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Union Calendar No. 599

106th Congress, 2d Session – – – – – – – – – – House Report 106–1037

THE TRAGEDY AT WACO: NEW EVIDENCE EXAMINED

ELEVENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT REFORM

Available via the World Wide Web: http://www.gpo.gov/congress/house
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DECEMBER 28, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, December 28, 2000.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform, I submit herewith the committee's eleventh report to the 106th Congress.

DAN BURTON,
Chairman.

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106TH CONGRESS, *2d Session* } HOUSE OF REPRESENTATIVES { REPORT 106–1037

THE TRAGEDY AT WACO: NEW EVIDENCE EXAMINED

DECEMBER 28, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON, from the Committee on Government Reform submitted the following

ELEVENTH REPORT

On October 19, 2000, the Committee on Government Reform approved and adopted a report entitled, "The Tragedy at Waco: New Evidence Examined." The chairman was directed to transmit a copy to the Speaker of the House.

The Committee on Government Reform has conducted a yearlong investigation of the actions of the Federal Bureau of Investigation, the Department of Justice, and the Department of Defense with regard to the standoff which occurred at the Mt. Carmel Center outside Waco, TX, from February 28, 1993, through April 19, 1993, as well as actions taken after the tragic end of the standoff.

I. WHY THE COMMITTEE CONDUCTED THIS INVESTIGATION

From July 26 through August 1, 1995, this committee's Subcommittee on National Security, International Affairs, and Criminal Justice and the Committee on the Judiciary's Subcommittee on Crime held joint hearings on all aspects of the Federal Government's role in the 1993 tragedy at the Mt. Carmel Center, a religious community about 10 miles northeast of Waco, TX.[1] On August 2, 1996, the committees released a joint report.[2] Major findings of the report included:

- The BATF's investigation of the Branch Davidians was incompetent.

[1] "Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 1)," hearings before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight, 104th Cong., 163 (1995).

[2] H. Rept. No. 104–749.

- The affidavit filed in support of the ATF's arrest and search warrants included knowingly false statements.
- The BATF fraudulently claimed that the Branch Davidians were producing methamphetamine, in order to obtain non-reimbursable and prompt military support.
- The BATF's military-style raid was deeply flawed, in concept, in planning, and in execution.
- The decision to end the standoff on April 19, 1993, was "premature, wrong, and highly irresponsible."[3] The possibility of a negotiated end should have been further pursued.
- President Clinton should have accepted Attorney General Reno's resignation.
- The committees found no evidence that the FBI discharged firearms or set the fires, either intentionally or inadvertently, on April 19, 1993.
- The actions of the military, including the National Guard, did not violate the Posse Comitatus Act.

It was the committees' understanding that on April 19, 1993, the FBI's Hostage Rescue Team used only two means to insert CS gas into the Branch Davidians' residence: spraying devices attached to the booms of M–728 Combat Engineering Vehicles[4] and plastic, non-pyrotechnic ferret rounds fired from 40mm M–79 grenade launchers.[5] This understanding was consistent with the public statements of Attorney General Janet Reno in 1993 and with the position of the Department of Justice until 1999.

Attorney General Reno, along with other Department of Justice and FBI officials, had been emphatic in their public statements about the means by which the HRT inserted gas into the Branch Davidian residence. Before the House Committee on the Judiciary, on April 28, 1993, Reno stated in a prepared statement that, "I wanted, and received assurances that the gas and its means of delivery were not pyrotechnic"[6] At the same hearing, FBI Director William Sessions' prepared testimony stated that "[o]ne critical factor [in formulating the plan] was that CS gas could be used without pyrotechnics. It will not start or contribute to a fire." [7]

Sometime in 1998, an independent filmmaker, Michael McNulty,[8] obtained permission to review the physical evidence collected at the scene of the tragedy, which was then in the custody of the Texas Rangers Division of the Texas Department of Public Safety. McNulty found pictures taken by the Texas Rangers during the week after the April 19, 1993, fire which portrayed at least one expended M–651 projectile, a military CS gas projectile that uses py-

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[3] Id. at 4.
[4] Id. at 68.
[5] Id. at 69.
[6] "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas," hearing before the Committee on the Judiciary, 103d Cong., 16 (Apr. 28, 1993) (statement of Attorney General Janet Reno).
[7] "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas," hearing before the Committee on the Judiciary, 103d Cong., 85 (Apr. 28, 1993) (statement of William Sessions, former FBI Director).
[8] McNulty was a producer of "Waco: The Rules of Engagement" (Fifth Estate Productions, 1997) and "Waco: A New Revelation" (MGA Films, 1999).

rotechnic means to expel gas. On June 14, 1999, Senior Captain Bruce Casteel, Chief of the Texas Rangers, directed Ranger Sergeant Joey Gordon to review the evidence, particularly any evidence that pyrotechnic rounds may have been used.[9] The chairman of the Texas Public Safety Commission, James B. Francis, first raised questions in public about the use of pyrotechnic rounds to the Dallas Morning News in an article published July 28, 1999.[10] A retired senior FBI agent, Danny Coulson (who also founded the FBI Hostage Rescue Team) confirmed to the Dallas Morning News on August 24, 1999, that pyrotechnic rounds had been used.[11] Committee staff also traveled to Texas, interviewed Texas Rangers, and examined the physical evidence in attempt to ascertain whether the pyrotechnic rounds had been used.

In addition to the newly-revealed possibility that FBI use of pyrotechnic rounds may have contributed to the fire, allegations surfaced regarding the active participation of the military in the April 19, 1993, assault and regarding the possibility that videotapes filmed on April 19, 1993, using aerial Forward-Looking Infrared (FLIR) technology, depicted government agents firing weapons. Also, a report issued by the General Accounting Office on August 26, 1999, called into question certain findings of the 1996 committee report with respect to the military's support of the Bureau of Alcohol, Tobacco and Firearms prior to their February 28, 1993, raid.[12]

The 1996 joint report concluded that the BATF misled the Defense Department as to the existence of a drug nexus in order to obtain non-reimbursable support in a prompt manner from the Defense Department. While there had been allegations that a drug manufacturing operation was located at the Davidian residence at some point in the mid to late 1980's before Koresh took control of the group, there was no evidence that the drug operation continued into late 1992.

The committee's investigation was limited to resolving these new allegations, thereby building on, but not replacing, the report issued in 1996. We have found no reason to revise the major findings of the 1996 report.

II. How the Committee Conducted This Investigation

In September 1999, the committee issued document subpoenas to the Department of Justice, the Department of Defense, and the White House. Over the course of the committee's investigation, committee investigators reviewed and analyzed over 1 million pages of documents. Committee attorneys interviewed 20 representative members of the FBI Hostage Rescue Team who were involved in the standoff, along with military personnel, numerous senior Justice Department and FBI officials, and surviving Branch Davidians.

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[9] "Texas Rangers Division of the Texas Department of Public Safety, Investigative Report Branch Davidian Evidence" (September 1999) (exhibit 1).

[10] Lee Hancock, "DPS Head Raises Questions About Davidian Fire," the Dallas Morning News, July 28, 1999 (exhibit 2).

[11] Lee Hancock, "2 Pyrotechnic Devices Fired at Davidians, Ex-official Says," the Dallas Morning News, Aug. 24, 1999 at A1 (exhibit 3).

[12] "U.S. General Accounting Office, Department of Defense: Military Assistance Provided at the Branch Davidian Incident" (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).

In September 1999, the committee retained a FLIR analyst, Carlos Ghigliotty, to analyze flashes that appeared on the FLIR tapes taken on April 19, 1993, that were alleged to be gunfire. On October 6, 1999, the Washington Post published an article in which Ghigliotty was quoted stating that he "conclude[d] that the FBI fired shots on that day." [13] According to the article, Ghigliotty's conclusion was based on his review of both visual-range and FLIR videotapes.[14] On October 12, 1999, Ghigliotty examined the original FLIR tapes at an FBI lab and supervised the creation of first generation copies. Beginning in December 1999, Ghigliotty prepared a list of all of the questionable thermal flashes he detected on the four FLIR tapes taken on April 19, 1993.[15] Ghigliotty died in the spring of 2000 without having submitted to the committee a scientific report on the flashes. The Maryland Medical Examiner reported that his death was caused by cardiac arrhythmia and atherosclerotic cardiovascular disease.[16]

In December 1999, the committee retained a second FLIR analyst, Dr. Don Frankel of Photon Research Associates, Inc. On September 11, 2000, Frankel submitted a report to the committee concluding that the flashes analyzed by him on behalf of the committee do not depict gunfire.[17] His report is discussed in detail in Section IV of this report.

III. FINDINGS

The committee has reached the following conclusions as a result of its investigation:

A. THE EVENTS OF APRIL 19, 1993

- Aerial Forward-Looking Infrared videos filmed on April 19, 1993, include flashes around the Mt. Carmel Center that at first blush resemble muzzle blasts. Careful scientific analysis of the flashes does not, however, appear to support allegations that these flashes are the result of gunfire. Analysts who submitted reports to both this committee and the Office of Special Counsel reached similar conclusions: that the flashes they were asked to examine appeared to be solar or other thermal reflections emanating from debris. However, the analyst retained by this committee reported that an overhead FLIR camera of the type used by the FBI on April 19, 1993, would not record every muzzle flash occurring within its field of view. Therefore, while the flashes that have generated such controversy do not appear to represent gunshots, it is within the range of possibility that gunshots may have occurred that were not captured by the FLIR camera. This conclusion is bolstered by the March 21, 2000, FLIR reenactment performed at Ft. Hood, TX.

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[13] David A. Vise and Richard Leiby, "Expert Concludes FBI Fired Shots During Waco Siege," the Washington Post, Oct. 6, 1999 at A6 (exhibit 5).

[14] Id.

[15] The final version of the list Carlos Ghigliotty provided the committee is attached as exhibit 6.

[16] "Office of the Chief Medical Examiner, State of Maryland, Post Mortem Examiantion Report No. 00–2354–027 on Carlos Ghigliotty" (Apr. 28, 2000) (exhibit 7 on file with the committee).

[17] Donald S. Frankel, Photon Research Associates, "Assessment of Waco, Texas FLIR Videotape" (Sept. 11, 2000) (exhibit 8).

- Every FBI agent interviewed by the committee has denied discharging any weapons (other than for the delivery of CS gas) on April 19, 1993, or knowing of any gunfire from government sources. This committee has uncovered no evidence to contradict these claims.
- There is no evidence that HRT snipers stationed at a house (designated the Sierra One sniper position) across the Double EE Ranch Road from the compound fired shots on April 19, 1993. Shell casings recovered at the house by the Texas Rangers have been tested by the Office of Special Counsel and matched weapons used by the Bureau of Alcohol, Tobacco and Firearms on February 28, 1993.
- The operations plan approved by Attorney General Janet Reno called for a gradual, section-by-section, insertion of CS gas over the course of 2 days, followed by "deconstruction" of the building if the Branch Davidians had not surrendered after 48 hours. Nonetheless, on the morning of April 19, 1993, the HRT punched large holes in the walls of the building, drove M–728 Combat Engineering Vehicles deep into the building, and destroyed one-half of the gymnasium on the Black side of the building.
- At approximately 8 a.m. on April 19, 1993, HRT member David Corderman, after obtaining authorization from HRT commander Richard Rogers, fired either two or three pyrotechnic M–651 rounds in an attempt to insert gas in an underground tornado shelter on the Green side of the Center.[18] Corderman had fired non-pyrotechnic ferret rounds at the shelter's tarpaper and plywood roof, but they had failed to penetrate it. Although HRT leadership was aware of the possibility that HRT personnel might need to use M–651 rounds, they failed to include the contingent use of M–651 rounds in the operations plan they sent for approval to the Attorney General. They also failed on April 19, 1993, to obtain authorization for this deviation from higher up the chain of command.
- A Texas Department of Public Safety photographer took pictures of an expended M–651 projectile during the crime scene investigation after the fire. The projectile was never logged into evidence by the Texas Rangers or FBI, and numerous searches have failed to locate this expended projectile.

B. FAILURE TO DISCLOSE THE USE OF PYROTECHNIC TEAR GAS ROUNDS

- Department of Justice attorneys William "Ray" Jahn, LeRoy Jahn, and William Johnston, who were responsible for prosecuting the surviving Davidians, learned in 1993 that HRT personnel had sought and received approval to fire the M–651s. They did not disclose these facts to the criminal defendants, to the Congress in 1995, or by her account, to Justice Department civil trial defense attorney Marie Hagen. The Jahns and Johnston arguably

[18] The FBI designated the front of the Center, which faced southwest toward the Double EE Ranch Road, the "White side," the side of the Center facing roughly southeast toward Elk Road the "Red side," the side of the Center facing roughly northwest toward the Perry Ranch and beyond towards Old Mexia Road the "Green side," and the rear of the Center the "Black side." These designations are used throughout this report.

had a legal and ethical duty to disclose these facts. Had they done so, the considerable time and resources that have been devoted to uncovering these facts now would not have been expended.

- Former HRT Commander Richard Rogers approved the use of pyrotechnic M–651 rounds on April 19, 1993. He sat silently behind Attorney General Reno and former FBI Director William Sessions during the 1993 House Judiciary Committee hearings as they stated under oath that no pyrotechnic device had been used by FBI personnel on April 19, 1993. Rogers claims that he was distracted at the time.

C. THE JUSTICE DEPARTMENT INTERNAL REVIEW

- Attorney General Reno failed to ensure that the "vigorous and thorough investigation" ordered by the President and promised by Reno occurred. The Scruggs investigation was negligent and was improperly rushed to its conclusion solely for political purposes. A thorough investigation in 1993 would have saved time and resources later incurred to discover the truth.
- Had Scruggs and his colleagues conducted a "vigorous and thorough investigation," they would have discovered the truth regarding: (a) the use of the pyrotechnic M–651 rounds; (b) the role of active duty Army special operations personnel during the 51–day standoff; and (c) FBI Special Agent Riley's statement regarding gunfire from an HRT sniper position.
- Pressure from senior Justice Department officials, including then-Deputy Attorney General Phil Heymann, caused the Scruggs team to rush to conclude their investigation and to publish their report, thus failing to uncover and disclose facts which could have fully accounted for the allegations made in the civil trial and disclosed in the fall of 1999.
- All of the actions taken by the Justice Department were consistent with an organization that was not eager to learn the full truth about what happened on April 19, 1993. This is made clear by the fact that the original FLIR tapes made on that day sat unanalyzed in an FBI office for 6 years.
- The committee recommends that in the case of future tragedies of the scale and importance of Waco, an outside and independent investigation should be commissioned to preclude the kind of negligence that occurred in 1993 and to obviate the need for subsequent congressional and other investigations.

D. THE ROLE OF THE MILITARY

- The committee uncovered no evidence that any member of the armed services present at Waco, including the National Guard, violated the Posse Comitatus Act. Representatives from the U.S. Special Operations Command were present, but the available evidence indicates that they acted only as observers and technicians.
- Relations between civilian officials and the military with regard to Waco were characterized by disregard of the Posse Comitatus

Act on the part of the civilians, and by diligence on the part of the military. Two senior Army officers were asked to evaluate the FBI's proposed operations plan for April 19, and consistently refused to do so, as such support would have made them direct participants in planning the arrest of the Branch Davidians, and would have therefore violated the Posse Comitatus Act.

- Two senior Army officers were asked to review the FBI's proposed operations plan and attend a briefing with Attorney General Reno on April 14, 1993. While Attorney General Reno has stated that these officers told her the FBI's plan was "excellent" in one case, and "sound" in another, both officers have clearly stated they were careful not to evaluate the plan during the meeting. President Clinton and Attorney General Reno have deceived the American people for over 7 years by misrepresenting that the military endorsed, sanctioned or otherwise approvingly evaluated the plan.

IV. Further Analysis of the Events of April 19, 1993

A. DEVELOPMENT OF THE OPERATIONAL PLAN

1. Emergency Plans During the 51-Day Standoff

On February 28, 1993, the Bureau of Alcohol, Tobacco and Firearms (BATF) attempted to serve a search warrant on the Branch Davidian religious community near Waco, TX, and an arrest warrant on the community's leader, David Koresh. That raid ended in tragedy, as four BATF Special Agents and six Branch Davidians were killed in an ensuing gunfight. The flaws in the conception, planning and execution of the BATF raid are well documented in the 1996 joint report of the Committee on the Judiciary's Subcommittee on Crime and this committee's Subcommittee on National Security, International Affairs, and Criminal Justice.[19]

In the aftermath of that failed raid, the Treasury Department requested that the Federal Bureau of Investigation (FBI) assume command of the situation. The FBI deployed its Hostage Rescue Team (HRT), a full-time counterterrorist unit based at the FBI Academy at Quantico, VA, along with part-time Special Weapons and Tactics (SWAT) teams from various FBI Field Offices and hundreds of other Special Agents and support personnel. HRT assumed tactical command of the site on March 1, 1993, and began deploying its members to various positions around the compound.

Upon arrival at an incident site, HRT commanders, as standard procedure, formulate an emergency plan for approval by the Special Agent in Charge (SAC) in overall command of an incident.[20] Soon after arriving in Waco, HRT commanders developed emergency plans to deal with various contingencies, including the possibility that the Davidians would attempt suicide. The first such plans were oral, and were later committed to writing.

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[19] H. Rept. No. 104–749.

[20] Interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, HRT, FBI, in Phoenix, AZ (Aug. 9, 2000). In 1993, the SAC of the FBI Field Office within which a critical incident occurred was in overall command of the incident. In 1995, the FBI created the Critical Incident Response Group, which assumed responsibility for management of critical incidents.

Under the early versions of HRT's emergency plans, in the event of a mass suicide attempt by the Davidians or under similar circumstances, HRT personnel would have attempted to disable those inside by firing non-pyrotechnic "ferret" rounds from M–79 40 millimeter grenade launchers [21] through the doors and windows. Ferret rounds are plastic projectiles with stabilizing fins containing 25 grams of CS, a type of tear agent, suspended in a liquid solvent.[22] Upon impact, the front of the round ruptures, releasing its contents. Ferret rounds are often used to deploy CS gas indoors or in areas where flammable materials are present, because there is little risk of fire from the round. Another type of CS gas round in HRT's inventory at Waco was the M–651, or "military" round. Inside the M–651's metal projectile, a fuse ignites a chemical mixture a short time after the round is fired, propelling CS gas from its base.[23] The pyrotechnic M–651 round is the preferred round for use when flammability is not a concern, as it expels a large cloud of visible CS gas and can be used to deny large areas to threats.

The emergency plans evolved over the course of the 51–day standoff. The written plan was lengthened, and incorporated the use of M728 Combat Engineering Vehicles (CEVs) on loan from the Texas National Guard. The CEVs were equipped with mounted CS gas spraying devices, which were to be used to insert CS gas directly in the building through windows and through holes punched in the walls. The plan continued to include the use of M–79 grenade launchers to launch ferret rounds through the doors and windows.

2. The Proposed Operations Plan

As it became clear that the standoff with the Davidians could be a protracted one, a formal, written operations plan was drafted under the direction of FBI SAC Jeff Jamar and HRT Commander Richard Rogers.[24] As was the case with the emergency plan, the operations plan was sent up the FBI's chain of command, except this time it was presented to Attorney General Janet Reno.

Several earlier versions had been drafted and proposed, and these earlier versions provided for immediate insertion of tear gas by the combined use of CEVs with boom-mounted gas cylinders along with ferret rounds shot into every opening into the compound. These earlier versions were not approved.

The FBI's proposed operations plan, as submitted and approved by Attorney General Janet Reno, described what was to occur on April 19, 1993, in the following manner:

> On order, two CEVs will enter the compound inside the concertina wire prior to sunrise. One CEV will penetrate the structure on the 1st floor, at the White/Green corner utilizing the boom and project tear gas via the Mark 5 delivery system secured to the boom. After delivery, the CEV

[21] The M–79 is a Vietnam War-era shotgun-like weapon that fires 40-milimeter, spin-stabilized rounds such as tear gas, buckshot, high explosive, illumination and smoke.

[22] A discussion of CS gas generally, and ferret rounds in particular, can be found at H. Rept. No. 104–749 at 69–75.

[23] "Texas Rangers Division of the Texas Department of Public Safety, Investigative Report Branch Davidian Evidence" (September 1999) (exhibit 1).

[24] Interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, HRT, FBI in Phoenix, AZ (Aug. 9, 2000).

> will retreat from the structure and stand-by. The second CEV will stand by and upon retreat by the 1st CEV, will insert additional tear gas into the 2nd floor of the White/Green corner. Prior to the entry of the CEVs, the BVs [Bradley Fighting Vehicle, a type of armored personnel carrier] will be engaged in routine spotlight maintenance. Upon delivery of the tear gas by the CEV, a BV on the Green side will deliver Ferret liquid tear gas rounds into the top of the black covering on the unfinished and unoccupied construction in order to deny access in this area. If firing commences from the Compound, the BVs will be prepared to deliver Ferret liquid tear gas rounds into all windows/openings in the compound structure. If all subjects fail to exit the compound structure after 48 hours of tear gas, then, on order, a modified CEV will proceed to open up/disassemble the structure at the location where the structure was least gassed until all subjects are located.[25]

The operations plan clearly outlines the tactics to be employed. That is, the two CEVs would "penetrate the structure . . . utilizing the boom and project tear gas via the Mark 5 delivery system secured to the boom." The CEVs would insert tear gas incrementally, and only one CEV would insert gas at a time. Right after the CEVs first began inserting tear gas, a Bradley would approach the "unfinished and unoccupied" tornado shelter and fire ferret rounds through the top. If the Davidians fired at the HRT, then the HRT would shoot ferret rounds into all openings in the compound.

The plan also details the type of tear gas to be used; the CEVs would discharge tear gas from the cylinders mounted on their booms and the HRT would be firing liquid ferret rounds. There is no mention in the operations plan of the possibility of using any pyrotechnic types of tear gas rounds.

3. Deviation in the Execution of the Plan

This plan, as approved by the Attorney General, bears little resemblance to what actually occurred on April 19, 1993. The plan antiseptically describes "[o]ne CEV will penetrate the structure . . . utilizing the boom and project tear gas." On April 19, 1993, HRT members operating the CEVs repeatedly entered the structure at different points, causing damage to the building far exceeding what one would expect from reviewing the plan. One photograph shows holes in the compound walls that exceeded the width of a CEV.[26] The photograph also shows that the gymnasium in the rear of the compound has collapsed and entire sections of the first floor walls on the compound are missing.

At mid-morning on April 19, 1993, the CEV that was tasked to insert gas into the Black side of the compound, designated CEV–2, became disabled as it attempted to return to the T-intersection to reload its CS cylinders. The driver and the vehicle commander exited CEV–2 and entered a reserve CEV that did not have the capability to inject CS gas. This CEV returned to the Black side, and

[25] "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp No. WWC142–0441, 26 (Apr. 12, 1993) (exhibit 9).
[26] Exhibit 10.

was ordered to open up a path to the area around the base of the tower for CEV–1.[27] This was an area that the HRT commander believed had not had any tear gas inserted.[28] The path to the tower between the swimming pool and the gymnasium was not much wider than a CEV, so CEV–2's commander opted to push through the walls of the gymnasium rather than risk collapsing the side of the pool with the weight of his vehicle. CEV–2 repeatedly entered the gymnasium until the structure collapsed a short time before noon. During their interviews with committee staff, the tank commander and the on-site commander both claimed that this collapse was an accidental result of their attempts to insert tear gas in the tower area, and not a deliberate attempt to demolish the building.[29]

The operations plan did include a provision for the demolition of the compound, but only after 48 hours of deliberate gas insertion. Nonetheless, the gymnasium was demolished less than 6 hours after the HRT implemented their operations plan.

4. Foreknowledge of Need to Deviate from the Plan

Of concern to the committee is why the possibility of early, serious structural damage to the compound was not put forth in the operational plan. The shoddy nature of the construction of the compound was well known to the FBI, and concerns had previously been noted concerning its fragility, especially the gymnasium's:

> HRT has talked to military engineers and have developed information regarding the construction of the compound. It is not of good quality. Information has been obtained from individuals who have worked in the compound regarding construction. They believe that if they use the rail on the CEV to penetrate into the white side, the result will be a peeling away of the siding exposing the rooms on that side. They anticipate the roof will remain intact [sic] The construction of the black side (gym) is not of good quality. It is believed that the same type of activity directed toward the gym will result in the collapse of the roof. HRT advised that they have on occasion "bumped" the compound using the CEVs and it is not very stable.[30]

Despite the foreknowledge of the poor quality of the construction, and despite the fact that the operational plan did not call for a systematic "disassembly" of the compound until after 48 hours had elapsed, the gymnasium was demolished within 6 hours of the implementation of the plan.

Jeff Jamar, the on-scene commander at Waco, claimed in his deposition taken in preparation for the civil trial that he had the discretion to allow deviations from the operational plan:

> Q. My question is, is it your testimony that there was a specific reference contained in the plan of operations, the

[27] Interview with Jim Walden, Special Agent, FBI, in Washington, DC (Dec. 10, 1999).

[28] Interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, HRT, FBI, in Phoenix, AZ (Aug. 9, 2000).

[29] Interview with Jim Walden, Special Agent, FBI, in Washington, DC (Dec. 10, 1999); interview with Jeff Jamar, former Special Agent in Charge, FBI, in Austin, TX (Feb. 16, 2000).

[30] Memorandum from Danny Coulson, former Deputy Assistant Director, FBI, undated, 2, at Bates Stamp No. WWC130–0247 (exhibit 11).

> written plan of operations that was approved for April 19, 1993, that permitted you the authority to order penetration of the building with more than simply the tear gas insertion booms?
>
> A. . . . Yes, that was part of my discretion as—in implementing plan was to do that, yes.[31]

The court, in the civil litigation arising from the issues centering on the FBI's deviation from its operational plan, agreed:

> FBI agents operating the military vehicles inserted tear gas in accordance with the approved Plan of Operations on April 19, 1993. Because the plan could not provide for every contingency, it necessarily afforded discretion to the FBI agents on the scene to adapt to the evolving conditions, including, among other things, the failure of the Davidians to leave the building, the relative ineffectiveness of the tear gas due to the wind and the Davidians' gas masks, and the possibility that certain individuals were prevented from leaving because the exits were barricaded. Any deviation from the written plan was within the authority delegated to the agents on the scene.[32]

The on-scene commander clearly felt he had the implied, if not explicit, authority to deviate from the operational plan, and the court ultimately came to the same conclusion.

Of interest to the committee, however, is that earlier, more aggressive proposed operational plans which allowed for immediate and total tear gas bombardment from M–79 grenade launchers along with CEVs were not approved by FBI headquarters personnel from Washington, DC.[33] The plan as approved for April 19, 1993, allowed only incremental increases in tear-gassing. Only if the Davidians fired at the HRT was the gassing to be accelerated, and the M–79s employed.

This appears to have been a self-fulfilling prophecy, as Jamar told committee staff he believed the Davidians would start shooting as soon as the HRT approached the compound with the CEVs. It is an issue of serious concern that the plan, as executed, was more aggressive and destructive than the plan that was approved, and resembled closely earlier plans which had not been approved.

B. THE USE OF PYROTECHNIC DEVICES ON APRIL 19, 1993

1. No Contingency for Use of Pyrotechnic Rounds

The FBI's operations plan did not include as a contingency the use of pyrotechnic M–651 rounds against the Branch Davidians. The plan only referred to the use of ferret tear gas rounds and the use of CEVs modified to insert tear gas from boom-mounted cylinders.[34] No mention was made concerning the possible use of M–

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[31] Transcript of Deposition of Jeffrey Jamar, former Special Agent in Charge, FBI, at 6–10:48, *Andrade* v. *Chojnacki* (W.D. Tex. Mar. 15, 2000) (No. W–96–CA–139) (exhibit 12).

[32] Findings of facts and conclusions of law at 9, *Andrade* v. *Chojnacki* (W.D. Tex. Sept. 20, 2000) (No. W–86–CA–138) (exhibit 13).

[33] Transcript of Deposition of Jeffrey Jamar, former Special Agent in Charge, FBI, at 2–10:31, *Andrade* v. *Chojnacki* (W.D. Tex. Mar. 15, 2000) (No. W–86–CA–138) (exhibit 12).

[34] "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp No. WWC142–0441 (Apr. 12, 1993) (exhibit 9).

651s in the proposed operation plan given to the Attorney General.[35] Further, the plan mentioned the need to insert tear gas into the outdoor tornado shelter, but only with ferret rounds:

> Four Bradley Vehicles (BV) will be positioned around the compound ready to supplement the CEV in gas delivery, if needed. One of the four BV's will insert Ferret liquid tear gas rounds into the black covering of the new unoccupied construction on the green side immediately after the introduction of tear gas into the previously referenced white/green section of the compound structure.[36]

Moreover, HRT personnel were aware that the use of ferret rounds against the unfinished tornado shelter would likely prove ineffective:

> THE UNFINISHED AREA OF THE COMPOUND ON THE GREEN SIDE WILL BE THE TARGET OF CS INTRODUCTION USING THE M–79 GRENADE LAUNCHERS. IT DOES NOT APPEAR TO BE POSSIBLE TO USE HAND HELD CANISTERS TO ENGAGE THIS PART OF THE COMPOUND. THERE IS SOME QUESTION AS TO WHETHER THE FERRET WILL PENETRATE THE TARPAPER-COVERED PORTION OF THE UNFINISHED AREA. (DUE TO THE ANGLE), SOME OR ALL FERRETS MAY NOT PENETRATE. THE INTRODUCTION OF CS INTO THE WHITE GREEN COVER SHOULD GIVE SOME COVERAGE OF THE TRAP DOOR ENTRANCE TO THE TUNNEL, THUS DENYING SUBJECTS ACCESS TO THE TUNNEL AND THE UNDERGROUND BUS. THERE IS SOME INDICATION THAT THIS PORTION OF THE COMPOUND IS FLOODED.[37]

It is obvious that there was prior awareness on the part of the HRT that ferret rounds were likely to be ineffective against the roof of this structure. Why the operations plan failed to describe the possible need to use a more dangerous round remains a troubling question.

2. Use of Pyrotechnic Rounds

On April 19, 1993, HRT member David Corderman fired ferret rounds from a Bradley Fighting Vehicle using an M–79 grenade launcher at the shelter from the White/Green corner. Since he was shooting at a downward and shallow angle, the ferret projectiles merely bounced off the roof.[38]

At approximately 8 a.m., Corderman asked for approval to use M–651 tear gas rounds on the shelter's roof. The request went up the HRT's chain of command to HRT commander Richard Rogers,

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[35] Id.

[36] Id. at Bates Stamp No. WWC142–0440.

[37] See memorandum from Danny Coulson, former Deputy Assistant Director, FBI, undated, at Bates Stamp No. WWC130–0247 (exhibit 11).

[38] Interview with David Corderman, Special Agent, FBI, Washington, DC (Nov. 4, 1999).

who granted permission.[39] Portions of these conversations are clearly audible on the overhead FLIR tapes:

> ["HR 1" is Richard Rogers, Commander of the HRT. "HR 2" is Stephen McGavin, Supervisory Special Agent, HRT.]
>
> 7:48:55 a.m. (4/19/93)
>
> HR 2. HR 2 to HR 1.
>
> HR 1. Go ahead, it's HR 1.
>
> HR 2. [unintelligible] supplying Charlie 1 [unintelligible] with relative safety utilizing the vehicle for cover and attempt to get [unintelligible] penetrate the construction project.
>
> HR 1. You're talking about the block over top the construction?
>
> HR 2. Say again, HR 1.
>
> HR 1. Are you saying he can penetrate the block covering over the construction on the green side?
>
> HR 2. Ten-four. He thinks he can get into position with relative safety utilizing the track for cover and attempt to penetrate it with military rounds.
>
> HR 1. Roger. Of course, if there's water underneath that's just going to extinguish them but you can try it.
>
> HR 2. Ten-four. Copy. He can try it?
>
> HR 1. Yeah, that's affirmative.
>
> 8:08 a.m. (4/19/93)
>
> Charlie 1. Charlie TOC to HR 1.
>
> [Pause]
>
> CHARLIE 1. YEAH, THE MILITARY GAS DID NOT PENETRATE THAT, UH, BUNKER WHERE THE BUS WAS. COPY.
>
> [Pause]
>
> CHARLIE 1. IT BOUNCED OFF.[40]

Corderman told committee staff that he fired two or three M–651 rounds. These rounds also bounced off the roof. A photograph from an FBI surveillance plane shows a small cloud of white smoke near the outdoor structure.[41] Corderman identified this photograph to committee staff as depicting the effects of the military round that he fired.[42] Corderman stated that he used the M–651 round because he thought this heavier metal projectile would be more likely to penetrate the shelter roof than the lighter, plastic ferret projectile.

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[39] Interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, HRT, FBI in Phoenix, AZ (Aug. 9, 2000).
[40] Transcript of FBI FLIR Tape (Apr. 19, 1993) (exhibit 14).
[41] Exhibit 15.
[42] Interview with David Corderman, Special Agent, FBI, in Washington, DC (Nov. 4, 1999); interview with David Corderman, Special Agent, FBI, in Washington, DC (Apr. 13, 2000).

The HRT personnel at Waco did not consider the fact that Corderman fired military tear gas rounds extraordinary. All HRT personnel were interviewed by the FBI soon after the fire and none of them mentioned the use of M–651 rounds because none of them had been asked if such rounds had been used. In November 1993, when HRT members were again interviewed, this time by Department of Justice prosecutors preparing for trial, Rogers and other HRT members readily admitted that M–651s had been used.[43] By their accounts, none thought it significant and they did not recall any response from the Justice Department prosecutors at that time.[44]

Curiously enough, in addition to the fact that the possession and eventual use of M–651 rounds were never mentioned in the operational plan, neither was the fact that the Bradleys also contained high explosive (HE) rounds for the M–79 grenade launchers. Although no evidence whatsoever has been found that these rounds were fired on April 19, 1993, their existence for use as a contingency should have been explicit in the operational plan.

3. Disappearance of the Pyrotechnic Rounds

An issue that has long plagued the Waco civil litigants as well as law enforcement officials concerns the whereabouts of the expended M–651 projectiles. The rounds were known to have been fired, one was photographed, another was seen on the ground shortly after the fire, but none were ever logged in as evidence by the Texas Rangers or the FBI.

Shortly after the end of the fire, evidence technicians from both the FBI and the Texas Department of Public Safety took over the crime scene to collect and inventory all evidence. A few days after April 19, 1993, a photographer for the Texas Department of Public Safety took photographs of an expended M–651 projectile.[45] Adjacent to the round in the photograph is what appears to be the wire shaft of a flag used to mark objects to be inventoried into evidence.[46] However, the evidence log maintained by the Texas Rangers shows no entry for this projectile.[47]

Wallace Higgins, an FBI Hazardous Devices and Explosives Examiner for the FBI's Explosives Unit, told committee staff that he observed two M–651 projectiles at the crime scene following the fire. One was in water and he couldn't see the end of it in order to determine whether or not it was live. Borrowing a .45 pistol from a Texas Ranger, he shot at it twice, hitting it and denting the projectile. According to Higgins, this was a "render safe" action that was done in order to determine if the round was still live. The round did not initiate; indicating it had been fired and activated previously. This round was found between the silo and the outdoor tornado shelter.[48]

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[43] Interview with Richard Rogers, former commander, HRT, FBI, in Phoenix, AZ (Aug. 9, 2000).

[44] Id.

[45] Interview with Joey Gordon, Sergeant, Texas Rangers Division, Texas Department of Public Safety, in Ft. Hood, TX (Mar. 19, 2000).

[46] See "Texas Rangers Division of the Texas Department of Public Safety, Investigative Report Branch Davidian Evidence," attachment I (September 1999) (exhibit 1).

[47] "Texas Rangers Division of the Texas Department of Public Safety Investigative Report #2 Branch Davidian Evidence" (January 2000) (exhibit 16).

[48] Telephone interview with Wallace Higgins, former Special Agent, FBI (Oct. 2, 2000).

Higgins found a second round in the dirt near the underground walkway, which abutted the tornado shelter. Higgins determined that the round had been expended and he left it in place. Higgins recalled that he told someone on the FBI evidence collection team about the rounds. However, he wasn't certain whether it was Rick Crum, an FBI firearms expert, or James Cadigan, the on-scene leader of the FBI's evidence collection team. Higgins further recalled that he didn't believe the rounds were still present on the ground by the time that the evidence collection was finished. Higgins stated he did not know what became of the rounds. He acknowledged that the FBI laboratory subsequently erred in labeling certain 40 millimeter flashbang rounds at the crime scene as M–651s, but the rounds he saw near the compound were M–651s and not flashbang rounds.[49]

FBI Special Agent James Cadigan, who led the on-scene evidence collection for the FBI, stated to committee staff that he arrived at Waco on April 19, 1993. Cadigan stated that his expertise is in small arms identification, up to and including .50 caliber weapons, but not larger ordinance such as 40mm rounds. When Cadigan arrived at the crime scene, the rubble from the compound was still smoldering. Within 24 hours he met with members of the ATF, Texas Rangers, and Federal prosecutors Ray and LeRoy Jahn. They established a protocol to divide the crime scene into grids. The Jahns told him the Texas Rangers were in charge of the evidence search. Cadigan became the administrative person on the site. He was primarily located at a mobile home brought to the compound, where he was responsible for locating equipment to be used by the evidence collection teams. Cadigan stated that he never observed any M–651s at the site. Cadigan recalled that some time after the fire, the Texas Rangers shipped a truckload of evidence to the FBI lab in Washington, DC. Federal prosecutors Ray and LeRoy Jahn, along with John Lancaster and, possibly, John Phinizy, reviewed each item at the lab for its probative value. The prosecutors logged probative value items, or those that might be used at trial, and sent the non-probative items back to the Texas Rangers. Cadigan also acknowledged that the FBI laboratory had misidentified certain 40mm flashbang rounds as M–651s.[50]

The Texas Rangers collected and stored the evidence from the compound at two primary sites. Items that might be used at the criminal trial in 1994 were stored at a large locker at the Texas Department of Public Safety in Austin, TX. In 1999, the Texas Rangers searched this area and found no military tear gas projectile. The other site was a warehouse in Waco, TX. This site contained many large, locked Conex containers. These containers were filled with hundreds of five gallon sealed drums; most of which contained hundreds of thousands of rounds of ammunition from the Branch Davidian compound, many of which had "cooked off" in the fire.

On November 17 and 18, 1999, the Texas Rangers and U.S. Postal Inspectors working for the Office of Special Counsel conducted an exhaustive hand search of the many tons of physical evidence

[49] Id.

[50] Interview with James Cadigan, Supervisory Special Agent, FBI, in Washington, DC (Oct. 3, 2000).

stored at the warehouse in Waco.[51] The search failed to produce any military tear gas rounds. Only the photograph of the projectile was found in the inventory.[52]

C. ALLEGATIONS OF GOVERNMENT GUNFIRE ON APRIL 19, 1993

The tragic outcome of the FBI's attempt to end their standoff with the Branch Davidians has been understandably difficult for most, if not all, Americans to comprehend. The fact that approximately 80 men, women and children did not flee tear gas and flames, and instead met gruesome deaths, has led a large cross section of the American public to suspect that the government somehow prevented the Davidians from escaping their residence on April 19, 1993. These suspicions have centered on the allegation that HRT or military personnel fired upon the Davidians both before and during the fire.

These suspicions have been further raised by troubling evidence brought to light during the discovery process in a wrongful death lawsuit and by independent investigators, Freedom of Information Act plaintiffs, and other private parties. This evidence includes:

- An FBI witness statement given by an HRT member that states that the agent "heard shots fired from sniper position #1."[53]
- Spent shell casings recovered from the FBI sniper position.
- Infrared footage taken by an FBI surveillance airplane on April 19, 1993, which to many viewers appears to include images of muzzle blasts directed at the rear of the compound.

One example of such an image on the FLIR tape, pointed out by documentary filmmaker Michael McNulty, concerned what appeared to be dark forms located directly behind CEV–2, which was making repeated entries into the gymnasium located on the back side of the compound. Flashes appeared on the FLIR tape from the edges of the forms, which McNulty alleged represented automatic gunfire from government agents located immediately behind CEV–2.[54] Dr. Allard, a FLIR expert retained by the plaintiffs in the civil case, described this event:

> A tank (CEV) was used to smash into a building before the complex fire. As the tank approached the building, two appeared on the videotape behind the tank. They rolled over and began shooting into the building with automatic gunfire. (The airborne FLIR recorded only part of the operation). A short time later, the tank backed out of the building. Standing behind the tank were three men. The tank appeared to roll over the men, as they disappeared under the tank. It stopped for a few seconds, turned, and left the scene. No men were observed after the tank left the scene.

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[51] Committee staff were present and participated in this search.

[52] The search did produce the remains of 40mm illumination rounds, presumably fired over the compound to illuminate the area prior to the installation of search lights.

[53] FBI telephone interview with Charles Riley, Special Agent, FBI, 2 (June 2, 1993) (exhibit 17).

[54] See "Waco: The Rules of Engagement" (Fifth Estate Productions, 1997) and "Waco: A New Revelation" (MGA Films, 1999).

The men had to enter and leave the tank through its bottom escape hatch.[55]

1. Sites Manned by the FBI

By April 19, 1993, the HRT had occupied various outbuildings and other sites around the compound for nearly 51 days. Immediately following the failed BATF raid on February 28, 1993, HRT personnel had taken over two pre-existing observation and sniper sites that had been used by the BATF on February 28, 1993. These sites provided cover for the agents while affording them a fairly unobstructed view of the compound. Both of these sites were fortified by the HRT. These sites were designated by the HRT as "Sierra One" and "Sierra Two." Sierra One was a house across the Double EE Ranch Road from the compound. The driveway leading from the compound entered the road almost directly in front of the house. Sierra One, and the house next to it (designated "Sierra One Alpha") were less than 300 yards from the compound and allowed full observation of the entire front or "white" side.

Sierra Two was a cinderblock garage located several hundred yards behind or on the black side of the compound. Between the two locations, HRT personnel had direct views of the white and black sides of the compound, with peripheral views of the red and green sides. These locations were provided with spotting scopes, rifle scopes and night vision equipment.

By early March 1993, HRT had heavily fortified both Sierra One and Sierra Two with sandbags and metal plates. Both sites had machine-gun emplacements as well as sniper/observer positions. As additional protection from attack, these sites had seismic sensors, on loan from the U.S. Special Operations Command (USSOCOM), placed around them.[56] These proved of little value, however, as cattle and deer often set the sensors off.

In order to more effectively monitor the right, or red side of the compound, HRT members constructed a new sniper position, designated "Sierra Three," up the driveway approximately 180 yards from the white/red corner. This position consisted of a trench fortified by metal plates and sandbags. It was occupied only part-time when HRT members needed to monitor special events. The HRT also constructed dummy sites on the red side to deceive the Davidians as to the snipers' true location.[57] Three HRT snipers manned Sierra Three on April 19, 1993.[58]

FBI agents from various FBI field office SWAT teams were also located on the left, or green side of the compound along a driveway that ran roughly parallel to the green side, on the neighboring Perry ranch. Personnel were stationed along this road, approximately 550 yards from the green side. This location was designated "Sierra Four." There was also an outer perimeter, consisting of roadblocks and other positions manned by various Federal, State and local law enforcement agents, including the BATF and FBI

[55] Edward Allard, "Preliminary Analysis of the Waco FLIR Tapes" 5 (Aug. 30, 1999) (exhibit 18).

[56] Interviews with 10 current and former USSOCOM Army Special Forces personnel at Ft. Bragg, NC; Raleigh, NC; and Washington, DC. The identities of these individuals remain classified by the Department of Defense.

[57] Interview with Kenneth G. Vincent, Special Agent, FBI, Washington, DC (Apr. 12, 2000).

[58] Id.

SWAT. This outer perimeter had been manned since the early days of the standoff.

In addition to manned sites, HRT personnel observed the Davidians through various technical devices, which the HRT obtained from U.S. Special Operations Command. Two remotely operated closed circuit TV cameras were placed; one on the green side and one on the red.[59] In addition, a thermal imager, also on loan from U.S. Special Operations Command, was placed on top of a water tower at an intersection of the Double EE Ranch Road and Elk Road, situated on the red side of the compound.[60] These devices, coupled with transmissions from several bugging devices inside the compound, allowed fairly close observation of the compound as well as intelligence from inside the compound.

In spite of the HRT's 360-degree coverage, and in spite of the hundreds of other law enforcement officers surrounding the Davidians, two individuals had been able to enter the compound undetected during the standoff.[61] In addition, the FBI had prohibited the Davidians from exiting their building without first obtaining permission. However, several times during the standoff, Davidians went outside unannounced and HRT members fired 40mm "flashbang grenades" over the Davidians' heads.[62]

In order to prevent continued unauthorized entries and exits, HRT members had erected a concertina (razor wire) fence on April 10, 1993,[63] which encircled the compound except for an opening on the driveway off the white/red corner of the compound. The fence, remnants of which remain at Mt. Carmel today, consisted of two stacked rolls of concertina wire, supported by metal posts. It was constructed by the HRT utilizing various armored vehicles as cover from potential gunfire from the compound. The fence was approximately 5 to 6 feet high and followed the contours of the compound, at a distance anywhere from 15 to 25 yards.[64]

During the operation of April 19, 1993, all HRT sites were manned, allowing close observation of the compound from all sides. Committee staff interviewed individuals from all positions. All consistently stated that not one government agent fired any gunshots at the compound. Numerous photographs and numerous videotapes taken of the compound from all angles were examined. None showed any government personnel on foot in close proximity to the compound, except for those that were involved in rescuing Davidians from the burning structure.

2. Gunfire from HRT Sniper Position

Two houses across the Double EE Ranch Road from the Mt. Carmel Center were manned both by BATF snipers on February 28,

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[59] Interviews with 10 current and former USSOCOM Army Special Forces personnel at Ft. Bragg, NC; Raleigh, NC; and Washington, DC. The identities of these individuals remain classified by the Department of Defense.

[60] Id.

[61] "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp No. WWC142–0433. (Apr. 12, 1993) (exhibit 9).

[62] Although these rounds are pyrotechnic in nature, none are known to have been fired on Apr. 19, 1993.

[63] "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp No. WWC142–0437 (Apr. 12, 1993) (exhibit 9).

[64] FBI aerial photograph with outline of fence as described to committee staff by Steve McGavin, former Deputy Commander, HRT, FBI (exhibit 19).

1993, and by HRT snipers (who designated the two houses Sierra One and Sierra One Alpha, as described above) throughout the 51–day standoff. The BATF snipers had been armed with .308 caliber sniper rifles as well as .223 caliber assault rifles, and admitted firing both during the February 28, 1993 shoot-out. The HRT snipers who manned the same positions throughout the standoff were armed with the same types of weapons, but denied ever firing them.

On April 20, 1993, an HRT member who had been stationed at the Sierra One sniper position handed over to the Texas Rangers 11 .308 caliber shell casings and 24 .223 caliber shell casings which the HRT member stated he had found at Sierra One.[65] On April 22, 1993, Texas Rangers searched the houses. Pursuant to this search, the Rangers sifted through sand found throughout the house (which had apparently leaked from sandbags used to fortify the sniper position) and found an additional .308 caliber shell casing.[66] The presence of spent shell casings at the sniper position as late as April 22, 1993, raised the disturbing possibility that the FBI had fired from the position on April 19, 1993, or sometime during the standoff.

Despite this possibility, firing pin and ejector impressions on the shell casings were not compared with test firings of BATF weapons until this year, by the Office of Special Counsel. The Special Counsel found that the shell casings found on April 20 and 22, 1993, matched BATF weapons used on February 28.[67] In light of this evidence, a claim in the civil suit was withdrawn by the plaintiffs.[68]

Another indication that HRT personnel may have fired from Sierra One on April 19, 1993, was the notes of an FBI interview with Charles Riley, a former HRT member who was positioned at Sierra Three on April 19, 1993. Supervisory Special Agent Gail Seavey, who conducted the interview, wrote that, on April 19, 1993, Riley "heard shots fired from sniper position #1."[69] Riley stated that he did not review this statement prior to its final draft, but that he had been misunderstood. Riley later clarified that he had heard a radio report from Sierra One that someone at that position had witnessed gunfire from within the compound.[70]

3. Allegations that FLIR Tape Depicted Muzzle Flash

During the standoff, the FBI employed various aircraft for observation purposes. In addition to small fixed wing aircraft and helicopters, the FBI utilized their primary observation plane known as the Nightstalker. This plane was equipped with a Forward Looking Infrared imager or "FLIR," essentially a video camera which films

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[65] "Criminal Law Enforcement Division of the Texas Department of Public Safety, Report of Investigation," RF093021–U.12, at 3 (May 1993) (exhibit 20).

[66] "Texas Rangers Division of the Texas Department of Public Safety, Investigative Report #2 Brance Davidian Evidence" at 3, 4 (January 2000) (exhibit 16). (Pages are not numbered in text).

[67] John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex," 15 (July 21, 2000).

[68] Id. See also Andrade Plaintiffs' motion to dismiss claims with prejudice against Lon Horiuchi. (W.D. Tex., Mar. 30, 2000) (No. W–86–CA–138) (exhibit 21).

[69] FBI telephone interview with Charles Riley, Special Agent, FBI, 2 (June 2, 1993) (exhibit 17).

[70] FBI telephone interview with Charles Riley, Special Agent, FBI, 1 (Nov. 19, 1996) (exhibit 22).

in the infrared range. Since it measures in this range, the plane is useful in low light and nighttime conditions.

At Waco, the Nightstalker was often employed to circle the compound during the evening hours in order to detect unauthorized entries or exits. Since the FLIR operators had video monitors as well as recorders onboard, FLIR operators could make real-time observations and communicate with the HRT commanders. The FLIR recorders on the plane recorded on two tapes, allowing the operator to switch to another tape when the first tape ran out, without ceasing to record. This created some overlap at times.[71] On April 19, 1993, the plane also provided daytime overhead surveillance to monitor the execution of the HRT's tear gassing plan. On April 19, 1993, the plane circled the compound for periods of time, landed and refueled at a nearby airport, then returned to the compound. As a result, several FLIR videotapes were made, some of which overlapped. Certain portions of FLIR tapes, one starting at 10:41 a.m. and ending at 12:16 p.m., and one starting at 12:16 p.m. and ending at 1:39 p.m., were analyzed by experts hired by the committee.

