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Plaintiffs 'take nothing,' he rules; Davidians have vowed to appeal
By Lee Hancock / The Dallas Morning News
The Branch Davidians' long-running wrongful-death

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Plaintiffs 'take nothing,' he rules; Davidians have vowed to appeal

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The Branch Davidians' long-running wrongful-death lawsuit ended Wednesday with a federal judge's ruling that they and not the government were responsible for the 1993 tragedy.

In a 22-page judgment finalizing an advisory jury's recommendation, U.S. District Judge Walter S. Smith Jr. ruled that surviving sect members and their families who had sought \$675 million in damages would "take nothing" from the federal agencies involved in the deadly standoff near Waco.

Judge Smith's ruling also included a lengthy rebuke of lead plaintiffs' lawyer Michael Caddell of Houston, saying he abused the judicial process.

The judge wrote that Mr. Caddell had attempted "for the past year ... to try their case in the media through the use of innuendo, distortions and outright falsehoods, rather than honestly presenting the true facts of the case."

Mr. Caddell and other lawyers for the plaintiffs could not be reached Wednesday evening.

The decision drew praise from Justice Department officials and FBI director Louis Freeh, who termed it a "most gratifying" vindication of federal law enforcement.

"No one in the FBI wanted anyone harmed. Everyone did their best under extraordinarily difficult circumstances. In the end, no one fired a shot, the government did not start the fires and the Davidians were found by the court to be solely responsible for the unnecessary deaths that occurred," Mr. Freeh said.

The judge's decision came two months after an advisory jury concluded that Branch Davidians alone instigated a Feb. 28, 1993, shootout with federal agents and then ended a 51-day standoff by immolating themselves inside their besieged building.

Six Branch Davidians and four federal Bureau of Alcohol, Tobacco and Firearms agents died in the shootout, and about 80 sect members died in the final fire at the compound they called Mount Carmel.

Judge Smith's ruling rejected the sect's arguments that FBI efforts to force them out of their building with tanks and tear gas on April 19, 1993, were at least partially responsible for the fire.

Blaming Koresh

Instead, the judge wrote, sect leader David Koresh and several of his male followers intentionally set the fires, and "adult Davidians kept the children in the compound after starting the fire rather than sending them to safety."

"The entire tragedy at Mount Carmel can be laid at the feet of this one individual," he wrote of Mr. Koresh.

The judge concluded that the plaintiffs failed to prove their most controversial claim: that blips of light recorded by an airborne FBI infrared camera just before the fire were heat flashes from government guns firing into the compound.

"Mere speculation does not constitute proof," he wrote. "The FBI acted with restraint on April 19, 1993, despite the deadly gunfire directed at them during the tear gas operation. The FBI did not return fire."

Judge Smith also rejected the argument that FBI agents had failed to protect the lives of more than 17 children and other innocents who died inside the compound.

"Because the fire was started by certain Davidians, the United States owed no duty to protect the remaining Davidians from the fire," Judge Smith wrote. "Despite this, a number of FBI agents risked their lives to assist Davidians from the burning compound in an attempt to save the children."

He added that the agents' rescue efforts were the "most telling evidence" to debunk persistent conspiracy theories that the government intentionally set the compound fire or tried to cut off escape routes with gunfire.

The ruling ends more than seven years of federal litigation arising from the standoff. In addition to presiding over the four-week wrongful-death trial that led to Wednesday's ruling, Judge Smith heard a 1994 criminal trial arising from the standoff and several other lawsuits brought by federal agents.

But even before the judge issued his final judgment, lawyers for the sect declared that they would appeal what they predicted would be a hostile decision toward them.

Mr. Caddell fired an opening salvo last week with a lengthy and caustic motion charging that the judge had denied his clients a fair trial. Asking Judge Smith to recuse himself and declare a mistrial, the motion alleged that the judge's behavior, comments and rulings displayed "profound and deep-seated prejudice" against the sect members and their families.

He also condemned the judge's move to impanel an advisory jury to help him decide the case, contending it was a ruse to provide the judge with cover for a controversial decision.

Such litigation against the federal government is normally decided by a federal judge alone. But Judge Smith announced just before the trial began in mid-June that he was bringing in a jury because of the high degree of public interest and controversy in the case.