The committee retained Dr. Donald Frankel, of Photon Research Associates in Newton, MA, to perform an analysis of the FLIR tapes from April 19, 1993, and from the planned March 19, 2000, FLIR test at Ft. Hood, TX. His report, attached as exhibit 8, focused on analyzing four segments of FLIR tape from April 19, 1993. The four segments that Dr. Frankel analyzed were selected because three out of the four contained footage that the plaintiffs in the civil litigation had asserted represented muzzle flashes.[72] The first segment, as discussed earlier in this report, contained the FLIR footage that depicted flashes from directly behind the CEV that was penetrating the gymnasium at the rear of the compound.[73] The second segment contained what appeared to be bright flashes at the corner of the gymnasium.[74] The third segment contained flashes appearing to the left of the CEV.[75] The fourth segment contained a flash located in the center of the courtyard.[76]

In addition, on March 19, 2000, Special Counsel Danforth, pursuant to an order of the civil trial court and with the concurrence of the civil litigants, conducted a FLIR test at Ft. Hood, TX, in an attempt to shed light on what, if any, muzzle flashes were observable by the type of FLIR in use in 1993. The Department of Justice was initially reluctant, but eventually consented to the test.[77] The test protocols, agreed to by all the parties in the civil suit, provided for flying FLIR-equipped aircraft over a group of individuals firing weapons of different calibers and firing rates. It also provided for the creation of a "rubble field" which was believed to approximate the construction debris found at the compound late in the morning of April 19, 1993, when the FBI's CEVs were forcibly penetrating the compound walls to insert tear gas. The committee sent observ-

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[71] Interview with Isaac Nakimoto, Special Agent, FBI, in Washington, DC (Dec. 15, 1999).
[72] Edward Allard, "Preliminary Analysis of the Waco FLIR Tapes" (Aug. 30, 1999) (exhibit 18).
[73] FLIR tape #3, local time 11:24:11, tape counter 00:37:36.
[74] FLIR tape #3, local time 12:08:31, tape counter 01:21:54.
[75] FLIR tape #3, local time 12:08:51, tape counter 01:22:13.
[76] FLIR tape #3, local time 12:10:55, tape counter 01:24:14.
[77] Lee Hancock, "Government Rejects Attorney's Effort to Test if Agents Used Guns at Waco," the Dallas Morning News, Oct. 27, 1999 (exhibit 23).

ers to this test. Both the FLIR videotapes taken by the FBI's Nightstalker surveillance airplane (utilizing a more advanced, digital version of the FLIR camera in use in 1993) and a British Lynx helicopter (utilizing the same model FLIR camera as used by the FBI in 1993) were obtained and analyzed by Dr. Frankel. These tapes were then compared with the four segments of FLIR tape from April 19, 1993.

In his 34-page report submitted to the committee on September 11, 2000, Dr. Frankel concluded that the flashes exhibited in the four tape segments referenced above could not depict gunfire.[78] Dr. Frankel drew three conclusions from his analysis of the FLIR tapes. He first concludes:

> (1) The flashes seen on the tape during the four critical time periods cannot be weapons muzzle flash. Their duration is far too long and their spatial extent is far too great. They are almost certainly the result of solar energy or heat energy from nearby vehicles reflected toward the FLIR by debris or puddles.[79]

Dr. Frankel's report breaks down the elements involved in detecting muzzle flashes. Muzzle flashes have distinct spatial and temporal characteristics.[80] Frankel measured the spatial proportions and the durations of the flashes found on the FLIR tapes and compared the results with standard reference works in the field.[81] For example, a rifle firing the .308 caliber NATO round (7.62mm) leaves a muzzle flash that is 0.4 meters long and lasts for approximately 2 milliseconds.[82] By contrast, Dr. Frankel reported that the flashes seen on the April 19, 1993 FLIR tape ranged from one tenth of a second to over 1 second long.[83]

> (2) The FLIR video technology has a very low probability of detecting small arms muzzle flash.[84]

Due to the limitations of the FLIR camera, events such as muzzle flashes are of such short duration as to limit the camera's chances of depicting muzzle flash. Since the FLIR camera uses a scanning apparatus which scans the field of view 60 times per second, or any given point in the field of view once every 16.67 milliseconds, shorter duration events such as muzzle flash may not appear on the FLIR tape:

> The FLIR video scanning arrangement described in the previous section implies that the detector is observing only a small part of the scene at any given instant. For ordinary objects that persist for long periods of time, the effect is not noticeable. For fast motion, it results in blurring. For very brief events, such as muzzle flash, it can result in the event being missed entirely. . . . The FLIR camera scans a field in 1/60 s [1/60 of one second]. During the 1

[78] Dr. Donald S. Frankel, Photon Research Associates, "Assessment of Waco, Texas FLIR Videotape," 1 (Sept. 11, 2000) (exhibit 8).
[79] Id.
[80] Id.
[81] Id. at 5, 6.
[82] Id. at 6.
[83] Id. at 13–20.
[84] Id. at 1.

> ms that a muzzle flash is observable, the camera therefore scans only 6% of the scene. This figure may be taken as a first order approximation of the probability that the FLIR can detect a small arms muzzle flash that occurs within its field of view. This estimate does not take into account the sensitivity of the camera, which may prevent muzzle flash from ever being detected at useful ranges.[85]

Dr. Frankel's third conclusion concerns the possibility that muzzle flash may have occurred, but wouldn't necessarily be picked up on the FLIR:

> (3) As a consequence of (2) above, the absence of muzzle flash detection on the FLIR tape does not prove that weapons were not actually fired during the final assault. Indeed, there is ample evidence (not presented here) that the Davidians were firing at the federal agents throughout this period, but none of their muzzle flashes are detectable on the videotape.[86]

Dr. Frankel then examines the four specific segments of FLIR tape. The first segment, containing the purported flashes behind the CEV, are measured temporally:

> As Figure 7 shows, the "rhythmic flashes last for several tenths of a second (several hundred ms). Since this is 50 to 100 times longer than the muzzle flash from small arms lasts, these flashes cannot be muzzle flash. They are most likely a reflection of the CEV engine's hot parts, which themselves are clearly visible in the videotape.[87]

The other three segments also contain flashes with duration times that preclude them from being muzzle flashes:

> [I]t is possible to state with 100% confidence that the bright flashes that occur at the four 1993 time periods covered by this report are *not* muzzle flash. They are all far too long in duration to be muzzle flash. Comparison with the re-enactment videos also indicates that they are too bright compared to their surroundings, and too great in spatial extent. The most plausible sources for these flashes varies from case to case, but include sunlight reflected from debris, puddles of water, or window glass, and CEV engine hot parts thermal radiation reflected from debris or puddles of water. After the compound catches fire, it is hard to discount burning construction material as the source of flashes.[88]

Although Dr. Frankel rules out that any of the four segments depicted muzzle flash, that does not rule out the possibility that muzzle flashes were present, but not recorded by the FLIR:

> Examination of the FLIR videotape of the last day of the siege of the Branch Davidian compound fails to identify any events that resemble the muzzle flashes observed dur-

[85] Id. at 3.
[86] Id. at 1.
[87] Id. at 13.
[88] Id. at 32, 33.

> ing the re-enactment. One might have hoped that the apparent lack of muzzle flash would prove that the FBI agents did not fire their weapons. But because of the FLIR's low probability of muzzle flash detection, it is not possible to make such a statement with much confidence.[89]

It is extremely unlikely that anyone will ever be able to prove, scientifically, that no government agent ever fired a shot at the Davidians on April 19, 1993. The committee, however, has not found sufficient evidence to support the allegations that law enforcement or military personnel directed gunfire toward the Branch Davidians on April 19, 1993.

V. Actions and Omissions of The Department of Justice Since 1993

A. INTRODUCTION

There is a stark contrast between what should have occurred after the April 19, 1993, tragedy and what, in fact, did occur. On April 20, 1993, President Clinton made the following clear pronouncement:

> I have directed the United States Departments of Justice and Treasury to undertake a vigorous and thorough investigation to uncover what happened and why, and whether anything could have been done differently. . . . Finally, I have directed the departments to cooperate fully with all congressional inquiries so that we can continue to be fully accountable to the American people.[90]

Seven years later, Special Counsel Danforth explained what he thought of the Justice Department investigation:

> The failure of the Scruggs team to discover and report that the FBI used pyrotechnic tear gas rounds was the result of initiating the investigation with the assumption that the FBI had done nothing wrong, was inconsistent with the responsibility to conduct a thorough and complete investigation, and was clearly negligent.[91]

Special Counsel Danforth's conclusions, and the conclusions of this committee, show how empty the President's promise has been.

Following the tragic deaths of the Branch Davidians on April 19, 1993, Attorney General Reno asked her assistant, former Federal prosecutor Richard Scruggs, to conduct an investigation into the facts surrounding the tragedy.[92] Justice Department officials later asked former Justice Department official Edward Dennis, Jr.,[93] to conduct an analysis of those facts. The Department of Justice pub-

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[89] Id. at 32.

[90] President William Clinton, remarks by the President in question and answer session with the press in Washington, DC at 2 (Apr. 20, 1993) (exhibit 24).

[91] John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 52 (2000).

[92] Interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (Jan. 5, 2000).

[93] Dennis is a former U.S. Attorney and served as the Justice Department's Assistant Attorney General (Criminal Division) during the Bush administration. Dennis now practices law as a partner with the law firm of Morgan, Lewis & Bockius.

lished their respective findings on October 8, 1993.[94] Both Scruggs and Dennis stated publicly and during their interviews with committee staff that their findings were based upon a complete review of all relevant documents and interviews with numerous Justice Department, Federal and State law enforcement officials. Neither report, however, constituted a substantial review of the evidence. The Justice Department investigations were not as thorough as required by a tragedy of this magnitude.

Critical Justice Department errors include failures to:

- Conduct an outside, objective, independent analysis of FLIR tapes to determine if Federal law enforcement officers fired weapons other than M–79 grenade launchers on April 19, 1993—even after the plaintiffs in the tragedy-related civil litigation challenged the actions of the FBI at the scene on April 19, 1993,[95] and despite the fact that line attorneys within the Department of Justice argued for such an independent analysis in 1997;[96]
- Disclose and explain the authorized use of pyrotechnic devices by HRT next to the compound on the morning of April 19, 1993;
- Mention the HRT's possession of 40–millimeter high explosive rounds during the siege;
- Determine whether Attorney General Reno knew that pyrotechnic devices were used on April 19, 1993;
- Determine whether Attorney General Reno had knowledge of the possible use of high explosive devices;
- Discuss Attorney General Reno's rejection of the FBI's proposed operations plans days before the fire and later reversal;
- Provide a full accounting of the use of military personnel and equipment;
- Produce final and complete reports of the events on April 19, 1993; and
- Provide Congress with relevant information in a timely manner.

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[94] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version); Edward S.G. Dennis, Jr., U.S. Department of Justice, "Evaluation of the Handling of the Branch Davidian Stand-off in Waco, Texas" (Oct. 8, 1993) (redacted version).

[95] *Andrade* v. *Chojnacki,* (No. W–96–CA–139) (W.D. Tex. 1994) (civil litigation).

[96] See memorandum from Phyllis Pyles, Assistant Director, Torts Branch, Federal Torts Claim Act Section, (FTCA), Civil Division, Department of Justice, to Thomas Kelley, Inspector—Deputy General Counsel, Office of the General Counsel, FBI (Apr. 25, 1997); memorandum from Helene Goldberg, Director, Torts Branch, Constitutional and Specialized Torts Section, Civil Division, Department of Justice, to Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice (May 14, 1997); memorandum from Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, to Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice and Pyles (May 29, 1997); memorandum from Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice, to Helene Goldberg, Director, Torts Branch, Constitutional and Specialized Torts Section, Civil Division, Department of Justice (May 29, 1997); memorandum from Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice, to Thomas Kelley, Inspector—Deputy General Counsel, Office of the General Counsel, FBI (May 29, 1997) (exhibit 29); memorandum from Helene Goldberg, Director, Torts Branch, Constitutional and Specialized Torts Section, Civil Division, Department of Justice to Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice, (June 4, 1997); outline for June 5, 1997 meeting between staff of FTCA and CSTL [sic] Branches, author unknown (exhibit 31); memorandum from Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice, to Thomas Kelley, Inspector—Deputy General Counsel, Office of the General Counsel, FBI (Sept. 5, 1997).

Scruggs alleged that he conducted a thorough review of all relevant documents and interviewed all Justice Department, Federal and State law enforcement officials with knowledge of the events on April 19, 1993:

> What follows is an attempt to explain what actually happened at the Branch Davidian compound between the arrival of the FBI on February 28, and the aftermath of the fire that occurred on April 19. . . . *[W]e believe this report to be accurate and based upon solid evidentiary grounds;* we expect additional details to be revealed at trial. This report has been prepared with the cooperation of literally hundreds of individuals. Approximately 950 interviews were conducted, and tens of thousands of pages of documents and transcripts were read and analyzed.[97]

Dennis stated that he largely relied upon the facts discovered and interviews conducted by Scruggs in order to prepare his report:

> To make this evaluation, I have reviewed the procedures followed by the Department and the FBI, giving particular attention to the means employed, the alternatives considered and the decisions made in attempting to resolve the stand-off.
>
> I have not been called upon to conduct *a de novo* factual inquiry. A comprehensive factual report is being prepared by the Department and the FBI. I have primarily relied upon the record gathered by the Department as the basis for the conclusions in this Report, supplemented by a number of follow-up interviews. *However, I am satisfied that the factual inquiry by the Department was conducted in a thorough and objective manner*. . . . I have been afforded access to documents gathered in that effort and to the reports of interviews conducted for factual investigation. In addition, since my appointment I participated in a number of Department interviews. I have also conducted independent interviews of some witnesses.[98]

It is troubling that the Waco tragedy did not seem to merit a "vigorous and thorough investigation." President Clinton called for such an inquiry. Attorney General Reno promised that such an inquiry would take place. Neither took the steps necessary to make sure it would happen. Congress and the American people demanded a "vigorous and thorough" analysis of the events leading up to the tragedy. While Scruggs admitted to committee staff that, at first, he believed that the FBI had in fact committed some sort of error on April 19, 1993, he changed his mind early in the inves-

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[97] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 12–14 (emphases added).

[98] Edward S.G. Dennis, Jr., U.S. Department of Justice, "Evaluation of the Handling of the Branch Davidian Stand-off in Waco, Texas" (Oct. 8, 1993) (redacted version) at 1–2 (emphasis added). Commenting in the fall of 1999 on the scope of his investigation, however, Dennis stated that his report "was not intended to be a comprehensive, all-encompassing report." Stephen Labaton, "Reno Admits Credibility Loss in Waco Case," the New York Times, Aug. 27, 1999 at A18, col. 4 (exhibit 33).

tigation.[99] An objective, thorough analysis should have been the Justice Department's top priority.

B. WHAT THE AMERICAN PEOPLE WERE TOLD BETWEEN 1993 AND 1999

1. 1993–1994—the Department of Justice Conducts the Post-Tragedy Investigation and the Criminal Trial

Congress and members of the media expressed concern with regard to the thoroughness of the Justice Department's investigations of BATF's and the FBI's handling of the Waco tragedy. In 1993, the Committee on the Judiciary requested documents from several agencies, including the Departments of Justice and Defense, the FBI and Bureau of Alcohol, Tobacco and Firearms, regarding the planning and execution of the initial BATF raid on February 28, 1993, and the subsequent FBI assault on April 19, 1993.

On April 28, 1993, Justice Department and FBI officials, including Attorney General Reno, then-HRT Commander Richard Rogers and then-FBI Director William Sessions, testified before the House Committee on the Judiciary regarding Attorney General Reno's decisionmaking prior to, and HRT's actions on, April 19, 1993. Attorney General Reno testified that HRT personnel did not employ pyrotechnic devices on the day of the fire:

> I wanted, and received, assurances that the *gas and its means of use* were not pyrotechnic.[100]

Sessions likewise stated that the tear gas that HRT personnel employed was in itself non-pyrotechnic:

> CS gas, which is actually a powder, was selected because it was best suited to be used in the circumstances we faced. . . . One critical factor was that CS gas can be used without pyrotechnics. It will not start or contribute to a fire.[101]

No Justice Department or FBI official present at that hearing—most significantly, HRT Commander Richard Rogers—corrected Attorney General Reno or Sessions or advised them that their testimony was misleading or inaccurate. According to Rogers, moreover, other portions of Attorney General Reno's testimony earlier that afternoon so bothered him that he failed to listen to the remainder of her testimony and, therefore, did not take note of her misstatements with regard to HRT's use of pyrotechnic tear gas on April 19, 1993.[102] In any case, Rogers told committee staff that he would not have corrected Attorney General Reno because, in his opinion, her statement was technically correct in light of the fact that he deemed the tornado shelter, into which HRT personnel fired pyrotechnic tear gas rounds, to be separate from the main

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[99] Interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (June 22, 2000).

[100] "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas," hearing before the Committee on the Judiciary, 103d Cong., 13, 16 (Apr. 28, 1993) (emphasis added) (statement of Janet Reno, U.S. Attorney General).

[101] Id. at 83, 85 (emphasis added) (statement of William Sessions, former FBI Director).

[102] Reno disclosed classified information regarding an Army special operations unit. That information remains classified.

Branch Davidian compound.[103] Roger's opinion on this matter defies logic and credulity.

Later in 1993, Scruggs reported to the American people that, after receiving adequate briefings from Justice Department, FBI, military and scientific advisors, the Attorney General approved the dissemination of tear gas into the compound on April 19, 1993:

> On April 12, 1993, the FBI presented the tear gas plan to the Attorney General for her approval. Over the next several days the Attorney General and senior Justice Department and FBI officials discussed, debated and dissected, every aspect of the plan . . . After becoming convinced that some action was needed, the Attorney General vigorously questioned every aspect of the proposed plan, and the FBI provided her the answers to all her questions.
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> * * * * *
>
> In addition, a nationally recognized team of arson experts. . . . has also concluded that the Davidians started the fire, that the fire could not have been started by accident at a single point of origin, and that the gas delivery systems the FBI used were completely nonincendiary.[104]

As was discovered in 1999 and will be discussed below, Scruggs' investigation was incomplete and his conclusion was wrong with respect to the means by which HRT personnel delivered tear gas on April 19, 1993.

In 1995, the subcommittees of the Committee on the Judiciary and this committee (committees) convened joint hearings to review the Waco tragedy. Among others, the subcommittees subpoenaed William "Ray" Jahn, the Assistant U.S. Attorney who, with his wife, LeRoy, prosecuted the surviving Davidians in the criminal trial, to testify. Mr. Jahn told the subcommittees that no HRT member fired ammunition other than the non-pyrotechnic tear gas: "On the 19th of April, though repeatedly fired upon by the occupants of [the Branch Davidian compound], the FBI did not fire a shot, *other than non-lethal ferret rounds* which carried the CS gas."[105] This was not true.

In preparation for those hearings, the subcommittees requested documents from the Justice Department, FBI and BATF.[106] Many

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[103] Interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, Hostage Rescue Team, FBI, in Phoenix, AZ (Aug. 9, 2000). Rogers' statement, however, as discussed in ch. IV, above, is flatly contradicted by the language within the FBI's proposed operations plan which suggests that HRT personnel considered *everything* within the concertina wire surrounding the Branch Davidian residence as the "compound." "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp No. WWC142–0441 (Apr. 12, 1993) (exhibit 9).

[104] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, February–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 278–279, 324 (emphases added) (footnotes omitted).

[105] "Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part I)," hearing before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, 104th Cong., 100, 107 (July 19, 1995) (statement of Ray Jahn, Assistant U.S. Attorney) (emphasis added).

[106] Sadly, the Justice Department did not produce the requested documents until 3 days before the start of the hearings. As Special Counsel Danforth noted, Justice Department officials were more concerned in 1995 with their own political self-preservation than their duty of full disclosure to the American people and the Congress. John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Con-

Continued

of those documents likewise indicated that HRT personnel did not use weapons or devices capable of fire ignition. For example, an after-action report drafted by the BATF Special Agent who logged the FBI's tactical communications on April 19, 1993, and spoke with various FBI agents regarding the FBI's proposed operations plan indicated that the FBI decided not to use devices or weapons capable of fire ignition due to the risk of loss of life: "[n]on-military rounds were utilized because they do not have a pyrotechnic deployment system which burns and creates a fire hazard." [107] Other documents also indicate that, once HRT agents heard the code phrase "compromise" via radio, they delivered tear gas via non-pyrotechnic ferret projectiles.[108]

However, several documents gave cryptic indications that HRT personnel had delivered tear gas by firing pyrotechnic, M–651 tear gas rounds via M–79 grenade launchers:

- [Special Agent] Smith recalls one conversation, relative to the utilization of some sort of military round to be used on a concrete bunker and additional traffic pertaining to the need for additional gas rounds for the M–79 grenade launchers; [109]
- *1 military tear gas round*—goal—to deny that area and to channel exit.—did not want to send men into tunnel to flush out.—rounds bounced off; [110]
- Corderman . . . Fired 1–4 incendiary rounds . . . 1 military round at cement underground. . . . [Special Agent] Mohr—*loaded military*. . . . Hit front door; [111]
- Bunker—*Firing cupcake round*—[black] roof . . . tried to penetrate—to open it up . . . CS bounced off; Beginning operation—to deny them access; [112]
- [Special Agent] Bob Hickey . . . says [HRT Charlie Team personnel's] unsuccessful attempt to put gas in the bunker—smoke in big lie film; [113]

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frontation at the Mt. Carmel Complex, Waco, Texas" iii (2000). Justice Department officials refused to produce documents requested by the subcommittees until 3 days prior to the first day of the hearings in 1995 and then produced disorganized collections of documents that were heavily redacted. While it may not have been possible to have reviewed and analyzed every document prior to the hearings, a thorough analysis might have found several documents that now raise questions about the truthfulness of prior Justice Department and FBI testimony and/or the completeness of the Justice Department-sponsored post-tragedy investigations. A reasonable amount of time for congressional review of the documents would also have allowed the subcommittees to more substantively question law enforcement witnesses, such as FBI negotiator Byron Sage and HRT Commander Rogers, regarding the specific use of M–651s in the FBI's proposed operations plan. A reasonable period for such a review would also have allowed staff to ask whether the use of those projectiles was expressly approved by Reno. The actions of those within the Department of Justice responsible for it's response to the subcommittees' requests does not stand as an endorsement of the Department's professionalism.

[107] Randy Haight, BATF Special Agent, "FBI Waco Detail After Action Report" 4 (Aug. 24, 1993) (exhibit 34).

[108] FBI interview with Mark Tilton, Special Agent, FBI at 1 (Apr. 20, 1993) (exhibit 35); FBI telephone interview with Cort Traylor, Special Agent, FBI at 1–2, (June 21, 1993) (exhibit 36); FBI telephone interview with David Corderman, Special Agent, FBI at 1–2 (June 8, 1993) (exhibit 37); FBI interview with Richard Intellini, Special Agent, FBI at 1, Waco, Texas (Apr. 21, 1993) (exhibit 38).

[109] FBI interview with R. Wayne Smith, Special Agent, FBI, in Richmond, VA at 5 (June 9, 1993) (exhibit 39).

[110] Handwritten notes of interview with unidentified HRT personnel, Quantico, VA, date unknown, author unknown, at Bates Stamp No. WACO 004164 (emphasis added) (exhibit 40).

[111] Id. at Bates Stamp Nos. H090899 018–H090899 019 (emphases added) (exhibit 41).

[112] Id. at Bates Stamp No. H090899 023 (exhibit 42).

[113] WACMUR—F.B.I. H.R.T. interview schedule, 11/9/93, author unknown, at Bates Stamp No. H090899 031 (exhibit 43).

- [Special Agent] Dave Corderman . . . Smoke on film came from a attempt to penetrate bunker w/1 military and 2 ferret rounds; military [projectile] was grey [sic] bubblehead w/green base; Dave fires 3 rounds into kitchen and less than 30 sec[onds] later sees smok [sic];[114]
- Military [green] ring—outdoor *pyrotechnic*;[115] and
- Rebuttle [sic] Smoke from Bunker—came when these guys tried to shoot gas into the Bunker. (Military gas round)—dark grey bubblehead w/green base. 1 military round—2 others ferret. . . . 1st target ferret into Bunker . . . military bounced off also.[116]

Justice Department and FBI officials failed to inform the Congress in 1995 of these facts however, in an apparent hope that, 3 days before the hearings convened, no one would have the opportunity to find these documents and ask relevant questions. Their failure raises serious concerns regarding why these officials did not simply tell the Congress and the American people what they did and why.

2. 1995–1996—The Civil Litigation Plaintiffs Allege that HRT Personnel Started the Fire

In 1994, the civil litigation plaintiffs[117] filed lawsuits that sought compensation for the loss and damage that occurred.[118] The plaintiffs alleged, among other things, that the FBI and specific HRT members violated the plaintiffs' civil rights. The Department of Justice assigned the defense of the case to an experienced Washington, DC-based, Justice Department attorney, Marie Hagen.[119] Hagen filed a Motion for Summary Judgment to dismiss the action.[120] The trial court took the matter under advisement.

As part of pre-trial discovery, the civil litigation plaintiffs obtained copies of handwritten notes created by Justice Department attorneys and staff during November 1993 interviews of HRT personnel.[121] The plaintiffs' expert, Dr. Richard Sherrow, claimed in support of the plaintiffs' opposition to the government's motion for summary judgment and dismissal that the material collected and stored by the Texas Department of Public Safety's Texas Rangers included at least one expended pyrotechnic tear gas grenade which could have started the April 19, 1993, fire:

> Besides the . . . Ferret cartridges, information from documents obtained from the FBI through the United States

[114] Id. at H090899 033 (exhibit 44).
[115] Handwritten notes of Interview with unidentified HRT personnel, Quantico, VA, date unknown, author unknown, at Bates Stamp No. H090899 037 (emphasis added) (exhibit 45).
[116] Handwritten notes of interview with unidentified HRT personnel, Quantico, VA, date unknown, author unknown, at Bates Stamp No. WACO 004134 (exhibit 46).
[117] The plaintiffs included several of the surviving Branch Davidians and the estates of Davidians who died on Apr. 19, 1993.
[118] Lawsuits were filed in several jurisdictions and were later transferred and consolidated into the civil litigation heard by Judge Walter Smith, Jr., in the Federal district court for western Texas.
[119] Hagen has served as a line attorney within the Justice Department's Civil Litigation Branch for several years and led the U.S.' defense in the lawsuit concerning the U.S.S. Iowa's 16-inch gun turret explosion, which, coincidentally, occurred on Apr. 19, 1986.
[120] Under Federal and State law, it is proper to file a motion for summary judgment when: (a) there is no material issue of genuine fact—i.e., no factual dispute exists; or (b) as a matter of law, the action must be dismissed. See e.g., Fed. R. Civ. Pro. 56.
[121] See e.g., exhibits 40–46.

> Department of Justice indicates that military pyrotechnic munitions may have been fired into [the Branch Davidian compound]. Documents disclosed indicate that agents could not penetrate either the underground shelter roof or the top of the rear four-story tower with Ferrets. Therefore, they fired at least one "military" round and referred to this munition as a "bubblehead". . . . The exact identity of a "bubblehead" would have to be determined before any possible contribution to the fire could be established.[122]

Upon receipt of the plaintiffs' opposition and, particularly, the Sherrow Declaration, Hagen asked FBI Assistant General Counsel Jacqueline Brown to discover the basis for Sherrow's allegation. In response, Brown sent HRT Supervisory Special Agent Robert Hickey, an HRT member present at the Branch Davidian compound on April 19, 1993, a copy of the Sherrow declaration.[123] Brown also spoke with an FBI tear gas expert, Monty Jett, to seek his assistance regarding the Sherrow Declaration allegations and asked his help in responding to those allegations.[124]

Almost 1 year after the conclusion of the joint committee hearings in 1995, Hickey sent Brown a memorandum in February 1996 that analyzed the Sherrow declaration. Hickey did not refute the Sherrow declaration charges but, in fact, corroborated the fact that HRT personnel had employed pyrotechnic tear gas during the early morning hours of April 19, 1993:

> All chemical agents purchased and used at Waco were non-flammable *with the exception* of two (2) or three (3) military 40mm CS round [sic] as detailed later under the "Tactical Considerations" portion of this communication.
>
> * * * * *
>
> Shortly after the operation commenced on 4/19/93, the HRT (Charlie Team) determined, after two (2) or three (3) ferret rounds, that they were unable to penetrate the underground shelter roof which was their first target. Charlie Team then requested to use 40mm military CS rounds in an effort to penetrate the roof. Charlie Team was granted authority to fire the military CS rounds. A total of two (2) or three (3) rounds were fired at the underground shelter roof.[125]

Brown received the Hickey memorandum. Brown's diary indicates that she intended to speak with Hagen regarding the Hickey memorandum but it is unclear as to whether Brown sent a copy of

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[122] Declaration of Richard L. Sherrow, president, Richard L. Sherrow and Associates, at 6, *Andrade* v. *Chojnacki* (S.D. Tex. Jan. 16, 1996) (No. H–94–0923) (Sherrow declaration) (exhibit 47).

[123] Interview with Jacqueline Brown, Assistant General Counsel, Office of the General Counsel, FBI, in Washington, DC (Jan. 7, 2000).

[124] See facsimile from Jacqueline Brown, former Assistant General Counsel, Civil Litigation Unit, Office of the General Counsel, FBI, to Monty Jett, Instructor, Firearms Training Unit, FBI 1 (Feb. 9, 1996) (exhibit 48).

[125] Memorandum from Robert Hickey, Supervisory Special Agent, FBI to Jacqueline Brown, Assistant General Counsel, Civil Litigation Unit, Office of the General Counsel, FBI at 2–3 (Feb. 15, 1996) (Hickey memorandum) (emphasis added) (exhibit 49). As will be discussed, below, documents indicate that Brown spoke with both her supervisor, FBI Civil Litigation Unit Chief Virginia Buckles, and Hagen regarding the substance of the Hickey memorandum.

the Hickey memorandum to Hagen or anyone else within the FBI or the Justice Department.[126]

Rather than find the answer to the question that she asked Brown, Hagen, instead, argued in 1996 to the trial court that Sherrow's allegation was baseless and unworthy of consideration. Hagen made this representation even though Hickey had disclosed the truth of the allegation to Brown:

> Similarly, plaintiffs' statement that the projectiles used to insert tear gas "could have hit" persons inside the compound and "could" have started a fire is mere speculation as to causation; there is no evidence that such incidents actually occurred.[127]
>
> * * * * *
>
> The degree to which plaintiffs' expert testimony is based on speculation is demonstrated by Mr. Sherrow's conclusion that the 40mm ordinance found within the compound "probably was fired by the U.S." because it "could be fired only from a military weapon and civilian possession of these weapons is severely restricted." This statement is extraordinary in that it ignores the virtual arsenal gathered by the Davidians. . . . [Plaintiffs' military munitions expert Rick] Stauber's claim that these same munitions are "not of standard military issue," . . . and therefore "only a military organization probably would possess them" . . . even if true, *does not warrant plaintiffs' inference that the United States must have fired them*.[128]

Hagen continued to argue in 1997 that Sherrow's declaration was meritless and undeserving of consideration, even though Brown had received the Hickey memorandum over a year beforehand:

> 3. Supplemental Declarations of Richard Sherrow.
>
> Likewise, plaintiffs' supplemental evidence concerning the start of the fire on April 19, 1993, is legally inadequate to avoid summary judgment. Testimony as to what *could have* occurred amount to mere speculation which is insufficient to create a genuine issue of material fact. . . . Sherrow's declarations offer nothing but conclusory opinions.
>
> * * * * *
>
> Sherrow fails to explain how the mere presence of a 40 mm ordnance at the site justifies an opinion that, more

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[126] Interview with Jacqueline Brown, Assistant General Counsel, Office of the General Counsel, FBI, in Washington, DC (Jan. 7, 2000); interview with Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice in Washington, DC (Nov. 16, 1999); interview with Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, in Washington, DC (Nov. 23, 1999); see also e-mail from James Touhey, Jr., Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice to Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, et al., (Aug. 19, 1999) ("[Brown] has no recollection of having seen the memo. . . .."). (Exhibit 50).

[127] See e.g., defendants' reply memorandum at fn. 4, *Andrade* v. *Chojnacki* (W.D. Tex. Apr. 1, 1996) (No. W–96–CA–139) (emphasis added) (citations omitted) (due to the large size of this memorandum, it will not be included as an exhibit to this report).

[128] Id. at fn. 53, (citations omitted) (emphasis added).

> likely than not, conduct of the United States led to the fire.[129]

On March 20, 1998, 2 years after Hickey wrote his memorandum alerting, at a minimum, FBI officials that HRT personnel employed pyrotechnic tear gas rounds on April 19, 1993, Hagen filed a reply to the plaintiffs' opposition and re-requested that the trial court dismiss the lawsuit as meritless. With respect to Sherrow's allegation about the use of pyrotechnic tear gas grenades, Hagen denied that the allegation had any basis:

> Plaintiffs also argue that the fire may have been started by "munitions fired by the U.S." . . . Like the testimony regarding the start of the fire, however, *this theory is mere speculation which simply ignores the recorded words of the Davidians who spread the fuel and lit the fires. Such speculation dissolves in the face of the recording made on April 19.*[130]

As late as 1999, Hagen and the Department of Justice failed to ascertain whether Sherrow's declaration was based upon any fact. A telephone call to the HRT personnel located 30 miles from Justice Department Headquarters would have likely led to the discovery of the Hickey memorandum. Instead, Hagen continued to argue to the trial court that the allegations that HRT personnel fired pyrotechnic rounds on April 19, 1993 were unworthy of, at a minimum, an internal review within the Justice Department and the FBI:

> . . . [P]laintiffs have submitted nothing other than vague generalizations and speculation about the existence of evidence that they claim was somehow missed by the prosecutors and defense attorneys in [the criminal prosecution], as well as by congressional investigators. *Such unsworn, unsupported speculation is insufficient to warrant discovery at this juncture. Plaintiffs have had ample opportunity to make their case for discovery in their prior submission to the Court. After almost four years of litigation and submissions by the parties, the Court has more than enough information on which to base a ruling as to whether further discovery is necessary on any of the factual issues.*[131]

Again, Justice Department officials failed to take advantage of numerous opportunities to find and disclose the truth surrounding the events of April 19, 1993. In failing to do so, those officials created the circumstances where dark suspicions regarding the actions of Federal law enforcement on that day could grow.

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[129] Defendants' reply to plaintiffs' supplemental response to U.S.' motions for summary judgment and supplemental declaration of Ramsey Clark at 5–6, *Andrade* v. *Chojnacki* (W.D. Tex. Apr. 3, 1997) (No. W–96–CA–139) (emphasis in original) (citations omitted) (exhibit 51).

[130] Defendants' reply memorandum of law at 66–67, *Andrade* v. *Chojnacki* (W.D. Tex. Mar. 19, 1998) (No. W–96–CA–139) (citations omitted) (emphases added) (exhibit 52).

[131] Defendants' opposition to plaintiffs' motion for leave to file supplemental evidence and briefing at 2, *Andrade* v. *Chojnacki* (W.D. Tex. May 14, 1999) (No. W–96–CA–139) (emphases added) (exhibit 53).

3. What the American People Learned in 1999

Documentary filmmaker Michael McNulty followed the civil litigation and found the plaintiffs' allegation that FBI personnel started the fire to be of interest. McNulty contacted then-Assistant U.S. Attorney William Johnston, the Assistant U.S. Attorney for Waco, TX, and asked permission to inspect the material within the Rangers' custody.[132] Johnston contacted Department of Justice Director of Public Affairs Bert Brandenberg, who authorized the request.[133] Johnston authorized the Rangers to escort McNulty during his inspection. During six inspections, McNulty found a picture taken by the Rangers during the week after the April 19, 1993, fire that portrayed at least one expended M–651 projectile.[134]

On April 30, 1999, Hagen learned from reading a McNulty-signed declaration filed by the plaintiffs that McNulty had reviewed the Waco-related evidence after receiving permission to do so from Johnston.[135] Hagen telephoned Johnston who told her that Brandenberg had authorized McNulty's review. Hagen contacted Brandenberg to confirm Johnston's statement.[136] Brandenberg confirmed Johnston's statement.[137] Hagen wrote Johnston and ordered him to permit no further inspections.[138] Justice Department Torts Branch Director James Axelrad likewise wrote Johnston's supervisor, U.S. Attorney for the Western District of Texas, James Blagg, and ordered that no further inspections take place.[139]

Johnston concluded that the existence of evidence regarding the use of potentially pyrotechnic tear gas grenades required further study. Johnston repeatedly notified Blagg and other Justice Department officials about what the Rangers were discovering as the Rangers continued their investigation.[140]

On July 27, 1999, Texas Department of Public Safety Chairman James Francis announced that McNulty and the Texas Rangers had discovered at least one 40 millimeter pyrotechnic round within

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[132] See letter from William Johnston, Assistant U.S. Attorney, Department of Justice, to Janet Reno, U.S. Attorney General, at 1 (Aug. 30, 1999) (exhibit 54).

[133] Id.

[134] "Texas Rangers Division of the Texas Department of Public Safety, Investigative Report Branch Davidian Evidence" 6 (Sept. 9, 1999) (exhibit 1).

[135] See memorandum from Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, to Donald Remy, Deputy Assistant Attorney General, Department of Justice at 1 (Sept. 2, 1999) (exhibit 55).

[136] See e-mail from Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice to Bert Brandenberg, former Director, Office of Public Affairs, Department of Justice (Apr. 30, 1999) (exhibit 56).

[137] See e-mail from Bert Brandenberg, former Director, Office of Public Affairs, Department of Justice to Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice (May 1, 1999) (exhibit 57).

[138] See letter from Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice to William Johnston, Assistant U.S. Attorney, Department of Justice (May 3, 1999) (exhibit 58).

[139] See letter from Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice, to James Blagg, U.S. Attorney for the Western District of Texas, Department of Justice (May 3, 1999) (exhibit 59).

[140] E-mail from William Johnston, Assistant U.S. Attorney, Department of Justice to James Blagg, U.S. Attorney for the Western District of Texas, Department of Justice (Aug. 2, 1999) (exhibit 60); e-mail from William Johnston, Assistant U.S. Attorney, Department of Justice, to James Blagg, U.S. Attorney for the Western District of Texas, Department of Justice (Aug. 17, 1999) (exhibit 61); e-mail from William Johnston, Assistant U.S. Attorney, Department of Justice, to William "Ray" Jahn, Assistant U.S. Attorney, Department of Justice (Aug. 19, 1999) (exhibit 62) ("[t]he casing is labelled [sic] M–118 and it is said to fire the M–651 tear gas round. . . . [A]t least that was the original information that I recall from [Texas Ranger] Joey Gordon."); e-mail from William Johnston, Assistant U.S. Attorney, Department of Justice, to Myron Marlin, Director, Office of Public Affairs, Department of Justice (Aug. 26, 1999) (exhibit 63).

the evidence maintained by the Rangers.[141] Lee Hancock, a reporter for the Dallas Morning News who had reported on the Branch Davidian tragedy since 1993, contacted retired FBI Deputy Assistant Director Danny Coulson regarding the Rangers and McNulty's findings.[142]

Hancock explained to Coulson that Sherrow had alleged that HRT personnel fired pyrotechnic tear gas grenades on April 19, 1993, and that those rounds may have started or exacerbated the fire. Hancock also told Coulson of McNulty's discovery of the pictures of the expended rounds. Coulson told Hancock that the use of those rounds had been a well-known fact among HRT personnel. The Dallas Morning News highlighted Coulson's statements in its article:

> The former official, Danny O. Coulson, said in an interview that two devices known as M–651 CS tear gas grenades were fired from FBI grenade launchers hours before the compound erupted in flames April 19, 1993. He said they were used with permission from FBI supervisors and that they played no role in starting the fire.
>
> * * * * *
>
> But Mr. Coulson, then a deputy assistant director for the FBI's criminal investigative division, said he learned . . . that two M–651 CS cartridges were fired at an area known as "the pit," an underground structure that led to tunnels that opened into the compound.
>
> "There were at least two pyrotechnic devices used that day," said Mr. Coulson, who helped supervise the government's handling of the siege.
>
> * * * * *
>
> Mr. Coulson said two devices were fired after the request was approved by FBI supervisors, including rescue unit Commander Richard Rogers.
>
> * * * * *
>
> Mr. Coulson said he had no idea why FBI officials did not acknowledge the use of the pyrotechnic devices in their statements to Congress and to investigators who conducted a lengthy Justice Department review of FBI actions at Waco.

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[141] Lee Hancock, "2 Pyrotechnic Devices Fired at Davidians, Ex-Official Says Government Denies Former FBI Agent's Statements," the Dallas Morning News, Aug. 24, 1999 at 1A (exhibit 3).

[142] Coulson participated in the 1993 standoff as a Washington, DC-based, FBI manager. Coulson, as the founder and first commander of HRT, possessed knowledge regarding the tactics and equipment available to HRT personnel. Coulson also spoke often with Rogers, assisted in the draft of the FBI's proposed operations plan, attended briefings for Attorney General Reno and Sessions and watched the tragedy on CNN from within the FBI's Strategic Incident Operations Center (SIOC) on Apr. 19, 1993. See FBI interview with Danny Coulson, former Deputy Assistant Director, FBI at 3–7 (July 13, 1993) (exhibit 64); see also Transcript of Coulson Deposition at 27:9–28:19, *Andrade* v. *Chojnacki* (W.D. Tex. Feb. 22, 2000) (No. W–96–CA–139) (exhibit 65).

> "The first thing they should've said, if we knew, they should've said we fired," said Mr. Coulson. . . . "That's a problem." [143]

In response to Coulson's statements, Justice Department officials flatly denied that FBI agents had fired any such device: " We are aware of no evidence to support the notion that any pyrotechnic devices were used by the federal government on April 19. . . . We've said that all along." [144] FBI officials, however, prepared another internal investigation into what incendiary or pyrotechnic rounds HRT personnel possessed on April 19, 1993.[145]

In support of Coulson's revelation, Texas Public Safety Commission Chairman James Francis stated that the Rangers possessed "overwhelming" evidence that confirmed that HRT personnel had in fact fired pyrotechnic tear gas grenades on April 19, 1993:

> There are written reports by Rangers, there is photographic evidence, there is physical evidence, all three of which are problematic.
>
> * * * * *
>
> I would suggest that Janet Reno get a full briefing of the facts. She's not getting the facts," he said. "I can't understand for the life of me why a senior FBI official's statement was flatly contradicted by the Department of Justice without even checking the facts." [146]

Two days later and in reaction to public and congressional outrage, Attorney General Reno stated that, prior to April 19, 1993, she had directed FBI officials not to use pyrotechnic devices during the assault: "I did not want those used. I asked for and received assurances that [the tear gas projectiles used on April 19, 1993] were not incendiary. . . ." [147] Unfortunately, a "thorough and vigorous investigation" had not been done to learn if those assurances were, in fact, true.

Further controversy erupted in the press on August 30, 1999, when the Dallas Morning News obtained a copy of a five page letter from the Waco-based Assistant U.S. Attorney, William Johnston, to Attorney General Reno. In his letter, Johnston detailed his efforts to resolve the mystery of the pyrotechnic devices, accused Justice Department officials of trying to intimidate him, and asserted that individuals within the Justice Department were trying to keep the truth hidden:

> Last week, a fax originated with the Department of Justice came to me. The fax was in three pages. . . . It has been suggested to me that these documents were sent to me to "hang over my head," or to say that I'd better look out stir-

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[143] Lee Hancock, "2 Pyrotechnic Devices Fired at Davidians, Ex-Official Says Government Denies Former FBI Agent's Statements," the Dallas Morning News, Aug. 24, 1999 at 1A (exhibit 3).

[144] Id. (citing statement of Justice Department Director of Public Affairs Myron Marlin).

[145] See memorandum from the Office of Inspections, Inspection Division, FBI, to Inspection Division, FBI (Aug. 26, 1999) (exhibit 66).

[146] Lee Hancock, "FBI to Acknowledge Use of Pyrotechnic Devices; New Account on Branch Davidian Fire Expected," the Dallas Morning News, Aug. 25, 1999 at 1A, (citing statement by Francis) (exhibit 67).

[147] Lee Hancock, "Reno Says FBI Had Assured Her on Raid; She Says Pyrotechnics Not Part of Plan," the Dallas Morning News, Aug. 27, 1999 at 1A (exhibit 68).

> ring this matter up, as I may have to explain [these documents]. So long as it is the truth "hanging over my head," I am not afraid. I will not be intimidated by anyone with the Department of Justice.[148]

On September 8, 1999 in response to this committee's subpoena, the Department of Justice produced documents to this committee which indicated that FBI personnel informed superiors within the FBI that HRT agents employed M–651 rounds to deploy tear gas onto the compound on April 19, 1993.[149] One of these documents, a 49 page report prepared by the FBI crime laboratory on December 6, 1993, (FBI lab report) further indicated that, among the objects found in the remains of the compound after April 19, 1993, the Rangers had located at least one and possibly three spent 40 millimeter projectiles.[150] On August 19, 1999, Justice Department Torts Branch trial attorney James Touhey, Jr. conducted a search of documents via computer and not only located the missing 49th page but, furthermore, located additional documents that Justice Department officials failed to produce to the committee after the 1995 hearings. Touhey found that the Department of Justice could account for 63 copies of the FBI lab report. The Justice Department: (1) produced at least one and possibly three full, 49 page copies of the FBI lab report to plaintiffs in the civil litigation; (2) produced a 48 page copy of the FBI lab report (missing the final page that identified the spent rounds as M–651s) and at least two, forty-nine pages of the Lab Report to the Committee on the Judiciary in 1995 in response to their requests; and (3) possessed as many as 56, full copies and at least three 48 page copies of the FBI lab report within Justice Department, FBI or U.S. Attorney files.[151]

The need for this committee, therefore, to commence its investigation into the actions and omissions of Federal law enforcement, Justice Department and the military was both manifest and timely. Until Attorney General Reno was forced to appoint Special Counsel Danforth to investigate this matter, only this committee possessed

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[148] Letter from William Johnston, Assistant U.S. Attorney, Department of Justice, to Janet Reno, Attorney General 3–4 (Aug. 30, 1999) (emphases added) (exhibit 69). Committee staff contacted Johnston and asked him to speak to staff and produce relevant documents. To avoid conflict with Justice Department regulations with respect to the production of material to outside sources, Johnston asked for and received a committee subpoena that ordered him to produce this information.

[149] Exhibits 40–46.

[150] Report from the FBI Laboratory to James Miller, Sergeant, Texas Rangers, Texas Department of Public Safety at 49 (Dec. 6, 1993) (exhibit 70). The committee became concerned in September 1999 that Justice Department officials had failed to produce a complete copy of the 49 page lab report to the committees in 1995. Committee staff found that the committee had received the first 48 pages of the lab report but had not received the last page that identified the expended, military tear gas projectile. At least two additional complete copies of the lab report were located in the mass of documents produced to the committees after lengthy delays, and just 3 days before the hearings convened in 1995. As noted earlier, the documents were produced at a time and in a fashion that made it difficult, if not impossible, to review them in a systematic way and make use of them. It remains a mystery as to why the Justice Department produced to the committees a version of the lab report that omitted the page that mentioned a pyrotechnic device. Similar tactics have been employed time and time again by the Justice Department and the White House in other investigations. On Oct. 10, 2000, the day that this committee delivered copies of this report to its members for their preliminary consideration, the Justice Department delivered additional documents responsive to the committee's Sept. 1, 1999 subpoena.

[151] See memorandum from James Touhey, Jr., Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, to Jeffrey Axelrad, Director, Torts Branch, FTCA, Civil Division, Department of Justice (Sept. 2, 1999) (exhibit 71).

the necessary jurisdiction and interest in finding true and complete answers that the American people demanded for the last 6 years.

C. THE ATTORNEY GENERAL TAKES OFFICE IN MID-CRISIS

On February 28, 1993, the Department of the Treasury requested FBI assistance in response to the murder of four BATF agents that day. Republican holdover and Acting Attorney General Stuart Gerson managed the Justice Department and the Branch Davidian crisis with the assistance of Acting-Deputy Attorney General Mark Richard, Deputy Assistant Attorney General John Keeney, others within the Justice Department, Judge Sessions and the FBI. Gerson approved the request and authorized the deployment of HRT advance personnel and equipment, including HRT Commander Richard Rogers to Waco. Justice Department and FBI officials based in Washington, DC received briefings from Jamar and Rogers and visited the FBI positions near the compound to witness FBI efforts. These officials also received briefings on contingency plans that the FBI would employ if the Branch Davidians attempted to escape or assault FBI positions before full HRT deployment on site could be accomplished.

Janet Reno was confirmed as Attorney General on March 12, 1993 and received her first detailed briefing on the standoff during the week of March 15, 1993.[152] In response to a suggestion from President Clinton through Hubbell and Presidential Advisor Bruce Lindsey, Attorney General Reno asked if the military had been consulted with respect to the merits of the FBI's proposed operations plan.[153] A briefing in response to Attorney General Reno's query was scheduled for April 14, 1993.

On April 12, 1993, the FBI representatives briefed Attorney General Reno for the first time on their proposed operations plan designed to resolve the standoff at the Branch Davidian compound. FBI representatives presented Attorney General Reno with a briefing book that contained, among other things: (1) a summary of events to that date; (2) the FBI's strategy to resolve the standoff; (3) the proposed operations plan; (4) the FBI's method of gas delivery; and (5) other key facts.[154]

The April 12, 1993, briefing book identified Jamar and Rogers as in charge of the tactical situation surrounding the Branch Davidian compound.[155] The April 12, 1993, briefing book also enclosed the FBI's proposed operations plan that described the means by which HRT personnel hoped to resolve the standoff:

> II. Mission
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> * * * * *
>
> On order, utilize two Combat Engineer Vehicles (CEVs) to deliver tear gas (CS) into White/Green section of the com-

[152] FBI interview with Janet Reno, U.S. Attorney General, in Washington, DC 1 (Aug. 2, 1993) (exhibit 72).

[153] FBI interview with Bruce Lindsey, Advisor to the President and Director of the Office of Presidential Personnel, in Washington, DC (Sept. 1, 1993) (exhibit 73).

[154] See "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp Nos. WWC142–0440—0441 (Apr. 12, 1993) (emphases added) (exhibit 9).

[155] Id. Neither individual, however, attended the Apr. 12, 1993, briefing and Attorney General Reno never met Jamar until well after the end of the standoff.

pound structure. Four Bradley Vehicles (BV) will be positioned around the compound ready to supplement the CEV [sic] in gas delivery, if needed. *One of the four BVs will insert Ferret liquid tear gas rounds into the black covering of the new unoccupied construction on the green side immediately after the introduction of tear gas into the previously referenced white/green section of the compound structure.*

* * * * *

Wait a period of time, which will depend on the subjects [sic] response to the initial gas delivery and subsequent negotiations if any are possible, and deliver additional tear gas utilizing a CEV into the Black/Red corner. Again, demand surrender by the occupants. *Continue delivery of tear gas into different parts of the compound structure at regular intervals for 48 hours or until all subjects have exited compound and surrendered.*[156]

The FBI's proposed operations plan identified the two methods by which it intended to insert the tear gas:

CS Gas Delivery methods (Tear Gas)

A. M79, grenade launcher uses a 40 mm liquid-filled ferret round which delivers 25 grams of CS liquid on impact. In Waco there are approximately 400 rounds of the 40mm liquid-filled gas ferret rounds available for HRT and SWAT use. These rounds when fired from 20 yards or less are capable of penetrating a hollow core door.

* * * * *

B. M60 CEV with cylinder delivery system. One cylinder has 15 one-second bursts per charge. Each burst will extend out approximately 55 feet from the cylinder creating a fog or gas mist in the area. Each cylinder can be recharged 20 times. There are six cylinders on hand in Waco with enough raw materials to recharge all 6 cylinders 20 times each.[157]

Nowhere in the FBI's proposed operations plan or in the April 12, 1993, briefing book did the FBI indicate that the black covering of the new unoccupied construction on the green side was considered by FBI on-site personnel as separate and apart from the Branch Davidian compound. FBI officials also did not indicate to Attorney General Reno that the FBI might, should the need arise, utilize pyrotechnic devices more capable of penetrating that structure. The FBI's proposed operations plan also did not indicate to Attorney General Reno that HRT personnel, as a contingency, intended to use M–651 pyrotechnic tear gas rounds, automatic machine guns or high explosive grenades, if the need arose. Finally, no FBI representative told Attorney General Reno during the week prior to April 19, 1993, that HRT personnel might employ pyrotechnic or high explosive ammunition if they believed that the circumstances warranted their use.

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[156] "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General at Bates Stamp Nos. WWC142–0440 (Apr. 12, 1993) (emphases added) (exhibit 9).

[157] Id. at Bates Stamp No. WWC142–0448.

Rogers telephoned personal friends, the then-current and then-former Army special operations unit commanders[158] on the evening of April 13, 1993, and asked them to travel to Washington, DC for the purpose of briefing Attorney General Reno. As will be discussed in detail below, the officers were reluctant to do so, in light of the Posse Comitatus Act proscriptions, without the express authorization from their respective chains of command.

On April 14, 1993, Attorney General Reno attended a meeting at FBI Headquarters to speak with FBI and military representatives regarding the FBI's proposed operations plan. During that meeting, Attorney General Reno asked Schoomacher and the Colonel their thoughts on the FBI's proposed operations plan. Both officers, to their credit, declined to offer a critique of the plan because of their orders not to do so and their awareness of the Posse Comitatus Act proscription. Both spoke generally about: (1) the effects of tear gas on humans; (2) the eventual need to rest and retrain on-site HRT personnel who, at that time, had been on duty for up to 42 days; and (3) the fact that, if it were a military situation, they might order an immediate, inclusive application of tear gas rather than employing an incremental approach.

D. APRIL 16, 1993—ATTORNEY GENERAL RENO REJECTS THE FBI'S PROPOSED OPERATIONS PLAN AND THEN REVERSES HER DECISION

April 16, 1993, is a key date in the Branch Davidian tragedy timeline. On this date, Attorney General Reno disapproved execution of the FBI's proposed operations plan at that time.[159] Later that morning, FBI Director Sessions requested an opportunity to ask that the Attorney General reconsider her disapproval. After meeting with Associate Attorney General Webster Hubbell, Attorney General Reno decided to reconsider her decision and the next day she approved execution of the FBI's proposed operations plan. While Richard Scruggs, in 1993, and Special Counsel Danforth, in 2000, did find that Attorney General Reno in fact disapproved the FBI's proposed operations plan on this date, they did not discuss why she reconsidered her decision.[160] Attorney General Reno wields substantial discretion to approve or disapprove the actions of Federal law enforcement personnel. Concurrent with that responsibility, however, is the duty to account *fully* for the bases of her actions. Attorney General Reno has never fully explained what led her to reverse her decision.

As Special Counsel Danforth's interim report noted, Hubbell called Deputy Assistant Attorney General Mark Richard into his of-

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[158] In 1993, the former unit commander, then-Brigadier General Peter Schoomaker, served as an Assistant Division Commander at Ft. Hood, TX. In response to a request from then-Texas Governor Ann Richards, General Schoomaker's superior asked him to travel to Waco and report to the Governor on the situation. The then-unit commander, an Army Colonel, served at Fort Bragg, NC.

[159] Transcript of interview with Janet Reno, U.S. Attorney General, in Washington, DC at 78:13–80:12 (Oct. 5, 2000) (exhibit 74 on file with the committee).

[160] In light of Special Counsel Danforth's charter—to investigate "bad acts," rather than "bad judgment," this omission from his report is not of concern. John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 2 (2000) (footnote omitted).

fice the morning of April 16, 1993.[161] Richard recalled that then Justice Department Director of Public Affairs Carl Stern was already present in Hubbell's office. Hubbell told Richard that Attorney General Reno had "disapproved" the FBI's proposed operations plan.[162] Richard told committee staff that he was surprised at Hubbell's pronouncement.[163]

Hubbell asked Richard what Richard thought would be the FBI's reaction to this news. Richard responded that the FBI would be upset. Hubbell asked Richard if Richard thought that the FBI should be told and offered the opportunity to discuss the matter. Richard agreed and Hubbell telephoned FBI Director William Sessions and, without telling him the reason, asked Sessions to come to his office.[164]

Sessions left FBI Headquarters, accompanied by then-FBI Deputy Director Floyd Clarke and, shortly, arrived at Hubbell's office. When Hubbell reiterated to the gathered individuals that Attorney General Reno had "disapproved" the FBI's proposed operations plan, Sessions requested an opportunity to speak directly to the Attorney General.[165] Hubbell responded by telling Sessions to wait while Hubbell went to her office. Hubbell was gone, according to Richard, for approximately 10 minutes.[166]

Hubbell reappeared with Attorney General Reno and, almost immediately, she told the attendees that she wanted the FBI to prepare a statement [167] for her that would include all facts in support

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[161] John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 108 (2000).

[162] FBI interview with Mark Richard, Deputy Assistant Attorney General, Department of Justice in Washington, DC at 5 (July 15, 1993) (exhibit 75).

[163] Interview with Mark Richard, senior counsel for the European Union and International Criminal Matters and former Deputy Assistant Attorney General, Department of Justice in Washington, DC (Apr. 20, 2000).

[164] Id.; telephone interview with William Sessions, former FBI Director (Oct. 9, 2000).

[165] Director Sessions' 1993 statement to the post-fire investigators indicates that he argued to Attorney General Reno for approval of the FBI's proposed operations plan on Apr. 16, 1993. FBI interview with William Sessions, FBI Director, in Washington, DC at 7 (July 14, 1993) (exhibit 76). This statement seemed inconsistent with other statements and committee staff interviews with the Apr. 16, 1993, meeting participants. See e.g., FBI interview with Mark Richard, Deputy Assistant Attorney General, Department of Justice in Washington, DC at 5 (July 15, 1993) (exhibit 75); interview with Mark Richard, senior counsel for the European Union and International Criminal Matters and former Deputy Assistant Attorney General, Department of Justice, in Washington, DC (Apr. 20, 2000); telephone interview with Carl Stern, former Director, Office of Public Affairs, Department of Justice, in Washington, DC (May 11, 2000); interview with Floyd Clarke, former FBI Deputy Director, in Washington, DC (May 4, 2000). Committee staff interviewed Sessions regarding this matter. During that interview, Sessions corrected his 1993 statement and stated that while he certainly wanted the Attorney General to approve the proposed operations plan, he could not recall any conversation with the Attorney General during which he argued for reconsideration of the FBI's proposed operations plan. Telephone interview with William Sessions, former FBI Director (Oct. 9, 2000). Sessions recalled no discussions during the Apr. 16, 1993, meeting after the Attorney General asked the FBI to prepare the additional materials. Id. Finally, Sessions recalled no conversations with the Attorney General after the Apr. 16, 1993, meeting and prior to the Apr. 17, 1993, meeting during which the Attorney General approved the FBI's proposed operations plan. Id.

[166] FBI interview with Mark Richard, Deputy Assistant Director, Department of Justice, in Washington, DC at 5 (July 15, 1993) (exhibit 75); see also interview with Mark Richard, senior counsel for the European Union and International Criminal Matters and former Deputy Assistant Attorney General, Department of Justice, in Washington, DC (Apr. 20, 2000).

[167] The "statement" that the FBI prepared for the Attorney General became a second, detailed briefing book. "WACO INVESTIGATION—Second Attorney General Briefing Book" at Bates Stamp WWC425–0892–WWC425–2044, undated (due to the large size of these materials, it will not be included as an exhibit to this report); see also FBI interview with Janet Reno, U.S. Attorney General, in Washington, DC at 5 (Aug. 2, 1993) (exhibit 72); FBI interview with Mary Incontro, Deputy Chief, Terrorism and Violent Crimes Section, Criminal Division, Department of Justice, in Washington, DC at 3–4 (July 22, 1993) (exhibit 77); Edward S.G. Dennis, Jr., U.S. Department of Justice, "Evaluation of the Handling of the Branch Davidian Stand-off in Waco, Texas" (Oct. 8, 1993) (redacted version) at 57–58.

of the FBI's proposed operations plan.[168] Several of the attendees were surprised at Attorney General Reno's directive, since, based upon Hubbell's information, she had "disapproved" the plan.[169] In hopes of satisfying her request, however, Sessions and Clarke returned to FBI Headquarters and directed subordinates to prepare the requested materials.[170] FBI representatives gave this second briefing book to Attorney General Reno sometime on April 17. After reconsidering her earlier disapproval, Attorney General Reno approved the FBI's proposed operations plan during the evening of April 17, 1993.[171] Attorney General Reno has stated that she did not carefully review the materials from the FBI prior to approving the FBI's proposed operations plan.[172]

Scruggs learned of Attorney General Reno's unexplained reversal during the course of his investigation. Richard and others, at a minimum, told the investigators of these events and Richard, in particular, expressed to them his surprise at her change of heart:

> RICHARD related that on Friday, April 16, 1993, he was called to HUBBELL's office where he met with HUBBELL and CARL STERN. HUBBELL advised that the Attorney General had disapproved the FBI plan to end the siege. RICHARD related he was asked by HUBBELL what the reaction of the FBI might be. RICHARD stated he related that the FBI would not be pleased, but would accept it however, may talk in terms of withdrawal. RICHARD related that HUBBELL further asked if RICHARD would like to speak with the Attorney General, but RICHARD

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[168] FBI interview with Janet Reno, U.S. Attorney General, in Washington, DC at 5 (Aug. 2, 1993) (exhibit 72); FBI interview with Webster Hubbell, Associate Attorney General, Department of Justice, in Washington, DC at 5 (Aug. 3, 1993) (exhibit 78); telephone interview with Carl Stern, former Director, Office of Public Affairs, Department of Justice, in Washington, DC (May 11, 2000); interview with Floyd Clarke, former FBI Deputy Director, in Washington, DC (May 4, 2000).

[169] See e.g., interview with Mark Richard, senior counsel for the European Union and International Criminal Matters and former Deputy Assistant Attorney General, Department of Justice, in Washington, DC (Apr. 20, 2000).

[170] "Waco Investigation—Second Attorney General Briefing Book" at Bates Stamp WWC425–0892–WWC425–2044, undated; Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 287–288; see also interview with Floyd Clarke, former FBI Deputy Director, in Washington, DC (May 4, 2000); interview with Mary Incontro, former Deputy Chief, Terrorism and Violent Crimes Section, Criminal Division, Department of Justice, in Washington, DC (Apr. 14, 2000).

[171] John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 108–109 (2000); Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 287–289 ("On April 17, the Attorney General met in her conference room with Hubbell [and other Justice Department and FBI officials] to review the statement she had requested the previous day. . . . The AG approved the plan with an execution date of Monday, April 19. . . . [On April 18, 1993] The FBI provided her with the remainder of the supporting documentation for the statement, which Richard subsequently gave to the Attorney General") (footnotes omitted).

[172] FBI interview with Janet Reno, U.S. Attorney General, in Washington, DC at 5 (Aug. 2, 1993) (exhibit 72) ("She read only the chronology, gave the rest a cursory review, and satisfied herself that the documentation was there."); Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 287, fn. 36. The Attorney General's statement during the 2000 interview with committee staff that, in fact, she did review this second briefing book is consistent only with the fact that she read the "chronology." Transcript of Interview with Janet Reno, U.S. Attorney General, in Washington, DC at 85:23–25 (Oct. 5, 2000) (exhibit 74 on file with the committee).

> advised he had nothing more to tell her then [sic] what she already knew.
>
> * * * * *
>
> HUBBELL stated that he was going to contact Director SESSIONS and shortly thereafter, the Director, [FBI Deputy Director Floyd] CLARKE and [then-FBI Assistant Director for Criminal Investigations Larry] POTTS arrived. RICHARD related that HUBBELL advised of the Attorney General's disapproval of the plan to end the siege and Director SESSIONS acknowledged that he would like to speak to the Attorney General.[173]

Scruggs attached no particular significance to this event. Dennis, moreover, failed to even mention this reversal and discuss its import.[174]

Committee staff questioned several of the April 16, 1993, meeting participants with respect to Attorney General Reno's decision to disapprove, reconsider and, finally, approve the FBI's proposed operations plan.[175] It seemed curious that, in light of her numerous public statements that she considered all facts carefully before approving the FBI's proposed operations plan, in fact, she disapproved the plan, reconsidered her decision on April 16, 1993, and, finally, approved the plan on April 17, 1993. Attorney General Reno has yet to account fully for this decisionmaking process and the facts that she considered during this forty-eight hour period.

Prior to her April 16, 1993, decision to disapprove the FBI's proposed operations plan, Attorney General Reno received all the information relating to: (1) the tactical situation; (2) HRT personnel fatigue; (3) the potential for harm if tear gas were employed; (4) the status of water and food supplies within the Branch Davidian compound; (5) the safety and well being of the children that resided within the compound; and (6) the timing of the execution of the plan—the factors that she publicly has stated she relied upon to reach her decision.[176] Based upon this information, in fact, she disapproved the FBI's proposed operations plan on April 16, 1993. The Attorney General did not carefully review all the requested additional information from the FBI prior to her later reversal. Attor-

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[173] FBI interview with Mark Richard, Deputy Assistant Attorney General, Department of Justice, in Washington, DC at 5 (July 15, 1993) (exhibit 75).

[174] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 286–287; Edward S.G. Dennis, Jr., U.S. Department of Justice, "Evaluation of the Handling of the Branch Davidian Stand-Off in Waco, Texas" (Oct. 8, 1993) (redacted version) at 57–58.

[175] See e.g., Transcript of Interview with Janet Reno, U.S. Attorney General, in Washington, DC at 78:13–85:25 (Oct. 5, 2000) (exhibit 74 on file with the committee); interview with Mark Richard, senior counsel for the European Union and International Criminal Matters and former Deputy Assistant Attorney General, Department of Justice, in Washington, DC (Apr. 20, 2000); interview with Floyd Clarke, former FBI Deputy Director, in Washington, DC (May 4, 2000); telephone interview with Carl Stern, former Director, Office of Public Affairs, Department of Justice, in Washington, DC (May 11, 2000); interview with Larry Potts, former FBI Assistant Director, in Washington, DC (May 30, 2000).

[176] See generally, FBI interview with Janet Reno, U.S. Attorney General, in Washington, DC (Aug. 2, 1993) (exhibit 72); "WACMUR: Major Case #80—Assault on a Federal Officer," briefing for the Attorney General (Apr. 12, 1993) (exhibit 9). See "Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 3)," hearings before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, 104th Cong., 357, 357–359, 370–372 (Aug. 1, 1995); see also Transcript of Interview with Janet Reno, U.S. Attorney General, in Washington, DC at 78:13–79:10 (Oct. 5, 2000) (exhibit 74 on file with the committee).

ney General Reno has yet to explain what information caused her to reconsider and, later, approve the FBI's proposed operations plan.[177]

As stated earlier, the Attorney General, like any senior government official, must use discretion with respect to decisionmaking. The concurrent duty to account for that discretionary decisionmaking authority, however, also exists. The Attorney General's failure to disclose fully her reasons for reversing her decision is inconsistent with the President's directive to make all of the facts public.

E. APRIL 19, 1993—SEASONED FBI OFFICIALS WITHIN SIGHT OF ATTORNEY GENERAL RENO FAILED TO WARN HER THAT THE FBI'S ACTIONS AT WACO DEVIATED FROM THE OPERATIONS PLAN THAT SHE APPROVED

The FBI maintained a Significant Incident Operations Center (SIOC) within FBI Headquarters from which senior, Washington, DC-based Justice Department and FBI officials were able to send and receive communications pertaining to the Waco stand-off. The SIOC was the location within FBI Headquarters from which Attorney General Reno, Hubbell, Sessions, Clarke, Stern and other senior and mid-level Justice Department and FBI officials were able to witness the unfolding developments of Waco.[178]

An understanding of the SIOC's layout is important to understanding how the tragic events of April 19, 1993, occurred.[179] The SIOC contained three rooms. In one was a large, main room in which mid-level FBI personnel maintained communications with on-site crisis personnel and had several large television screens. The second, smaller room contained technical equipment used to secure communications with on-site tactical personnel and was manned at all times by technical personnel. The final room was a small conference room used by senior Justice Department and FBI personnel. All three rooms were connected[180] and the conference room included three glass windows looking into the main room. On April 19, 1993, personnel moved freely from one room to another in response to requests for information or other tasks.

FBI Deputy Assistant Director Danny Coulson and Michael Kahoe, Chief of the FBI's Violent Crimes and Major Offenders Section, sat in the main SIOC room and, in addition to traversing the rooms when requested to perform tasks, watched the operation unfold on one of the television screens. Attorney General Reno, Hub-

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[177] Judiciary Committee Chairman Henry Hyde asked the Attorney General in 1995 to explain the basis for this reversal and to disclose what Hubbell told her during the 10–15 minutes on Apr. 16, 1993, when Hubbell left Sessions, Clarke, Richard and Stern in his office to bring Attorney General Reno back to discuss her disapproval with those officials. The Attorney General, instead, discussed the information that she had learned prior to Apr. 16, 1993—information which led her to "disapprove" the FBI's proposed operations plan. "Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 3)," hearings before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, 104th Cong., 357, 370–372 (Aug. 1, 1995).

[178] Even though in 1993 the SIOC was advanced in its ability to communicate in a secure fashion with on-site crisis managers, it lacked access to real-time, tactical information, such as the tactical radio frequencies and forward-looking infrared (FLIR) camera images that were available to on-site FBI personnel. Consequently, those within the SIOC on Apr. 19, 1993, gathered around several large television screens to watch CNN's coverage of the unfolding tragedy.

[179] Since 1993, the FBI has significantly expanded and improved the size and capability of its SIOC.

[180] A door normally kept closed, however, separated each room.

bell, Clarke, Stern, Sessions and others [181] watched the events from within the conference room.

HRT personnel commenced execution of the FBI's proposed operations plan at 5:55 a.m.[182] Approximately 5 hours later, Rogers directed an HRT-manned CEV to drive into the walls of the compound. Both Kahoe and Coulson expressed surprise at the action. Coulson and Kahoe, based upon their personal experience and training, participated in the initial drafting and editing of the FBI's proposed operations plan and briefed senior Justice Department and FBI personnel regarding the stand-off.[183] Both men had participated in numerous meetings during the previous week during which she was briefed. Both men had also communicated extensively with Rogers since February 28, 1993, on the specifics of the FBI's proposed operations plan.[184] In sum, both men knew the details, intent and specific orders of the plan that Attorney General Reno had approved.

When Coulson and Kahoe noticed the actions of the CEV, they expressed surprise at the actions. Coulson and Kahoe knew that any penetration of the Branch Davidian compound was not supposed to have occurred until 2 days later—after attempts to force the Davidians out of the compound through tear gas insertion had failed. As Coulson stated during his deposition, both verbally communicated their surprise:

> Q. Okay, Okay. Where were you located on April 19, 1993, within SIOC?
>
> A. I was in the main SIOC area, but not in the [conference room]
>
> Q. And who were you in close proximity to? And I realize we're talking about a period of several hours, so——
>
> A. Mr. Kahoe was out in that main part of the SIOC area. I believe that Mr. Evans was. Mr. Betz, probably Mr. Lovin and Mr. Glasser, and various agents and support staff.
>
> Q. Now, at some point, during the day on April 19, 1993, you were able to see, from the television broadcasts from [the Branch Davidian compound], the tanks penetrating the building, not with a boom and not just at a window, but, actually, you saw CEV–1 go fully into the building on the front side, correct?
>
> * * * * *
>
> A. I don't know if it was CEV–1, CEV–2, C—I have no idea of the nomenclature for——
>
> Q. All right, sir.

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[181] The participants all recalled that many people moved in and out of the conference room that morning.

[182] Central Standard Time.

[183] See FBI interview with Danny Coulson, former Deputy Assistant Director and Special Agent in Charge, FBI in Washington, DC at 4–8 (July 13, 1993) (exhibit 64); FBI interview with E. Michael Kahoe, former Section Chief, Violent Crimes and Major Offenders Section, Criminal Investigation Division, FBI in Washington, DC at 1–2 (July 14, 1993) (exhibit 80); Transcript of Coulson Deposition at 11:24–12:4; 34:22–42:6, *Andrade* v. *Chojnacki* (W.D. Tex. Feb. 22, 2000) (No. W–96–CA–139) (exhibit 64).

[184] Id.

A. The CEV. I did see a tracked vehicle go, penetrate further into the building that I'd seen them earlier.

Q. And we've had testimony that there was some surprise, when that happened, within SIOC, and people made comments and that sort of thing. Who were you with or seated next to, for example, when that CEV went into the building, fully penetrated the building?

A. Mike Kahoe.

Q. Did you say anything, or did Mr. Kahoe say anything at that time?

A. Yes. He said something, and I said something.

Q. What did he say?

A. "Holy shit."

Q. Did he say anything else other than "Holy shit?"

A. That's all I recall.

Q. All right, sir. What did you say?

A. I said, "I hope that's a bad camera angle."

Q. Meaning that you hoped it looked worse on television than it was?

* * * * *

A. I had hoped that it didn't penetrate as far as it appeared on television, which is often the case.

* * * * *

Q. All right, sir. Now, do you recall the [FBI's proposed operations plan] contemplating the penetration of the tanks, the body of the tanks fully into the building on the front of [the Branch Davidian compound] on April 19, 1993?

A. No.

Q. And that's when Mr. Kahoe said "Holy shit" and that's why you said "I hope that's a bad camera angle?"

* * * * *

A. I can't speak for Mr. Kahoe. I can speak for myself, in that my first reaction is, we're going to lose that tank, that the tank could be disabled and trapped inside the building. That was my very first thing 0when I saw it. And I did—I was surprised to see the activity.

Q. And it was not something that you had contemplated, based on your understanding of the plan, would occur on April 19, 1993; correct ?

A. No, I did not contemplate that.[185]

The statements of surprise from both Coulson and Kahoe—seasoned FBI officials who participated in the draft of the FBI's proposed operations plan is disturbing for two reasons. First, the fact

[185] Transcript of Coulson Deposition at 59:5–60:22; 150:9–151:5, *Andrade* v. *Chojnacki* (W.D. Tex. Feb. 22, 2000) (No. W–96–CA–139) (exhibit 65).

that these two men were alarmed by the HRT Commander Richard Rogers' orders and the actions of HRT personnel in response reflects the fact that Rogers deviated from the plan as approved by the Attorney General. Second, the fact that these individuals did not communicate their concerns to the Attorney General and other senior, Justice Department and FBI officials sitting 10 to 20 feet away from them is of great concern. In light of the fact that both possessed practical experience in situations such as Waco and direct knowledge relating to the specific tactics to be employed that morning, Attorney General Reno, FBI Director Sessions and other senior officials should have been requested that they make themselves directly available for consultation during the morning of April 19, 1993. At a minimum, they should have felt free or been directed to offer their advice to the Attorney General and Director Sessions if they had concerns or felt that they possessed information necessary for the Attorney General to possess. This failure of communication among seasoned tactical professionals and the political leadership within the Department of Justice and the FBI may lead to future tragedy if not corrected.

F. THE DEPARTMENT OF JUSTICE'S FAILURE TO CONDUCT A "THOROUGH AND VIGOROUS INVESTIGATION" IN 1993 AS ORDERED

On April 20, 1993, one day after the tragic resolution of the stand-off at the Branch Davidian compound, President Clinton stated that the Department of Justice would begin a "vigorous and thorough investigation" into the responsibility for the deaths at Waco.[186] Attorney General Reno supported this command. As the American people now realize, however, a "vigorous and thorough" investigation was not done by the Justice Department. The Justice Department's failure to conduct a "vigorous and thorough investigation" has resulted in a loss of confidence on the part of the public in their government and in millions of dollars spent to examine legitimate concerns that the entire story about Waco had not been disclosed.

1. The Failure to Disclose the Use of Pyrotechnic Tear Gas Grenades

During the early morning hours of April 19, 1993, HRT member David Corderman requested and received approval from Rogers to fire pyrotechnic tear gas grenades into the underground structure located adjacent to the main Branch Davidian compound.[187] The use of these rounds was neither contemplated in the FBI's proposed operations plan nor approved by the Attorney General. Rogers granted his permission in deviation from his express orders not to use any pyrotechnic device. While this deviation is of great concern, it is unlikely that the use of these devices caused or exacerbated the fire that began around noon on April 19, 1993. The rounds were fired almost 4 hours prior to the start of the fire and there

[186] President William Clinton, remarks by the President in question and answer session with the press in Washington, DC at 2 (Apr. 20, 1993) (exhibit 24).

[187] Corderman radioed McGavin who contacted and received authorization from Rogers. Interview with David Corderman, Special Agent, FBI, in Washington, DC (Nov. 4, 1999); interview with Steven McGavin, Special Agent and former Deputy Commander, Hostage Rescue Team, FBI, in Washington, DC (June 5, 2000); interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, HRT, FBI, in Phoenix, AZ (Aug. 9, 2000).

is no indication that the use of these pyrotechnic rounds had any relevance to the fire that began around noon on April 19, 1993.

Of more concern, however, is the fact that Federal law required that the prosecutors disclose to the criminal defendants evidence that would either: (1) tend to prove their innocence; (2) challenge the prosecution witnesses' statements regarding the start of the April 19, 1993, fire; (3) impeach the prosecution witnesses' credibility; or (4) support an alternative theory as to how the fire began.[188]

On August 6, 1993, lead criminal Justice Department prosecutors Ray and LeRoy Jahn sought and received a criminal indictment of several of the surviving Branch Davidians for, among other things, conspiracy to murder HRT personnel on April 19, 1993. In doing so, the Jahns alleged that the surviving Branch Davidians had started the April 19, 1993, fire:

> It was a part of the conspiracy that, on April 19, 1993 Vernon K. Howell, also known as David Koresh, would give instructions to spread flammable fuel within the [Branch Davidian] Compound upon learning that the FBI was to introduce tear gas into the Compound to end the siege. It was part of the conspiracy that a coconspirator would and did give instructions at about noon on April 19, 1993, to start the fires with [the Branch Davidian Compound].[189]

In order to prove this allegation, the Jahns, Bill Johnston and a paralegal named Reneau Longoria interviewed several HRT personnel regarding their recollections.[190]

Rogers and McGavin told the Jahns on or about November 9, 1993, that, in addition to employing non-pyrotechnic tear gas rounds and tear gas deployed via the M–728 CEVs, HRT personnel had sought and obtained authorization to fire pyrotechnic M–651 rounds during the morning of April 19, 1993. Rogers and McGavin described in detail the rounds' characteristics—such as the shape and color of the rounds—and the reasons for their use.[191] Rogers, McGavin and other HRT personnel did not withhold from the Jahns or the other criminal prosecutors information relating to the use of these rounds. In fact, the prosecutors found this information pertinent to their efforts to prosecute the criminal defendants, but planned to disclose the use of these rounds but only if necessary to rebut the defendants' defense:

> • "Rebuttle [sic] Smoke from Bunker—came when these guys tried to shoot gas into the Bunker. (Military gas round)—dark grey bubblehead w/green base. 1 military round—2 other ferret. 1st target ferret into Bunker . . . military bounced off also."[192]

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[188] *Brady* v. *Maryland*, 373 U.S. 83 (1963); *United States* v. *Augurs*, 427 U.S. 97 (1976).

[189] Superseding indictment at 6–7, *United States* v. *Schroeder*, (W.D. Tex. Aug. 6, 1993) (Criminal No. W–93–CR–046) (exhibit 81).

[190] The Jahns, as co-lead counsel for the criminal trial, were responsible for collecting all relevant information regarding the events on Apr. 19, 1993, and the conduct of the prosecution of the surviving Branch Davidian defendants. Justice Department officials relieved Johnston of his responsibilities prior to Apr. 19, 1993, although he did assist in the conduct of the criminal trial. As will be discussed below, Johnston interviewed Corderman and, like the Jahns, recognized the value of Corderman's potential testimony.

[191] Exhibits 40–45.

[192] Exhibit 46.

Similarly, Johnston also learned that Corderman's employment of "military" incendiary rounds on the morning of April 19, 1993, could explain issues that might arise during the trial: "one green military (incind) . . . smoke . . . [s]hot bunker before compromise . . . then military round. . . . *[c]an explain smoke.*" [193]

These prosecutors failed to ascertain whether they had to disclose these facts to the criminal trial defendants—although they may have been required to do so.[194] The prosecutors also failed to disclose these facts to senior Justice Department personnel. The prosecutors may contend that these facts were not exculpatory because they were irrelevant to the defense. Such an assertion, however, fails to justify their actions. If the use of the pyrotechnic rounds on April 19, 1993, was irrelevant or otherwise immaterial to the case, then it should not have had rebuttal value. If the information had impeachment value or was otherwise material to the defendants, *Brady,* its progeny and the 5th Circuit Court of Appeals' interpretation of *Brady* required its disclosure.[195] As Justice Department Associate Deputy Attorney General David Margolis [196] told committee staff, *Brady* required the Jahns, as co-lead counsel, to refer any question with respect to the disclosure of even *potentially* relevant material to the U.S. Attorney for the Western District of Texas, William Blagg, or to Washington, DC-based, Justice Department officials for a *Brady* analysis. The criminal prosecutors failed to do so.

In 1999, senior Justice Department officials reviewed Mrs. Jahn's 1993 notes and the November 19, 1993, HRT interview schedule that revealed the fact that Corderman had attempted to penetrate the Branch Davidian's underground bunker with pyrotechnic rounds. The officials concluded that the information: (1) was potentially *Brady* material that the Jahns and Johnston should have disclosed; and (2) that the Justice Department should produce the material to the civil litigation plaintiffs.[197]

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[193] Handwritten interview notes by Johnston with unidentified HRT personnel, date unknown, location unknown at 1 (emphasis added) (exhibit 82). Johnston was the subject of much controversy during the summer and fall of 2000, after the media reported that Special Counsel Danforth intended to seek an indictment of Johnston for, among other things, obstruction of justice and perjury. After the trial court ordered all Federal agencies to produce all relevant Waco-related documents, Johnston found these three pages among his personal notes. According to those press accounts, Johnston withheld these documents from production and thereafter lied to Special Counsel Danforth's investigators about his actions. As will be discussed below, Johnston also had a legal and ethical duty to comply with subpoenas issued by this committee on Aug. 30, 1999, and Oct. 1, 1999, to produce these documents to Congress. He failed to do so.

[194] *Brady, Augurs*; see also Fed. R. Crim. Pro. 16.

[195] e.g., *Garrison* v. *Maggio*, 540 F.2d 1271 (5th Cir. 1976); *United States* v. *Herberman*, 583 F.2d 222 (5th Cir. 1978). The 5th Circuit Court of Appeals is the appellate court to which the criminal defendants sought review of their convictions. In 1999, Justice Department Assistant Attorney General and Criminal Division Chief Richard Durbin wrote the U.S. Attorney for the Western District of Texas, William Blagg, and recommended that the information within the Jahns' possession in 1993—the fact that HRT personnel fired pyrotechnic tear gas grenades on Apr. 19, 1993—be disclosed, pursuant to Brady to the plaintiffs in the civil litigation. E-mail from Richard Durbin, Jr., Assistant Attorney General, Criminal Division, Department of Justice, to William Blagg, U.S. Attorney for the Western District of Texas, Department of Justice (Sept. 8, 1999) (exhibit 83).

[196] Margolis served as the Associate Deputy Attorney General under then-Deputy Attorney General Heymann and continues to do so. As he explained to committee staff, he possesses substantial experience, as a former Organized Crime Task Force Chief and Criminal Division Chief, in determining *Brady* disclosure requirements. Interview with David Margolis, Associate Deputy Attorney General, Department of Justice, in Washington, DC (Aug. 18, 2000).

[197] See e.g., e-mail from Richard Durbin, Jr., Assistant Attorney General, Criminal Division, Department of Justice, to William Blagg, U.S. Attorney for the Western District of Texas, Department of Justice, et al. (Aug. 8, 1999) (exhibit 84); e-mail from William Blagg, U.S. Attorney for the Western District of Texas, Department of Justice, to Richard Durbin, Jr., Assistant At-

Ray Jahn, as co-lead counsel and a participant in the November 1993 briefings with HRT personnel, knew that HRT personnel had employed pyrotechnic rounds on April 19, 1993, and likewise planned to introduce that fact as rebuttal evidence during the criminal trial. Ray Jahn swore to the Congress in 1995, however, that, ". . . the FBI did not fire a shot, *other than the non-lethal ferret rounds*. . . ."[198] The Jahn's decision to withhold from the defendants and the Congress the fact that HRT personnel employed these rounds on April 19, 1993, arguably constitutes a significant and material ethical lapse.

Johnston's recognition of the value of Corderman's testimony also made him responsible for asking the Jahns or other Justice Department superiors for a *Brady* analysis. Either the Jahns and Johnston asked for such an analysis and were rebuffed, or they failed to do so. The Jahns refused to meet with committee staff to explain this possible lapse.[199]

Additional concerns are raised by the fact that Johnston, after sending his August 30, 1999, letter to Attorney General Reno, spoke to the press and further accused Washington, DC-based Justice Department officials of withholding information related to Corderman's actions:

> Assistant U.S. Attorney Bill Johnston said he felt compelled to warn Ms. Reno after he was given a 5-year-old document that discusses the use of "military gas" by the FBI on April 19, 1993. He said he was concerned because the document, a three page set of notes detailing an interview with members of the FBI's hostage rescue team, included handwritten notations suggesting that it be kept from anyone outside the department's legal staff.
>
> "There are handwritten notes on the documents discussing whether or not they should be disclosed, and, obviously, they have not been," said Mr. Johnston. . . . There was discussion about whether they should be turned over," he said. "Obviously, the decision was made somewhere in Washington that they ought not to be."[200]

As mentioned above, Johnston searched his own records in 1999 or 2000 and discovered his Corderman interview notes that also described Corderman's employment of the pyrotechnic tear gas

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torney General, Criminal Division, Department of Justice (Aug. 8, 1999) (exhibit 85); memorandum from Richard Durbin, Jr., Assistant Attorney General, Criminal Division, Department of Justice, to David Margolis, Associate Deputy Attorney General 1 (Sept. 9, 1999) (exhibit 86).

[198] "Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part I)," hearing before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, 104th Cong., 100, 107 (July 19, 1995) (statement of Ray Jahn, Assistant U.S. Attorney) (emphasis added).

[199] Letter from André Hollis, senior counsel, Committee on Government Reform, U.S. House of Representatives, to Gerald Goldstein, partner, Goldstein, Goldstein and Hilley, and counsel for William "Ray" Jahn and LeRoy Jahn (Sept. 12, 2000) (exhibit 87); letter from Gerald Goldstein, partner, Goldstein, Goldstein and Hilley, and counsel for William "Ray" Jahn and LeRoy Jahn, to André Hollis, senior counsel, Committee on Government Reform, U.S. House of Representatives (Sept. 21, 2000) (exhibit 88).

[200] Lee Hancock, "Waco Prosecutor Warns Reno Evidence Possibly Withheld; Notations About File on Pyrotechnics Use Raised His Concerns," the Dallas Morning News, Aug. 31, 1999 at 1A (emphasis added) (exhibit 89).

rounds.[201] Even after finding these notes, Johnston failed to correct his statements. Johnston could have produced the notes to the trial court for a private review. Johnston should have produced them to the committee in response to its August 30, 1999, or October 1, 1999, subpoenas. The committee's August 30, 1999, subpoena to Johnston, personally, ordered Johnston to produce documents related to the use of pyrotechnic tear gas rounds employed by HRT personnel. The request was continuing in nature, and, even if he had discovered the documents long after the subpoena was issued, he had a legal obligation to produce them to the committee. The terms of the subpoena received by Johnston were as follows:

> This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date *shall be provided immediately upon location or discovery subsequent thereto.*
>
> * * * * *
>
> Please provide the Committee with all records relating to CS pyrotechnic tear gas rounds employed at the Waco standoff.[202]

There is no ambiguity regarding the terms of this subpoena.

While Johnston deserves credit for his role in bringing to light the use of pyrotechnic devices on April 19, 1993, a secret that lasted for 7 years, his record in this matter is a mixed one. Had Johnston not taken the initiative, the American people might have remained badly misinformed about the entire tragedy. In this respect, Johnston performed a public service for which he suffered undeserved reprisals from the Department of Justice. On the other hand, Johnston's apparent decision to withhold his handwritten notes on the subject from Special Counsel Danforth and to this committee cannot be overlooked or excused.

As mentioned earlier, Justice Department civil litigation lead attorney Marie Hagen asked FBI Assistant General Counsel Jacqueline Brown in 1996 to ascertain the basis for Sherrow's assertion. Brown told committee staff that, after receiving Hickey's memorandum confirming the use of these rounds, she communicated these facts, orally or otherwise, to Hagen. Hagen disagreed with Brown's assertion and told committee staff that she never had such a communication with Brown.[203]

Documents made available to committee staff indicate that Brown did in fact share the Hickey memorandum with her supervisor, Virginia Buckles, and Hagen. For example, Brown, who maintained a daily checklist of action items, recorded on February 19, 1996, the fact that she spoke with Hagen and other Justice Department officials regarding the Hickey memorandum and showed them the document: "meet w/DOJ re dec[laration] . . . Sherrow

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[201] David Vise, "Waco Whistleblower Faces Indictment," the Washington Post, Sept. 1, 2000 at A1 (exhibit 90).

[202] Subpoena duces tecum from the Honorable Dan Burton, chairman, Committee on Government Reform, U.S. House of Representatives, to William Johnston, Assistant U.S. Attorney, Department of Justice 3 (Aug. 30, 1999) (emphasis added) (exhibit 91).

[203] Interview with Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, in Washington, DC (Nov. 23, 1999).

Dec[laration] memo to M[arie] H[agen]."[204] Second, Buckles' own memoranda to then-FBI General Counsel Howard Shapiro detailing the status of then-ongoing FBI civil litigation referenced Buckles' and Brown's involvement in assisting Hagen and the Justice Department to clarify the Sherrow declaration statements.[205]

When the use of pyrotechnic tear gas rounds became public in 1999, Justice Department attorneys spoke with Brown specifically about the statements within the Hickey memorandum. Those Justice Department attorneys concluded that Brown had not knowingly withheld the Hickey memorandum:

> I spoke to Lyn Brown about the document I found . . ., 2/15/96 memo by Robert A. Hickey to attn. of Jacqueline F. Brown. Lynn said that the first she heard of this memo was during her conversation with Greg Parsons, her HRT liaison [sic], which she related to Marie this morning. She had no recollection of having seen the memo. . . . She asked me to fax her a copy, which I did, as she has been trying unsuccessfully to track down a copy. She bristled a bit when I said that finding the memo this late in the day had caused concern over here, in that we have been trying to learn about the accusations of the use of military munitions for several weeks. . . . I tried to defuse the situation by stating that I was not accusing Lynn of having hidden anything (I do believe she's telling the truth when she states that she can't recall having seen the memo before).[206]

Attorney General Reno also wondered whether Justice Department officials had attempted to confirm or deny the Sherrow declaration allegations and, if so, how Hagen responded. At first, those officials told Reno that Hagen had not responded to the Sherrow declaration allegations. Later, however, Justice Department officials admitted to the Attorney General that Hagen had in fact dismissed the Sherrow declaration allegations without first discovering the truth:

> At our recent meeting, you asked whether we had responded in any way to Mr. Sherrow's January 17, 1996, declaration in support of the plaintiffs' opposition to the defendants' motion to dismiss in the civil case. While it was indicated to you that we had not responded because the allegations were not germane to the main issues in the case, our exhaustive search of all United States' pleadings after the meeting has resulted in the discovery of many in-

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[204] Jacqueline Brown, Assistant General Counsel, Civil Litigation Unit, Office of the General Counsel, FBI, Dayplanner task list (Feb. 19, 1996) (exhibit 92).

[205] Matters of interest memorandum from Virginia Buckles, Unit Chief, Civil Litigation Unit, Office of the General Counsel, FBI to Howard Shapiro, General Counsel, FBI 1–2 (Feb. 12, 1996) (exhibit 93); see also matters of interest memorandum from Virginia Buckles, Unit Chief, Civil Litigation Unit, Office of the General Counsel, FBI to Howard Shapiro, General Counsel, FBI 4–5 (Nov. 12, 1996) (Exhibit 94).

[206] E-mail from James Touhey, Jr., Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, to Marie Hagen, Trial Attorney, Torts Branch, Civil Division, FTCA, Department of Justice et al., (Aug. 19, 1999) (exhibit 50).

stances where Mr. Sherrow's declaration was mentioned or argument was in reaction to it.[207]

Whether or not Brown in fact told Hagen of the contents of Hickey's memorandum, Hagen specifically asked Brown for this information.[208] As the civil litigation lead counsel, Hagen had the duty to follow up on her query prior to denying the use of these rounds in response to the plaintiff's assertion. Instead of simply ignoring the allegation, moreover, Justice Department officials informed the Attorney General that Hagen had, in fact, attacked the Sherrow Declaration allegations as baseless without first asking whether they were true. The recklessness of Hagen's conduct cannot be downplayed. The fact that she has not been reprimanded as a result of her actions similarly remains curious.

Had Hagen acted as required in accordance with her responsibilities, the fact that Corderman requested and received permission to fire these rounds almost 4 hours prior to the start of the fire—and therefore not likely to be material to the cause of the fire on April 19, 1993—would have been disclosed in 1996. The startling revelations in 1999 regarding the use of these rounds would have been moot. The time-consuming investigations started in 1999 would not have been necessary.

2. The "Negligent" Scruggs Investigation

During the afternoon of April 19, 1993, Attorney General Reno asked her Special Assistant Richard Scruggs to conduct a post-fire investigation.[209] While Scruggs was an experienced Federal prosecutor,[210] the rushed and incomplete efforts that he made to investigate the tragedy caused substantial harm. Had Attorney General Reno ordered an investigation similar to that conducted by then-Treasury Secretary Lloyd Bentsen—an investigation by experienced, outside investigators free of arbitrary time limits—it is hard to believe that the facts now available would have taken so long to come to public light.

Attorney General Reno asked Scruggs early in April 1993, to serve as her assistant at Justice Department Headquarters. When Scruggs arrived on April 5, 1993, he had no portfolio of specific responsibilities. Attorney General Reno told Scruggs, however, to remain uninvolved in the then-ongoing Branch Davidian standoff.[211] Ultimately, the fact that Attorney General Reno later placed Scruggs in such a position of responsibility in light of her role in

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[207] Memorandum from Donald Remy, Deputy Assistant Attorney General, Civil Division, Department of Justice, to Janet Reno, U.S. Attorney General (Aug. 30, 1999) (exhibit 95 on file with the committee).

[208] Interview with Jacqueline Brown, Assistant General Counsel, Office of the General Counsel, FBI, in Washington, DC (Jan. 7, 2000); interview with Marie Hagen, Trial Attorney, Torts Branch, FTCA, Civil Division, Department of Justice, in Washington, DC (Nov. 23, 1996); see also John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 56 (2000).

[209] Interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (Jan. 4, 2000); interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (June 22, 2000).

[210] Scruggs served as an Assistant U.S. Attorney in Miami where he met and worked often with Attorney General Reno who was then a State prosecutor for Dade County, FL.

[211] Interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (Jan. 4, 2000).

the tragedy and his personal relationship with her also is puzzling.[212]

Scruggs began the investigation with the belief that the FBI had in fact committed some error on April 19, 1993.[213] Scruggs employed FBI Inspectors and Washington, DC-based agents from various field offices to interview witnesses or participants in the tragedy.[214] He also drafted an outline of tasks for which one of several FBI Inspectors were assigned the responsibility of completion. The tasks included gathering and reviewing: (1) all witness statements, including those of military personnel involved in the tragedy; (2) copies of all video and audio tapes; and (3) all FLIR tapes made or within the possession of the FBI in conjunction with the Branch Davidian standoff. Scruggs' failure to ensure that these tasks were in fact completed is the major evidence of the "negligent" manner by which he oversaw the post-fire investigation:

> *Recommended Investigative Steps in Waco Inquiry*
>
> (1) Obtain and correlate all chronologies from all relevant parties and agencies. Check with Assistant Attorney General Mark Richard, FBI Assistant Director Larry Potts, and Waco on-sight [sic] supervisors. Complete chronology needed from first call to FBI to FBI's clearing of crime scene. Chronology should include all activities on site, all meetings and briefings in [Washington, D.C.], etc. [Special Agent] *Cousins*
>
> (2) Develop full witness list. . . . Create and maintain a "Witness file" for each individual, reports of interviews, grand jury transcripts, etc. *This includes all law enforcement, military, civilian, and material witnesses.* [Special Agent] *Beverly/Schenck*
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> * * * * *
>
> (4) *Obtain or create full listing of all physical evidence, including audiotapes (T[itle] III and consensual), videotapes, correspondence, crime scene evidence, etc. obtain copies of*

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[212] The Department of Justice also assigned two additional young attorneys, Steven Zipperstein and Rob Lyon, to assist Scruggs. Interview with Steven Zipperstein, former Special Counsel to the Assistant Attorney General, Criminal Division, Department of Justice, in Los Angeles, CA (June 14, 2000). The FBI assigned a senior FBI Inspector, Victor Gonzalez, and two additional Inspectors, Herb Cousins and Roderick Beverly, to assist in the investigation. Interview with Victor Gonzalez, former Inspector, Inspection Division, FBI, in Washington, DC (Apr. 18, 2000); telephone interview with Victor Gonzalez, former Inspector, Inspection Division (Apr. 27, 2000); interview with Herbert Cousins, former Inspector, Inspection Division, FBI, in Washington, DC (May 5, 2000); telephone interview with Roderick Beverly, former Inspector, Inspection Division, FBI, (May 18, 2000). Cousins told committee staff that he worked with Scruggs and Reno while assigned to the FBI's Miami field offices. Interview with Herbert Cousins, former Inspector, FBI, in Washington, DC (May 5, 2000). Scruggs told committee staff that he may have in fact asked the FBI to assign Cousins to the investigation. Interview with Richard Scruggs, former Special Assistant to the Attorney General and current Assistant U.S. Attorney, Department of Justice, in Miami, FL (Jan. 4, 2000). Both Cousins and Beverly lacked substantive experience as FBI Inspectors. Cousins and Beverly became Inspectors in March 1993 after attending several hours of classes and working on one or two field audits. Interview with Herbert Cousins, former Inspector, FBI, in Washington, DC (May 5, 2000); telephone interview with Roderick Beverly, former Inspector, FBI, (May 18, 2000).

[213] Interview with Richard Scruggs, former Special Assistant to the Attorney General and current Assistant U.S. Attorney, Department of Justice, in Miami, FL (June 22, 2000).

[214] Id.

all audiotapes, videotapes, transcripts, correspondence, etc. and maintain in evidence files. [Special Agent] *Prouty.*[215]

The fact that Scruggs decided to employ FBI personnel to investigate whether the FBI had caused or exacerbated the April 19, 1993, tragedy remains puzzling. Indeed, during the early stages of his investigation, the Washington Post published an article that raised concerns as to whether the FBI's Inspection Division could conduct an independent investigation of the tragedy.[216] On May 20, 1993, Scruggs and his colleagues discussed this issue and the Washington Post article but, in response to arguments from Gonzalez in support of the involvement of the Inspection Division, Scruggs decided that their involvement would not create an appearance of conflict: "Mr. Gonzalez discussed the Washington Post [sic] article re this inquiry. The article addresses some questions regarding the independence of the Inspection staff in conducting the inquiry. Gonzalez gave Scruggs examples of other inquiries that FBI [sic] conducted with independence despite controversies."[217] The fact that the FBI was a part of the largest domestic law enforcement tragedy in American history should have been the reason for an *outside* investigation into the FBI's activities.[218]

To ensure that the Inspectors and agents asked the same questions, Scruggs prepared questions and sent them to the FBI personnel questions for use during these interviews.[219] These questions included a request as to whether the witness had, if they were FBI employees, discharged their weapon. All witnesses were asked if they witnessed any FBI employee firing any weapon during the 51-day standoff. The questions failed, however, to direct FBI personnel to ask about other FBI actions, such as the possible use of pyrotechnic tear gas grenades or other ammunition. Had Scruggs and his colleagues thoroughly reviewed all the documents available to them, they would have found references to "military" rounds. Scruggs and his colleagues, however, failed to do so. The failure of the Scruggs team to come to an understanding that pyrotechnic rounds were used was, as discovered in 1999, a significant shortcoming.

Before he and his colleagues completed the fact-finding process, Scruggs changed his belief that the FBI was at fault for the Waco tragedy.[220] Scruggs thereafter presumed that the FBI had done nothing to create or exacerbate the April 19, 1993, fire. In doing so, Scruggs did not consider directing the FBI Inspectors and agents to ask the necessary additional questions, such as whether HRT personnel had employed any device capable of starting the April 19, 1993 fire. For example, on June 2, 1993, FBI Supervising

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[215] Richard Scruggs, Assistant to the Attorney General, Department of Justice, "Recommended Investigative Steps in Waco Inquiry" 1–2 (May 7, 1993) (exhibit 96).

[216] The FBI Inspection Division conducts audits of field offices and units within FBI Headquarters. Interview with Victor Gonzalez, former Inspector, Inspection Division, FBI, in Washington, DC (Apr. 18, 2000).

[217] Handwritten notes of meeting, author unknown, 1 (May 19, 1993) (exhibit 97).

[218] In contrast, the Department of Treasury's employment of the Secret Service, with the assistance of that Department's Office of the Inspector General, minimized the risk of conflict of interest and, therefore, enhanced the substance of its conclusions. Special Counsel Danforth, likewise, employed Postal Service investigators, not FBI personnel, to conduct its investigation.

[219] Interview questions/instructions at Bates Stamp Nos. WWC429–2012–WWC429–2022, undated, author unknown (exhibit 98).

[220] Interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (Jan. 4, 2000).

Special Agent Gail Seavey interviewed FBI Special Agent and former HRT member Charles Riley[221] regarding his involvement in the Branch Davidian standoff. Seavey wrote that, on April 19, 1993, Riley witnessed gunfire from the Sierra One position commanded by Horiuchi.[222] Riley did not review this statement prior to its final draft. Seavey, moreover, failed to ask follow-up questions regarding this stunning statement, such as whether the gunfire might have, in fact, been directed at Sierra One or whether any other HRT personnel likewise noticed this gunfire. Seavey transmitted the statement to FBI Headquarters.