After hearing four weeks of testimony, jurors returned a verdict for the government in less than three hours, and court personnel later said their actual deliberations took less than an hour.

Criticism from the bench

Judge Smith began his Wednesday ruling by castigating Mr. Caddell's recusal motion as legally and factually baseless. He told the Houston lawyer that such an unfounded and "reckless" public attack on a judge could constitute a violation of the Texas Bar Association's disciplinary rules.

Although he acknowledged remarking during one bench conference that he considered sect member Livingstone Fagan "a lying, murdering son of a bitch," the judge wrote that the comment was a joking and "off-the-record" response to a joking comment.

Mr. Fagan was among eight sect members convicted of federal firearms and manslaughter charges after the standoff, and he acknowledged in a recent deposition that he had shot at least one ATF agent. "The court resents the slight to Mr. Fagan's mother, should he have one," Judge Smith wrote Wednesday.

Lawyers for the sect argued during the wrongful-death trial that ATF agents started the shootout as they arrived to search the compound and arrest Mr. Koresh on weapons charges. But Judge Smith rejected that claim, as well as the sect's contention that ATF agents fired indiscriminately and used excessive force.

He wrote that the ATF's decision to rush the building with a large number of agents was "reasonable in light of the accumulation of weapons by the Davidians," and he added that agents acted lawfully and reasonably after being ambushed.

He noted that lawyers for the sect had admitted before the trial that their clients had amassed an arsenal of more than 300 weapons, including sniper rifles, illegal grenades and machine guns.

Other arguments

Lawyers for the sect also contended that FBI tanks touched off or helped spread the fire at the end of the siege when they smashed into the compound during a tank and tear gas assault. They alleged that the decisions of the FBI's commanders to send the tanks deep into the building and to have no provision for fighting fires that day violated a Washington-approved plan for the tear gas operation.

But the judge ruled that the FBI's actions and decisions were both proper and protected under federal law from subsequent legal challenge.

He said that the Branch Davidians' actions were the sole cause of their injuries and precluded any claims of government negligence. "The law requires each person to act reasonably. The standard is what a reasonable person would do, not what a reasonable Davidian would do. As a matter of law, there was nothing reasonable about the adult Davidians' behavior from Feb. 28, 1993, through April 19, 1993."

The ruling mirrors a preliminary July report by Waco special counsel John C. Danforth absolving government agents and Attorney General Janet Reno of any wrongdoing in their efforts to end the siege.

A Waco chronology

Feb. 28, 1993: Four Alcohol, Tobacco and Firearms agents and six Branch Davidians die when a gunbattle erupts as agents arrive to search the sect's Waco compound and serve an arrest warrant on its leader, David Koresh.

April 19, 1993: After a 51-day standoff, FBI tanks ram the compound and spray in tear gas to end the siege. The compound erupts in flames, burning about 80 sect members inside.

April 1995: Families and survivors of the Branch Davidians involved in the siege have their wrongful-death lawsuits consolidated into a single case in the court of U.S. District Court Judge Walter S. Smith Jr. of Waco. Judge Smith also handled 1994 trials in which eight Branch Davidians were convicted of criminal charges stemming from the siege.

August 1999: After years of denials, the Justice Department acknowledges Dallas Morning News reports that pyrotechnic tear gas canisters were used at the compound

during the siege.

September 1999: Former U.S. Sen. John C. Danforth of Missouri is appointed by Attorney General Janet Reno to lead an independent inquiry into the events in Waco.

July 14, 2000: A five-member advisory jury decides that federal authorities were not responsible for the gunfight that began the siege or the deadly fire that ended it. Judge Smith reserves the right to make final rulings in the case.

July 21, 2000: In a preliminary report, Mr. Danforth clears the government of any wrongdoing, saying Mr. Koresh and his followers were solely responsible for the tragedy. He said there was "no massive conspiracy or cover-up" after the siege and he exonerated Ms. Reno and other top federal officials.


Sept 20, 2000: Judge Smith rules that the government was not responsible for the gunfight or the fire. He also ruled that no agents shot into the burning compound.

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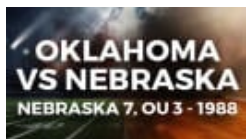
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