Similarly, on June 9, 1993, FBI Special Agent and aircraft pilot Wayne Smith told an FBI Inspector working with Scruggs that he overheard FBI personnel radio Rogers and ask for his permission to employ "military" tear gas rounds. Had Scruggs performed even a cursory review of Smith's statement, he would have, or should have, known that HRT personnel fired non-ferret pyrotechnic tear gas rounds—an issue worthy of investigation and disclosure:

> Regarding radio transmissions heard on April 19, 1993, [Special Agent] Smith advised that there was a high volume of HRT traffic and Sniper [Tactical Operations Center] instructions regarding requests for the insertion of gas by ground units. [Special Agent] Smith recalls one conversation, relative to the utilization of some sort of military round to be used on a concrete bunker[.] * * *[223]

It is surprising that this statement went unnoticed and that Scruggs' investigators failed to ask Smith what he meant by "military" rounds. If Smith could not answer the question, one would expect investigators to interview—or, in all likelihood re-interviewed—Rogers or Jamar and asked whether the "military" rounds to which Smith referred were ferret rounds. A minimal investigatory effort would have led to the timely disclosure that HRT personnel employed these pyrotechnic rounds.

Scruggs and his colleagues also interviewed the senior Justice Department and FBI officials who attended the April 14, 1993, briefing for Attorney General Reno.[224] She stated that she relied upon the statements of Schoomaker, the Army Colonel and a Dr. Harry Salem, an Army civilian tear gas expert, to satisfy her concerns regarding the introduction of tear gas into the Branch Davidian compound on April 19, 1993. In addition, an Army major stationed at the Pentagon attended the briefing and took notes of the conversations. Hubbell, furthermore, stated in response to questions during his interview that the Army representatives com-

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[221] Riley was called to Waco to assist his former colleagues on HRT. Before Apr. 19, 1993, Riley served as a sniper/observer at the Sierra Two and Three positions. On Apr. 19, 1993, Riley served as an observer at the Sierra Three sniper position, approximately 180 yards from the Branch Davidian compound. The civil litigation plaintiffs named Mr. Horiuchi as a defendant in the case as a result of what Seavey wrote.

[222] FBI telephone interview with Charles Riley, Special Agent, FBI at 1 (June 2, 1993) (exhibit 17).

[223] FBI interview with R. Wayne Smith, Special Agent, FBI in Richmond, VA at 5 (June 9, 1993) (exhibit 39).

[224] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version) at 266–270.

mented extensively to Attorney General Reno on the FBI's plan to introduce tear gas into the compound:

> The military representatives stated that the FBI plan to introduce tear gas into the compound was reasonable and practical. The only aspect of the plan that the military would do differently concerned the timing of the gas insertion.
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> * * * * *
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> Hubbell recalls [that] the military representatives indicated [that] they believed [that] the FBI plan as presented would work and that after the gas was inserted people in the [Branch Davidian compound] would come out.[225]

Even though Scruggs and his colleagues knew that a "vigorous and thorough investigation" required that they collect statements from "all law enforcement, military, civilian, and material witnesses"—especially those of individuals upon whom Attorney General Reno so greatly relied—no Justice Department or FBI investigator contacted any military representative to interview them as to their recollection of the meeting. Scruggs likewise failed to collect contemporaneous notes of that meeting made by the Army Colonel, the Army Major and Dr. Salem.[226] Had they done so, they would have discovered that the Army officers who attended the April 14, 1993, meeting had a far different recollection of events.

Scruggs and his colleagues collected over 900 witness statements during the course of their efforts. Surprisingly, however, they failed to review these statements for potential follow up investigation, or, even worse, reviewed the documents but failed to realize their importance. For example, Scruggs, Zipperstein, Cousins, Beverly and Gonzalez[227] all told committee staff that they were certain that

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[225] FBI interview with Webster Hubbell, Associate Attorney General, Department of Justice, in Washington, DC, 3 (Sept. 9, 1993) (exhibit 78). Hubbell was the only person to make such statements that, if believed, would indicate a violation of the posse comitatus proscriptions. His statements to the Scruggs report investigators were not challenged then or during the subsequent investigation. Scruggs' colleagues also failed to corroborate Hubbell's statements by interviewing Schoomaker, the Colonel, the Major or Dr. Salem. No other attendee made similar statements. Records that documented that meeting likewise contradict Hubbell's statement. Hubbell refused to cooperate in the committee's investigation and be interviewed by its staff. Letter from John Nields, Jr., partner, Howrey, Simon, Arnold & White, and counsel for former Associate Attorney General Webster Hubbell, to James Wilson, chief counsel, Committee on Government Reform, U.S. House of Representatives (July 26, 2000) (exhibit 79).

[226] As will be discussed below, Scruggs and his colleagues failed to interview the Apr. 14, 1993, meeting military participants and the special operations personnel who traveled to Waco to observe and assist the FBI with equipment. This failure, and the resulting rumors about the actions of special operations personnel during the 51 day standoff, are additional examples of harm caused by the failure to conduct a thorough investigation.

[227] The Department of Justice refused to make its Office of Professional Responsibility Assistant Counsel Robert Lyon available for interview with committee staff because, as its representatives contended, Lyon served as a line attorney and, to do so, would violate the Justice Department's long-standing policy of making line attorneys available for congressional investigations. This argument lacks merit. Scruggs returned to Miami on or about Dec. 10, 1995, where he resumed his service as an Assistant U.S. Attorney. The Department of Justice made Scruggs available for two interviews with committee staff. It also made Hagen, Brown and other Justice Department attorneys available for interview. Special Counsel Danforth's investigators interviewed all of the attorneys. In any case, Justice Department documents make clear that Reno possesses the authority to make line attorneys available for congressional questioning in limited situations. See "Talking Points for the Attorney General—Production of Line Prosecutors," author unknown (July 13, 1995) (exhibit 99). The Justice Department also failed to make the Jahns available for an interview by committee staff and, instead, referred the committee to their attorneys. The Jahns, through their attorney, refused to cooperate. Letter from Andre Hollis, senior counsel, Committee on Government Reform, U.S. House of Representatives, to Gerald Goldstein, partner, Goldstein, Goldstein and Hilley, and counsel for William "Ray" Jahn and

someone on their team interviewed and recorded statements from the April 14, 1993, Army attendees. No statements exist, however and, when challenged, they had no explanation for their omissions.

Scruggs would have learned or should have realized from even a cursory review of, for example, Riley's witness statement, that evidence contradicting the FBI and Attorney General Reno's statements that "no FBI agent fired their weapon on April 19, 1993" might exist. Had Scruggs or his colleagues reviewed the document, they could have further questioned Riley and resolved the issue. In fact, Riley was not contacted until November 1996, when the FBI's attorney, Jacqueline Brown, contacted him. The civil litigation plaintiffs also asserted in the response to the motion for summary judgment that Riley's witness statement created a material fact in dispute since it purported to record his recollection of witnessing gunfire from the Sierra One position. Once contacted, Riley offered a supplemental statement stating that: (1) he had witnessed gunfire *directed towards* the Sierra One position, not *from* Sierra One; and (2) that Seavey had mis-recorded his statement.[228] Again, had this error been identified in 1993, the correction could have been made in a timely fashion, included in Scruggs' 1993 Report and deemed a non-issue by the American people, the civil litigation trial court, Special Counsel Danforth and the Congress.

Even more astounding, however, is the fact that Scruggs failed to interview HRT Commander Richard Rogers personally regarding the implementation of the FBI's proposed operations plan. FBI Inspectors, as part of the FBI's standard operating procedure, interview personnel when a shooting occurs. They interviewed Rogers on April 21, 1993, and, again as a follow-up, on June 7, 1993. It appears astounding, in hindsight, that Scruggs, as the lead Justice Department attorney investigating the events leading up to and including April 19, 1993, did not speak with Rogers, who: (1) was the HRT commander and the primary tactical advisor to Jamar; (2) selected the Army officers who briefed Attorney General Reno on April 14, 1993; and (3) was responsible for the creation and execution of the FBI's proposed operations plan.[229] Had Scruggs interviewed Rogers regarding these issues, he would have learned, as committee staff learned, that Rogers granted Corderman permission to employ the pyrotechnic tear gas grenades because he believed that Attorney General Reno had not proscribed the use of those rounds. In addition, Scruggs would have learned that active

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LeRoy Jahn (Sept. 12, 2000) (exhibit 87); letter from Gerald Goldstein, partner, Goldstein, Goldstein and Hilley, and counsel for William "Ray" Jahn and LeRoy Jahn, to André Hollis, senior counsel, Committee on Government Reform, U.S. House of Representatives (Sept. 21, 2000) (exhibit 88). In light of President Clinton's and Attorney General Reno's numerous public statements that the Justice Department would "fully cooperate" with the "all Congressional inquiries," these refusals to cooperate further damage the Department and Reno's credibility with the American people and the Congress. In contrast, the committee received full cooperation from the FBI and, in particular, from: (1) the FBI Civil Discovery Review Unit, ably led by Unit Chief Paul Cignoli; (2) FBI Office of Public and Congressional Affairs Supervisory Special Agent Ann Todd; and (3) former Special Counsel to the Assistant Director and current FBI Office of Public and Congressional Affairs Section Chief Eleni Kalisch.

[228] FBI telephone interview with Charles Riley, Special Agent, FBI (Nov. 19, 1996) (exhibit 22); John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 19, fn. 22 (2000).

[229] Rogers told committee staff that he never spoke with Scruggs until at least 1995. Interview with Richard Rogers, former Assistant Special Agent in Charge and Commander, HRT, FBI, in Phoenix, AZ (Aug. 9, 2000).

duty Army special operations personnel were present inside the outer, State law enforcement-maintained perimeter on April 19, 1993, and that HRT personnel possessed high explosive grenades in case the Branch Davidians located within their compound attempted to overrun FBI positions. All of these facts surfaced in 1999 and led to committee and Special Counsel Danforth's investigations.

Finally, had Scruggs asked HRT members, particularly Rogers and Corderman, to detail what they did and when, they could have, at least, learned of the use of the pyrotechnic tear gas grenades. If Scruggs had collected all the audio and videotapes as he contemplated, he would have learned of Corderman's request for permission to fire the pyrotechnic rounds. In light of Scruggs' statement that "the gas delivery systems the FBI used were completely non-incendiary,"[230] it is clear that a "vigorous and thorough investigation" did not take place in 1993.

In addition to its failure to conduct a thorough investigation, the Scruggs team also encountered pressure from senior Justice Department officials to conclude the investigation as quickly as possible. Deputy Attorney General Philip Heymann told committee staff that he wanted Scruggs to complete the investigation in order to release their findings at the same time as the Department of Treasury released its report regarding the actions of Bureau of Alcohol, Tobacco and Firearms.[231] To presume that an investigation relating to a 51 day standoff that resulted in the deaths of 80 men, women and children could be conducted, concluded and published at the same time as the BATF investigation—an investigation that concerned the actions of a horrible, but a less fatal prelude, is incredible.

In addition to the appearance of impropriety that this type of pressure creates, it is fair to question whether Scruggs and his colleagues might have in fact conducted a more thorough investigation had they not been pressured to finish the Scruggs report in a politically expedient fashion.[232] Scruggs, former Special Counsel to Assistant Attorney General Steve Zipperstein, Heymann and others told committee staff that Heymann often questioned Scruggs regarding when the investigation would be concluded.[233] Attorney General Reno's sensitivity to these appearances of impropriety was

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[230] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," 324 (Oct. 8, 1993) (unredacted version) (Scruggs agrees with the arson team conclusion that the FBI's methods of gas delivery was "non-incendiary"); John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" 48 (2000).

[231] Interview with Professor Philip Heymann, former Deputy Attorney General, Department of Justice, and current professor of law, Harvard Law School, in Boston, MA (July 19, 2000).

[232] To their credit, Scruggs and his colleagues did resist perceived pressure from senior Justice Department officials including David Margolis, Associate Deputy Attorney General, Department of Justice and Carl Stern, Director, Office of Public Affairs, Department of Justice to amend their draft findings to reflect more favorably upon the Attorney General. See e.g., handwritten notes of September 20, 1993, meeting (author unknown) 1 (exhibit 100) ("[Steve Zipperstein] objects to [this] meeting, [because] [Mark] Richard + [Carl] Stern are precipient witnesses. . . . Objects again—that kind of input is not supposed to occur in this process.").

[233] Interview with Professor Philip Heymann, former Deputy Attorney General, Department of Justice, and current professor of law, Harvard Law School, in Boston, MA (July 19, 2000); interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (Jan. 4, 2000); interview with Steven Zipperstein, former Special Counsel to the Assistant Attorney General, Criminal Division, Department of Justice, in Los Angeles, CA (June 14, 2000).

obvious.[234] The Attorney General did not assign to Heymann oversight responsibility for Scruggs' efforts. Scruggs did not report his interim findings to the Attorney General, since she was a subject of the investigation. In order to avoid additional appearances of impropriety, moreover, Scruggs should not have reported to the Attorney General's subordinates. The fact that Heymann was allowed to pressure Scruggs to complete the investigation remains disturbing.

G. CONCLUSIONS AND RECOMMENDATIONS

The committee does not suggest that, when tragedy strikes a law enforcement effort to resolve a crisis, senior Justice Department officials are always wrong or inexperienced. In this case, however, the Department of Justice's failure to exercise the level of oversight that is expected during crises such as Waco is of great concern. It is clear that no one within the Department of Justice or the FBI's leadership knew prior to April 19, 1993, that HRT was prepared to use pyrotechnic and high explosive ammunition against the Branch Davidians. Attorney General Reno and other officials within the Department of Justice were concerned about the risk of fire and repeatedly asked Rogers to minimize this risk. Rogers was aware of these concerns but authorized use of pyrotechnic devices. Rogers was duty-bound to notify his superiors of these plans so that Attorney General Reno might fully understand the FBI's proposed operations plan and, based upon that full understanding, grant her approval. Had Rogers fulfilled his responsibility, it is doubtful that Attorney General Reno would have approved their use without specific, express limitations. It was also incumbent upon Rogers to correct the Attorney General when she testified to the Congress in 1995 that HRT personnel used no device which could have caused or exacerbated the April 19, 1993, fire. Justice Department officials directed Rogers to sit behind Attorney General Reno during the hearings in order to ensure that she relied upon accurate information and that she testified truthfully. Rogers' claims that: (1) he did not hear Attorney General Reno testify inaccurately; and (2) even if he had heard the Attorney General make the statement, in his mind the statement was technically correct because *he* had believed that the underground bunker was separate from the main Branch Davidian compound, may or may not be true. The fact, however, that Rogers failed to communicate this important distinction to Attorney General Reno or the Congress, in 1993 or 1995, is troublesome.

Justice Department attorneys William "Ray" Jahn, his wife, LeRoy Jahn and Bill Johnston, the criminal trial prosecutors, learned in November 1993 that HRT personnel fired pyrotechnic tear gas rounds on April 19, 1993, but failed to disclose this fact to their Justice Department superiors, to the criminal trial defendants or to Marie Hagen. The Jahns and Johnston recognized the importance of this information but decided to disclose it during the

[234] When she and other Justice Department officials concluded that an outside, analytical review of Scruggs' findings was necessary, Attorney General Reno considered requesting former Attorney General Benjamin Civiletti to conduct the review. According to Heymann, however, she decided against Civiletti because Civiletti had written to her to express his support of her in the aftermath of the fire. Interview with Professor Philip Heymann, former Deputy Attorney General, Department of Justice, and current professor of law, Harvard Law School, in Boston, MA (July 19, 2000).

criminal trials only if necessary. The Jahns and Johnston's failure to disclose this information was irresponsible, possibly unethical, an additional reason for this committee's investigation, and a reason for the appointment of the Special Counsel. Ray Jahn, furthermore, told the Congress and the American people that, "[o]n the 19th of April, though repeatedly fired upon by the occupants of [the Branch Davidian compound], the FBI did not fire a shot, *other than non-lethal ferret rounds* which carried the CS gas."[235] Jahn cannot now state that his testimony was merely negligent when he and other members of the criminal prosecution team knew in 1993 that Corderman had requested and received authorization to fire pyrotechnic tear gas grenades.

Likewise, Johnston also learned of Corderman's actions and likewise did not ask for a *Brady* analysis. Johnston, furthermore, requested and received the August 30, 1999, subpoena that commanded the production of all documents to this committee. In addition to the legal requirements of the committee's September 8, 1999, subpoena to the Department of Justice, to which Johnston also had to comply, the committee provided Johnston ample opportunity to produce the documents that he later found and withheld from Special Counsel Danforth and this committee. His actions, while mitigated by his assistance to and cooperation with the committee's investigation in other respects, should be thoroughly investigated.

In response to a request from Hagen, FBI Assistant General Counsel Jacqueline Brown likewise learned in February 1996, that HRT personnel fired pyrotechnic tear gas grenades on April 19, 1993. Unlike the Jahns, however, Brown did not recognize the importance of this information. It is probable, however, that Brown did discuss the information that she received with her FBI supervisor and Hagen. In any case, Hagen, as the Justice Department's lead civil litigation attorney had a duty, once she asked Brown to research the issue, to ensure that Brown provided her with the results of her research. Hagen is responsible for the belated disclosure of this information to the civil trial court and the plaintiffs.

Similarly, it is also clear that Scruggs failed to conduct a "vigorous and thorough investigation." Beset by time limitations enforced by then-Deputy Attorney General Philip Heymann, Scruggs and his colleagues failed to ask basic questions, review evidence and conduct an agnostic investigation. Information relating to the actions of HRT personnel, consequently, was not disclosed. While the belated disclosure of this information does not lead to the conclusion that law enforcement or military personnel were responsible for the April 19, 1993, fire, it did cause substantial damage to the trust that the American people had in, and should expect from, Federal law enforcement. The investigations conducted by Special Counsel Danforth and this committee, therefore, became necessary.

The disclosure of these facts by this committee and Special Counsel Danforth's investigation could have been avoided had the De-

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[235] "Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part I)," hearing before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, 104th Cong., 100, 107 (July 19, 1995) (statement of Ray Jahn, Assistant U.S. Attorney) (emphasis added).

partment of Justice conducted a thorough investigation in 1993, as had been promised. Had Attorney General Reno appointed an outside, objective investigator, as the Department of Treasury had and as became necessary in 1999, the American people could have learned the complete truth behind the tragedy. Public confidence in the Department of Justice and Federal law enforcement would have been greater and, perhaps, 61 percent of the American people would not have had the grounds to believe that Federal law enforcement murdered over 80 Branch Davidian men, women and children.[236]

If similar tragedies occur in the future, the committee recommends that future Attorneys General recognize the need for objective, independent investigations to determine the complete truth regarding the event. The conduct of an investigation that is not thorough and supervised by an independent analyst creates the real possibility of negligence.

VI. Department of Defense Support

A. INTRODUCTION

On August 2, 1996, subcommittees of the Committee on Government Reform and Oversight and the Committee on the Judiciary published a report on their joint investigation into the activities of Federal law enforcement agencies toward the Branch Davidians at Waco, TX.[237] The subcommittee report opens its discussion concerning the military's involvement as follows:

> U.S. military involvement is one of the least explored and most misunderstood elements of the events that took place near Waco, Texas in 1993. The Treasury Department report dedicated only 3½ of 220 pages to explaining the military's involvement, and the Department of Defense and National Guard Bureau have only recently taken an interest in addressing some of the military issues that Waco raised.[238]

The committee's current inquiry involved a review of recently subpoenaed Department of Defense (DOD) documents, as well as reports and other information associated with the subcommittees' investigation in 1995. Committee staff also interviewed, where necessary, military personnel and other officials who were involved with the Waco operation to ensure an enhanced understanding of the involvement of the military at the time.[239] The committee found four areas worthy of comment regarding DOD's involvement with assistance to the BATF and FBI during the Waco incident, and afterward when the American people looked to the White House, the Department of Justice, Treasury and DOD for an accounting of what happened at Waco, and why.

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[236] John C. Danforth, Special Counsel, U.S. Department of Justice, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" i (2000).

[237] See H. Rept. No. 104–749 (1996).

[238] Id. at 3.

[239] The term "military" as used within this report includes units, personnel and equipment of the Active and Reserve Components, to inlcude the National Guard, unless otherwise indicated.

The committee investigated whether any actions of the military during the Waco incident would constitute a law enforcement use of the military prohibited by the Posse Comitatus Act.[240] The documents and information reviewed during the committee's inquiry support the same finding of the subcommittees in 1996 that no violation of the Posse Comitatus Act occurred as a result of the military's support to the BATF and the FBI at Waco. However, information developed during the committee's current inquiry revealed that the Attorney General and other senior Federal law enforcement officials unwittingly attempted to involve two senior active duty Army officers in activity that would have violated the Posse Comitatus Act.[241] This occurred on April 14, 1993, when an Army general officer and a colonel were asked to review and comment upon the tactical details discussed within the FBI's proposed operations plan to insert tear gas into the Branch Davidian compound. The committee found that it was the active vigilance of these officers that precluded a violation of the Posse Comitatus Act when they declined to critique the details of the FBI's proposed operations plan.

Throughout their investigation, the subcommittees endeavored to elicit as much information as possible regarding the scope, equipment, expenditures and justification for the military support provided to the BATF and the FBI. Although the subcommittees developed a significant amount of information, they identified a need for more detailed accounting of the military equipment and material associated with DOD's support; the legal authority for providing the assistance; and, what costs were incurred by the American people.[242] To address these concerns, the subcommittees asked the General Accounting Office, the investigative arm of Congress, to audit the military assistance provided to both the BATF and FBI, as well as investigate the military counter-drug program through which DOD's support was provided. Upon review of the GAO inquiry, the committee discovered two notable omissions in the information DOD provided to the GAO. The discrepancies concerned a failure to account fully for military aerial reconnaissance support provided to the BATF, and an unsatisfactory resolution of questions surrounding the status of 250 high explosive 40-mm grenades that Army documents indicate were issued to the FBI at Ft. Hood, TX, during the Waco incident. Although the committee found no evidence that high explosive grenades were used at Waco, the status of these munitions has not been formally resolved by DOD.

The Justice and Defense Departments have had a continuing duty over the last 7 years to clarify the public record with a comprehensive and accurate accounting regarding the military's involvement at Waco. Unfortunately, the Justice Department's efforts have fallen short. Appendix B of the Scruggs report was intended to be a comprehensive accounting of the military personnel and equipment that supported the 51-day standoff at the Branch

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[240] See 18 U.S.C. § 1385 (1988), as amended.

[241] See 10 U.S.C § 101(d)(1), codified as amended by Public Law 102–484. The term "active duty" means full-time duty in the active military service of the United States. This does not include full-time National Guard duty. See also 32 U.S.C. § 101(12).

[242] See H. Rept. No. 104–749 (1996) at 53–55.

Davidian compound.[243] However, appendix B significantly understated the number of military personnel who supported the FBI during the standoff. The Scruggs report indicated that a total of 28 military personnel supported the FBI throughout the standoff, when in actuality, the number was approximately 330 active duty and National Guard personnel who intermittently provided assistance both on and off-site. The regular duties of off-site military personnel were not exclusively Waco-related.

Although President Clinton directed the Departments of Justice and Treasury to conduct an examination and assessment of what occurred involving their personnel at Waco, DOD was not similarly tasked to assess its involvement.[244] The failure of DOD to conduct its own internal review and prepare a comprehensive report over the last 7 years has complicated congressional inquiries and contributed to simmering skepticism among the American people about the military's involvement at Waco. A DOD assessment of support it provided would have been of immeasurable assistance to both the Departments of Justice and Treasury in their efforts to provide an accurate and complete accounting of what occurred at Waco involving their personnel.

The actions and decisions of officials from three cabinet-level departments—Justice, Treasury and Defense—were inextricably intertwined with the tragic events at Waco. All three are accountable to the American people for their involvement and the American people should have heard from each of them. DOD's failure of judgment in not conducting an assessment and preparing a report of its involvement concurrently with the Justice Department and Treasury investigations in 1993, has contributed to a persistent public belief over the last 7 years that DOD engaged in wrongful actions at Waco.

B. WAS THE POSSE COMITATUS ACT VIOLATED IN PROVIDING DOD SUPPORT?

During the subcommittee hearings in 1995, the actions of military personnel and the use of military equipment at Waco was of significant interest. Documents provided to the subcommittees by DOD and the testimony of witnesses described the military actions in support of both the ATF and FBI. During its current inquiry, the committee reviewed the 1995 subcommittee material, as well as documents produced by DOD in response to the committee's current subpoena. Committee staff also conducted interviews of military personnel who were involved with the Waco incident.

The committee found no evidence of any violation of the Posse Comitatus Act by the military regarding the assistance provided to the BATF and FBI during the Waco incident. The committee's inquiry, however, revealed that the active vigilance of two senior active duty Army officers precluded a Posse Comitatus Act violation from occurring on April 14, 1993, when these officers declined to actively critique the details of the FBI's tactical operations plan for inserting tear gas into the Branch Davidian compound.

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[243] See Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco Texas, Feb. 28–Apr. 19, 1993," (Oct. 8, 1993) (unredacted version).

[244] See President William Clinton, remarks by the President in question and answer session with the press in Washington, DC (Apr. 20, 1993) at 2 (exhibit 24).

1. Overview of the Posse Comitatus Act

Historically, there has been a generally accepted principle that in the United States the military should not be involved in civilian law enforcement.[245] The clear separation between civilian and military authority is embodied in the Declaration of Independence and the U.S. Constitution. Congress codified the principle by enacting the Posse Comitatus Act in 1878 in response to the improper use of military troops in the South during the post-Civil War reconstruction period. The statute provides:

> Whosoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Forces as a posse comitatus or otherwise to execute the laws shall 0be fined not more than $10,000 or imprisoned not more than 2 years, or both.[246]

No one has ever been prosecuted for violating the Posse Comitatus Act.[247] Due in part to a creeping acceptance of military involvement in law enforcement action, the Posse Comitatus Act has been invoked very rarely.[248] Until the criminal cases arising from the 1973 uprising at Wounded Knee,[249] civilian law enforcement apparently relied upon military support without fear of recourse.[250]

Two active duty regular Army colonels were present at Wounded Knee as DOD observers; however, these military personnel also provided "advice, urging, and counsel . . . to Department of Justice personnel on the subjects of negotiations, logistics, and rules of engagement."[251] Four criminal cases resulted from the Wounded Knee incident. In each, defendants raised similar challenges to the military's involvement.[252] The diverse rulings on these challenges raised questions about the legality of much of the military assistance being broadly and regularly provided to law enforcement agencies at the time.

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[245] See H. Rept. No. 104–749 (1996) at 30–34. A more detailed discussion of the Posse Comitatus Act and its application to events at Waco is contained within the subcommittees' report. The discussion here is a distillation of that overview and focuses on its application to the participation by two senior Army officers in a meeting with Attorney General Reno on Apr. 14, 1993.

[246] 18 U.S.C. § 1385 (1988), as amended. A post-Waco amendment changed the penalty portion to read "shall be fined under this title or imprisoned not more than two years, or both." Violent Crime Control and Law Enforcement Act of 1994 § 330016(L), Public Law 103–322, 108 Stat. 2147.

[247] Clarence I. Meeks II, "Illegal Law Enforcement: Aiding Civil Authorities in Violation of the Posse Comitatus Act," 70 Mil. L. Rev. 83, 128 (1975).

[248] Id.

[249] In 1973, a dissident Indian group forcibly took control of the Wounded Knee Village on Pine Ridge Indian Reservation, South Dakota. In support of Federal law enforcement agents, military personnel provided an array of assistance, closely resembling the military assistance provided to Federal law enforcement agents during the Waco incident.

[250] Peter M. Sanchez, "The 'Drug War': The U.S. Military and National Security," 34 A.F.L. Rev. 1, 109 (1991).

[251] Clarence I. Meeks II, "Illegal Law Enforcement: Aiding Civil Authorities in Violation of the Posse Comitatus Act," 70 Mil. L. Rev. 121 (1975). Similarly, during the Waco incident, two senior Army officers were present when the Attorney General was briefed on the FBI's plan to end the standoff and were asked to review the details of the plan. They discussed other general matters, but declined to comment on tactical details within the plan citing Posse Comitatus Act concerns.

[252] *United States* v. *Jaramillo*, 380 F. Supp. 1375 (D.Neb. 1975), appeal dismissed, 510 F.2d. 808 (8th Cir. 1975); *United States* v. *Banks*, 383 F. Supp. 368 (D.S.D. 1974); *United States* v. *Red Feather*, 392 F. Supp. 916 (D.S.D. 1975); *United States* v. *McArthur*, 419 F. Supp. 186 (D.N.D. 1976), aff'd sub nom., *United States* v. *Casper*, 541 F.2d 1275 (8th Cir. 1976), cert. denied, 430 U.S. 970 (1977).

In order to resolve questions raised by the Wounded Knee cases, and at the urging of DOD and the Justice Department, Congress enacted a number of general exceptions to the Posse Comitatus Act in 1981.[253] In general, the 1981 exceptions authorized the military to make available to civilian law enforcement agencies information collected during military operations, training and advice, the use of military equipment and facilities, and the use of some DOD personnel.[254] However, direct involvement in activities that are fundamentally law enforcement functions such as search, seizure, and arrest are prohibited.[255]

The National Guard is not subject to the same legal restrictions placed upon active duty and reserve military personnel with regard to civilian law enforcement.[256] Having evolved from the State militia concept, the National Guard holds the unique position as both a State and a national military force. When acting as members of the State militia, National Guardsmen are under the command and control of their Governor, who is their Commander-in-Chief. When acting as a part of the national military force, the President of the United States is their Commander-in-Chief.

The National Guard has three different "statuses" under current law. The first two are a Title 32 status (also called "state active duty" status), and a pure "State status."[257] Under either a Title 32 status or pure State status, the Posse Comitatus Act does not apply. The third status is called "Title 10 status," or "Federal active duty" status. Title 10 status occurs when the President or Congress takes affirmative action to "federalize" a National Guard unit, as in the case of a natural disaster or civil disturbance. Only in a federalized status are National Guard personnel under the command and control of the President of the United States, and subject to the restrictions under the Posse Comitatus Act. The Texas and Alabama National Guards were in a Title 32 status at the time they provided support and assistance to the BATF and FBI during the Waco incident.[258]

2. FBI Briefing to the Attorney General on April 14, 1993, Regarding the Proposed FBI Operations Plan

a. Involvement of DOD Representatives

On April 14, 1993, Attorney General Reno, Associate Attorney General Hubbell, FBI Director Sessions and several other Justice Department and FBI officials met at FBI headquarters. Also in attendance were four DOD officials: then-Brigadier General Peter Schoomaker, Assistant Division Commander, First Cavalry Divi-

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[253] See 10 U.S.C. § 371–377; Defense Department Authorization Act of 1982 § 905, Public Law No. 97–86, 95 Stat. 1114, as amended by National Defense Authorization Act Fiscal Year 1989 § 1004, Public Law No. 100–456, 102 Stat. 2043 (codified as amended at 10 U.S.C. § 377).

[254] 10 U.S.C., ch. 18.

[255] Id.

[256] Steven B. Rich, "The National Guard, Drug Interdiction and Counterdrug Activities, and Posse Comitatus: the Meanings and Implications of 'in Federal Service,'" 35 Army Law. 1 (1994). Active and Reserve military personnel are both subject to the proscriptions found in the Posse Comitatus Act, while the act only applies to National Guard personnel when they have been called "into federal service."

[257] In pure State status, no Federal funding occurs.

[258] See "Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians," Committee on Government Reform and Oversight in Conjunction with the Committee on the Judiciary, House of Representatives, H. Rept. No. 104–749 (1996) at 52.

sion at Ft. Hood, TX; an Army colonel assigned within the U.S. Special Operations Command; then-Major Scott Wells, assigned to the Pentagon; and Dr. Harry Salem, Chief Scientist for Life Sciences, U.S. Army Chemical Biological Defense Command, Aberdeen Proving Ground, MD. Each of these DOD representatives was interviewed by committee staff during this inquiry.[259]

On or about April 13, 1993, Assistant to the President and Deputy Counsel to the President Bruce Lindsey advised Associate Attorney General Webster Hubbell that the military should be consulted regarding the FBI's proposed operations plan. Lindsey indicated that President Clinton would want to know that the military had an opportunity to review it.[260] Lindsey indicated to Hubbell that President Clinton mentioned that the military had some involvement in the Ft. Chafee incident in Arkansas while he was Governor. At the meeting, Hubbell indicated to Lindsey that plans were under way to meet with the military.[261] Hubbell reported these developments to the Attorney General. The FBI was tasked to have military representatives review the plan and attend the meeting with Attorney General Reno scheduled for the next day.[262] Based upon his professional interaction and personal regard for them, Rogers contacted Brigadier General Schoomaker and the Army colonel on April 13, 1993 and asked them to attend.[263] DOD approved the FBI's request for the attendance of both senior Army officers.[264]

The FBI flew Brigadier General Schoomaker and the Army colonel to Washington, DC, on FBI aircraft on the morning of April 14, 1993. On the aircraft, HRT commander Rogers briefed them regarding the proposed operations plan and provided them a copy for their review. Brigadier General Schoomaker recalled Rogers asking him for his opinion of the plan, and he indicated it was not appropriate for him to comment; he "couldn't grade your paper."[265] Both officers believed Rogers wanted their support for the plan. Brigadier General Schoomaker indicated that the FBI viewed the Army colonel and him as experts and wanted them to review the CS plan and offer their opinion and support. The Army colonel indicated

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[259] Interview with General Peter Schoomaker, U.S. Army, in McDill AFB, Florida (Jan. 13, 2000). At the time of the interview with committee staff, General Schoomaker was on active duty as the Commander of the U.S. Special Operations Command, McDill AFB, Florida; interview with an Army general currently assigned to a unit within USSOCOM, in McDill AFB, Florida (Jan. 13, 2000). At the time of the Waco incident, this Army general was a colonel assigned to a unit within USSOCOM, and he is referred to as "an Army colonel" throughout this report; interview with LTC Scott Wells, U.S. Army, (Ret.) in Washington, DC (July 14, 2000). LTC Wells was a major at the time of the Waco incident; interview with Dr. Harry Salem, Department of the Army, in Aberdeen Proving Grounds, Maryland (July 26, 2000).

[260] See Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," appendix B at 258 (Oct. 8, 1993) (unredacted version).

[261] Id. at 279. Attorney General Reno received her first briefing on the proposed FBI operations plan on Monday, Apr. 12, 1993. At that meeting Associate Attorney General Hubbell suggested that they consult with the military about the effects of gas.

[262] The committee found no evidence that Justice Department or FBI personnel consulted with the military regarding the HRT operations plan prior to Apr. 14, 1993.

[263] Interview with General Peter Schoomaker, U.S. Army, in McDill AFB, Florida (Jan. 13, 2000); interview with an Army general currently assigned to a unit within USSOCOM, at McDill AFB, Florida (Jan. 13, 2000).

[264] Department of Defense document production Z0033619(U), Z0041496(U), Z0035388(U), Z0036114(U), Z0041511(U)–Z004512(U), Z0041508(U)–Z0041509(U), Z0041506(U)–Z0041507(U), Z0041510(U), Z0030706(U)–Z0030709(U) (exhibit 101).

[265] Interview with General Peter Schoomaker, U.S. Army, in McDill AFB, Florida (Jan. 13, 2000).

that Rogers never asked him directly for his opinion concerning the plan. However, the Army colonel indicated that it seemed understood that Rogers wanted "feedback and input" from Brigadier General Schoomaker and himself. The Army colonel further indicated that his superiors told him not to support or oppose the FBI's plan and not to give tactical advice.[266]

During the afternoon briefing, Attorney General Reno asked why they "would not grade the plan." Brigadier General Schoomaker responded that the Posse Comitatus Act prevented him from doing so, as well as the fundamental differences in purpose and function between the military and law enforcement. Brigadier General Schoomaker further indicated that Attorney General Reno appeared to have a good grasp of the plan being briefed, and did not appear too surprised at their refusal to "grade the paper."[267] The Army colonel recalled that at some point during the discussion of the operations plan, Hubbell asked: "[I]s this legal?" The Army colonel did not answer when Hubbell looked at him, but stated during his interview with committee staff that his private thought at the time was: "[t]hat's your job, not mine."[268]

According to the Army colonel, both officers were in an "uncomfortable" situation.[269] They had high regard for HRT commander Rogers and the HRT. However, they did not like the plan because of its incremental approach to inserting tear gas, but were not in a position to say so. They both indicated it was a law enforcement plan, not a military operation. The Army colonel indicated that Brigadier General Schoomaker made it very clear they were not going to assess the plan one way or the other.[270]

Brigadier General Schoomaker and the Army colonel told committee staff that when they left the April 14, 1993, meeting, they were convinced the FBI would never execute the proposed operations plan as it was briefed at the meeting. The Army colonel stated he believed the Attorney General "didn't buy the plan being proposed by the FBI."[271] Brigadier General Schoomaker stated that Attorney General Reno made no decision regarding the plan at the meeting, but his impression from the meeting was that no one thought it was a smart way to proceed.[272] He went on to state that he was astonished when he saw the fire on TV on April 19, 1993. According to Brigadier General Schoomaker, he wondered why anyone would make the decision to follow through with the FBI's proposed operations plan as it had been described at the meeting.[273]

Brigadier General Schoomaker told committee staff that his thought at the time of the meeting with Attorney General Reno was that HRT should have put a fence around the compound and waited until the Branch Davidians came out from hunger, but he did not state this thought openly at the meeting. He further stated that he was surprised that, given the efforts taken by the FBI to

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[266] Id.
[267] Id.
[268] Interview with an Army general currently assigned to a unit within USSOCOM, in McDill AFB, Florida (Jan. 13, 2000).
[269] Id.
[270] Id.
[271] Id.
[272] Interview with General Peter Schoomaker, U.S. Army, in McDill AFB, Florida (Jan.13, 2000).
[273] Id.

have the Army colonel and himself present for the meeting, there was little consultation with them.[274]

During the meeting, Brigadier General Schoomaker and the Army colonel offered general comments about the possible need for HRT personnel, at some point, to be pulled away from the compound for rest and refresher training. They also indicated that in a military operation, they would concentrate their action on "taking out the leadership" of a target organization. They also discussed their experiences with tear gas, as well as their knowledge of potential effects and reactions of people once exposed to tear gas.[275]

On May 13, 1993, approximately 1 month after the meeting with Attorney General Reno, the Army colonel prepared a memorandum for his commander providing a synopsis of what was discussed at the meeting.[276] Brigadier General Schoomaker and the Army colonel reviewed the memorandum during their interviews. Brigadier General Schoomaker indicated that to the best of his recollection, it was a "pretty accurate" synopsis of the meeting. The Army colonel indicated in his memorandum that he did not believe the FBI or the Attorney General was trying to force them to support or defend the plan. He further stated it was his belief that they simply wanted any observations that Brigadier General Schoomaker and he felt comfortable in providing.[277] Both officers indicated they were never contacted or interviewed by anyone associated with the Department of Justice's after-action inquiry. Neither officer has ever been asked to provide a written statement regarding their involvement with any Waco events, except for the memorandum prepared by the Army colonel for his commander.[278]

During his interview with committee staff, Major Wells indicated his present memory was unclear regarding what exactly occurred or was said at the meeting with Attorney General Reno. He did, however, vaguely recall that one of the senior Army officers indicated something to the effect that they "could not grade their paper" which, to him, referred to the FBI's proposed operations plan.[279]

Major Wells did not know he was to attend the meeting on April 14, 1993, as a DOD representative until that morning. He was not informed who else was going to attend. Major Wells stated that if it was known that the Attorney General and other senior Justice Department officials would be attending, an officer more senior than he would have been sent. Major Wells did know the topic for the meeting related to Waco, but did not know that Brigadier General Schoomaker, the senior Army colonel, or Dr. Salem would be there. In sum, he had no idea what was to occur or what his role would be other than to attend and take notes. Major Wells did not

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[274] Id.

[275] Interview with General Peter Schoomaker, U.S. Army, in McDill AFB, Flordia (Jan. 13, 2000); interview with an Army general currently assigned to a unit within USSOCOM, in McDill AFB, Florida (Jan. 13, 2000).

[276] See memorandum from Commander, [Army unit], to Commander, U.S. Army Special Operations Command, (May 13, 1993) Department of Defense document production Z0040342–0040345 (exhibit 102).

[277] Id at 4.

[278] Interview with General Peter Schoomaker, U.S. Army, in McDill AFB, Florida (Jan. 13, 2000); interview with an Army general currently assigned to a unit within USSOCOM, in McDill AFB, Florida (Jan. 13, 2000).

[279] Interview with LTC Scott Wells, U.S. Army, in Washington, DC (July 14, 2000). On Apr. 14, 1993, LTC Wells was a major.

offer any comments at the meeting and was not asked any questions.[280] He prepared very sketchy handwritten notes as the meeting progressed. Major Wells reviewed his notes with committee staff during his interview.[281]

Dr. Salem was present at the April 14, 1993, meeting as an expert on the effects of CS tear gas. As with Major Wells, his recollection of what individuals said at the meeting was unclear at best. After Dr. Salem attended the meeting, he returned to his command and prepared notes to assist him when he discussed details of the meeting with his superiors. In addition, he discussed the meeting in an e-mail message, and prepared an information paper on CS Riot Control Agent.[282]

b. Military Representatives Never Endorsed the FBI Operations Plan

Since April 19, 1993, there have been a number of statements by or attributed to the Attorney General regarding the involvement and comments of Brigadier General Schoomaker and the Army colonel during the April 14, 1993, meeting. These comments and remarks give the clear impression that according to Attorney General Reno, Brigadier General Schoomaker and the Army colonel endorsed or otherwise offered their approval of the FBI's proposed operations plan on April 14, 1993. Both officers stated to committee staff during their interviews that they made it clear to HRT Commander Rogers on the plane traveling to Washington, DC, and to Attorney General Reno at the meeting, that they could not offer any such endorsement. Examples of misleading statements concerning the involvement of these two officers include the following:

- *Remarks by President Clinton on April 20, 1993*

On April 20, 1993, President Clinton spoke to the American people regarding the tragic ending of the standoff at the Branch Davidian compound. During his remarks he discussed the questions he asked Attorney General Reno during their telephone conversation on April 18, 1993, in which she discussed her decision to approve the FBI proposed operations plan. President Clinton remarked:

> The third question I asked was, has the military been consulted? As soon as the initial tragedy came to light in Waco, that's the first thing I asked to be done, because it was obvious this was not a typical law enforcement situation. Military people were then brought in, helped to analyze the situation and some of the problems that were presented by it. And so I asked if the military had been consulted. The Attorney General said that they had, and that they were in basic agreement that there was only one minor tactical difference of opinion between the FBI and

[280] Id.

[281] See Department of Defense document production Z0003945–0003949 (exhibit 103). These undated notes were prepared by Major Wells during the Apr. 14, 1993, meeting with Attorney General Reno.

[282] See Department of Defense document production Z0013112–0013115, Z0023557–Z0023558 (exhibit 104). These documents were prepared by Dr. Salem shortly after the Apr. 14, 1993, meeting with Attorney General Reno.

the military—something that both sides thought was not of overwhelming significance.[283]

- *The Attorney General's Testimony Before Congress*

The Attorney General testified before the House Committee on the Judiciary on April 28, 1993, regarding the Waco incident and the tragic ending of the standoff. During her testimony she commented upon the remarks made by Brigadier General Schoomaker and the Army colonel. Attorney General Reno testified as follows:

> But we continued to deliberate; and in the course of our deliberations, we met with Gen. Peter Schoomaker and [Army colonel], former and present commanders of [Army unit], respectively, the Army's equivalent to the FBI's HRT, to review the plan. Their comments were instructive.
>
> While indicating the plan appeared to be sound, one suggestion was that rather than an incremental approach for the use of the gas as proposed by the FBI, gas should be inserted into all portions of the compound simultaneously. I preferred the FBI approach which called for a gradual increase in pressure over time. It seemed to me that that would be best to ensure the safety of those inside.
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> * * * * *
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> We had explored other possible alternatives. As I suggested to you, the FBI, before I had been sworn in, and then I concurred totally with them, rejected any direct assault on the compound as being far too dangerous for the agents and for those inside the compound.
>
> We asked to meet with military officials. The general who was the former commander of [Army unit] and the colonel presently commanding the [Army unit] came to Washington and met with us and FBI officials after they reviewed the plan and we consulted very carefully about that.
>
> One of the points raised for the first time by the [Army unit] commander and previous commander was that the HRT had to be at a constant state of readiness and that to keep them on a scene for the length of time that these agents had been on the scene began to raise questions that they could not remain there much longer and still be in the state of readiness which should be expected of an HRT team.
>
> I asked, "Well, isn't there another team," and was advised no, except for [Army unit], and then I believe the Navy has a force for marine disasters. We explored the provisions of posse comitatus and became convinced that you could not use the [Army unit] in a civil situation.
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> * * * * *
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> Q. Once the decision was made to force the issue, then it became a situation of how best to accomplish that

[283] President William Jefferson Clinton, remarks by the President in a question and answer session with the press, Washington, DC, at 3 (Apr. 20, 1993) (exhibit 24).

> tactically. It appears from your testimony that there was uniform consensus that tear gas would be an effective means of doing that. I note in your testimony that [Army unit] advisors, General Schoomaker and [Army colonel], suggested it be introduced in overwhelming amounts quickly. Rapidly. I would presume to not only upset physically but to, just the shock value of such an event.
>
> That recommendation was rejected for a more phased approach, which started at 6 a.m. in the morning until 12 noon when the fire began giving 6 hours in which plans could have been hatched to incinerate the compound or prearranged plans could have been put into effect.
>
> In retrospect, and not in the sense to assess responsibility but to look forward, could you elaborate on the advice you received from [Army unit] and why that advice was not followed for a more comprehensive approach?
>
> A.G. RENO. We discussed it at length, and both the head of the Hostage Rescue Team was there, the FBI, and it was a good and frank discussion with the [Army unit] on what would be the appropriate way to proceed.
>
> The more measured approach, again, went to the fact that we hoped they would not panic and would come out in an orderly way. That is what precipitated our decision. Ironically, once they fired, the FBI did not return the fire but the FBI then began to insert the gas almost immediately and so in effect, [Army unit's] recommendation was carried out.[284]

- *The Attorney General's 60 Minute Interview*

On May 12, 1995, Attorney General Reno participated in a "60 Minutes" interview with Leslie Stahl. During the interview, Stahl questioned Attorney General Reno regarding what factor finally enabled her to make the decision to approve the FBI's proposed operations plan:

> Q. Now key question. What did they tell you that finally tipped the scales so that you said, OK, let's do the tear gas?
>
> A.G. RENO. I can't say there was one particular point that finally tipped it. I think it was probably Saturday afternoon, April the 17th, which is the day I finally gave the go-ahead. And as of Friday night I didn't feel comfortable enough with proceeding. But I think it was the culmination of all the factors, that the situation in the compound was deteriorating, that we were concerned about people in the compound and the fact that he could do what he did at any time and we would be in the less favorable position to control it. That the HR? I was influenced by the fact that I had met with the United [——]

[284] "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas," hearings before the House Committee on the Judiciary, 103d Cong., (1993) at 15–16, 19, 64.

Q. Did you say HRI? I'm sorry, who was influenced, I didn't understand what you said?

A.G. RENO. I'm sorry.

Q. OK, Go ahead, I'm sorry.

A.G. RENO. I was influenced by the fact that I had had the opportunity to meet with the two military commanders who had commanded the HRT forces for the military.

Q. Oh, hostage rescue team?

A.G. RENO. Yes. They were concerned as they reviewed our plan, they said it was an excellent plan but they were concerned that the HRT team after having been on the scene for 51 days was getting so exhausted that it was not going to be effective and that that was creating a dangerous situation[.] [285]

- *Attorney General Reno's Interview with Members and Staff of the Committee on Government Reform on October 5, 2000*

On October 5, 2000, committee staff interviewed Attorney General Reno regarding, among other issues, her actions and decisions concerning the Waco matter:

Q. It is 263 of the Scruggs Report. It says, I asked that the military be consulted. Attorney General Reno stated the military had been consulted and that they were in basic agreement with the FBI recommendation. She explained that there was a minor technical difference of opinion, but both the FBI and the military agreed that it was not of overwhelming significance. Is this, to the best of your knowledge, a correct statement?

* * * * *

A.G. RENO. I wouldn't have called it a technical [——].

Q. That actually was going to be my next question. What is that which was referred to as the minor technical difference of opinion?

A.G. RENO. The difference of opinion was whether, as I recall, they were fired on. The military indicated that it would insert tear gas throughout the building and the Bureau wanted to do it in a more measured way.

Q. Okay. Shortly after the Waco tragedy on May 12, 1995, you appeared with Leslie Stahl on 60 Minutes and during that interview Ms. Stahl asked about your final decision to approve the FBI plan to proceed. And if we could, let's provide a copy of this.

* * * * *

The question is did the military commanders indicate to you that the FBI's plan was excellent?

A.G. RENO. That was my impression.

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[285] Leslie Stahl, "60 Minutes" interview with Janet Reno, U.S. Attorney General and Leslie Stahl, at 4 (May 12, 1995).

Q. What did they say to you about the plan to the extent you recall?

A.G. RENO. My remembrance—and this was—I need the—here it is. The best information I have, and I will check to see if there are others, actually of what was said at the time from Hubbell's 302 of August the 9th, 1993: The military representatives stated the plan to introduce tear gas into the compound was reasonable and practical. The only aspect of the plan that the military would do differently concerned the timing of the gas insertion.

Q. Was there any reticence on behalf of the military personnel present to provide commentary on the plan?

A.G. RENO. I don't recall any reticence, but none was expressed to me as I remember.

Q. Do you recall any comment to the effect that they could not grade the paper?

A.G. RENO. They couldn't grade the paper in terms of it being a law enforcement initiative as opposed to a law enforcement initiative as opposed to a military initiative. In a military initiative issues with respect to loss of life and the use of force would be a different situation.

Q. Do you recall that comment being made?

A.G. RENO. I don't recall the "grade your paper" comment, but I recall the fact that whether they—and I recall it and we'd have to double-check. My sense was that they thought it was a reasonable and practical plan, but they couldn't be the judge and nobody was asking them to be the judge of a law enforcement initiative where rules of engagement would apply that would be different than the military.

Q. We have—through the interviews that we have conducted we have been told that the General that was present told you that neither he nor the Army colonel could approve or disapprove or offer you any opinion about the plan thus there appears to be a slight divergence.

A.G. RENO. I don't think so because they couldn't approve the plan. It was going to be me.

* * * * *

Q. Thank you very much. They did indicate to you though that they were not able to offer an opinion about the plan? Not just an approval or disapproval of the plan, but an opinion.

A.G. RENO. I think they could not offer an opinion about the plan from the law enforcement perspective.

Q. But that leads to a divergence between your indication that they thought it was an excellent plan—I mean, if you are telling the 60 Minutes individual [ ]

A.G. RENO. My impression, after this passage of time, is based on what I see here and that statement is that they

made clear that they couldn't approve a plan that was a law enforcement plan as opposed to a military plan that provided for the insertion of gas in a gradual way, even if they were fired upon. As I indicated to you, they said that if they were fired upon, they would go right back at them and fully gas. And I think that was clear.[286]

c. The Statements of the Attorney General and the President Stand in Stark Contrast to Those of the two Senior Army Officers

The evidence developed during this inquiry clearly demonstrates that the intent of having Brigadier General Schoomaker and the Army colonel attend the April 14, 1993, meeting with Attorney General Reno was to have them review and provide comments and opinions regarding the merits of the FBI's proposed operations plan to end the standoff. The plan was specifically intended to force the Branch Davidians out of the compound so law enforcement agents could execute search and arrest warrants. While Attorney General Reno says that General Schoomaker and the Army colonel indicated to her that the FBI's proposed operations plan was "excellent," in one case and "sound" in another, both officers in separate interviews stated they were careful not to evaluate the plan—"not grade the paper" in any manner.

Brigadier General Schoomaker and the Army colonel should be complimented for their vigilance in avoiding a violation of the Posse Comitatus Act by refusing to give Attorney General Reno and the FBI advice on the tactical details or merits of the plan. Without their caution and concern, they would have become active and direct participants in planning the FBI's flawed operation.[287]

It is troublesome that Brigadier General Schoomaker and the Army colonel were never interviewed by anyone during the Scruggs inquiry. The committee finds it very disturbing that senior White House officials and other senior law enforcement officials unwittingly or not, placed senior military officers in a situation where the discussions at the meeting confronted them with violating the Posse Comitatus Act. The committee finds it most disturbing that President Clinton and Attorney General Reno have mischaracterized what the military officers told her, and deceived the American people for the last 7 years by indicating that the military endorsed or otherwise approved the details of the FBI's proposed operations plan.

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[286] Preliminary Transcript of Interview with Janet Reno, U.S. Attorney General, in Washington, DC at 96:5–101:4 (Oct. 5, 2000) (on file with the committee).

[287] See H. Rept. No. 104–749, 39–40 (1996). A somewhat similar event occurred when the BATF sought certain types of military assistance. Prior to the BATF raid on the Branch Davidian compound on Feb. 28, 1993, BATF requested assistance be provided from an Army Special Forces unit attached to JTF–6 at Ft. Bliss, TX. The request asked that the military assist in a "review and scrub" of the BATF operation, provide medical support close to the scene of the raid, and assistance in constructing and developing rehearsal sites. The commander of the unit, Major Mark Petree, U.S. Army, and Major Brent Ballard, U.S. Army, special operations representative to JTF–6, El Paso, TX, discussed their concern about the request with LTC Phil Lindley, U.S. Army, legal advisor at Army Special Operations Command Headquarters at Ft. Bragg, NC. LTC Lindley expressed serious concerns and objections to JTF–6 that the scope of support involved possible Posse Comitatus Act violations and it was scaled back. Active vigilance of the military officers involved resulted in a reduction in the scope of support and precluded any Posse Comitatus Act violations.

C. THE GENERAL ACCOUNTING OFFICE REPORT

During the subcommittees' hearings in 1995, interest was expressed regarding the military support, especially material and equipment, provided to the BATF and FBI in connection with their law enforcement activities at the Branch Davidian Compound.[288] On July 20, 1995, Assistant Secretary of Defense for Special Operations/Low Intensity Conflict, H. Allen Holmes, testified and agreed to provide the subcommittees a complete accounting of military support provided to the BATF and FBI at Waco.[289]

On January 23, 1996, Secretary Holmes provided the subcommittees with an incomplete accounting.[290] Troubled by the lack of available detail concerning the scope and cost of military assistance, the subcommittees requested that the GAO audit the military assistance provided at Waco and investigate the activities of Operation Alliance [291] in light of the Waco incident.[292]

GAO's specific objectives were to:

- Determine whether the BATF's requests for support from military counterdrug programs met requirements for authorizing that support;
- Identify the measures the BATF took to deal with any drug activity it might find during its warrant service, and determine whether those measures were appropriate for such operations where a methamphetamine laboratory might be encountered; and,
- Account for the type, costs, and reimbursements of all military support, including that from counterdrug programs, provided to the BATF and the FBI.[293]

On August 26, 1999, GAO concluded its inquiry and issued its report. It concluded:

> The ATF requests for assistance from military counterdrug programs met the requirements of the relevant statutes for authorizing such support. In these written requests, ATF cited its suspicions of drug activity. In both cases, the military reasonably exercised its discretion in providing that support as authorized under the relevant statutes.
>
> In planning how it would serve warrants at the compound, ATF planned for the possibility of encountering a methamphetamine laboratory or other hazardous drug materials. As required by agency policy, ATF agents in the op-

[288] "See Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 1)," hearings before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight, 104th Cong., 163 (1995).

[289] Id. at 406.

[290] See letter from the Honorable H. Allen Holmes, Assistant Secretary of Defense for Special Operations/Low Intensity Conflict, Department of Defense, to the Honorable William H. Zeliff, chairman, Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight, Department of Defense document production Z0032599(U)–Z0032608(U), (Jan. 23, 1996) (exhibit 105).

[291] Operation Alliance is a government office which coordinates joint military and civilian counter drug operations along the southwest border of the United States.

[292] See H. Rept. No. 104–749, 55 (1996) at 55.

[293] See "Department of Defense: Military Assistance Provided at Branch Davidian Incident," 1–2, (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).

> eration were made aware of the suspected laboratory and of the appropriate precautions. Moreover, DEA agents were at the command post to handle any drug-related materials.[294]

BATF officials submitted two requests for military assistance as they prepared for their dynamic entry upon the Branch Davidian compound to serve arrest and search warrants upon David Koresh during the January-February 1993 period. In order to receive non-reimbursable military assistance at Waco, BATF was required to demonstrate a "drug nexus" within their investigation. The adequacy of the BATF's evidence supporting a drug nexus was disputed by the subcommittees.[295] In this current oversight investigation, the committee has not sought to reopen that issue. Rather, it continues to hold to the conclusions reached in 1995, that the BATF had insufficient evidence of a drug nexus to seek either a search warrant or non-reimbursable military support.

1. Unresolved Issues Concerning Accounting for the Type, Costs, and Reimbursements of All Military Support within the GAO Report

After reviewing the GAO report, committee staff found the summary of military assistance provided by Assistant Secretary Holmes in January 1996 to be inaccurate and incomplete. It failed to address two support issues. First, there was no discussion of the aerial reconnaissance support provided by the Alabama National Guard.[296] Second, as GAO investigators discovered, the Army did not bill the FBI for 500 rounds of 40-mm grenade launcher ammunition and cannot say definitively to this day whether the rounds were actually provided. The munitions in question included 200 target-practice rounds, 50 illumination rounds, and 250 high explosive (HE) rounds.[297]

Documents and other evidence provided to the subcommittees in 1995, and later, to committee staff during this recent inquiry, indicate that HRT agents employed the target practice munitions at Ft. Hood, TX, to gain firing familiarization in preparation for the FBI's plan to insert 40-mm ferret CS gas grenades into the Branch Davidian compound.[298] There was no discussion in the FBI's proposed operations plan, however, that explained the need for high-explosive rounds to be issued to the FBI for their use at Waco. DOD has failed to formally resolve the status of the 250 high explosive (HE) rounds purportedly issued to the FBI.

DOD considers the discrepancies between the GAO report and the summary provided by Secretary Holmes to be minor. The com-

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[294] Id. at 17.

[295] See H. Rept. No. 104–749, 53 (1996). The subcommittees concluded that the BATF intentionally misled DOD and military personnel as to whether the Branch Davidians were operating an illegal methamphetamine lab at the Branch Davidian compound.

[296] See letter from the Honorable H. Allen Holmes, Assistant Secretary of Defense for Special Operations/Low Intensity Conflict, Department of Defense, to the Honorable William H. Zeliff, chairman, Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight, U.S. House of Representatives, at 9 (Jan. 23, 1996) (exhibit 105).

[297] See "Department of Defense: Military Assistance Provided at Branch Davidian Incident," 28 (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).

[298] See Department of Defense document production Z0022040, D635, D1822, D712, D1857–1858, DTG 111550Z MAR93, DTG 121323Z MAR93, Z0010339 (exhibit 106).

mittee disagrees. An accurate accounting of the use of military combat aircraft and high explosive munitions provided by the military to support civilian law enforcement operations is an issue of significance. This is especially true in the case of high explosive grenades because ammunition of this nature does not have a routine law enforcement purpose.

a. DOD's Failure to Account for the Participation of the Alabama National Guard in Support of Waco Operations in Response to a Congressional Request

Secretary Holmes' response to the subcommittees did not contain any reference to the support provided by the Alabama National Guard between January and April 1993. The fact of their participation was well known to DOD, especially the National Guard Bureau. The assistance provided by the Alabama National Guard was requested by the Texas National Guard as a part of their ongoing support to BATF during the Waco incident. The Texas National Guard briefly commented upon the Alabama National Guard assistance in their April 29, 1993, after-action report on their counter-drug support in Waco, TX. This report was addressed to the Chief of the National Guard Bureau at the Pentagon.[299]

After reviewing GAO's report, Committee Chairman Dan Burton wrote to William Cohen, Secretary of Defense, to express his concern regarding not only this discrepancy, but also the broader issue of DOD's inability to provide a definitive, single-source document cataloging in detail the military personnel, equipment, and material involved in the Waco incident. On November 16, 1999, Chairman Burton wrote:

> The critical first step in understanding the military's involvement during the Waco incident is to obtain a complete and accurate listing of the military units and personnel from any branch of the Armed Forces—Active Duty, National Guard or Reserve—who were engaged in any manner, means, or method of support to the BATF or FBI at Waco; the dates, locations, and descriptions of the duties and responsibilities of military members providing that support; and a complete listing and description of the equipment and material, to include all munitions, supplied to the BATF and FBI for their use during the Waco incident.
>
> DOD is the only entity that possesses that information and only DOD can produce such a document of record. The Committee on Government Reform and the American people should not have to engage in a documentary shell game to understand once and for all exactly what their military forces did in support of law enforcement operations at Waco.[300]

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[299] See "After Action Report of Texas National Guard Counterdrug Support in Waco, Texas," 3 (Apr. 29, 1993), DOD document production Z000465–Z000473 (exhibit 107). The report indicated that on Jan. 14, 1993, aerial photographs were taken by RF4–C aircraft from the Alabama National Guard.

[300] Letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to the Honorable William Cohen, Secretary of Defense, Department of Defense (Nov. 16, 1999) (exhibit 108).

On December 6, 1999, DOD's Deputy General Counsel, Harold Kwalwasser, responded on behalf of the Secretary of Defense. He wrote:

> While there are minor discrepancies between the matrix we created following the 1995 hearings and the GAO report, we believe that these documents provide a generally accurate picture of the support DOD provided to the federal law enforcement agencies.
>
> * * * * *
>
> With respect to your requests for information about the activities of the Texas and Alabama National Guards, we suggest that those requests be directed to state authorities since these Guard units were in a state, not federal, capacity during the Waco events. Although in 1995 we forwarded to Congress documents provided by the Texas and Alabama National Guards concerning the support they provided to federal law enforcement agencies, we are not in a position to provide the comprehensive information the Committee has requested about their activities, which would require interviews with numerous Guard personnel who are not federal employees. Such information should be requested from the appropriate state officials.[301]

DOD's Acting General Counsel, Douglas Dworkin, also corresponded with Chairman Burton on December 6, 1999, and provided some of the information requested in the chairman's initial letter of November 16, 1999.[302] The reply was entirely unsatisfactory. Although some information was provided, DOD continued to reiterate its opinion that the discrepancies between the GAO report and Secretary Holmes' 1996 response were generally minor. In addition, DOD continued to refer the committee to appropriate State officials from Texas and Alabama for information regarding their respective National Guard personnel and equipment.

On January 20, 2000, Chairman Burton again wrote to Secretary Cohen regarding the issue of DOD's obligation to provide a complete accounting of its support during the Waco standoff. Chairman Burton wrote that when Secretary Holmes agreed during the subcommittee hearings to provide an accounting, Secretary Holmes' obligation included providing information regarding the Texas and Alabama National Guard involvement:

> Although I do understand this position, the Honorable H. Allen Holmes, Assistant Secretary of Defense (Special Operations and Low Intensity Conflict) testified as DOD's senior representative during the 1995 hearings and offered to provide a complete accounting of DOD support provided to both the BATF and the FBI during the Waco incident. There were no qualifications discussed regarding which military branch or component support would be provided,

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[301] Letter from Harold Kwalwasser, Deputy General Counsel, Department of Defense, to the Honorable Dan Burton, chairman, Committee on Government Reform (Dec. 6, 1999) (exhibit 109).

[302] See letter from Douglas Dworkin, Acting General Counsel, Department of Defense, to the Honorable Dan Burton, chairman, Committee on Government Reform, (Dec. 6, 1999) (exhibit 110).

> and the committee does not accept any being imposed at this time. Additionally, the funds used to support the National Guard personnel at Waco were congressionally appropriated Federal funds. If there is a need to query The Adjutants General or other state official from Texas or Alabama, the Committee believes DOD has the responsibility to obtain the information and provide it to the Committee.[303]

On February 15, 2000, John Hamre, Deputy Secretary of Defense, responded to Chairman Burton and again reiterated DOD's continuing reticence to take the steps necessary to provide the committee the requested information regarding support provided by the Alabama and Texas National Guard:

> We are not, however, able legally or practically to provide the specific information you have requested for the National Guard. National Guard units are not actually part of the Department of Defense. Congress has designated them as "part of the organized militia of the several states." With limited exceptions, National Guard personnel are under the command and control of the Governors unless they are called into active duty in their status as members of the National Guard of the United States, a reserve component of the United States Armed Forces. The Texas and Alabama National Guard units involved at Waco were operating in a state, not federal, status. Consequently, the Department of Defense has no direct control over their relevant documents or individuals with first hand knowledge of the National Guard's activities.[304]

It became clear at this point that DOD was not going to follow through with its responsibilities to obtain the requested information. DOD's position that they were not "legally or practically" able to provide the requested information rings hollow. While technically true that Texas and Alabama National Guard personnel were in a "state status" and under the "command and control" of their respective Governors, in reality, Federal regulations, Federal funding, and Federal equipment enabled all their actions:

- The Texas and Alabama National Guards were providing support to *Federal,* not State, law enforcement agencies;
- The funds used by National Guards to support their activities were from *Federal* appropriations provided to the State of Texas for counter-drug missions approved by the Secretary of Defense;
- The National Guard military equipment (fixed wing aircraft and helicopters, Armored Personnel Carriers, trucks and utility vehicles, Bradley Fighting Vehicles, Combat Engineer Vehicles, etc.) used in support of the operations was provided by the *Federal* Government to the States principally for their Federal, not State, mission;

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[303] Letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to the Honorable William Cohen, Secretary of Defense, Washington, DC (Jan. 20, 2000) (exhibit 111).

[304] Letter from the Honorable John Hamre, Deputy Secretary of Defense, to the Honorable Dan Burton, chairman, Committee on Government Reform (Feb. 15, 2000) (exhibit 112).

- The terms and conditions governing the loan of National Guard military equipment to the ATF and the FBI were *Federal* (NGB), not State, regulations; and
- DOD (National Guard Bureau Headquarters) asked the Texas National Guard to keep them informed of all their actions in support of the Waco operation; and,

To the American people, the convenient nuances and distinctions concerning the National Guard's "State" and "Federal status" were meaningless at the time of the Waco incident, and probably remain so today. They witnessed tanks, military vehicles, and uniformed military personnel actively engaged in Federal law enforcement operations for 51 days. It is to DOD that they would and should look for an explanation and accounting of their military's involvement at Waco. For the last 7 years, only Congress has attempted to fully inform the American people concerning this issue. In the interest of moving the committee's inquiry forward, Chairman Burton wrote directly to the Adjutants General of Texas and Alabama.[305] Both Adjutants General promptly provided the requested information. Given the magnitude of the Waco tragedy, the committee simply does not understand why DOD would not attempt to live up to Secretary Holmes' promises to Congress in 1995.

The information provided to the committee from GAO, and the Texas and Alabama National Guards, indicate that high altitude aerial reconnaissance support was provided using camera-equipped RF–4C aircraft from the 117th Tactical Reconnaissance Wing located at Birmingham, AL.[306] There is disagreement, however, regarding how many missions were actually flown. The Texas National Guard indicated in its after-action report that one flight was flown on January 14, 1993.[307] The Alabama National Guard indicated that missions were flown on January 14th and 31st, March 4th, and April 7th, 1993.[308] The GAO indicated that missions were flown on January 6th and 14th.[309] While all agree that a mission was flown on January 14th, the total number of missions flown by the Alabama National Guard remains unclear. A timely DOD review would have, in all probability, resolved this issue.

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[305] See letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to Major General Daniel James III, Air National Guard, Adjutant General, Texas National Guard (Feb. 8, 2000) (exhibit 113). See also letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to Major General Willie A. Alexander, Army National Guard, Alabama National Guard (Feb. 8, 2000) (exhibit 114); memorandum from Lt. Col. Michael Sanderson, staff judge advocate, Alabama National Guard, to Thomas Bowman, senior counsel, Committee on Government Reform (Sept. 13, 2000) (exhibit 115). This was follow-up correspondence regarding the dates of the Alabama National Guard flights in support of Federal law enforcement in Waco.

[306] See memorandum from MG Willie A. Alexander, ARNG, Adjutant General, Alabama National Guard, to the Honorable Dan Burton, chairman, Committee on Government Reform (Feb. 17, 2000) (exhibit 116). See also memorandum from Lt. Col. Michael Sanderson, staff judge advocate, Alabama National Guard, to Thomas Bowman, senior counsel, Committee on Government Reform (Sept. 13, 2000) (exhibit 115).

[307] See "After Action Report of Texas National Guard Counterdrug Support in Waco, Texas," 3 (Apr. 29, 1993) at 3 (exhibit 107); DOD document production Z000465–Z000473.

[308] See letter from LTC Michael Sanderson, staff judge advocate, Alabama National Guard, to Thomas Bowman, senior counsel, Committee on Government Reform (Sept. 13, 2000) (exhibit 115).

[309] See "Department of Defense: Military Assistance Provided at Branch Davidian Incident," 29 (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).

b. Discrepancy Surrounding the Alleged Transfer of 250 High Explosive (HE) 40–MM Grenades from the Army to the FBI at Fort Hood During March 1993

On March 1, 1993, HRT personnel began to arrive at Waco to assume control of the law enforcement operation from the BATF. HRT personnel were flown to Waco by military aircraft from Andrews Air Force Base, MD.[310] When they departed, HRT personnel brought with them various weapons, munitions, communications, and other operational safety and security equipment. Some of this material was carried in two specially configured vehicles for HRT use on operational commitments. The ammunition included 40-mm high explosive grenades that were provided to the FBI by the ammunition storage facility at Marine Corps Base, Quantico, VA.[311] At this time, the FBI is uncertain of the exact number of HE grenades brought to Waco. However, they believed it would have been no more than approximately 12–18 grenades divided equally between the two vehicles. During the Waco standoff, HRT personnel who were assigned to carry M–79 grenade launchers, were issued a small number of HE grenades.[312]

Two documents on their face indicate that the Army issued 250 HE rounds to the FBI. Those documents were created by a Program Budget Analyst in the G–3 Budget Office at Ft. Hood, TX. However, according to DOD, that person had no first-hand knowledge as to whether any of the munitions were actually provided to the FBI.[313] DOD further indicated that the analyst prepared these two documents based upon information provided to her by the Deputy Range Officer for Ft. Hood and the Deputy G–3, for Headquarters, III Corps.[314]

The first document is an inventory attached to a loan agreement between the FBI and the Commanding General, of III Corps and Ft. Hood, dated July 30, 1993.[315] It was created a number of months after the Waco operation ended, and represented a preliminary effort to create a master list of the equipment and material believed to have been provided to the FBI at Ft. Hood, TX. That inventory reflected 250 HE rounds valued at $3,477.50; 200 target practice rounds valued at $346.00; and, 50 illumination rounds valued at $1,242.00.

During the GAO investigation years later, GAO asked the Program Budget Analyst at Ft. Hood, TX to account for the equipment, material, and ammunition listed on the equipment inventory.[316] The Program Budget Analyst was asked to annotate the inventory to assist the GAO, by writing "recovered" for items that were returned by the FBI, and "consumed" for items used or not re-

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[310] See Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," 9–11 (Oct. 8, 1993); see "Department of Defense: Military Assistance Provided at Branch Davidian Incident" 27 (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).

[311] Letter from Eleni P. Kalisch, Unit Chief, Office of Public and Congressional Affairs, FBI to Thomas G. Bowman, senior counsel, Committee on Government Reform (Oct. 9, 2000) (exhibit 117).

[312] Id.

[313] Letter from Harold Kwalwasser, Deputy General Counsel, Department of Defense, to Thomas Bowman, senior counsel, Committee on Government Reform, tab 2 (July 26, 2000) (exhibit 118).

[314] Id.

[315] Id. at tab 1.

[316] Id. at 3.

turned.[317] The Program Budget Analyst annotated "consumed" for the HE rounds based on information provided to her by the Deputy Range Officer that the FBI had been authorized to take any unexpended ammunition with them.[318]

The second document is a computer generated spreadsheet dated August 31, 1993, that contains the items for which the Army sought reimbursement from the FBI. The munition entries and values were the same as those indicated in the loan agreement.[319]

Upon review of Appendix IV of the GAO report, the committee became aware that the Army did not bill the FBI for 500 rounds of 40-mm grenade ammunition that were reportedly issued to the HRT personnel at Ft. Hood, TX. This ammunition included 200 target-practice rounds, 50 illumination rounds, and 250 HE rounds.[320] The ammunition of specific concern to the committee was the 250 HE rounds. Given the generally understood law enforcement objectives of HRT on April 19, 1993, it was unclear why HRT would need 250 HE rounds in addition to the HE grenades they transported to Waco, or how that ammunition may have been factored into the FBI's proposed operations plan. It should be noted, however, that the committee is not aware of any evidence indicating that FBI personnel, or any other persons, fired any HE rounds on April 19, 1993, or at any other time during the Waco incident.

On March 11, 1993, the FBI requested that DOD provide 100 40-mm practice rounds and 50 40-mm illumination grenades.[321] On March 12, 1993, the FBI increased its request for practice rounds to 200.[322] DOD approved the amended request.[323] Additionally, the FBI requested, and DOD approved, the use of an appropriate range at Ft. Hood, TX on which to use the target-practice rounds for familiarization firing. The training occurred on March 13, 1993.[324] There was no written request by the FBI for HE rounds. A handwritten note on the initial request authorized the FBI to depart the practice range with any unfired ammunition.[325]

The personnel and equipment summary attached to Secretary Holmes' letter indicated that the Army provided the FBI 50 illumination rounds and only 100 rounds of target-practice ammunition.[326] As stated above, the GAO investigators found that DOD issued 200 target-practice rounds to FBI personnel. The summary also indicated that the cost of the target-practice and illumination rounds was $5,065.00, when the correct total should have been $1,588.00.[327] The summary reflected a total of $5,065.00 which can

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[317] Id.
[318] Id. at 1.
[319] Id. at tab 1.
[320] See "Department of Defense: Military Assistance Provided at Branch Davidian Incident," 28 (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).
[321] See letter from Harold Kwalwasser, Deputy General Counsel, Department of Defense, to Thomas Bowman, senior counsel, Committee on Government Reform, (July 26, 2000) at tab 2 (exhibit 118).
[322] Id.
[323] Id.
[324] Id.
[325] Id.
[326] See letter from the Honorable H. Allen Holmes, Assistant Secretary of Defense for Special Operations/Low Intensity Conflict, Department of Defense, to the Honorable William H. Zeliff, chairman, Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight (Jan. 23, 1996) (exhibit 105).
[327] See letter from Harold Kwalwasser, Deputy General Counsel, Department of Defense, to Thomas Bowman, senior counsel, Committee on Government Reform (July 26, 2000) (exhibit 118).

only be explained if 250 HE rounds, which cost $3,477.50, are included.[328]

Chairman Burton wrote Secretary Cohen and requested an accounting of support and assistance provided by DOD, to include an accounting of all munitions supplied to the BATF and the FBI for their use during the Waco standoff.[329] On July 26, 2000, Harold Kwalwasser, DOD's Deputy General Counsel, wrote the committee regarding the results of DOD's inquiry and stated:

> Based on our review of documents and interviews with relevant personnel, we have not been able to confirm that the 250 HE rounds were, in fact, ever provided by the Army to the FBI.[330]

DOD's response goes on to indicate that the Deputy Range Officer does not remember advising the Budget Office to seek reimbursement for the HE rounds. He recalls that FBI personnel were prohibited from using HE rounds on the range assigned to them for their training. Additionally, he believes that FBI personnel only used training-practice rounds.[331] The Deputy G–3 for the Army's III Corps Headquarters at Ft. Hood, also did not recall informing the Budget Office that the FBI should be charged for the HE rounds. The G–3 office was generally responsible for overseeing the day-to-day operational activities at Ft. Hood. The Deputy G–3 was responsible for processing all FBI requests for support during the Branch Davidian operation.[332]

After reviewing DOD's response, committee staff forwarded copies of the correspondence with its enclosures to the GAO[333] and FBI[334] to give them an opportunity to review and comment.

With respect to GAO, committee staff was interested in finding out if the information provided by DOD would change the finding contained within the GAO report that 250 HE rounds were issued to the FBI. GAO investigators concluded DOD's response did not warrant any changes and stated:

> In closing, we see no need to change any of the information in our report on the military assistance provided during the Branch Davidian incident. As noted in our 1999 report, DOD officials indicated that they accepted our findings on the matters as presented. Moreover, the Department of Justice and the FBI indicated that they agreed with the substance of our report.[335]

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[328] Id.

[329] See letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to the Honorable William Cohen, Secretary of Defense, Department of Defense, (Nov. 16, 1999) (exhibit 108).

[330] Letter from Harold Kwalwasser, Deputy General Counsel, Department of Defense, to Thomas Bowman, senior counsel, Committee on Government Reform, 3 (July 26, 2000) (exhibit 118).

[331] Id. at 2

[332] Id.

[333] See letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to Henry L. Hinton, Assistant Comptroller General, General Accounting Office (Aug. 8, 2000) (exhibit 119).

[334] See letter from the Honorable Dan Burton, chairman, Committee on Government Reform, to the Honorable Louis Freeh, FBI Director, (Aug. 8, 2000) (exhibit 120).

[335] Letter from Carol Schuster, Associate Director, National Security Preparedness Issues, General Accounting Office, to the Honorable Dan Burton, chairman, Committee on Government Reform, at 3 (Aug. 21, 2000) (exhibit 121).

Committee staff also asked the FBI to review the DOD response and inform the committee whether the FBI received any HE rounds in connection with the Branch Davidian operation from any munitions source within DOD. In response, the FBI stated:

> The FBI has not identified any documentation or information which confirms that the FBI requested or received HE rounds from any munitions source within DOD in connection with the Waco-related events. Numerous interviews of the individuals deployed to Waco reflect no recollection of the FBI requesting or receiving HE rounds from DOD for any purpose, including training/target practice. The FBI defers to the lengthy record submitted to you by DOD on July 26, 2000, which suggests that HE rounds were not provided to the FBI during the Branch Davidian operation. Despite the best efforts of DOD and the FBI to "prove a negative," we recognize that the record before the Committee is inconclusive. As mentioned by DOD, however, the critical point to remember is that the FBI did not fire any HE rounds during the Branch Davidian operation.[336]

Distilled to its essence, the evidence presented to the committee is one of documents versus inferences and dated recollections. DOD's response and the GAO report indicate the Army provided the FBI with 250 rounds of HE ammunition. At the time GAO investigators finalized their report, both DOD and the FBI were allowed to review, take issue, and comment on the report prior to publication. Neither DOD nor the FBI disputed the entries demonstrating that the Army issued the 250 HE rounds until the committee began its inquiry.[337]

DOD's response seems to dispute the validity and accuracy of the Army's documents. DOD appears to rely on the statements of two Army officers who indicated they have no recollection of providing any information regarding the use of HE ammunition by the FBI to the Program Budget Analyst who prepared the documents. The analyst recalled that she obtained the information used to produce the two documents from these two officers. DOD's position that no HE rounds were issued is bolstered, in their opinion, by the fact there was no evidence that any HE rounds were fired on the range at Ft. Hood.[338] Additionally, DOD relies on the fact there are no statements or other evidence from any source indicating HE rounds were used during the Waco incident. In their response, the FBI adopted the general findings and opinions of DOD regarding this matter.

This issue involves properly accounting for the status of 250 rounds of lethal munitions. DOD's own regulations require military commanders, in similar situations, to conduct an inquiry.[339] This

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[336] Letter from John E. Collingwood, Assistant Director, Office of Public and Congressional Affairs, to the Honorable Dan Burton, chairman, Committee on Government Reform (Aug. 21, 2000) (exhibit 122).

[337] See "Department of Defense: Military Assistance Provided at Branch Davidian Incident" 17 (GAO/NSIAD/OSI–99–133, Aug. 26, 1999) (exhibit 4).

[338] Letter from Harold Kwalwasser, Deputy General Counsel, Department of Defense, to Thomas Bowman, senior counsel, Committee on Government Reform, at 2–3 (July 26, 2000) (exhibit 118).

[339] See Army Regulation 190–11, "Physical Security of Arms, Ammunition, and Explosives" (Apr. 30, 1986) at 2–9, 6, (exhibit 123). This Army directive was in effect at the time of the

committee is concerned that the DOD and FBI's procedures regarding ammunition accountability were so lax during a matter as significant as the Waco standoff, that 250 rounds of lethal ammunition which are not designed for routine civilian law enforcement activity have remained unaccounted for. There is no information available to the committee that an appropriate military commander conducted an inquiry as required by DOD's own regulations. This issue, although it does not go to the actual events of April 19, 1993, deserves a formal examination and resolution by appropriate military authorities, and the committee urges the Secretary of Defense to direct that such action take place. The results of this inquiry should be provided to the Congress and GAO.

D. INACCURATE ACCOUNTING OF MILITARY PERSONNEL SUPPORT WITHIN DEPARTMENT OF JUSTICE INTERNAL REVIEW

1. Overview of Military Support Provided to the FBI

Almost immediately after the failed February 28, 1993, raid, the limited training and light equipment support that had defined the role of the Texas National Guard was dramatically transformed into one involving armored personnel carriers, tanks, and combat engineer vehicles. These items of equipment were deemed necessary for the safety and protection of law enforcement personnel against the arsenal of weapons suspected to be within the compound.

On March 1, 1993, HRT personnel assumed control of law enforcement activity at the compound from the BATF. The transfer of authority from BATF to the FBI was done at the request of the Secretary of the Treasury and with the approval of Acting Attorney General Stuart Gerson. Over the 51-day standoff, the scope of military support expanded from the Texas National Guard to include military personnel and equipment assets from active duty military units.[340]

A limited number of active duty military personnel were present at the Branch Davidian compound at any one time during the standoff. Most of these troops were dressed in uniforms indicating their ranks and service, and were from units assigned at Ft. Hood, TX. The type of support provided by these troops consisted primarily of performing repairs and maintenance on military equipment that had been provided to the FBI. The committee found no evidence that the military personnel operated any of the equipment during any law enforcement operation.[341]

The active duty Army also provided three observers and seven technical equipment specialists from Army Special Forces units of the U.S. Special Operations Command over the 51-day period of

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Waco events in 1993. See also Army Regulation 190–11, "Physical Security of Arms, Ammunition, and Explosives" (Sept. 30, 1993) at 2–9, 5, (exhibit 124). The requirement for a military commander to direct that an inquiry be conducted regarding missing, lost, stolen or otherwise unaccountable ammunition is essentially the same.

[340] See Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," at 9–11 (Oct. 8, 1993) (unredacted version).

[341] H. Rept. No. 104–749 at 50.

the standoff.[342] The technical equipment specialist and their equipment were provided at the request of the FBI and with the approval of the Secretary of Defense.[343] Committee staff interviewed all 10 of these personnel.[344] The technical equipment specialists trained HRT personnel in the operation of a small amount of classified electronics and observation equipment, and provided necessary maintenance for these items. As indicated above, the Commander of U.S. Special Operations Command also provided an individual to observe HRT's actions and glean beneficial experiences that may be helpful to the military.[345] The decision to provide the observers was made by the Commander of the U.S. Special Operations Command with the concurrence of the chairman of the Joint Chiefs of Staff.[346]

As a general rule, there were no more than two technical equipment specialists and one observer from the U.S. Special Operations Command at Waco at any one time.[347] These personnel each stated during their interviews that they did not participate in any of the FBI's law enforcement operations at Waco, nor did they possess any weapons while there. They stated that, because of the classified nature of their normal duties, they wore civilian clothes and did not identify themselves as being in the military. They further stated that they did not assist in the planning or reviewing of any HRT operational plans, and at no time did they enter the Branch Davidian compound or its immediate area during the 51-day standoff.[348] While at Waco, they indicated they were restricted to a support trailer approximately 1,000 yards from the compound. When equipment maintenance was necessary, they stated that they were accompanied and transported by HRT personnel to the equipment location. When repairs were completed, they returned to their support trailer. They stated that they socialized very little with HRT or other personnel when off duty away from operations at the Waco compound.[349]

2. Inaccurate Accounting of Military Personnel

Appendix B of the Scruggs report was intended to reflect the scope of military support and assistance provided to the FBI during the 51–day standoff.[350] FBI officials working with Scruggs provided him the personnel and equipment figures. Scruggs indicated that he could not recall who within the FBI provided the information, but he accepted the accounting as accurate and included it within

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[342] Department of Defense document production Z0033619(U), Z0041496(U), Z0035388(U), Z0036114(U), Z0041511(U)–Z004512(U), Z0041508(U)–Z0041509(U), Z0041506(U)–Z0041507(U), Z0041510(U), Z0030706(U)–Z0030709(U) (exhibit 101).

[343] Id.

[344] Interviews with 10 current and former USSOCOM Army Special Forces personnel in Ft. Bragg, NC; Raleigh, NC; and Washington, DC. The identities of these individuals remain classified by the Department of Defense.

[345] Id.

[346] Department of Defense document production Z0033619(U), Z0041496(U), Z0035388(U), Z0036114(U), Z0041511(U)–Z004512(U), Z0041508(U)–Z0041509(U), Z0041506(U)–Z0041507(U), Z0041510(U), Z0030706(U)–Z0030709(U) (exhibit 101).

[347] Interviews with 10 current and former USSOCOM Army Special Forces personnel in Ft. Bragg, NC; Raleigh, NC; and Washington, DC. The identities of these individuals remain classified by the Department of Defense.

[348] Id.

[349] Id.

[350] See Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," at appendix B (Oct. 8, 1993) (exhibit 125) (unredacted version).

his report to reflect the military's support throughout the standoff. Scruggs also stated that he did not seek DOD's review of a draft of his report to ensure the accuracy of his discussion of the military's involvement prior to its release, although he did provide Treasury officials with a draft.[351]

When appendix B of the Scruggs report is compared with information developed during the committee's current inquiry, the personnel figures are grossly understated. Appendix B of the Scruggs report reflects that a total of 28 active duty and National Guard personnel supported the efforts of the FBI during the standoff. During an interview with Richard Scruggs on June 5, 2000, he confirmed to committee staff his belief that the FBI was supported by only 28 military personnel. Information provided to the committee by the Texas National Guard indicates there were approximately 130 National Guardsmen intermittently involved, and they provided both on and off-site support to the FBI during the standoff.[352] The personnel support on-site at Waco varied on a day-to-day basis, ranging from a minimum of 5 to a maximum of 35.[353] According to information provided to the committee by DOD, there were approximately 200 active duty military personnel intermittently providing support.[354] As with the Texas National Guard, this support was both on and off-site, with totals varying day-to-day.[355] Taken together, the committee's inquiry revealed that, approximately 330 active duty and National Guard military personnel were involved in providing both on and off-site support to the FBI's law enforcement efforts at Waco. As discussed in section III, the Scruggs investigation fell woefully short of a thorough accounting.

E. THE DEPARTMENT OF DEFENSE DID NOT CONDUCT A REVIEW AND ASSESSMENT OF MILITARY ASSISTANCE PROVIDED

On April 20, 1993, President Clinton spoke to the American people from the Rose Garden regarding the tragic end of the 51–day standoff at the Branch Davidian compound.[356] Although he ordered the Departments of Justice and Treasury to conduct "a vigorous and thorough investigation" into what happened and why, he failed to include DOD in this tasking. The committee believes President Clinton's omission of DOD was both unfortunate and shortsighted. As the last 7 years have shown, the Departments of Justice and Treasury inquiries fell short of presenting a complete accounting of the military's support role to their respective operations at Waco.

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[351] Interview with Richard Scruggs, Assistant U.S. Attorney, Department of Justice, in Miami, FL (June 22, 2000).

[352] See memorandum from LTC Bill Reimer, TXARNG, STARC JAG, Texas National Guard, to Thomas G. Bowman, senior counsel, Committee on Government Reform (Feb. 9, 2000) (exhibit 126).

[353] See memorandum from Director, Operations, Readiness and Mobilization, Office of the Deputy Chief of Staff for Operations and Plans, Department of the Army, to Deputy Chief of Staff for Operations and Plans, Director of the Army Staff, and Assistant Secretary of the Army (Installations, Logistics, and Environment) (July 14, 1995) (exhibit 127).

[354] See letter from Douglas Dworkin, Acting General Counsel, Department of Defense, to the Honorable Dan Burton, chairman, Committee on Government Reform (Dec. 6, 1999) (exhibit 110).

[355] Some of the off-site military personnel associated with providing or monitoring DOD's assistance were not exclusively involved with Waco support.

[356] President William Jefferson Clinton, remarks by the President in a question and answer session with the press, Washington, DC (Apr. 20, 1993).

It is unfortunate that DOD has been content over the same period to conduct no internal inquiry whatsoever.

President Clinton wanted Attorney General Reno to ensure that the military had been consulted regarding the FBI's proposed operations plan prior to its implementation. He was assured by Attorney General Reno during their telephone conversation on April 18, 1993, that the military had been consulted.[357] In connection with the Scruggs inquiry, President Clinton provided a statement regarding this telephone conversation which in part dealt with his questioning of Attorney General Reno regarding consultation with the military. The President stated in part:

> I asked whether the military had been consulted. I had previously asked that the military be consulted because, based upon my experience as Governor of Arkansas in dealing with a similar type situation in northwest Arkansas, I found that the military had a valuable perspective on how to deal with situations of this type. Attorney General Reno stated that the military had been consulted and that they were in basic agreement with the FBI recommendation. She explained that there was a minor technical difference of opinion, that both the FBI and the military agreed that it was not of overwhelming significance.[358]

Since April 19, 1993, the Department of Defense has been reactive, not proactive, in accounting for the military's support during the Waco incident. Whenever asked to provide information, briefings or witnesses, for inquiries, interviews or investigations, DOD has complied, except when this committee requested assistance with obtaining information concerning support provided by the Texas and Alabama National Guards.

DOD is an organization that will, without hesitation, collect information and prepare reports regarding a myriad of incidents, issues or allegations that involved their personnel or equipment. DOD's military and civilian leadership know that it is important to find out what happened and whether there are any lessons to be learned from events involving their personnel. These situations include vehicle accidents, plane crashes, ship collisions, military training accidents involving injury or death, damage to military equipment, and allegations of misconduct, fraud, waste or abuse. In addition, DOD has provided military personnel and equipment in support of significant national or international events like the 1992 Los Angeles riots; the 1996 Olympics; recent natural disaster assistance to State and local governments battling floods and fire; and international humanitarian relief as we have seen throughout the last decade in South America, the Caribbean, the Far East and Africa.

In each case, whether it is a single vehicle involved in a training accident, or a prolonged humanitarian assistance effort, DOD ensures that some level of after-action assessment and report is ac-

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[357] Richard Scruggs, U.S. Department of Justice, "Report to the Deputy Attorney General on the Events at Waco, Texas, Feb. 28–Apr. 19, 1993," at 262–263 (Oct. 8, 1993) (unredacted version).

[358] Id. at 263.

complished for lessons-learned and historical record purposes. An overall review of such events assists in evaluating whether current practice, policy or procedures are appropriate. What is troubling to the committee is that DOD did not independently exercise the same wisdom, judgment, and leadership with regard to an overall after-action accounting for their involvement and assistance at such a significant domestic law enforcement event as Waco.

What exacerbates DOD's failure in this regard even more, is that the Secretary of Defense promulgated a regulation in 1986 requiring that the Secretaries of the Military Departments and the Directors of the Defense Agencies prepare a quarterly report of all requests for assistance from civilian law enforcement officials.[359] The reports were to be forwarded to various offices within the Office of the Secretary of Defense. The reports were to outline the details of assistance provided (approved, denied, or pending), and any other information deemed appropriate. A sample report form was provided within the directive to assist in preparing the reports.[360] Support involving the use of classified information or techniques could be exempted from the reporting requirement if it was impractical to prepare an unclassified summary.

DOD has produced no documents indicating that any quarterly reports were prepared as required by their directive regarding the support provided by the military to the law enforcement agencies concerning the Waco incident. At this late date, no explanation can excuse DOD's failure in this regard.

F. RECOMMENDATIONS

The committee recommends the following:

1. Legislative Recommendations

The Congress should enact legislation requiring the following actions by DOD when providing military assistance to Federal, State, or local law enforcement agencies:

a. Notification to Congressional Leadership and Appropriate Congressional Committees When any Special Mission Unit, Personnel or Equipment, of the U.S. Special Operations Command, or Other Commands of the Armed Forces of the United States, Will Provide Assistance in Support of Domestic Federal, State or Local Law Enforcement Operations

The mission of the Armed Forces of the United States is to be ready to confront and prevail in any national security challenge that confronts the United States. Our Armed Forces must be the most precise, most lethal, most versatile, best equipped, and best trained forces in the world. The American people expect and demand no less. Congress directed the establishment of the U.S. Special Operations Command in 1987 to correct serious deficiencies in

[359] See DOD Directive 5525.5, DOD Cooperation with Civilian Law Enforcement 4 (Jan. 15, 1986) (exhibit 128). The reporting requirements in this DOD directive were valid at the time DOD was providing assistance at Waco in 1993 and remains valid as of the date of the committee's report. DOD has indicated that this directive is currently under review.

[360] Id. at 26. The directive requests information on various categories of support including facilities, information, equipment, aviation, explosives and ordinance, sensor equipment, personnel and training.

the ability of the United States to conduct special operations activities. Their usual focus is to provide a full range of activities in support of our national security objective outside our country's boundaries.

Because of their unique capabilities and equipment, special mission units are, at times, called upon to support law enforcement activities within the United States. Congress has recognized the importance of allowing law enforcement to have access to this unique expertise and has authorized certain exceptions to the Posse Comitatus Act to enable such support. When such support occurs, it is generally withheld from the public because of the classified nature of special mission units, personnel and equipment within the special operations community. When the public does become aware that such support has been provided domestically, it is generally after the law enforcement event has ended. The public is not only surprised, but to an increasing number of Americans, it is an issue of concern. When law enforcement events have tragic conclusions, as occurred at Waco, the American people expect and deserve a full, complete and accurate accounting of what occurred, especially when our country's special mission units have been used domestically.

Congressional leadership and committees of appropriate jurisdiction need to be made aware in advance whenever special mission units, personnel or associated equipment will be used in support of domestic law enforcement activities. Congress has an oversight responsibility on behalf of the American people that can only be accomplished with advance awareness of when this type of support will occur. Prior notification to Congress will also enable DOD to conduct such support with the knowledge that the elected representatives of the American people have been consulted in the decision scenario that led to the use of these very specialized military units in domestic law enforcement operations.

b. Annual Report to Congress by DOD Providing an Accounting of all Events in Which Active Duty, National Guard or Reserve Units, Personnel, or Equipment Have Been Provided in Support of Federal, State or Local Law Enforcement Operations

At the present time, DOD does have a requirement to collect a certain level of law enforcement support information. The Secretary of Defense has directed that a quarterly report of all such assistance (approved, denied, or pending) shall be submitted by the Secretaries of the Military Departments and the Directors of Defense Agencies to the Office of the Secretary of Defense. However, there is no concurrent requirement to provide Congress with this information. This same information would be of immeasurable benefit to the Congress as they accomplish their oversight responsibilities.

2. Oversight Hearing Recommendation

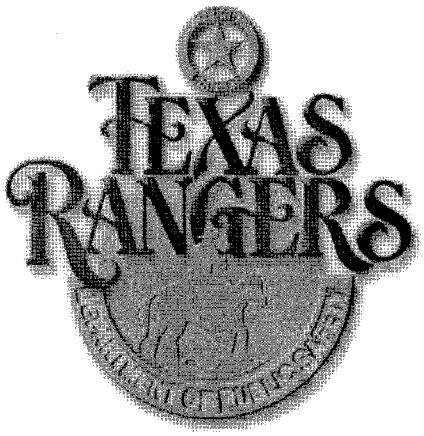
Appropriate congressional committees should conduct oversight hearings regarding: (1) the appropriateness of applying the Posse Comitatus Act to the National Guard with respect to support situations where a Federal law enforcement agency serves as the lead agency; and (2) the legal status of memoranda of agreements for

the interstate use of National Guard personnel and equipment for civilian law enforcement purposes.

Within the 1996 subcommittee report, it was recommended these hearings occur. Our current inquiry reconfirms the need for such congressional action for the reasons presented within the 1996 report.[361]

[The exhibits referred to follow:]

[361] See H. Rept. No. 104–749 (1996) at 53–55.



INVESTIGATIVE REPORT

BRANCH DAVIDIAN EVIDENCE

SEPTEMBER 1999



COMMISSION
JAMES B. FRANCIS, JR., CHAIRMAN
ROBERT B. HOLT, COMMISSIONER
M. COLLEEN McHUGH, COMMISSIONER

DUDLEY M. THOMAS, DIRECTOR
THOMAS A. DAVIS, JR., ASST. DIRECTOR



TEXAS RANGERS
BRUCE M. CASTEEL, CHIEF
G.E. POWE
RANGER SERGE



TEXAS RANGERS

DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM

DATE: 9/10/99

DIVISION: Ranger

TO: Chief Bruce Casteel, Headquarters, Austin

FROM: Sergeant Joey D. Gordon, Company "F", Llano

SUBJECT: Review of Evidence Related to the Branch Davidian Investigation

On 06-14-99, you assigned me to review the evidence, which is held by the Texas Department of Public Safety, Texas Ranger Division, File No. RF093021 (Capital Murder -- Steve WILLIS W/M, Age 32 on 02-28-93), this being the Branch Davidian investigation in Waco. There is approximately 24,000 pounds of evidence stored both in Waco and in Austin. My instructions were to review the evidence in Austin and notify you of any significant evidence identified. You also informed me of a piece of evidence which was questionable, a 40 mm shell casing found by Ranger Sergeant George TURNER in Sector EC1 at the Mt. CARMEL Center. I began to review the tapes and photographs provided to me by Ranger Captain Charlie BRUNE. It should be noted that the photographs that I viewed were only a portion of the total photographs taken. It is my understanding that the FEDERAL BUREAU OF INVESTIGATION (FBI) had taken all of the 35 mm film, negatives, and, reference material into their possession and only a limited number of photographs were returned to the Texas Department of Public Safety.

Before the review of all evidence provided by Captain BRUNE was completed, an investigation of the 40 mm shell casing was initiated in order to identify it. Sergeant TURNER had already provided you with an explanation as to his locating it and the explanation of its use that was provided to him by the Federal Bureau of

Investigation. Sgt. TURNER'S report to you, an aerial photograph of Mt. CARMEL Center, and a diagram with sectors drawn on it is ATTACHMENT A. In Sgt. TURNER'S report, the 40 mm shell casing is identified as EXHIBIT Q1237. Sgt. TURNER reported that FBI Special Agent Rick CRUM checked on Q1237, and advised that the shell casing did belong to the FBI. Sergeant TURNER also reported that CRUM said it had been fired after obtaining permission, in an attempt to knock a door down so gas could be dispensed. Sgt. TURNER also collected 40mm "FERRET" liquid CS casings and knew that Q1237 was different. ATTACHMENT B is photographs of an expended casing, projectiles, and packaging of "FERRET" rounds.

The shell casing Q1237 is a green-colored metal 40 mm shell casing which has six (6) square shouldered notches or cuts equally spaced located around the rim and has the ink markings:

AMM	LOT	NO. NCI
3 - 38 - 1		0769
40 mm	M118	HA-32-9-68

On 07-22-99, I took custody of Q1237 to begin to fully identify it. I had digital photographs taken of Q1237, which is ATTACHMENT C, to aid in its identification. On 07-30-99, I had the DPS Laboratory collect trace element samples from Q1237 for future analysis as needed. ATTACHMENT C contains the packaging and all items found with the 40 mm shell casing.

I enlisted the assistance of the U.S. Army, U.S. Army Research and Development Engineering Center (ARDEC), and Rock Island Arsenal among others to help in identifying Q1237.

The first two lines in the above marking are in red ink and the third or bottom line is in black ink. The markings in red identify the completed round as: ammunition from Lot number NCI 3-38-1, which was made by Northrop Carolina, Inc. in July of 1969. Investigation revealed that Northrop Carolina, Inc. (NCI) of P.O. Box 3049, Asheville, North Carolina was opened on 09-21-65 and merged with another company on 03-

26-79. In 1998, C.T. Corporation of 225 Hillsbough Street, Raleigh, North Carolina, reserves the NCI trademark. However, on 07-30-99 C.T. Corp. advised that NCI was in name only and no records of the original company were known.

A military "Ammunition Data Card" was located for Lot number NCI 3-38; this is ATTACHMENT D. This data card indicates that the production for lot number NCI 3-38 was begun on 07-29-69 and was completed and shipped on 08-11-69. This data card would indicate that NCI 3-38 munitions correspond to Q1237 shell casing's markings and are within a three (3) day period of time, thirty (30) years ago. The differences between Q1237 and the Data Card for Lot NCI 3-38 are that the casing for Q1237 is made by "HA" not NCI, and there is a "–1" in the Lot number on Q1237. The data card shows that the casings for NCI 3-38 were to be made by NCI and there is no "-1".

The third line in black ink on the shell casing indicates it is a 40 mm casing, the casing model number is an M118; it was made by HA, in lot number 9-32 in September of 1968. The "HA" is Harvey Aluminum, Inc. of 19200 Southwest Avenue, Torrance, California. Investigation revealed that Harvey Aluminum is now an inactive company and is now part of Martin Marietta Aluminum Division at 19600 Southwest Avenue, Torrance, California. No data card for Lot number NCI-3-38-1 could be found; however, the "-1" could be explained due to HA cases being used to complete the order originally using NCI cases. This alteration would require a change be reflected in the lot number, hence the "-1". This was confirmed when original loaded cartridges of lot number NCI 3-38-1 were located at the Pine Bluff Arsenal in Pine Bluff, Arkansas by Criminal Investigator Terence "O'D" O'DONNELL of the Department of Defense Industrial Operations Command, Rock Island Arsenal. Investigator O'DONNELL ordered two (2) of these cartridges held for this investigation. Ranger Sergeant Howard DUNHAM took custody of these two (2) cartridges on 09-07-99. Investigator O'DONNELL had e-mailed to me photographs of one of these live cartridges from lot number NCI 3-38-1,and these photographs are ATTACHMENT E.

These cartridges are early experimental M651 rounds used by the U.S. Government. They are designated under item nomenclature as CTG. 40 mm XM651E1, CS. The DODIC is B567 and the National Stock Number (NSN) is 1310-00-849-2083. This corresponds with the exact data found on the Ammunition Data Card for Lot Number NCI 3-38. The data card indicates that Diagram 122-2-6 would be of the XM651E1 cartridge. Diagram 122-2-6 is ATTACHMENT F and matches Q1237.

I obtained an Operator's Manual for NSN 1310-00-849-2083, the 40 mm TACTICAL CS, M651. To be more accurate in information about an older cartridge, I obtained Technical Manual TM 3-1310-243-10 from January 1975, which is ATTACHMENT G. This manual indicates that this cartridge has a projectile that delivers a CS agent and is fired from a 40 mm casing. This casing has six equally spaced notches located around the cartridge case base. When fired, the projectile disperses CS into the atmosphere by the burning of a pyrotechnic mixture. The manual, on page 10, reports the burning time to be 20 to 30 seconds, and the projectile carries 53 grams or 2 ounces of CS agent –pyrotechnic mixture. This projectile is gray in color with a red band. The red indicates that this is a non-persistent-effect irritant agent.

The manual states, on page 11, that the M651 cartridges are not explosives rounds; however, a malfunctioning projectile may explode upon impact. The M651 projectile is reported capable of penetrating window glass and up to ¾ inch pinewood at 200 meters and then delivering the CS agent. The max range is 400 meters. The manual for the M651 cautions that the projectile will cause injury to personnel in its path when fired. The diagram on page 7 and the description of the cartridge identification on page 14 indicate that the cartridge nomenclature should be marked on the base of the case. However, a note on page 14 also indicates that the lot number and nomenclature may be on the side of the case, which is consistent with Q1237.

No reference or fire hazard warning is provided in the manual, so I asked Investigator O'DONNELL to research what he could about tests conducted when the M651 was being developed to determine the realistic degree of hazards of starting a fire. On 08-

31-99, Investigator O'DONNELL advised me that he had consulted Ray JOHNSON who is currently the DECON/MUNITIONS Team Leader for the Soldier's Biological Chemicals Command at Rock Island Arsenal. JOHNSON advised that they had not explored the fire hazard of the M651 because it was known to cause fires. The projectile burns at 500 to 700 degrees Fahrenheit, and is capable of igniting flammable items. JOHNSON also advised that the military had no official definition of a pyrotechnic round but that the M651 was considered a pyrotechnic round by the military.

Investigator O'DONNELL also advised that no shipping records could be found on lot number NCI 3-38-1. These records are normally maintained for two (2) years.

It was of interest that Investigator O'DONNELL advised me on 08-27-99, that numerous inquiries from the news media and FBI personnel had been made to arsenals about the M651 and the fire potential following the news events of the preceding days.

I also requested that Investigator O'DONNELL research and provide me with a breakdown of the active ingredients in the M651. His report to me is ATTACHMENT H. It reports that the active ingredient in the M651E1 is: CS = o-Chlorobenzalmalononitrile (Mil-R-51029C) and the pyrotechnic mixture is the standard fuel/oxidizer/coolant formulation used on many smoke munitions. This being:

Agent (CS)	40%
Fuel (Sugar)	18%
Oxidizer (Potassium Chlorate)	27%
Coolant (Magnesium Carbonate)	12%
Binder (Nitrocellulose)	3%

On 09-03-99, I received a Technical Data Packet (TDP) for the XM651E1 round from Investigator O'DONNELL. It is included as an ADDENDUM to ATTACHMENT H; because of its irregular size and is printed separately.

During my review of the photographs in evidence, I found a photograph of a projectile that is gray with a red band lying in water. A copy of this photograph is ATTACHMENT I. There is no location number or photographer identified on the photograph. I had the lab photographers look at the photograph and none recalled taking the photograph. DPS Photographer Mike HOLLE advised that he took some photographs in an area with standing water which was near the bottom of Sector F or the top of Sector A, and he advised that he could have taken the photograph. DPS Photo Lab personnel advised that they had made detailed notes on each photograph taken, and they could give the location, photographer, settings, and other detail information about each picture. However, the FBI had taken all their notes and negatives and this left them with nothing to reference. It should be noted that in the photographs and videos of the Mt. Carmel Center taken after the fire, I observed standing water in numerous locations.

The gray/red banded projectile in the photograph, ATTACHMENT I, appears to be expended and has a brown/black (tar-colored) mark on the ogive. The projectile is not burned and is not a cooked-off round. Documentary filmmaker Mike McNULTY was unable to find this projectile in the DPS evidence when he searched for it. At this time, it is unknown what the photographed projectile's "Q" number or evidence number is; however, it is physically the same as the projectile to be mated with Q1237.

Ranger Lieutenant James MILLER, who was in charge of evidence collection at Waco, looked through his notes and records and found two (2) items in evidence held at Waco that could possibly be the gray and red-banded projectile. C548 was labeled as a "fired tear gas projectile" and C596 was labeled as a "fired tear gas shell." On 09-03-99, Lt. MILLER, Capt. BRUNE, and myself traveled to Waco and located these items; however, neither were the gray and red-banded projectile. C548 was an expended "FERRET" projectile, and C596 was the capsule of a M583A1 "WHITESTAR" parachute flare which was found in Sector F-C6A by Ranger Sergeant George FRAISER (now retired).

To conduct a proper search for this and other items, a detail inventory of all evidence will be made in preparation for release to the Clerk of the United States District Court for the Western District of Texas.

The location where the shell casing Q1237 was found may have no relationship to where it was fired. The shell casing was recovered in Sector E by Sgt. TURNER. It is possible that this is where one of the FBI's Hostage Rescue Team's (HRT) armored vehicles was cleaned out following the assault on the Mt. CARMEL Center by the use of 40 mm "FERRET" rounds.

Two other pieces of evidence held to be fully identified were two 40 mm projectiles identified as Q379 and Q380 which were recovered by Sgt. FRAISER in Sector F. These projectiles are similar in make, markings, size, and dimensions to each other. They differ in degree of exposure. Both have been fired and expended, and both have a black plastic nose covering the ogive, which is unbroken. One projectile shows more scratches and marks on this plastic covering than the other. "40 AG DM 118 A1" is stamped into the base of both projectiles. Neither projectile is burned nor are they cooked off rounds, and both have rifling marks made by lands on the rotating band, meaning they have been fired from a weapon. I had digital photographs made of one of these projectiles to aid in identification. These photographs are ATTACHMENT J.

The measurements and the stampings of these projectiles are not standard and are inconsistent with each other; therefore, military records and JANES INFORMATION GROUP were unable to identify them. I made a diagram of the measurements of these projectiles, which is included as ATTACHMENT K.

During the investigation to identify these projectiles, Q379 and Q380, I made contact with Fred PICKLER and Peter McAULEY of NICO Pyrotechnik. I provided them with the photographs in ATTACHMENT J. After viewing the photographs and consulting with the NICO German engineers, Peter McAULEY advised that the projectile did appear to be of NICO manufacture.

Peter McAULEY further advised that during the early 1990's, U.S. Law Enforcement was inquiring about a sound and flash projectile that could accurately be deployed and cause a distraction in special situations. The FBI had been one of those law enforcement agencies that were making inquiries. NICO already made a DM118 A1 round for the German Army that was a practice round. This round was a 40 mm cartridge that propelled a projectile with a tracer compound in the base and an orange "impact signature" marker compound in the nose. The DM 118 A1 would fire at about 78 meters per second, leave a visible tracer to the rear and then an orange chalk mark upon impact. These projectiles were of aluminum construction and had a black plastic covering over the ogive. The stamping on the base means it is a 40 mm, the AG is an abbreviation for cartridge/practice or training cartridge in German, DM is the international designation for German manufacture, 118 is the German Army's number for this training round, and the A1 designates that it has been modified or is a newer version than the original DM 118. I received a diagram and information on the DM 118A1 from ARDEC and it is ATTACHMENT L.

To facilitate the U.S. Law Enforcement request for a sound and flash cartridge, NICO used the 40 AG DM118 A1 projectiles, which they already made, to modify for the sound and flash cartridges. These projectiles were modified to hold a report composition in the nose, which would make a flash and sound similar to a "flash bang" but of less intensity, about 130 dBA. These projectiles had no tracer capability and would discharge at about 100 meters or 1.3 seconds.

The modification of the DM118A1 to the Sound and Flash round was accomplished by drilling out the center of the DM118A1 projectile and inserting a "blast chamber housing." This blast chamber housing is a cylindrically shaped piece of aluminum, which has a small hole in the center from the base up to just short of halfway where a large open cavity then is bored to the mouth. The small hole is the delay column and the large open cavity is for the report compound. The blast chamber housing is then span into the projectile body and secured with "Loctite 270."

The delay column uses a mixture of 80% silicium powder (Si) and 20% red lead (Pb3 04) to burn in the lower part of the hole through the base. This is ignited by the cartridge propellant, which is a nitrocellulose. This delay charge burns at a consistent rate and then ignites a column of pressed black powder. This in turn ignites the report compound that consists of aluminum powder and potassium perchlorate. This composition was being used by NICO in hand-held sound and flash devices, and the company had done extensive testing of this composition with regards to fires, noise, and flash. This composition did not start fires when tested on straw, a sofa, against curtain material, and kerosene. It did ignite gasoline. These projectiles were NICO 40 mm x 46 sound and flash (S & F) cartridges of a prototype design, and there were only approximately 1000 made in about 1990. The report (sound and flash) was discharged from the nose of the projectile, and during testing, it was found that the projectile could be propelled in an undesirable direction under certain circumstances. The design was subsequently modified for volume production to correct this problem. Projectiles marked 40 AG DM 118 A1 are no longer used for the basis of this cartridge. Since these rounds were developed to NICO's "Technical Specifications and Acceptance Regulations" for U.S. Law Enforcement and not to MILSPECS; there can be confusion in trying to identify these rounds.

These rounds were to provide law enforcement the ability to accurately place a distraction device into a desired area even through a barrier if needed. The cartridge should penetrate about 40 mm at 40 meters. The plastic nose will break on impact when striking something hard. Peter McAULEY advised that reviewing the pictures indicate that the projectile was utilized as designed and was aerially deployed without making penetration of any barriers. Fred PICKLER inspected Q379 and Q380 in Austin on 08-25-99 and concurred. The written correspondence I have received from NICO is ATTACHMENT M and includes a diagram of the 40 mm X 46 (S & F) as made in the prototype design like Q379 and Q380.

Peter McAULEY advised that due to the time involved it would take some time to find customers records from 1990 that purchased the prototype cartridges. An engineer at the German factory remembered possibly about 10 cartridges being sent to the

USA. He also recalls they may have been shipped through distributor FFE International. This is Frost Family Enterprise International managed by Jack FROST. FROST is a retired Colonel from the U.S. Army and has been a consultant for Mike McNULTY and accompanied McNULTY at the DPS evidence locker. Mike McNULTY advised that Col. FROST had delivered about 50 NICO cartridges to the FBI HRT back in the early 1990's, but Col. FROST also advised that Q379 and Q380 were made by ARGUS. Col. FROST also pointed out that Q379 and Q380 were mislabeled as CS gas projectiles on the evidence packaging. Col. FROST was correct about the mislabeled packaging; however, these projectiles do not seem to be of ARGUS manufacture.

ARGUS is an Austrian Arms Company ARMATUREN GESELLSCHAFT, Phone E 437 673 27810. Mike McNULTY sent to me a diagram of the projectile he believes Q379 and Q380 to be. The diagram of ARGUS 40 mm x 46 FLASHBANG 93 does not appear to match. This diagram is ATTACHMENT N. Mike McNULTY also advised me that his tests indicate that Aluminum powder, extruded iron oxide, and no potassium perchlorate were in Q379 and Q380. This leads Mike McNULTY to believe they were changed since potassium perchlorate is needed in a flashbang and should be in the compound.

To address the issue of tampering or alteration of these projectiles, I had the DPS Lab take samples for trace element testing from the nose and base of both Q379 and Q380. For future comparison and identification, Q1237, Q379, and Q380 were extensively photographed and ballistic evidence taken by the Lab.

I also learned how the NICO 40mm x 46 S & F cartridge is made and functions and how the XM651E1 functions. Shell casing, Q1237, is a M118 shell casing, which expels gases from the high pressure chamber in the center of the case, toward the inside of the case wall into the low pressure chamber. This places pressure on the base of the projectile, which is held into the case by a crimp at the case mouth. The pressure at the base of the projectile will overcome the crimp and the projectile will be propelled out the barrel. Projectiles Q379 and Q380 are fired from another type

casing which forces gases straight up into the base of the projectile and into a low pressure chamber until a predetermined level of pressure is reached. The projectile is held to the casing by a threaded column at the high pressure chamber. At the predetermined level of pressure, the threaded column breaks, and the projectile moves down the barrel and the delay column is ignited. These two separate deploying systems are not easily compatible with each other, and it seems very unlikely that Q1237 had anything to do with Q379 and Q380.

The NICO 40mm x 46 S & F report composition is of potassium perchlorate and aluminum powder. The potassium perchlorate is water soluble and both Q379 and Q380 were exposed to the outside elements for an unknown period of time. It is also unknown what type of tests were performed on Q379 and Q380 before I took custody of them. Also, since chemicals change physical states and molecular composition during a chemical reaction, I asked for assistance from the Director of the DPS Crime Lab Ron URBANOVSKY. He advised that he would research what chemical elements need to be searched for to determine if Potassium perchloate was present before the report composition was ignited.

By learning of the manner in which the NICO 40mm x 46 S & F cartridge is made, it is not easily altered, although it is not impossible. From what I have learned, Q379 and Q380 do not appear to have been altered; however, until all tests are completed and chemical evidence compared and evaluated, it cannot be concluded.

Mike MCNULTY has advised me that other evidence held by DPS is crucial to proving some of his suspicions that the FBI and ATF have not been truthful in their account of the Branch Davidian investigation. Mike McNULTY advised:

A. That flash bangs had been misidentified as firearm silencers and, thus, overlooked as key evidence in the investigation of the fire;
B. That a "watch cap" worn by Michael SCHROEDER, who was killed on 02-28-93, may contain powder residue showing he was shot at close range contradicting the shooting report;

C. That a "shape charge" may have been placed on the concrete roof of the "bunker" at the bottom of the tower, and that a bedroll found in the "bunker," which was not totally consumed by the fire, may contain trace elements of the explosive compound from the "shape charge" and;
D. That video tapes and pictures could be key in identifying elite military personnel such as Delta Force personnel who were at the scene.

As per your instruction, when all the evidence is inventoried for transfer to the Clerk of the U.S. District Court for the Western District of Texas, the above items of evidence will be identified and boxed separately with other significant evidence. This will clearly identify this evidence for easy access for future investigators.

Also, Mike McNULTY has questioned .308 Winchester cases located at the undercover house, which may show that the FBI snipers fired rounds on 04-19-93. The under cover house A and B were located near the Mount Carmel Center and were used by law enforcement officials prior to the ATF raid on February 28, and during the stand-off between the Davidians and law enforcement. The recovery of these casings was reported by Ranger Sergeant Ronny GRIFFITH in Report RF093021-U.12. A manila envelope marked U-12 contains this report, the original handwritten report, and notes and photographs of the scene. In the report, Sgt. GRIFFITH reports the recovery of:

A. Twelve (12) .308 F.C. cases and twenty four (24) .223 IMI cases recovered at Undercover House A;
B. Three (3) .45 cal. shell casings recovered between Undercover House A and B; and,
C. One (1) 22-250 casing recovered in the driveway of Undercover House B.

These casings will also be placed with the above evidence.

Also, as reported to you earlier in this report, part of an M583A1 "WHITESTAR" parachute flare was found among the evidence. Since this is incendiary in nature, it and all the other flares identified will be separated and boxed.

In concluding this first report to you, I am including a copy of a letter I received on 08-31-99 from AUSA Bill JOHNSTON to Attorney General Janet RENO giving his perspective on this investigation. With AUSA JOHNSTON'S permission, this letter is ATTACHMENT O.

I will keep you informed by memorandum, as efforts continue to locate and identify questionable evidence, including the M 651 projectile. Also, when test results and other outstanding information is received, I will report to you promptly.

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Operator's Manual CTG-40-MM
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ATTACHMENT O
Copy of letter from Assistant United States Attorney Bill Johnston to United States Attorney General Janet Reno

ATTACHMENT

A

Copy of Memorandum of 6/30/99 from
Ranger Sergeant George L. Turner

Diagram of Mount Carmel Center

Photograph of Mount Carmel Center

DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMO

DATE: 06/30/99
DIVISION: Ranger

TO: **Chief Bruce Casteel, Texas Ranger Division**

FROM: **Sergeant George L. Turner, Texas Rangers Co. F, Cleburne**

SUBJECT: **Branch Davidian Evidence**

As per your instructions, I submit to you this memo in regards to a particular piece of evidence I recovered during the search of the Branch Davidian Compound after it was destroyed by fire on April 19, 1993.

I was initially assigned to the investigation of the Branch Davidians immediately after the failed execution of the search and arrest warrant by the Bureau of Alcohol and Tobacco. After the above described fire I was assigned as a Team Leader of Team #2. Our mission was to conduct a thorough crime scene search and locate any and all evidence that would assist Federal prosecutors in the successful prosecution of the surviving Davidians. Texas Ranger Gary DeLosSantos was assigned to my team as the Recorder.

On Thursday, April 22, 1993 my team began the search of what is described as Sector E. This sector encompassed an area generally from the northwest wall of the large underground fort and northwest of the Compound's curtilage. This sector was gridded into 45 individual grids within an area measured at 160 feet by 480 feet. Forty of these individual grids measured 10 feet by 20 feet and 2 of the grids measured 80 feet by 80 feet. Two of the grids measured at 80 feet by 100 feet and one grid measured 160 feet by 200 feet.

Sector E grids were individually marked for identification beginning with EA1 through EA8, EB1 through EB8, EC1 through EC8, ED1 through ED8, EE1 through EE8, EF1 through EF@, EG1 through EG2 and EH1. All were numbered, excepted as noted; one through 8 in a northwesterly direction.

This sector would eventually yield 43 separate Ranger exhibits. They consisted mostly of bullets, bullet fragments and cooked off cartridge cases. In this sector was also located 6 automobiles, a tractor and a 16 foot trailer.

On April 23,1993 the actual evidence collection began. The previous days had been spent in the gathering of the necessary equipment and the gridding process. Assigned to my team at that time were DeLosSantos, Special Agent(FBI)Kevin Ashby, Special Agent (FBI)Jose Rodriguez, Special Agent(FBI)Jan Bray, DPS Photographer Michael Holle, DPS Latent Print Examiners Danny Carter and Oscar Kizzee, DPS Chemist Irma Rios and DPS Criminalist Dottie Collins.

At approximately 2:15PM while operating in Sector EC1 I located and collected what would later become evidence item Q1237. This exhibit (Ranger Exhibit #17 of RF093021-BB-27)was a spent 40MM metallic cartridge. This item was found among 28 plastic Ferret Rounds that had contained CS Liquid Gas. There was also found in this grid 2 cartridge box containers of the Ferret rounds. The metallic cartridge and the plastic Ferret rounds were in the same pile to the best of my memory. I have never seen a photograph of this exhibit. As stated above there was a photographer assigned to my team on this date. However, there were not enough photographers to have one assigned to each team and they were moved from team to team as necessary. Therefore, I may have been unable to have this item photographed at the time of its retrieval. Neither myself or Ranger DeLosSantos were familiar with the nature of this metallic cartridge.

At approximately 5:22 PM of that date I carried the collected exhibits to the collection point where all evidence was being turned over to evidence technicians and ultimately to Ranger Jim Miller. While waiting to submit these gathered exhibits, I showed the metal cartridge to Ranger Charles Brune and Ranger Joe Peters, both of whom were military veterans. Both Brune and Peters stated that the cartridge was that of a "Thumper Round." Not being familiar with the term I inquired farther. Both Rangers stated that the cartridge fired a high explosive round. It was submitted as an exhibit at that time with the 28 plastic Ferret cartridges.

At some point later I spoke with Special Agent (FBI)Rick Crum who was in charge of FBI personnel at the crime scene. I told him about the spent cartridge and that Ranger personnel had described it as a "Thumper Round." Agent Crum told me he would make an inquiry about it and let me know his findings. I am not sure but I believe I let Agent Crum look at the item and obtain a lot number from it. I am not positive on this though. The fact that I had discovered this item was made known to Ranger Captain Byrnes who was in charge of Ranger personnel at the time.

On Saturday, January 8, 1994 I traveled to San Antonio, The trial of the US Government versus the Branch Davidians would begin on Monday, January 10. Testimony actually began on the afternoon of January 12, 1994. I did not take the stand to give testimony until the morning of Thursday, January 13. I would testify again on February 2 and February 10. On my first day of testimony I presented all evidence that I had collected from Sectors E,I and J. Prior to my testimony of January 13 I was contacted by Agent Crum who was also in San Antonio for trial purposes. Agent Crum told me that he had checked the lot numbers of the item in question and that the round did belong to the FBI and that it had been fired by them. He continued by saying that the Agents who were dispensing the CS gas into the Compound on April 19 had fired the round after obtaining permission to do so. I do not know who gave the permission. According to Agent Crum the projectile had been fired at a door near that portion of the building in an attempt to knock it down so the gas could

be dispensed. I remember no further conversation with him about this item. I did not inquire if any examinations had been conducted on the cartridge. I was about to enter the courtroom or something similar and did not have a lot of time to continue the conversation.

To the best of my memory I admitted the exhibit containing this item and the spent plastic Ferret cartridges. These 29 separate items had been placed in a clear plastic bag and sealed. There were no questions asked me by the defense about this particular exhibit.

On Friday, August 21, 1998 I traveled to Austin and met with Ranger Lieutenant's Coffman and Miller. We went to the location at DPS Headquarter where the Court Exhibits from San Antonio are stored. At that time we met with a documentary film maker who had requested visual inspection of certain exhibits. One of his requested items was that of the "thumper round". Prior to this meeting I had been faxed a photograph of what I believe to be the cartridge in question. This photo had been taken at the FBI Laboratory in Washington,DC. I have never seen the original photograph but believe it to be in the possession of Captain Brune, however, I am not certain of this only that he faxed it to me. During the search for the requested items, we could not locate this exhibit. After discussion with Coffman and Miller the possibility existed that the item had not been submitted as a Government's Exhibit during the trial as I had believed. If that was the case it would mean that the exhibit would be currently stored at a warehouse in Waco with the other non-trial exhibits. However, it was still my belief that it had been entered during my first day of testimony.

After being unable to locate the item in Austin I returned home. I searched the Internet and found a location that contains the trial testimony of many of the witnesses that appeared in the San Antonio prosecution. My testimony is among these. In reading my testimony, particularly when exhibits of my Sectors are being admitted, I found no mention of a plastic bag containing 28 spent plastic cartridges and one spent metal cartridge. I do not know if the transcripts I was reading from are complete or not.

It is now my understanding that at the time of this writing the exhibit has been found at the Austin storage site. This would seem to indicate that it was admitted during trial but would not necessarily mean so. I do not know if the plastic bag that contains the cartridges is affixed with a yellow Government Exhibit marking or not. This information would definitely clarify if it was admitted or not.

I never came forward with the information that would seem to indicate that an explosive projectile was fired on April 19,1993 other than stated above. But I was never asked the question. If I had been I would naturally responded with the truth. Be it on the witness stand or elsewhere.

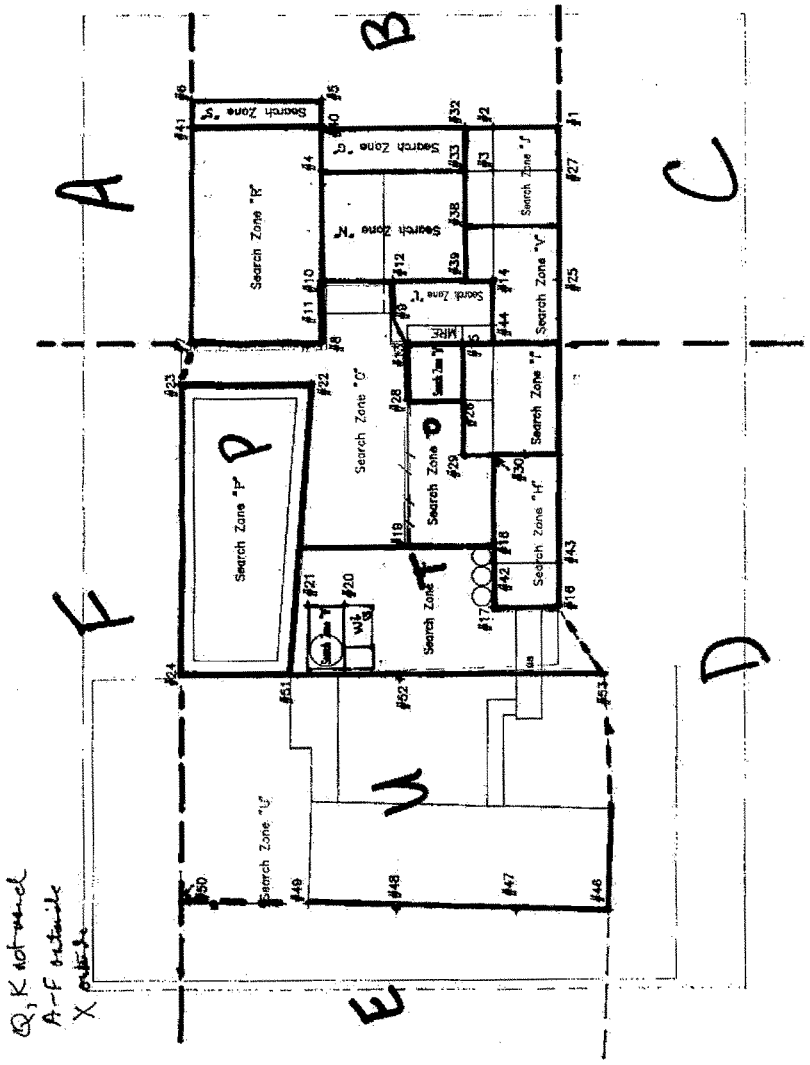
I know that Lieutenant Coffman contacted then Senior Captain Cooke and Captain David Byrnes before they were to testify before the Senate Sub-Committee in Washington and reminded them

of the possibility of an explosive round having been fired. I believe this to have occurred during the Summer of 1995 while I was on a seven week sick leave having had my heart repaired.

Respectfully submitted,

George L. Turner
Sergeant
Texas Rangers Co. F
Cleburne

CC:Captain Kirby Dendy
Lieutenant Ray Coffman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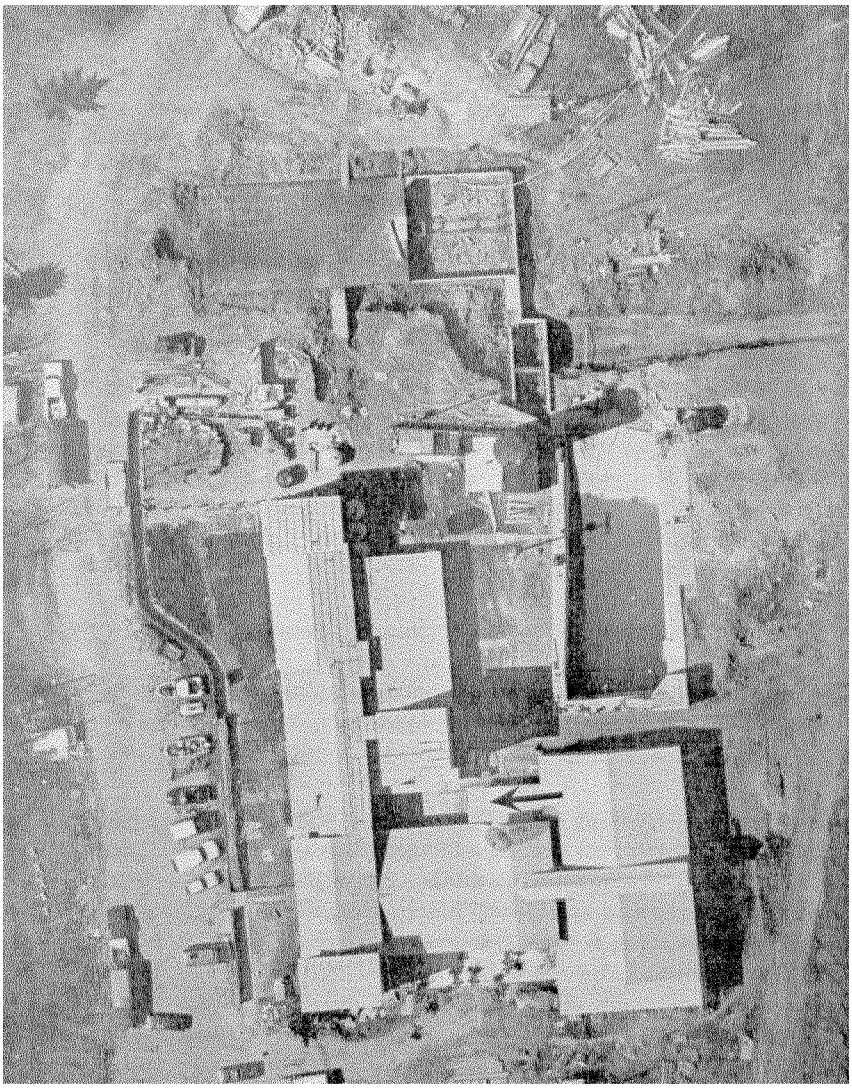
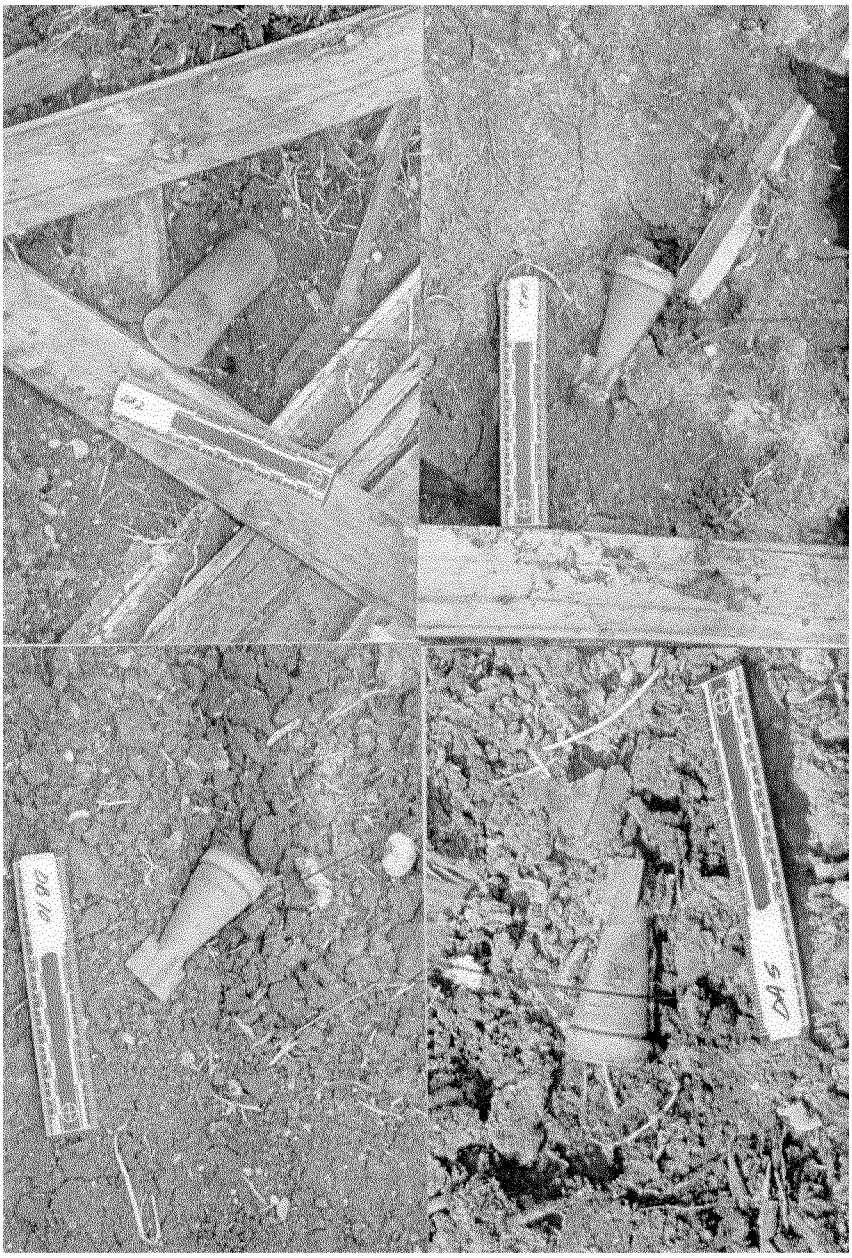


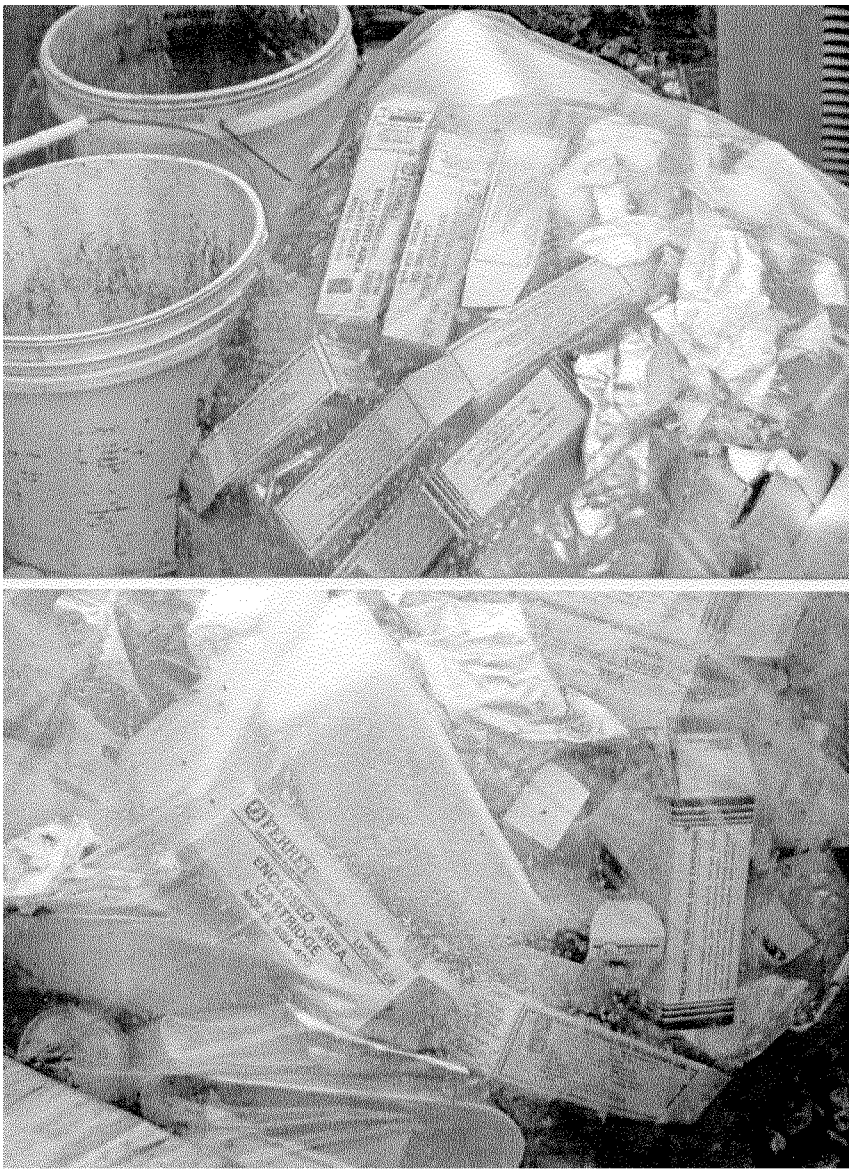
ATTACHMENT B

Photograph of Fired 40 mm "Ferret" Shell Casing

Photograph of Fired and Expanded "Ferret" Projectiles

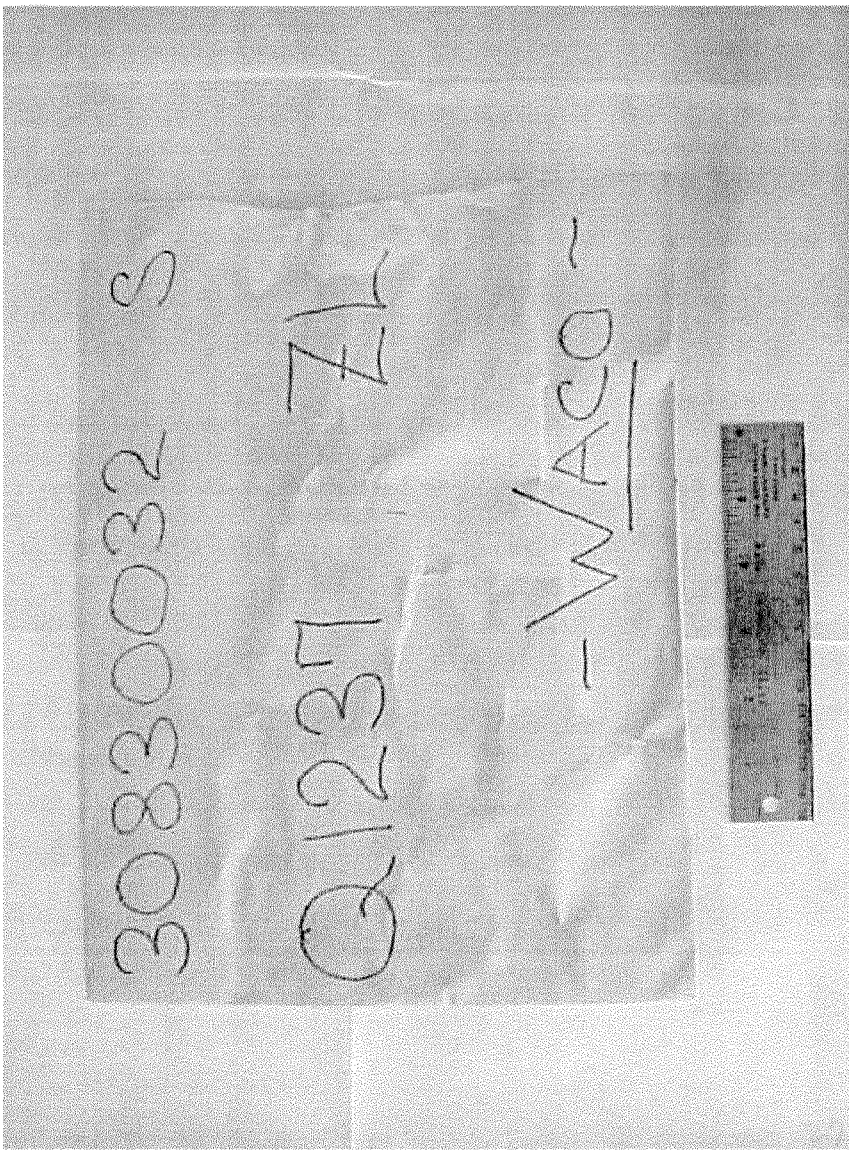
Photograph of "Ferret" Boxes in Trash Container





ATTACHMENT C

Photographs of Q1237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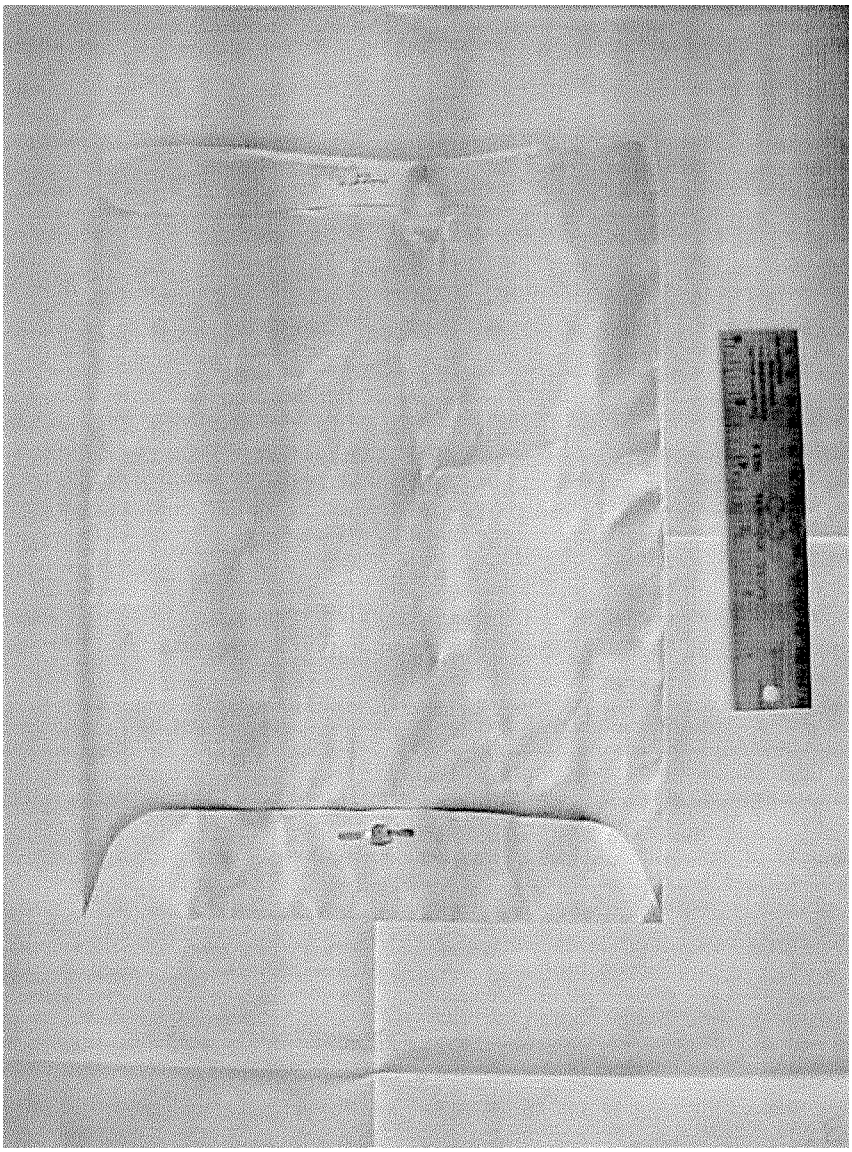

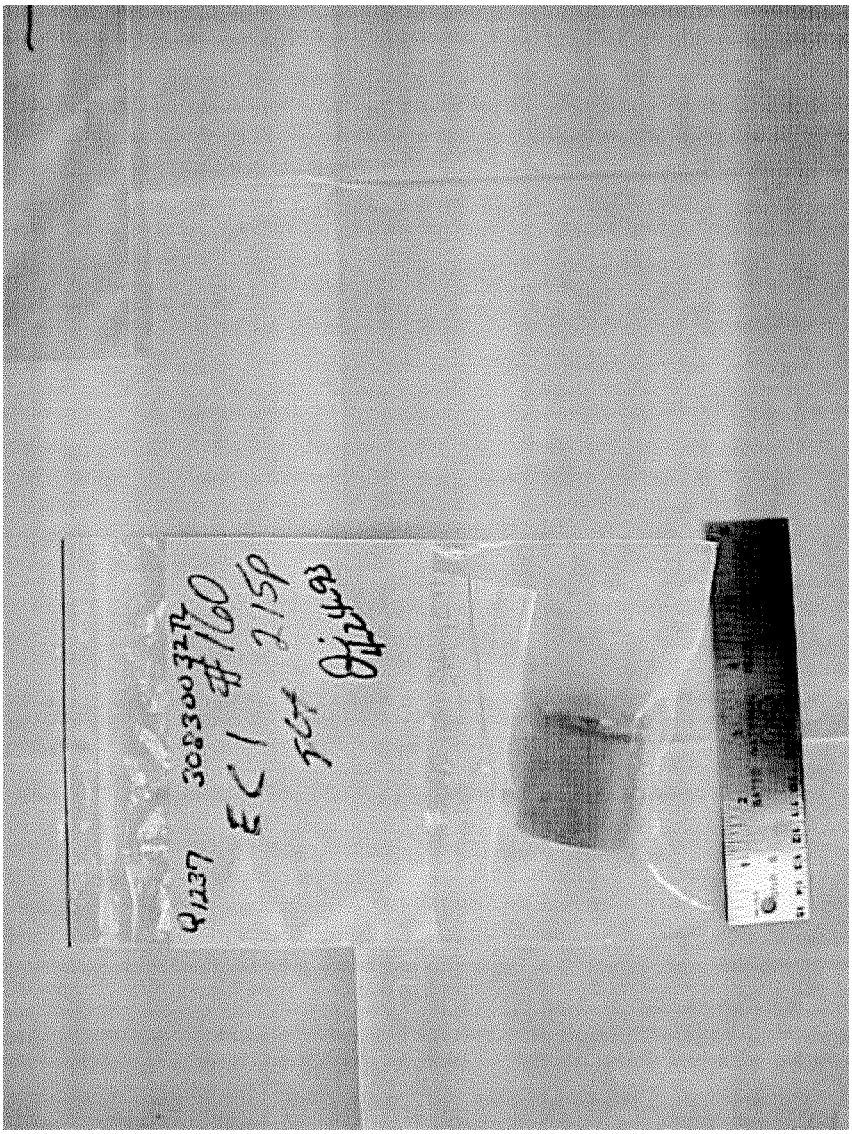

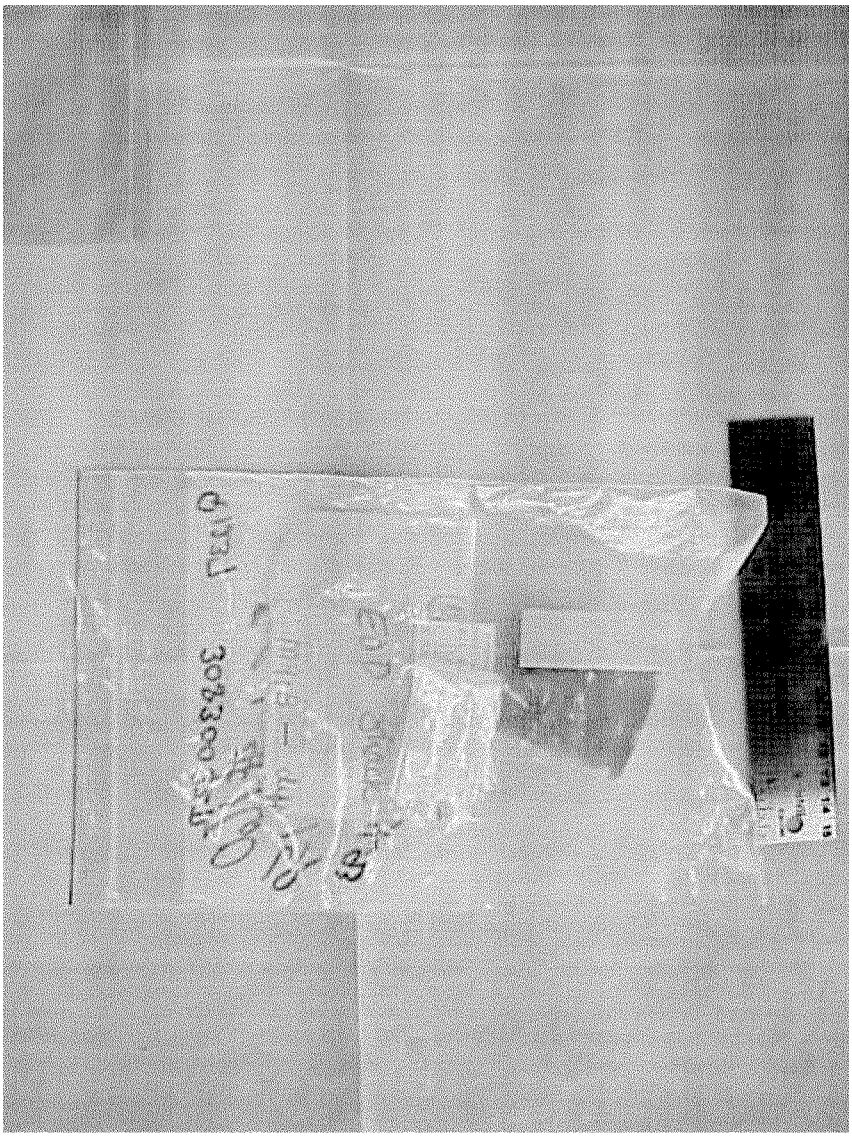

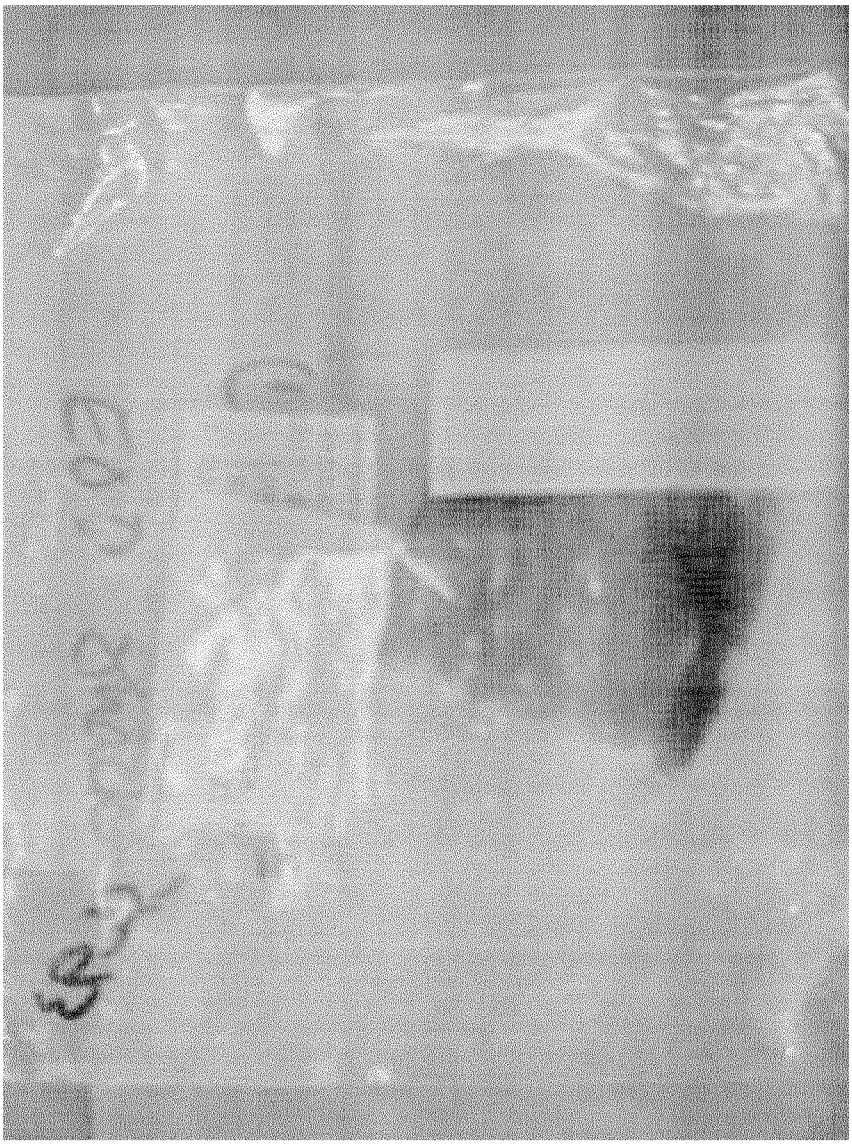

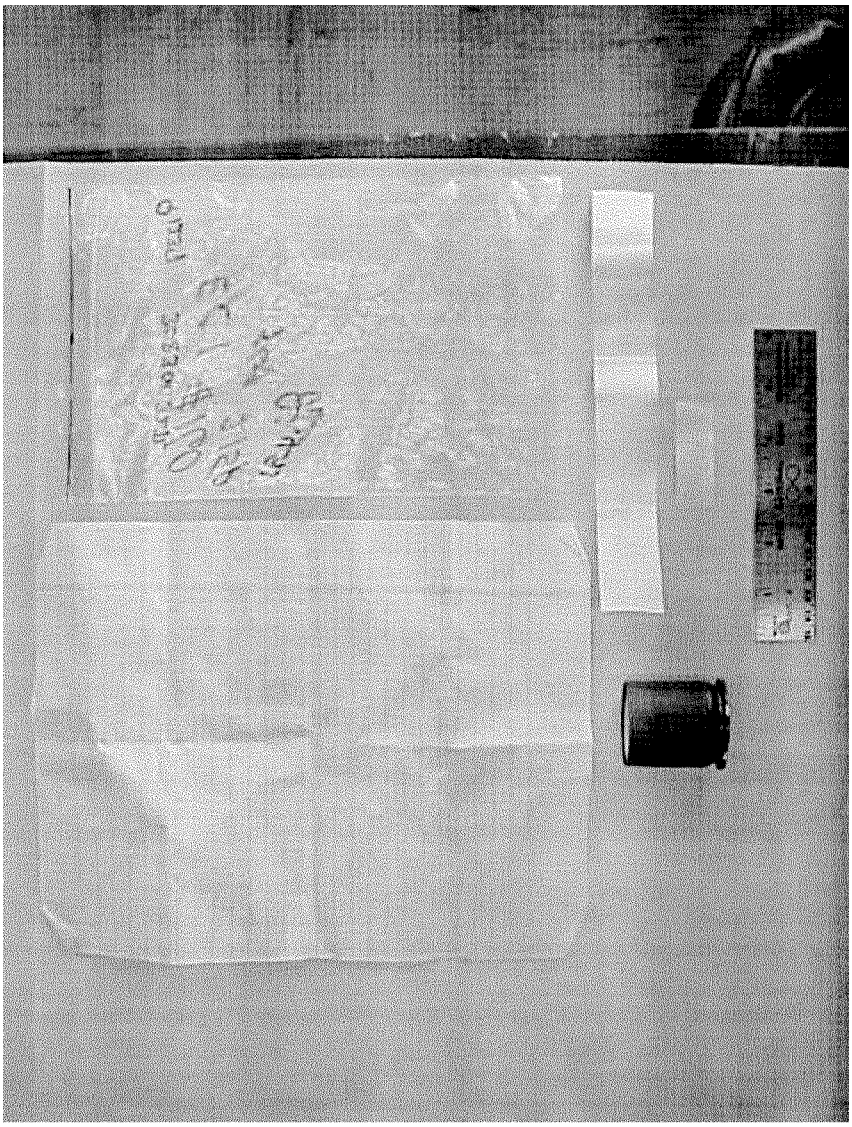

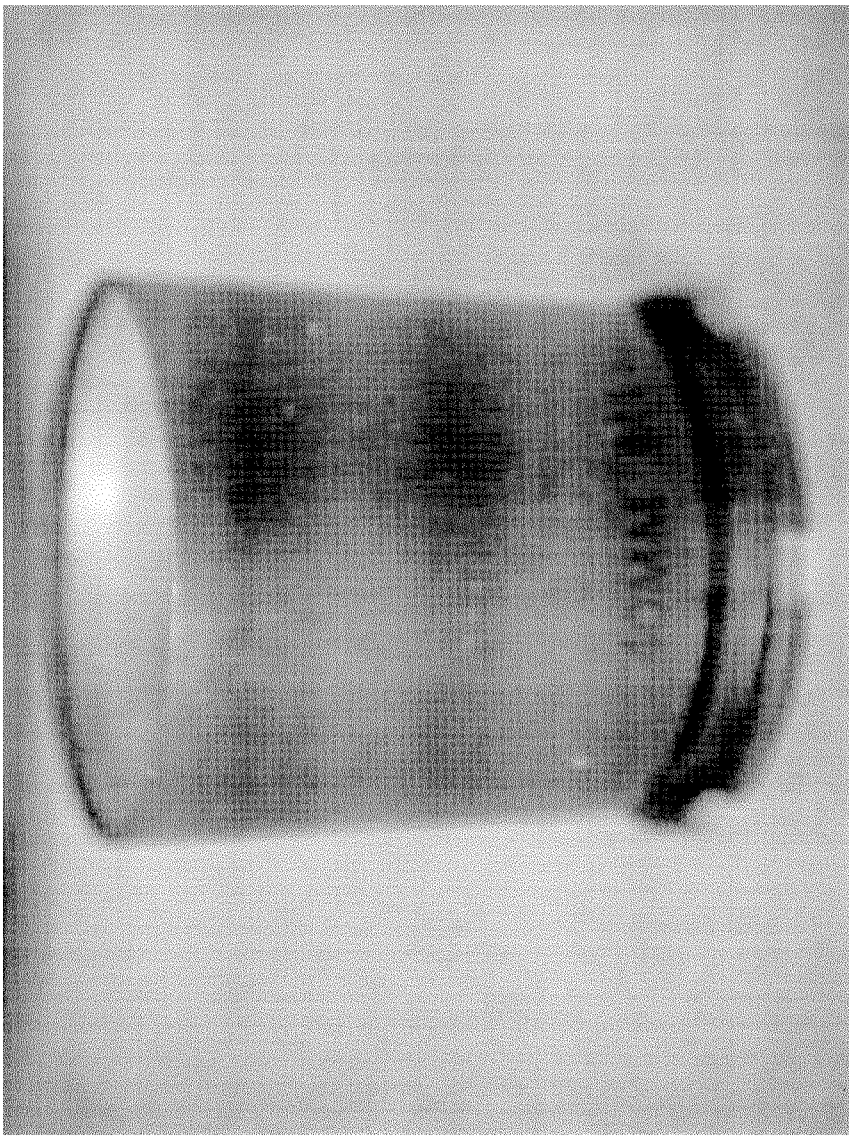

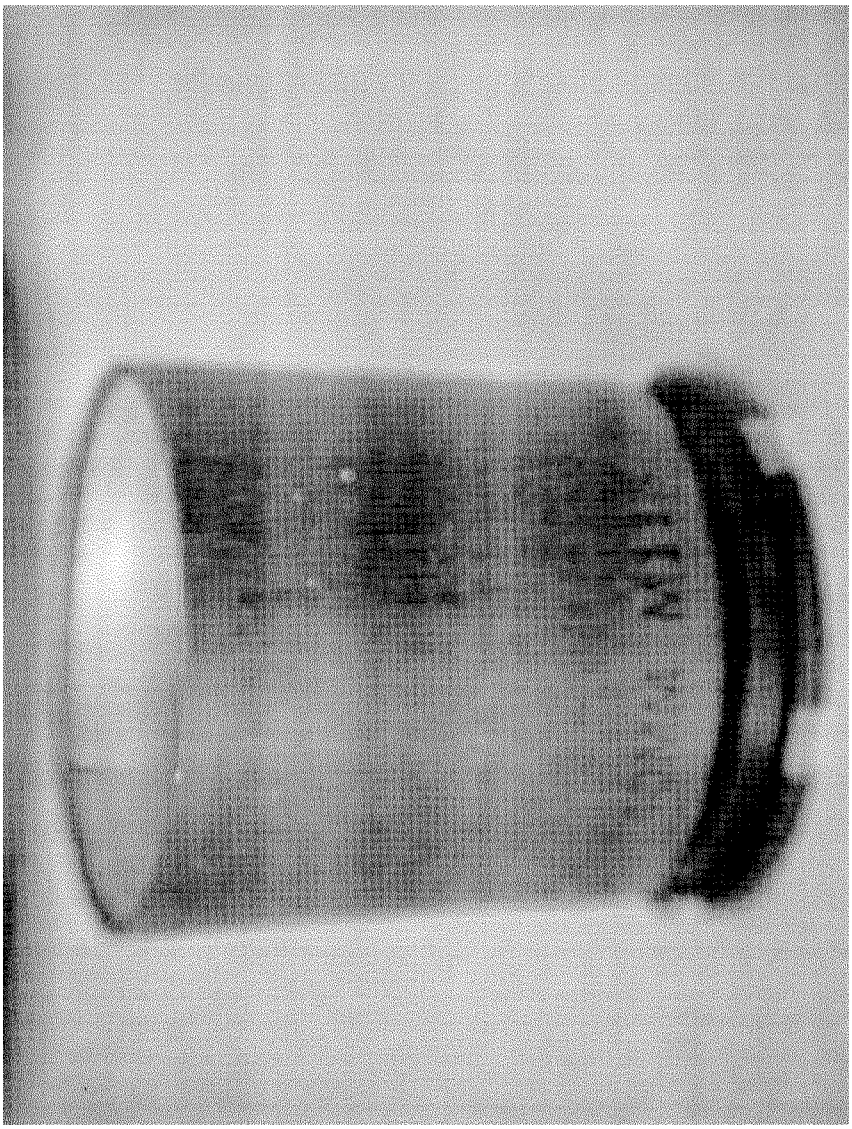

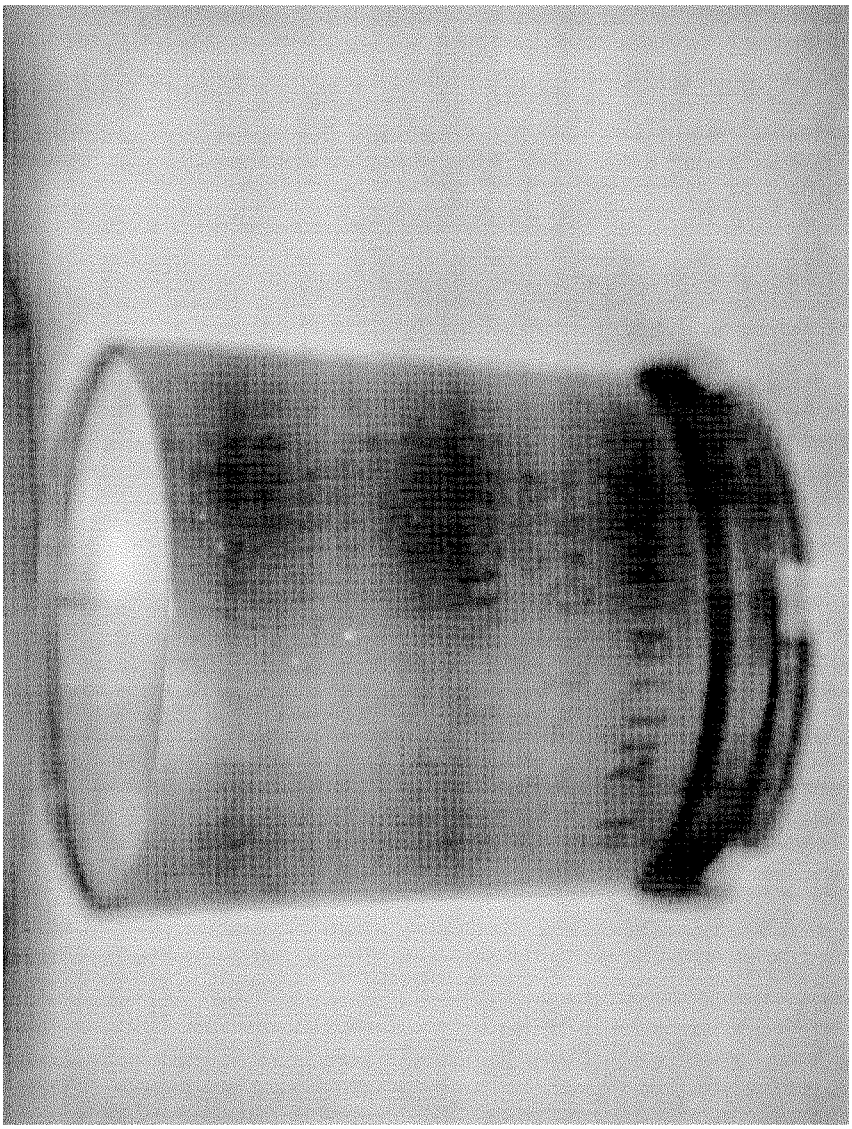

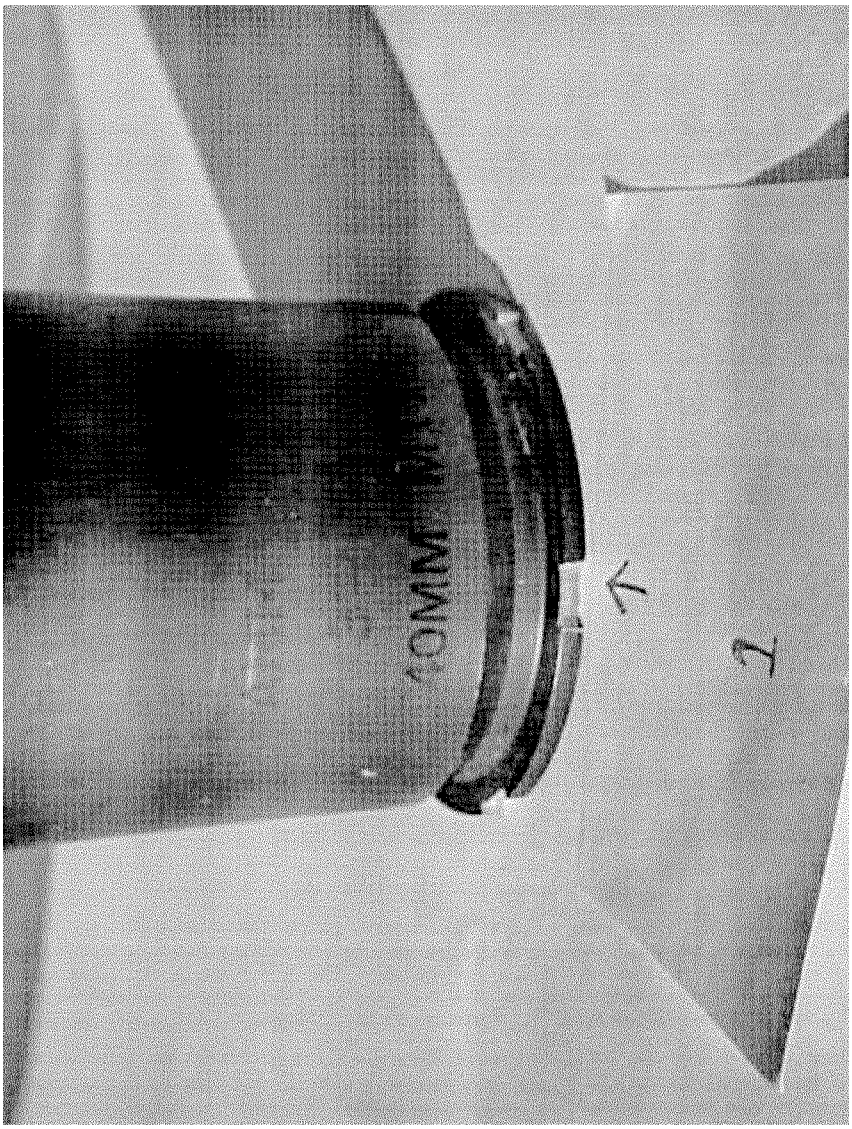
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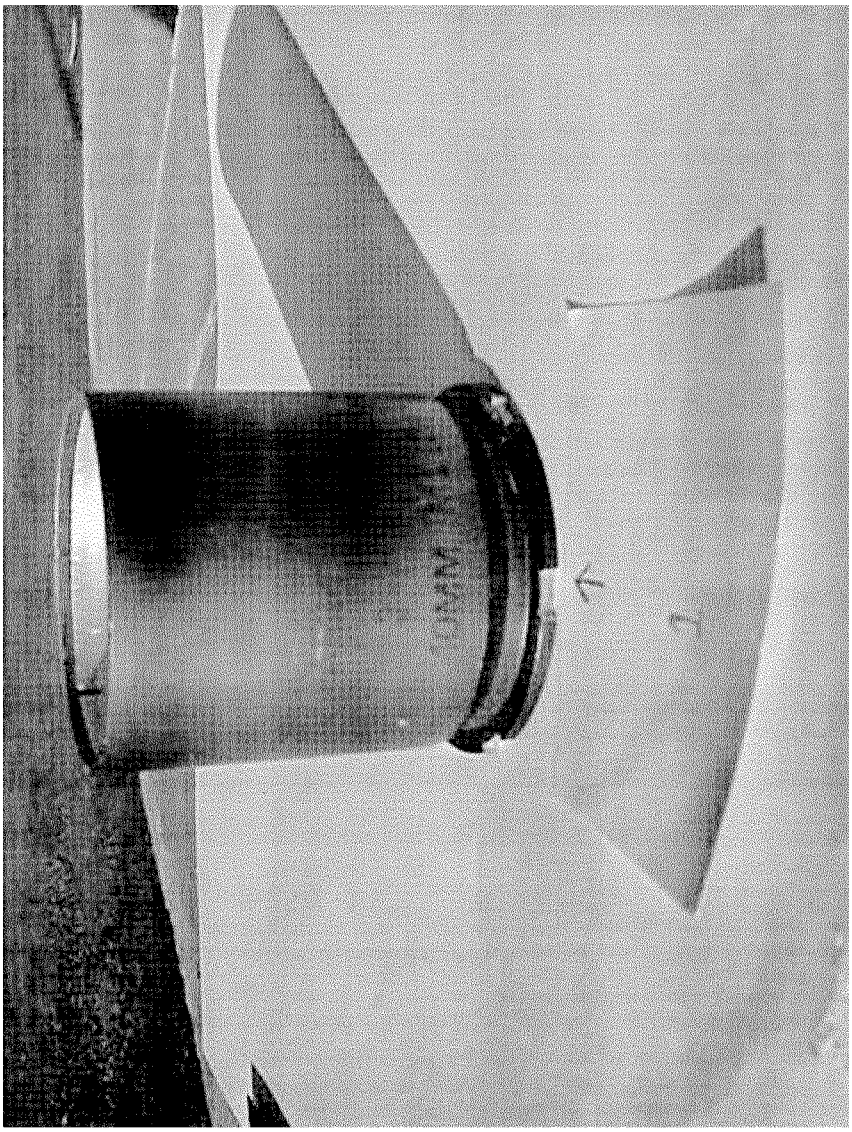

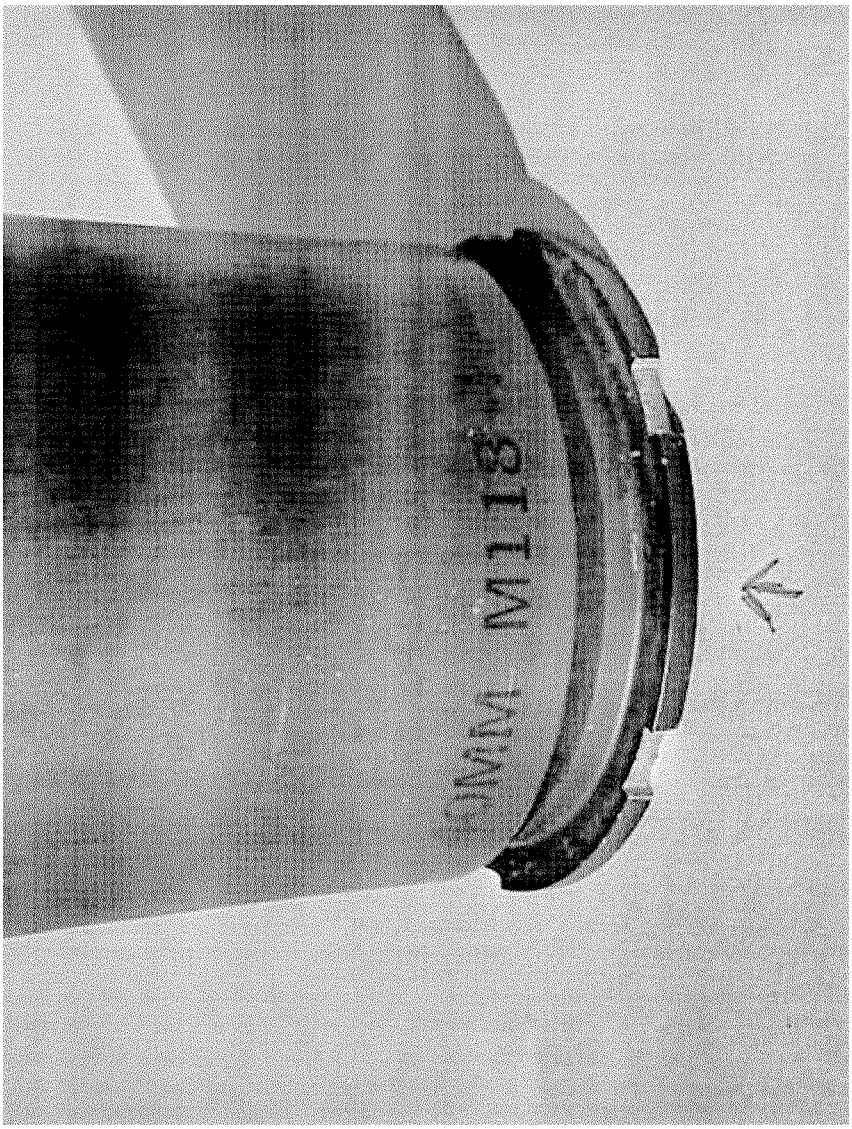
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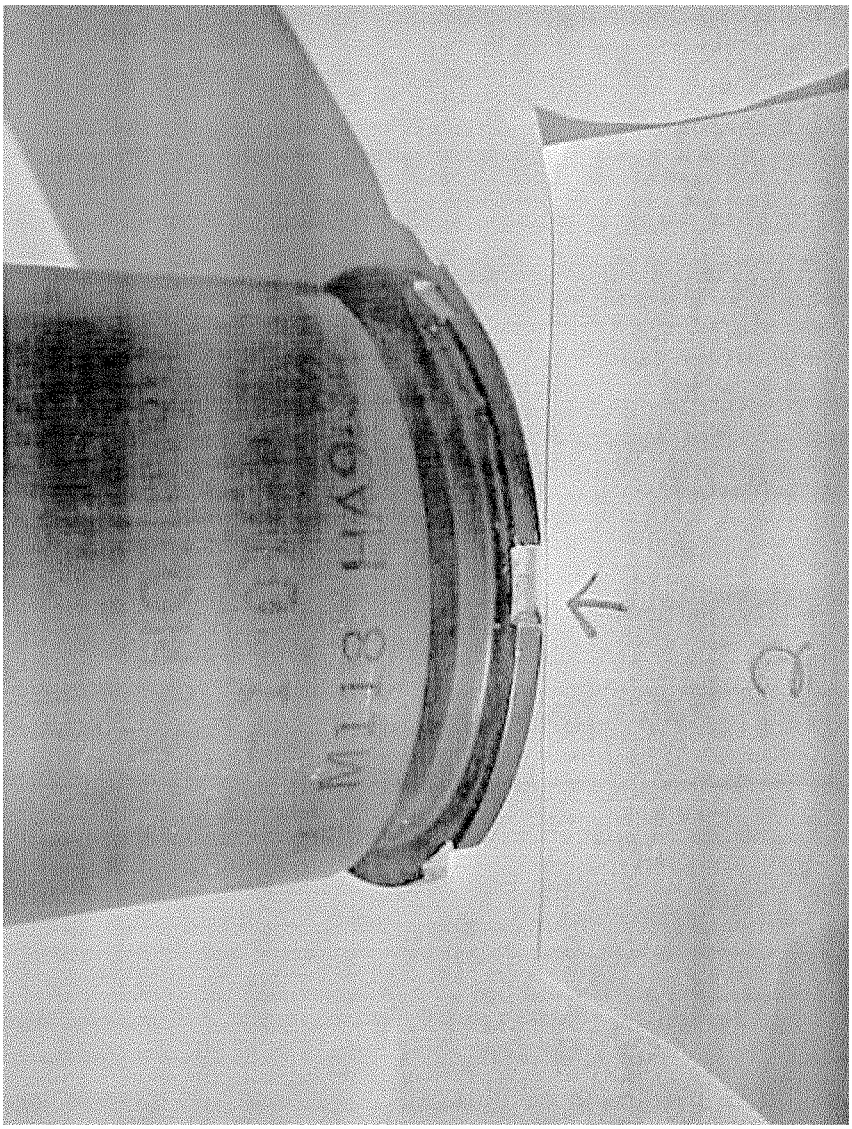

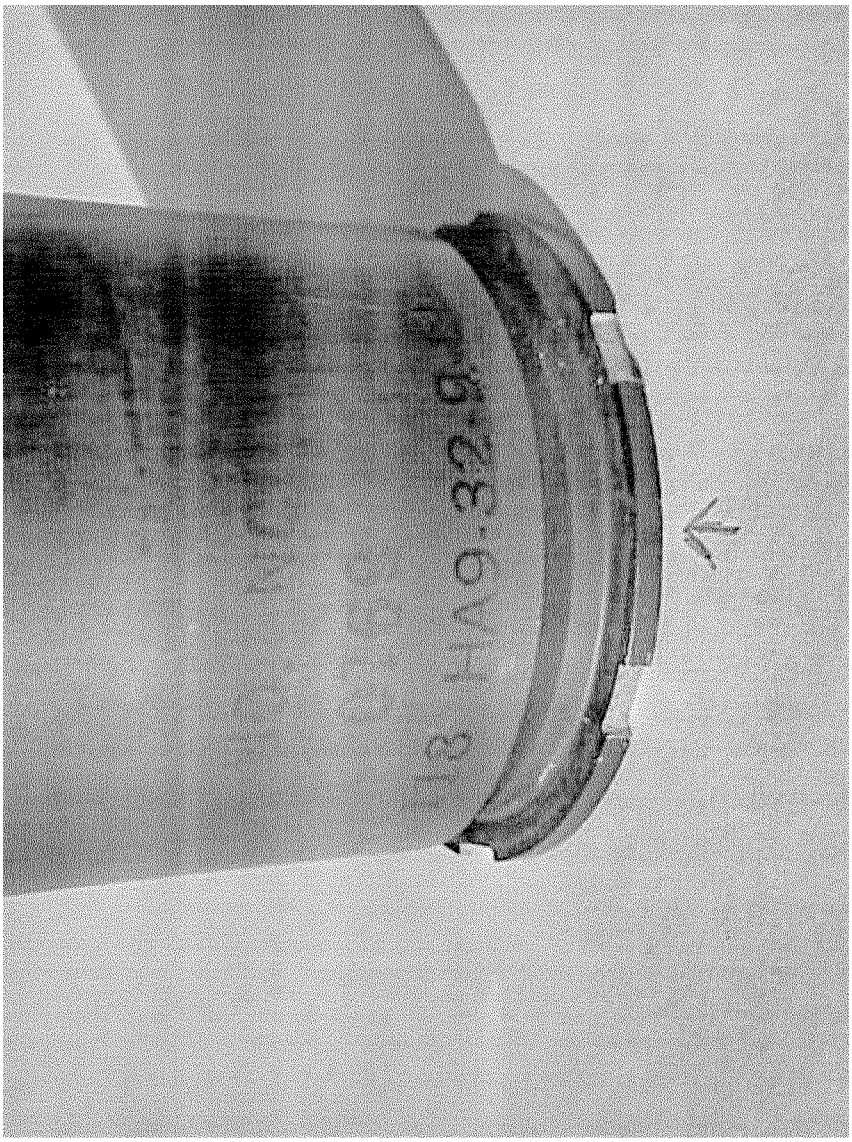

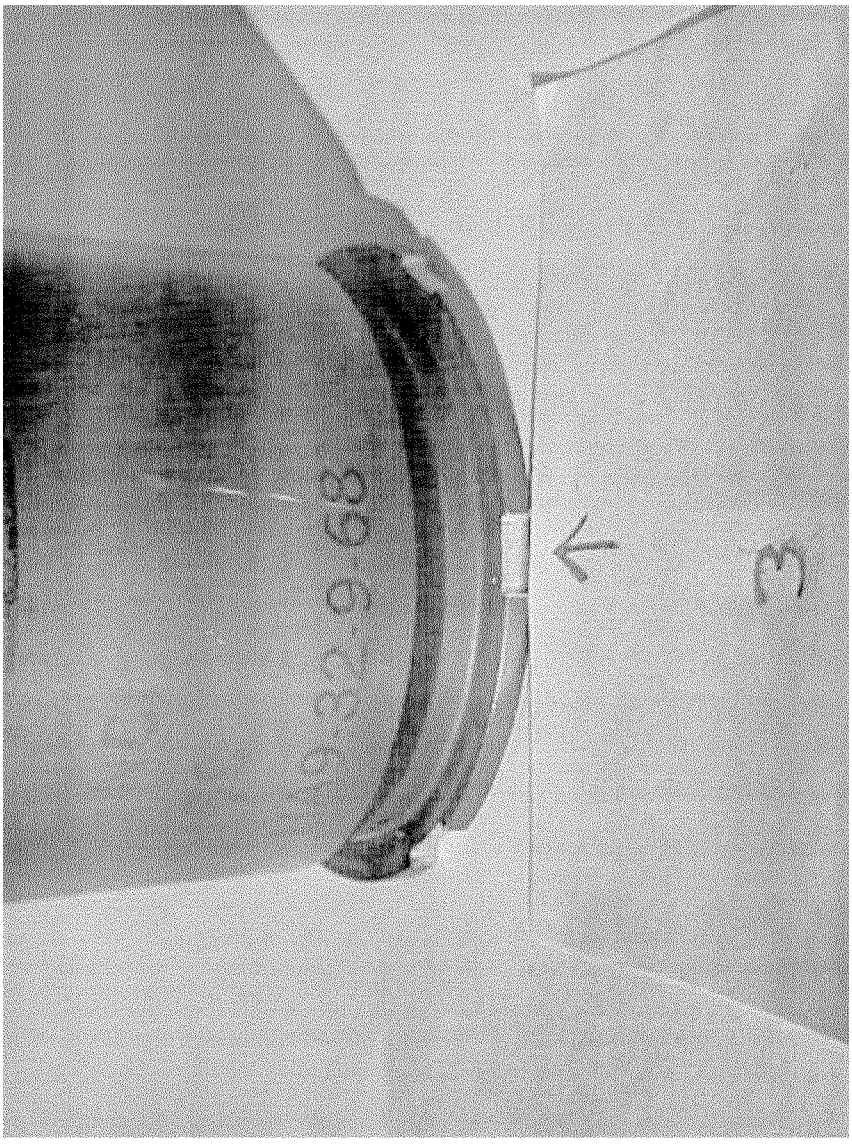
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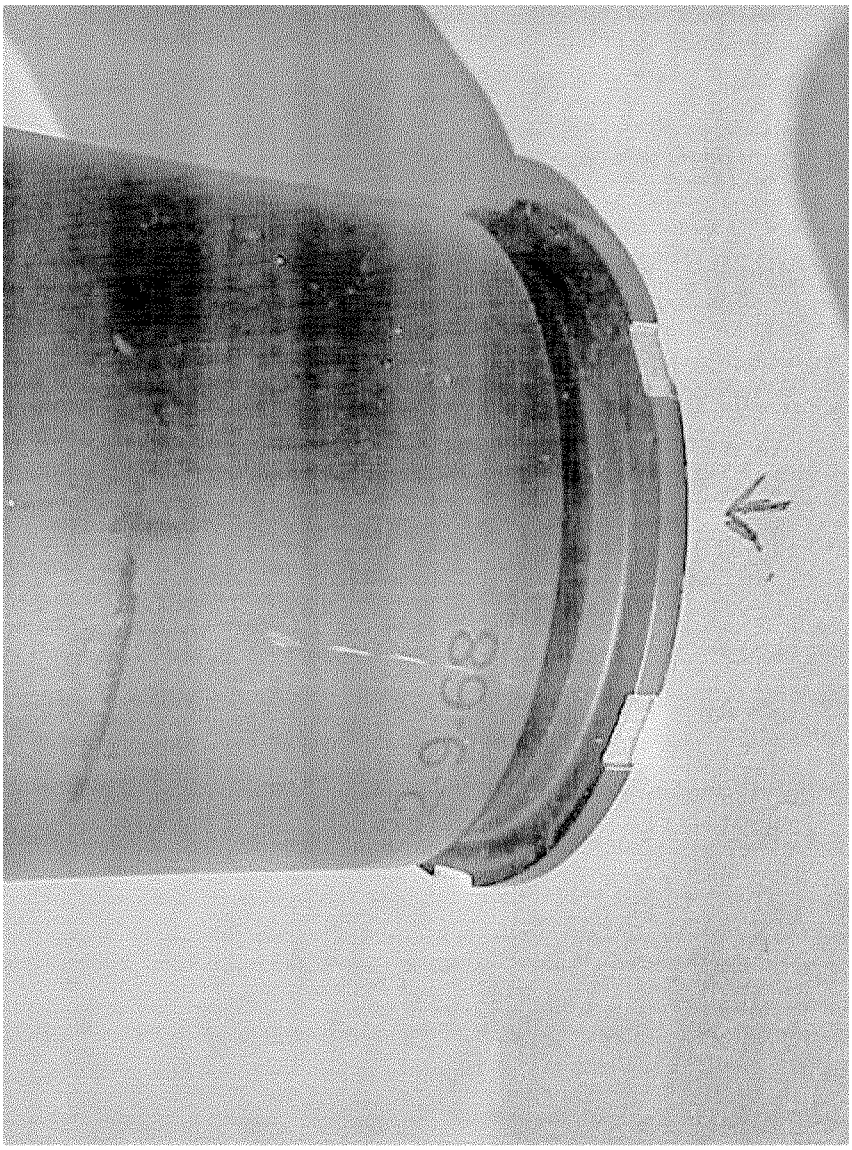

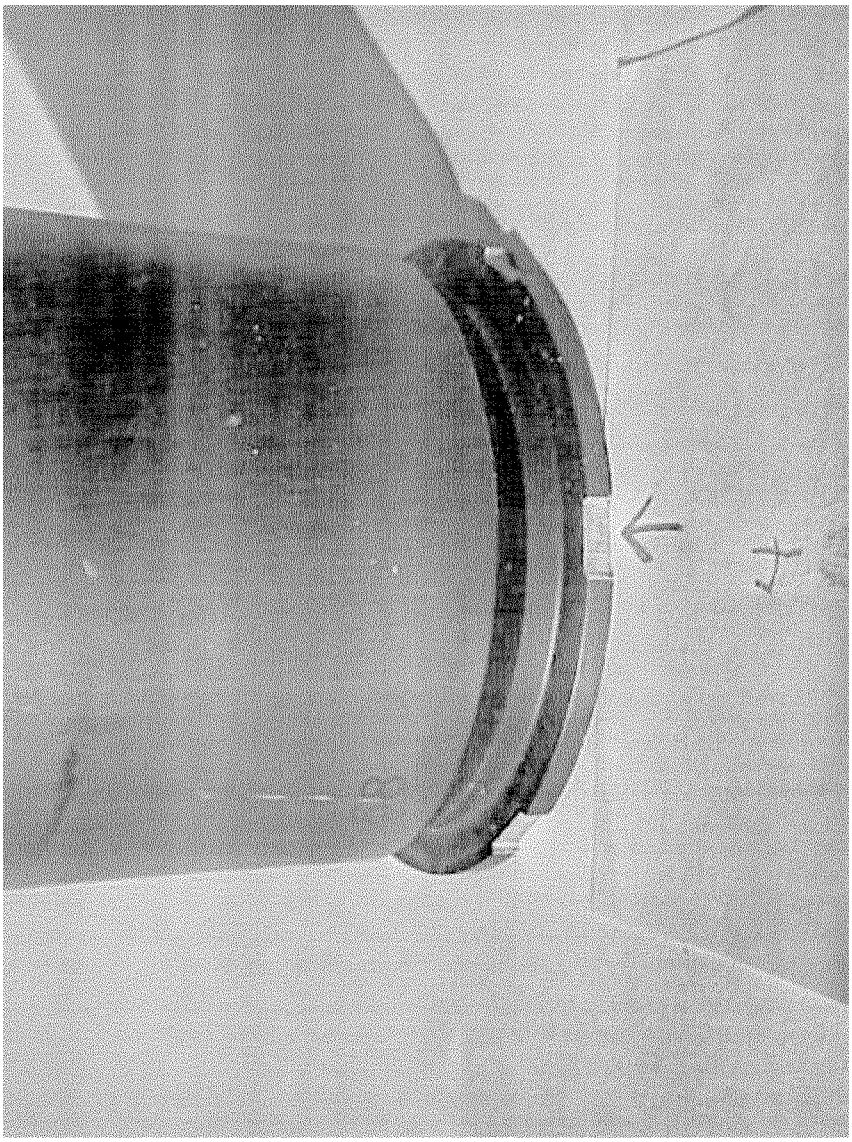

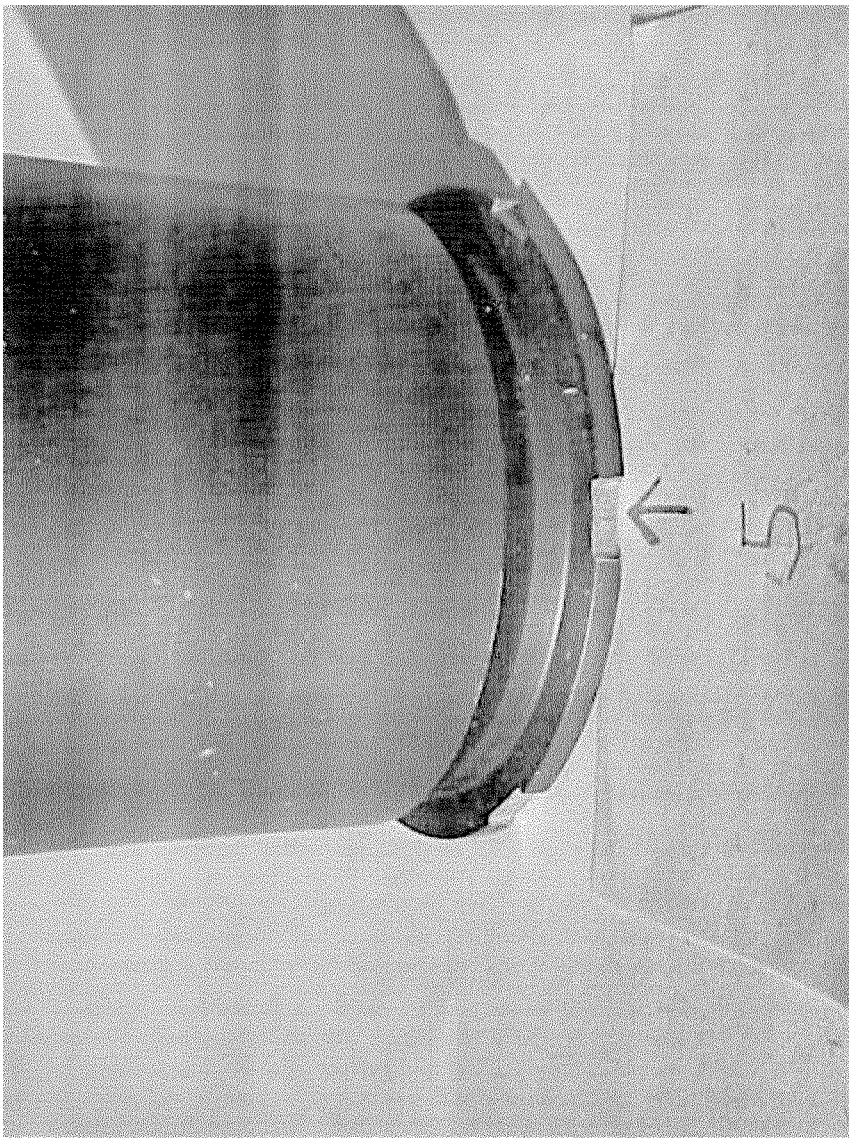

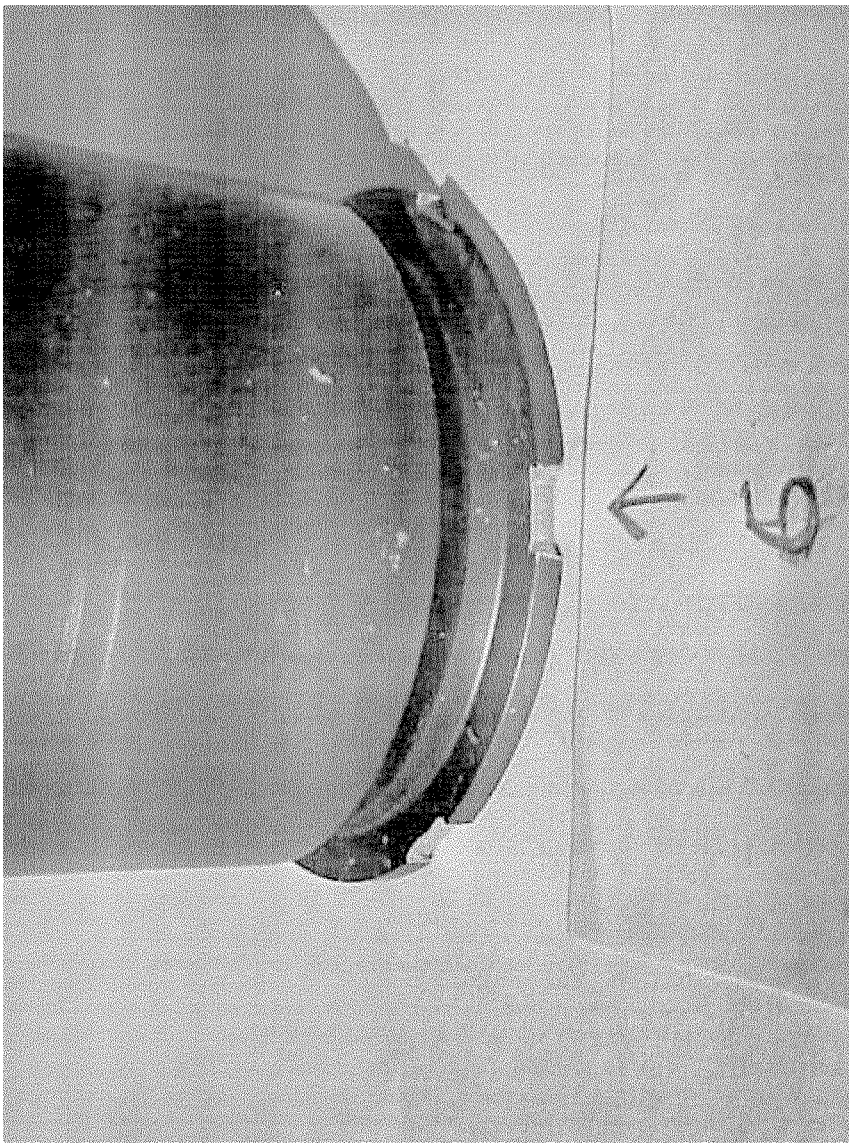
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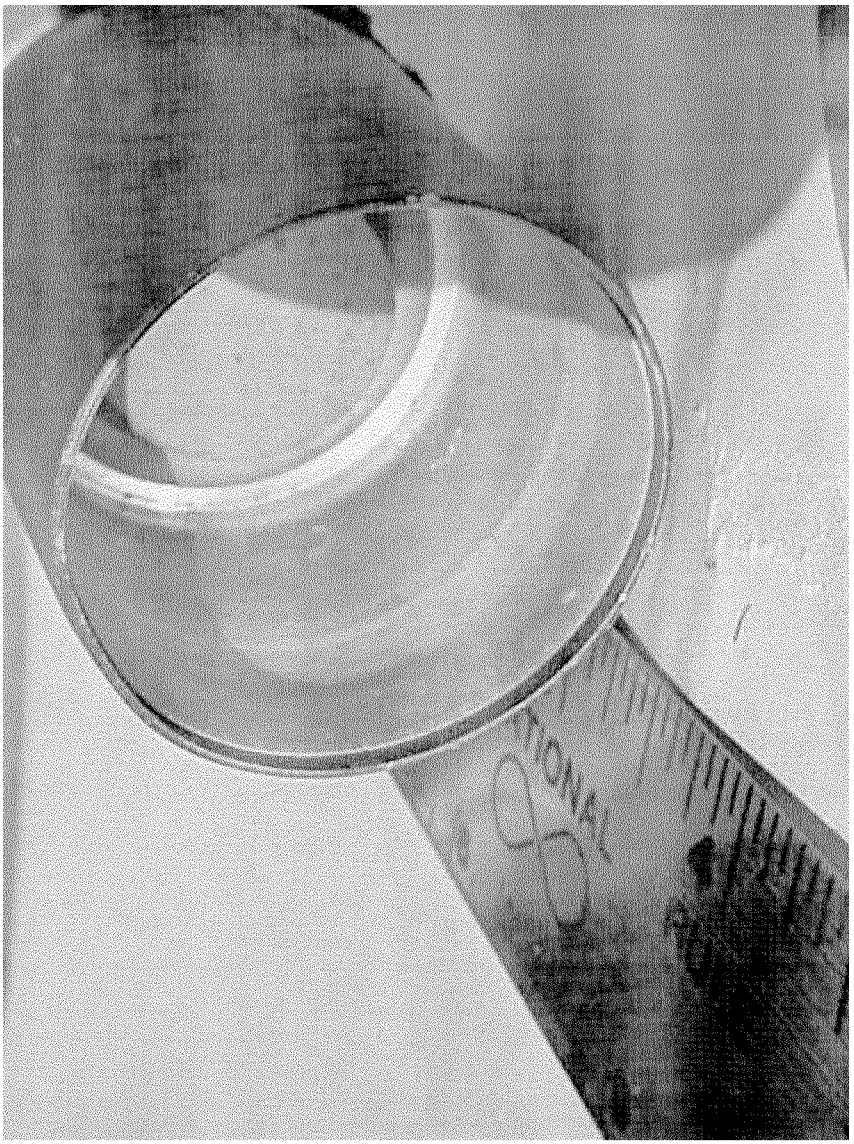

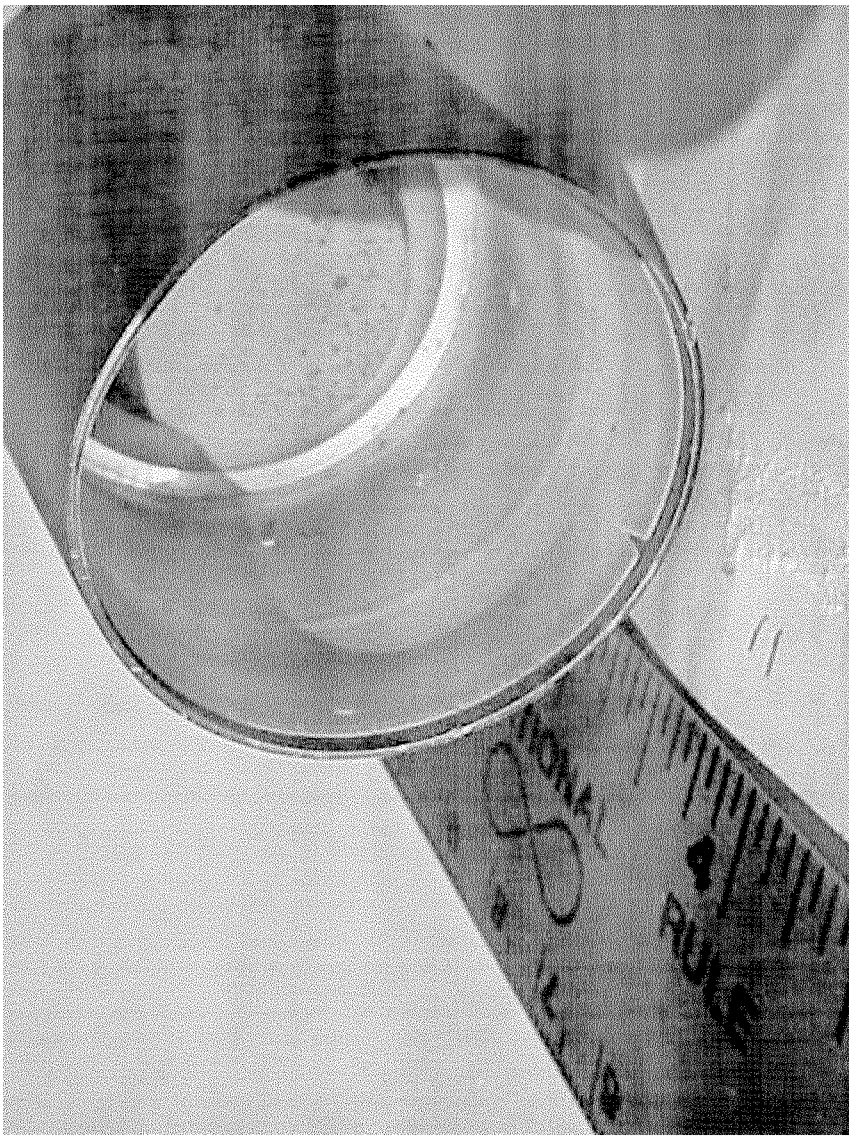
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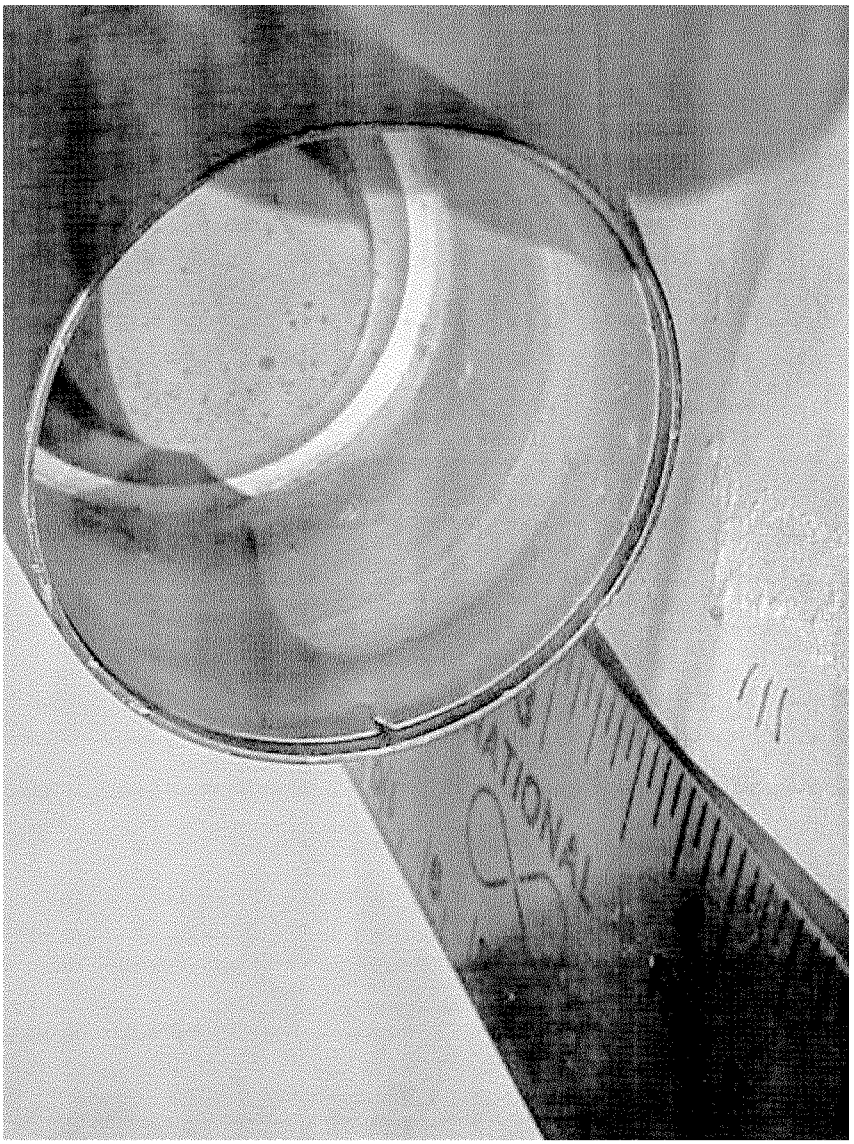
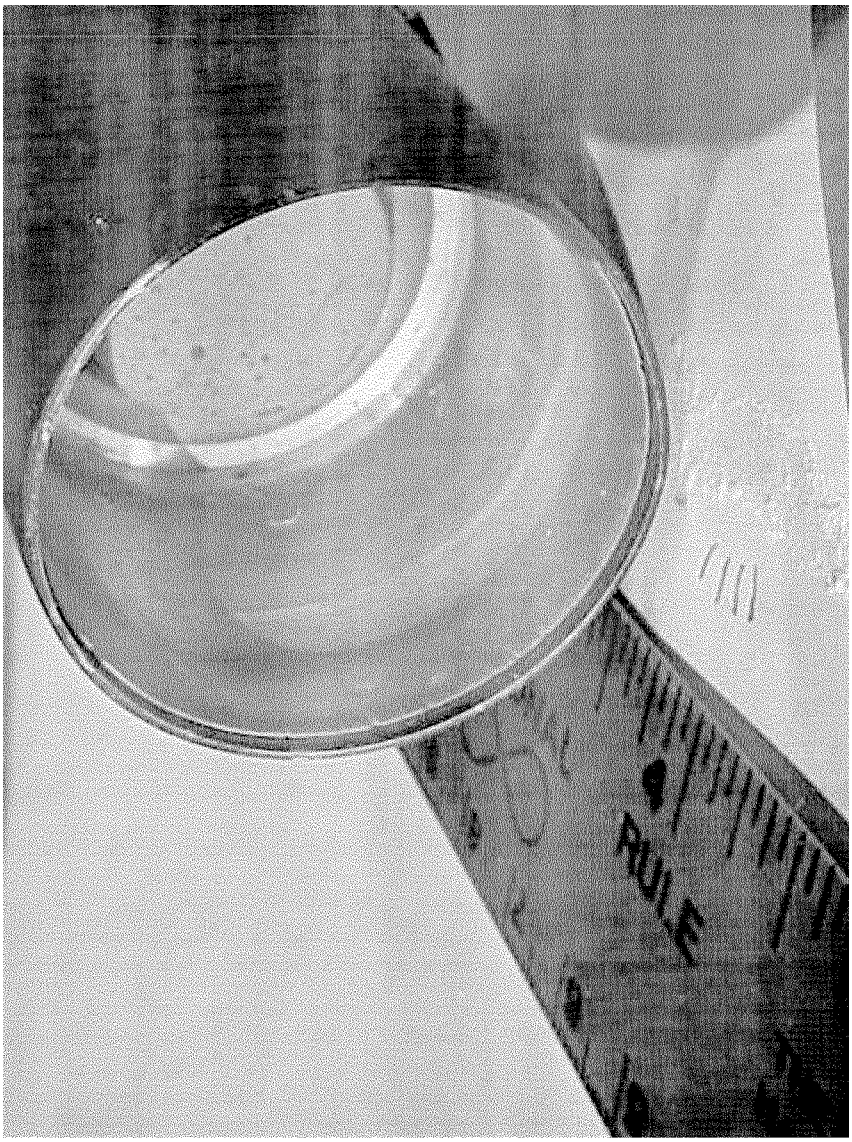

NATIONAL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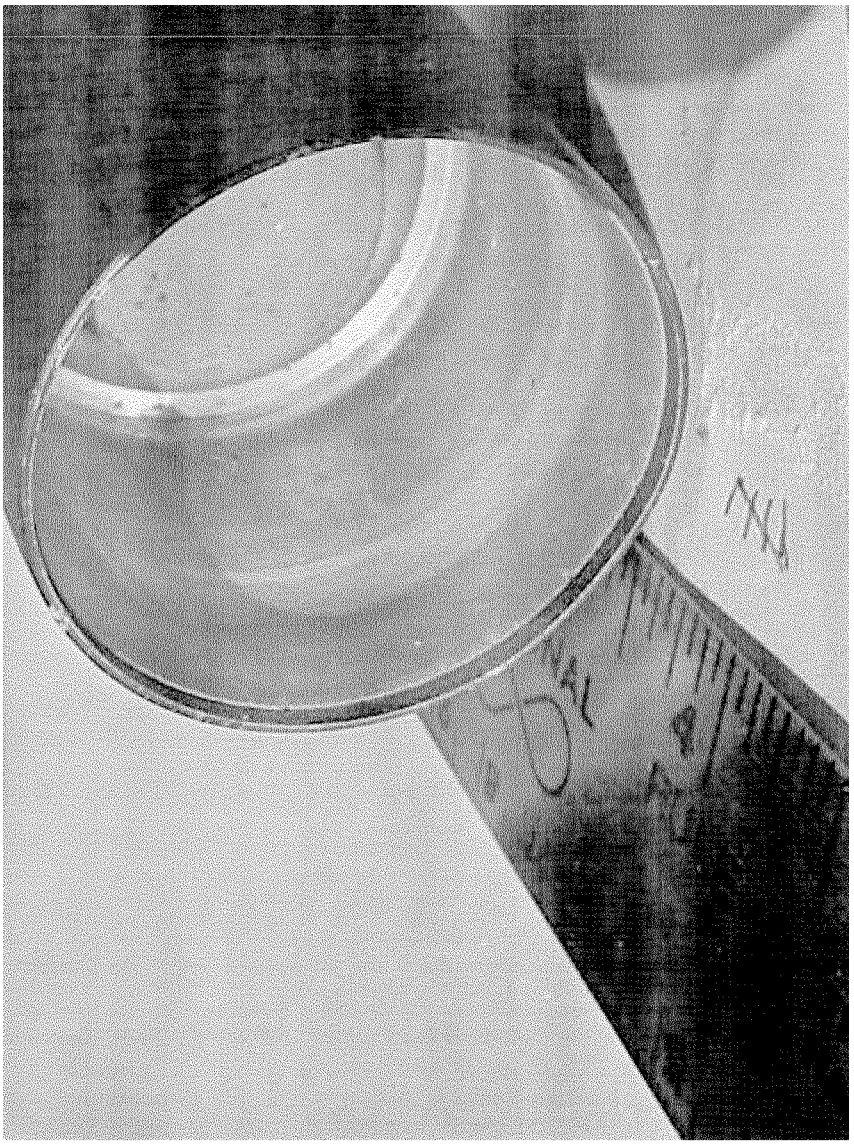


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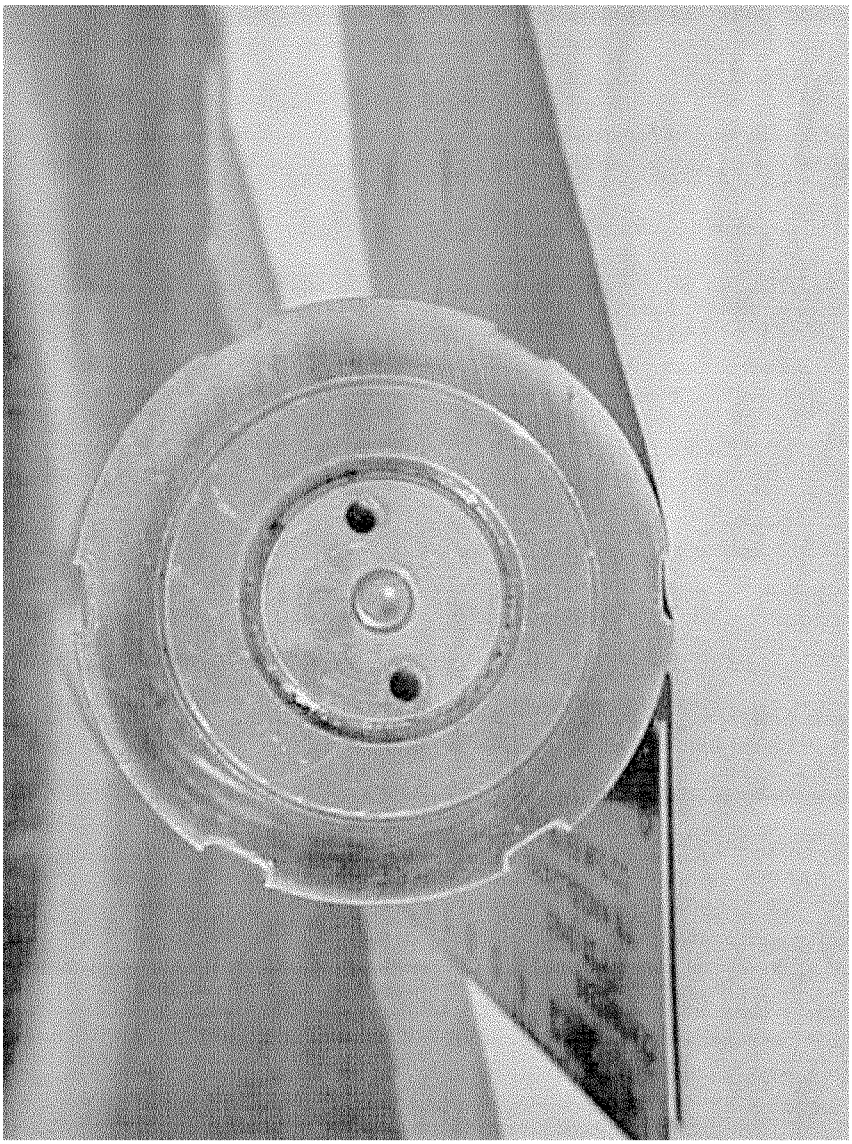
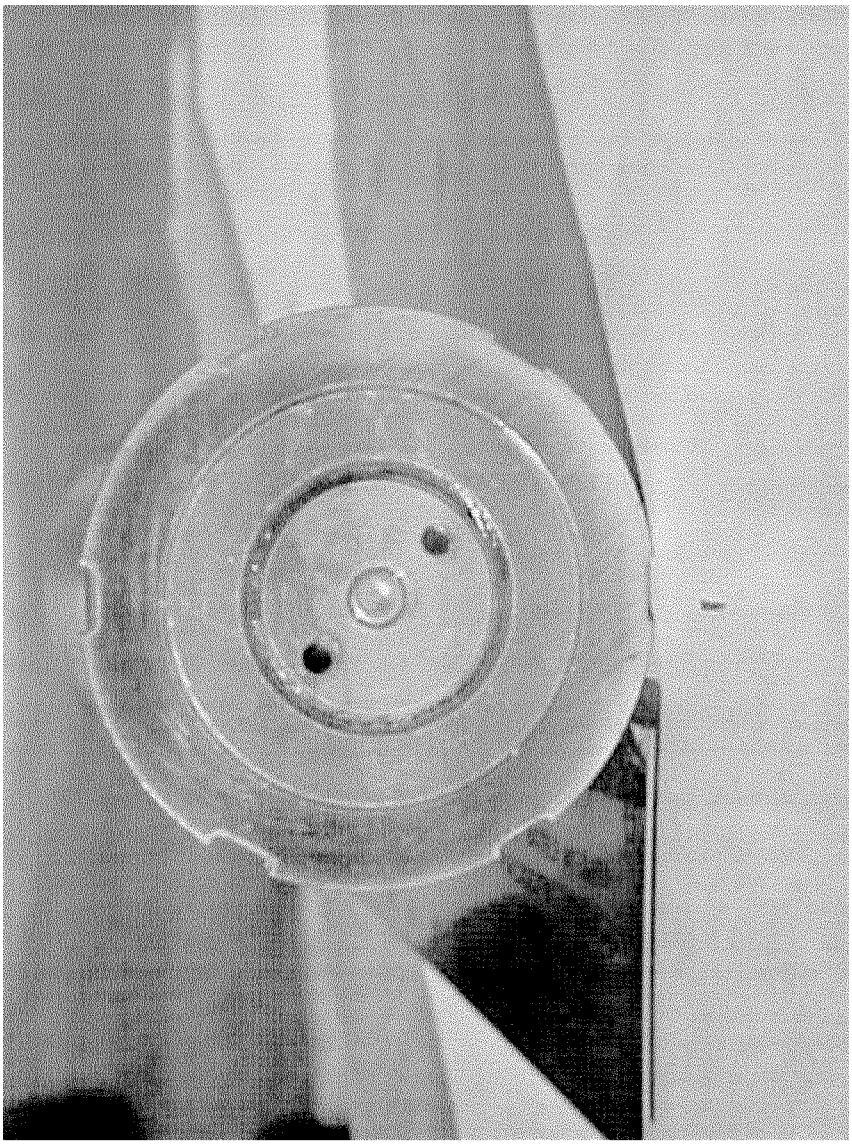
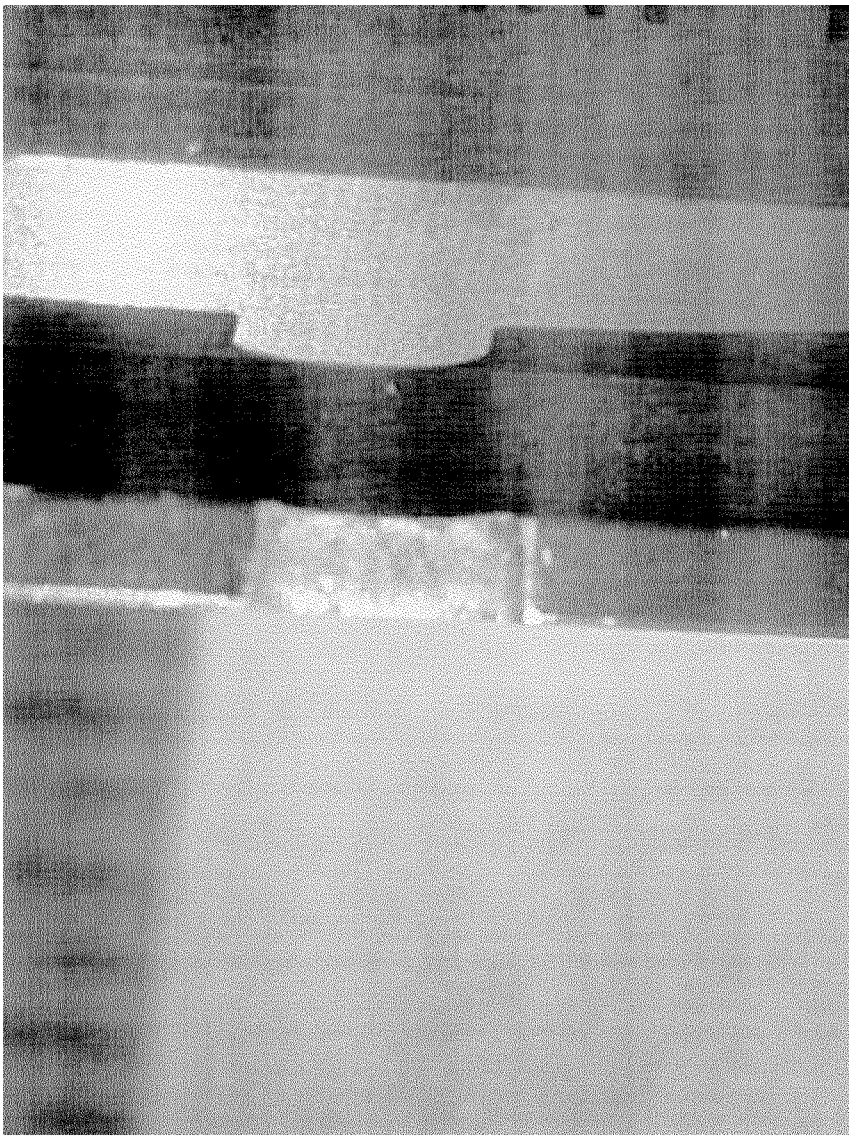
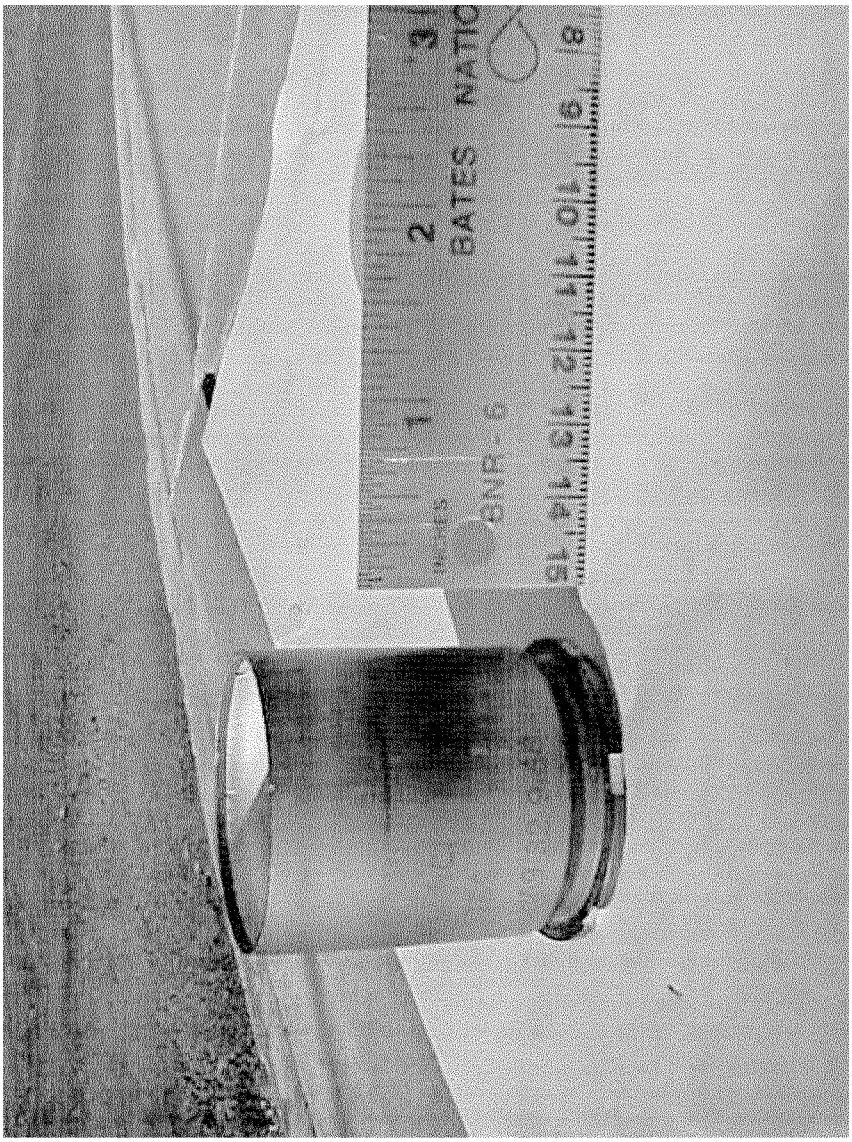







BATES NATIO
BNR - 6

ATTACHMENT D

Ammunition Data Card
Lot Number 3-38

AMMUNITION DATA CARD					Form Approved OMB No. 0704-0188
1. ITEM NOMENCLATURE CTG, 40MM, XM651E1, CS	2. NSN 1310-00-849-2083			3. DODIC B567	4. LOT NUMBER NCI-3-38
5. MANUFACTURER NORTHRP CAROLNA		6. NET QTY 37964		7. PACKING OF LOT 24/BOX	
8. CONTRACT/ORDER NO. SEE-REMRK	9. DRAWING AND REV. SEE-REMARK			10. SPECIFICATION AND REVISION 196-131-835A-7	
11. DATE STARTED 07/29/69	12. DATE COMPLETED 08/11/69	13. DATE INSPECTED 08/11/69		14. LINE 107	15. ZONE WGT
16. SPECIFICATIONS					
a. CHARGE WEIGHT	b. I O P	c. MAX PACKING DEPTH IN INCHES	d. PRODUCTION PACKING DEPTH RANGE IN.		e. EXPLOSIVE WT PER PACKAGE
17. TEST SAMPLES					
a. NUMBER 35	b. SENT TO			c. DATE SHIP 08/13/69	d. MODE OF SHIPMENT
18. DOT NOMENCLATURE			19. HAZARD CLASS	20. GOVERNMENT QUALITY ASSURANCE ACTIVITY ADD	

21. COMPONENTS					
a. COMPONENT	b. DRAWING NO.	c. MANUFACTURER	d. DATE	e. LOT	f. QTY
CS	MIL-C-50090-B	NCI	0669	NCI-727	2000#
PROPELLANT M9	PA-PD-55	HERCULES	1068	3018-8	40#
HEAD AND CASE CTG	122-2-17-AND-18	NCI	0769	34280	37999
BODY	122-2-8	TRIPLEX	0769	34280	37999
PRIMER M42	899925	GFM	0768	0597-8	37999

FUZE XM581E1	9219774	GFM	0369	NCI-3-38-1	4120
FUZE XM581E1	9219774	GFM	0469	NCI-3-38-2	33879

22. DISPOSITION	23. GOVERNMENT INSPECTOR		
A	a. TYPED NAME ELMER L. NEESE	b. SIGNATURE	c. DATE SIGNED 08/11/69

21. COMPONENTS (CON'T)

a. COMPONENT	b. DRAWING NO.	c. MANUFACTURER	d. DATE	e. LOT	f. QTY
FUZE XM581E1	9219774	GFM	UNK	1-17	UNK
FUZE XM581E1	9219774	GFM	UNK	1-18	UNK

24. REMARKS
CONTRACT OR ORDER NO: DAAA15-68-C-0662
MOD P024
DRAWING & REVISION: DL122-2-6B-8
CHARGE WT: 455 MG/ROUND

DD Form 1650

[Exit Back To Start]

Any Questions or Comments
email Bret Hobbs

OPTIONAL FORM 99 (7-90)

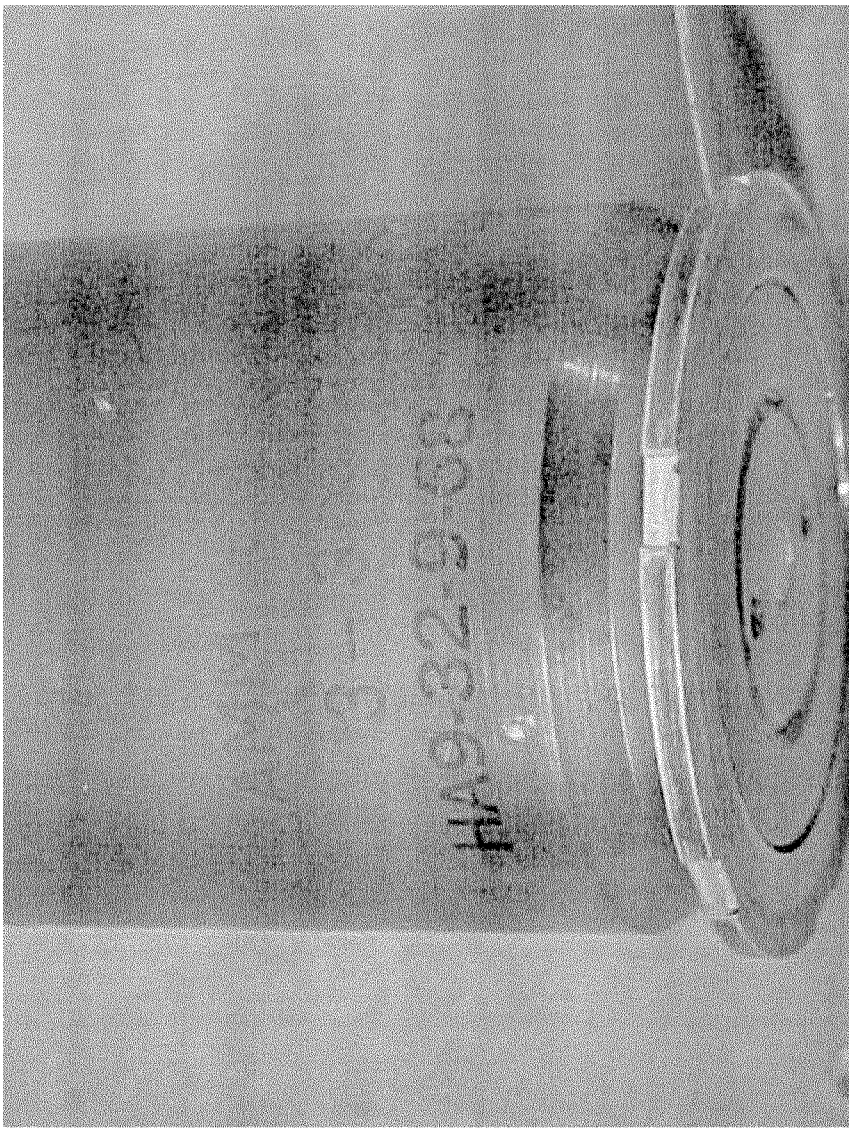
FAX TRANSMITTAL # of pages ▸ 2

To Ed Whitworth	From Kerry Kelly EOC
Dept/Agency FT Hood	Phone # [redacted]
Fax # [redacted]	Fax # [redacted]

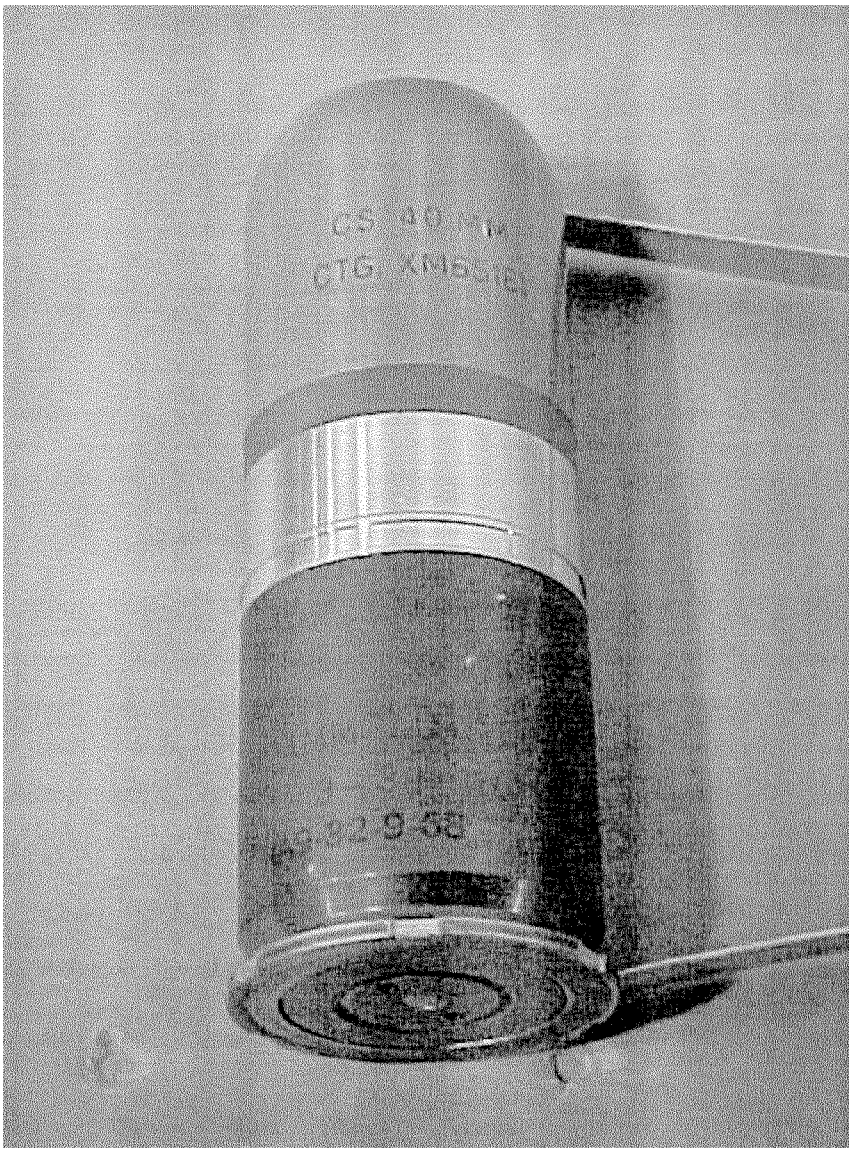
NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

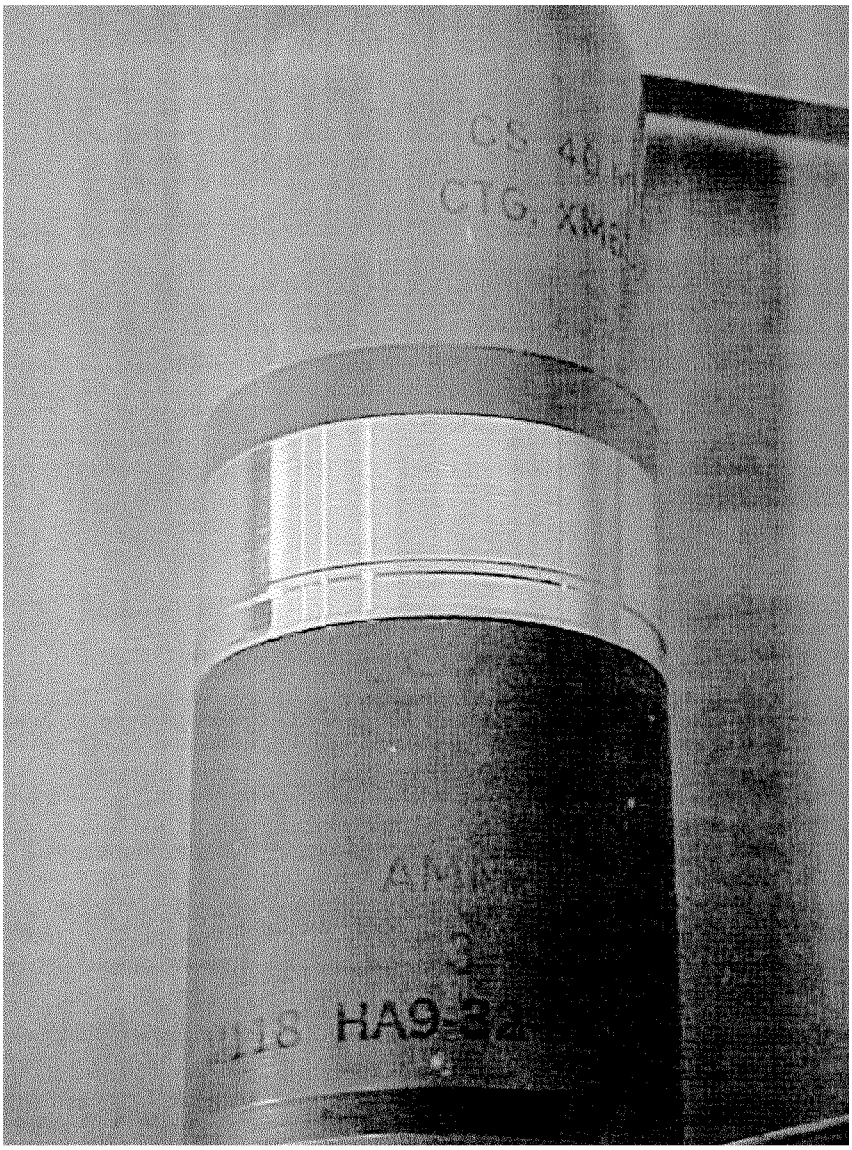
ATTACHMENT
E

Photograph of Loaded XM651 E1
Cartridge from Lot NCI 3-38-1




CS 40 MM
CTG. AM65




HA9-32

ATTACHMENT F

Diagram 122-2-6

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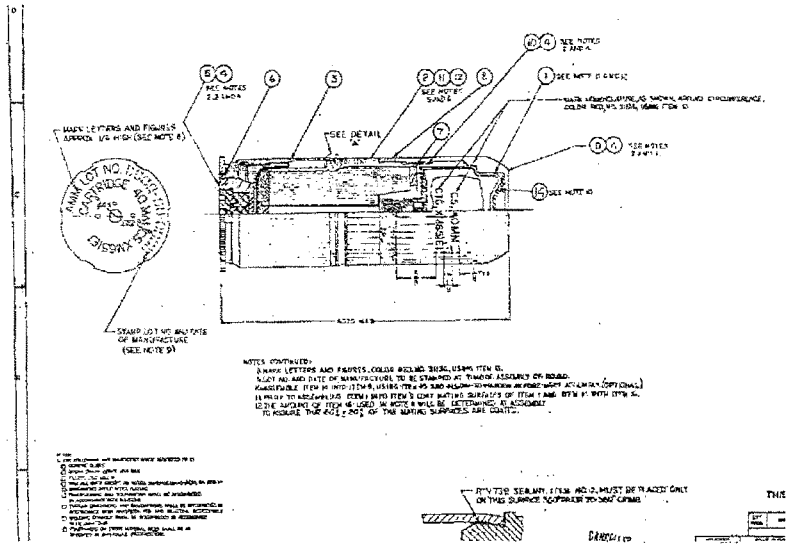
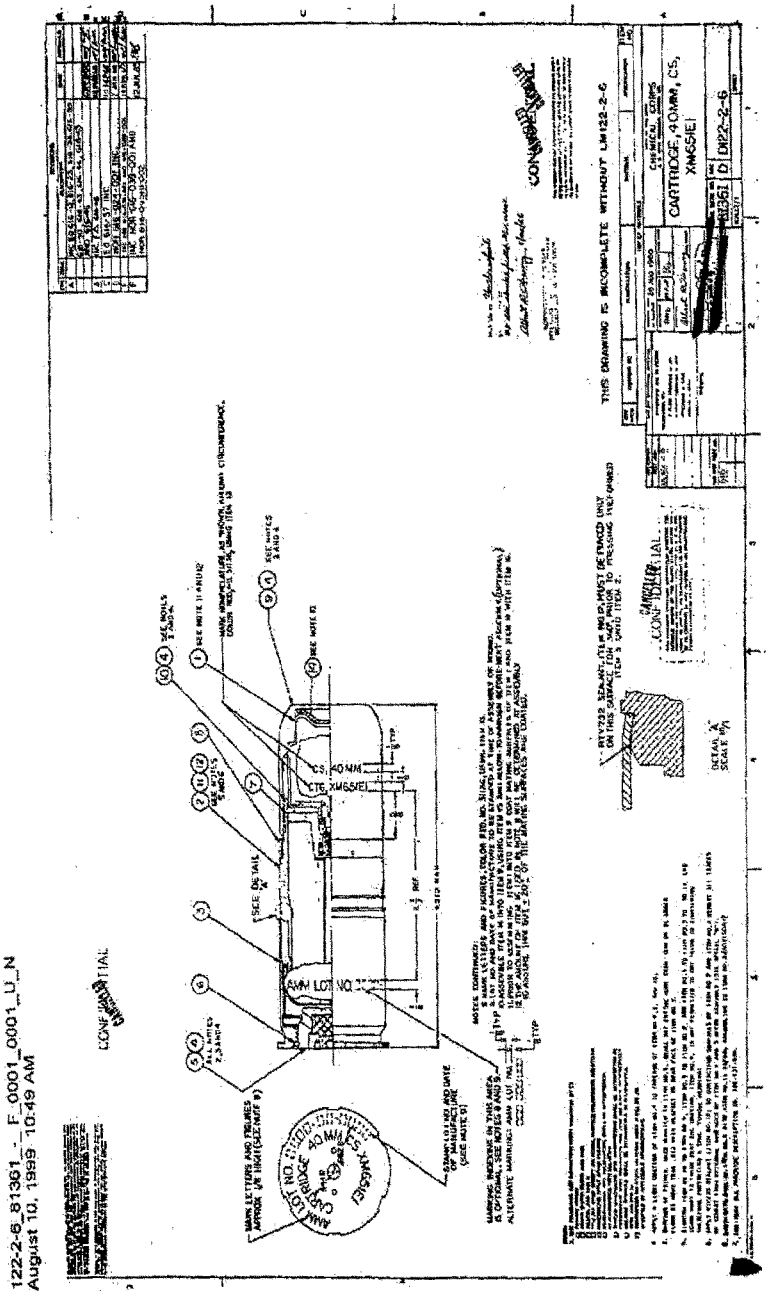
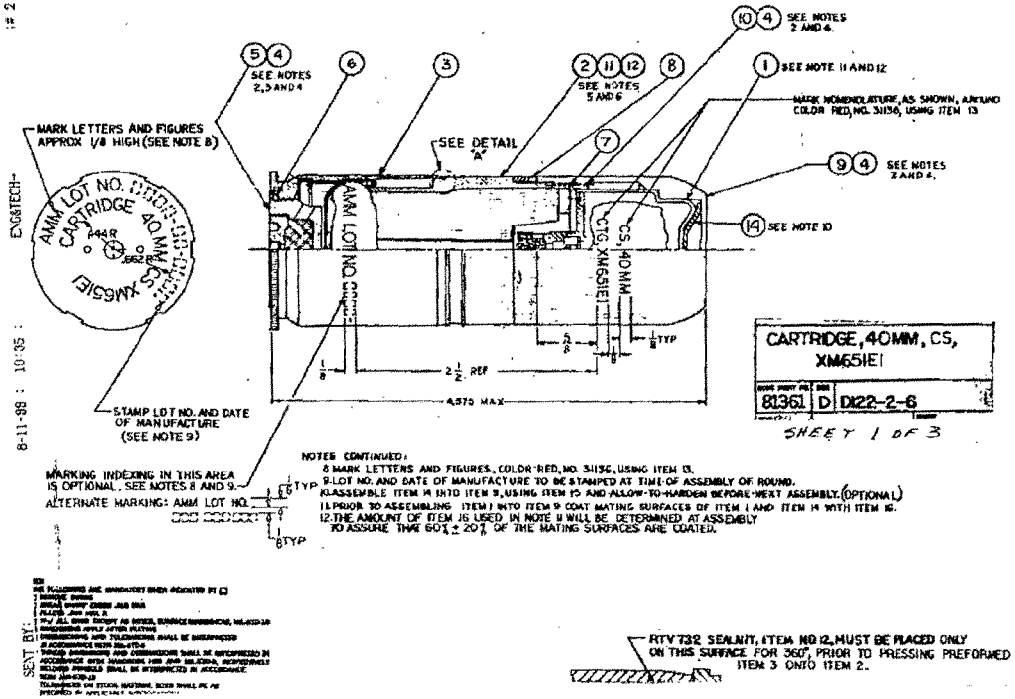
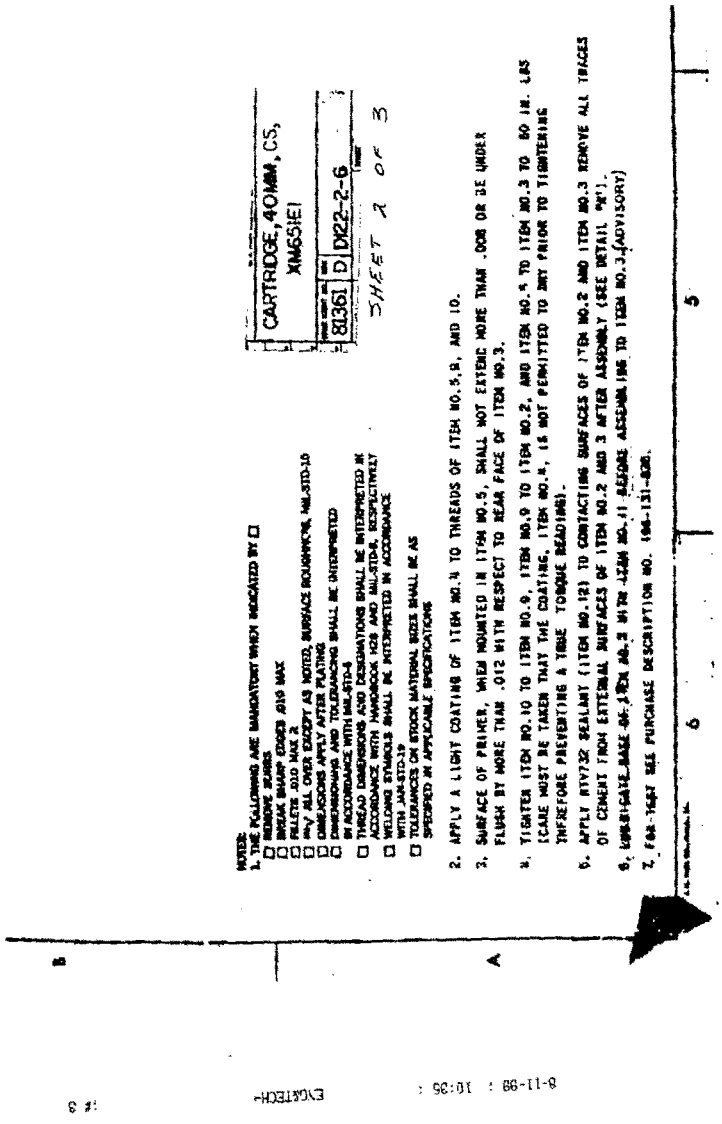


Fred Schottery - Avdec


122-2-6_81361_-_F_0001_0001_U_N
August 10, 1999 10:49 AM
CONFIDENTIAL
CARTRIDGE, 40MM, CS, XM655(E)
THIS DRAWING IS INCOMPLETE WITHOUT LM122-2-6



MARK LETTERS AND FIGURES APPROX 1/8 HIGH (SEE NOTE 8)
AMM LOT NO. CARTRIDGE 40 MM CS XM651E1
STAMP LOT NO. AND DATE OF MANUFACTURE (SEE NOTE 9)
SEE NOTES 2,3 AND 4
SEE NOTES 5 AND 6
SEE NOTES 2 AND 4.
SEE NOTE 11 AND 12
MARK NOMENCLATURE, AS SHOWN, AROUND COLOR RED, NO. 31136, USING ITEM 13
SEE DETAIL "A"
SEE NOTES 2 AND 4.
SEE NOTE 10
AMM LOT NO.
CTG, XM651E1
CS, 40MM
2 1/2 REF
4.575 MAX
1/8 TYP
CARTRIDGE, 40MM, CS, XM651E1
81361 D D122-2-6
SHEET 1 OF 3
MARKING INDEXING IN THIS AREA IS OPTIONAL. SEE NOTES 8 AND 9.
ALTERNATE MARKING: AMM LOT NO.
NOTES CONTINUED:
8 MARK LETTERS AND FIGURES, COLOR RED, NO. 31136, USING ITEM 13.
9. LOT NO. AND DATE OF MANUFACTURE TO BE STAMPED AT TIME OF ASSEMBLY OF ROUND.
10. ASSEMBLE ITEM 14 INTO ITEM 9, USING ITEM 15 AND ALLOW-TO-HARDEN BEFORE NEXT ASSEMBLY. (OPTIONAL)
11. PRIOR TO ASSEMBLING ITEM 1 INTO ITEM 9 COAT MATING SURFACES OF ITEM 1 AND ITEM 14 WITH ITEM 16.
12. THE AMOUNT OF ITEM 16 USED IN NOTE 11 WILL BE DETERMINED AT ASSEMBLY TO ASSURE THAT 60% ± 20% OF THE MATING SURFACES ARE COATED.
RTV 732 SEALNIT, ITEM NO 12, MUST BE PLACED ONLY ON THIS SURFACE FOR 360°, PRIOR TO PRESSING PREFORMED ITEM 3 ONTO ITEM 2.
SENT BY:
8-11-98 : 10:35 :
EXG&TECH-



SENT BY: EXCALIBUR- 8-11-98 ; 10:36 ; # 3

CARTRIDGE, 40MM, CS, XM651E1

81361 | D | D122-2-6

SHEET 3 OF 3

TES CONTINUED:

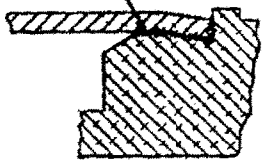
8 MARK LETTERS AND FIGURES, COLOR RED, NO. 31136, USING ITEM 13.

9. LOT NO. AND DATE OF MANUFACTURE TO BE STAMPED AT TIME OF ASSEMBLY OF ROUND.

10. ASSEMBLE ITEM 14 INTO ITEM 9, USING ITEM 15 AND ALLOW TO HARDEN BEFORE NEXT ASSEMBLY. (OPTIONAL)

11. PRIOR TO ASSEMBLING ITEM 1 INTO ITEM 9 COAT MATING SURFACES OF ITEM 1 AND ITEM 14 WITH ITEM 16.

12. THE AMOUNT OF ITEM 16 USED IN NOTE 11 WILL BE DETERMINED AT ASSEMBLY TO ASSURE THAT 60% ± 20% OF THE MATING SURFACES ARE COATED.



RTV 732 SEALANT, ITEM NO 12, MUST BE PLACED ON ON THIS SURFACE FOR 360°, PRIOR TO PRESSING PR ITEM 3 ONTO ITEM 2.

AND 10.

C MORE THAN .008 OR BE UNDER

3.

ITEM NO.4 TO ITEM NO.3 TO 50 IN. LBS

ITED TO DRY PRIOR TO TIGHTENING

EM NO.2 AND ITEM NO.3 REMOVE ALL TRACES

CANCELLED

CONFIDENTIAL

ENG&TECH

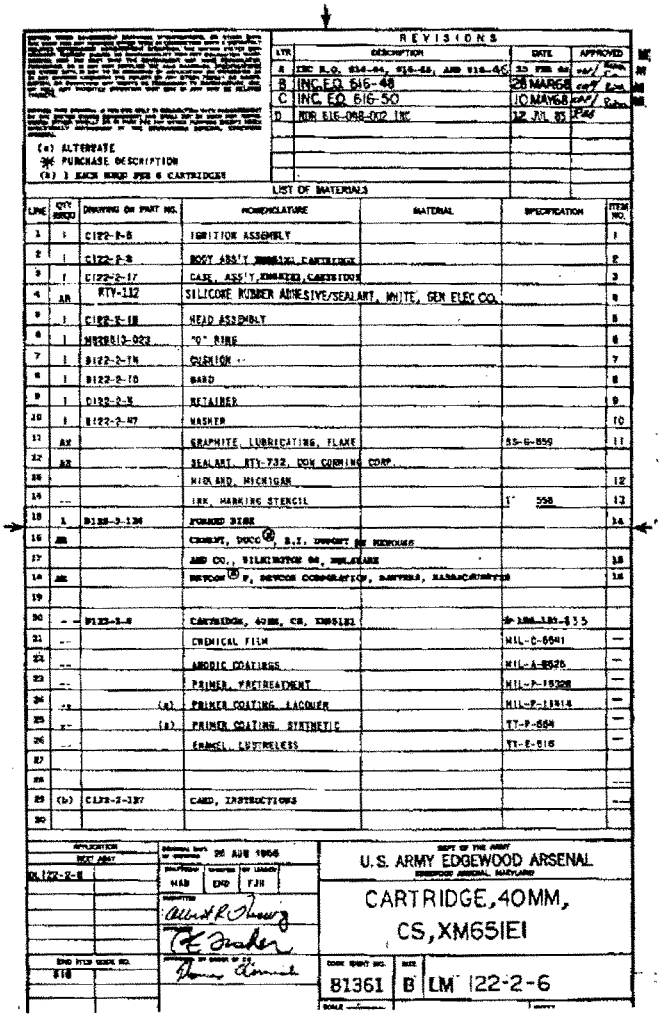
8-11-99 ; 10:37 ;

SENT BY:

SENT BY: 8-11-99 ; 10:38 ; ENG&TECH- ;# 5

[redacted]

REVISIONS			
LTR	DESCRIPTION	DATE	APPROVED
A	INC E.O. 616-44, 616-45, AND 616-46	23 FEB 68	[illegible]
B	INC. E.O. 616-48	28 MAR 68	[illegible]
C	INC. E.O. 616-50	10 MAY 68	[illegible]
D	NDR 616-088-002 INC	12 JUL 85	[illegible]



(a) ALTERNATE
✱ PURCHASE DESCRIPTION
(b) 1 EACH REQD PER 6 CARTRIDGES

LIST OF MATERIALS

LINE	QTY REQD	DRAWING OR PART NO.	NOMENCLATURE	MATERIAL	SPECIFICATION	ITEM NO.
1	1	C122-2-5	IGNITION ASSEMBLY			1
2	1	C122-2-8	BODY ASS'Y [illegible], CARTRIDGE			2
3	1	C122-2-17	CASE, ASS'Y, [illegible], CARTRIDGE			3
4	AR	RTV-112	SILICONE RUBBER ADHESIVE/SEALANT, WHITE, GEN ELEC CO.			4
5	1	C122-2-18	HEAD ASSEMBLY			5
6	1	M829813-023	"O" RING			6
7	1	B122-2-14	CUSHION			7
8	1	B122-2-10	BAND			8
9	1	C122-2-5	RETAINER			9
10	1	B122-2-47	WASHER			10
11	AR		GRAPHITE, LUBRICATING, FLAKE		SS-G-659	11
12	AR		SEALANT, RTV-732, DOW CORNING CORP.			
13			MIDLAND, MICHIGAN			12
14	--		INK, MARKING STENCIL		[illegible] 558	13
15	1	B122-2-126	FORMED DISK			14
16	AR		CEMENT, DUCO®, E.I. DUPONT [illegible]			
17			AND CO., WILMINGTON 98, DELAWARE			15
18	AR		DEVCON® F, DEVCON CORPORATION, DANVERS, MASSACHUSETTS			16
19						
20	--	B122-2-8	CARTRIDGE, 40MM, CS, XM651E1		[illegible]-835	
21	--		CHEMICAL FILM		MIL-C-5541	—
22	--		ANODIC COATINGS		MIL-A-8625	—
23	--		PRIMER, PRETREATMENT		MIL-P-15328	—
24	--	(a)	PRIMER COATING, LACQUER		MIL-P-11414	—
25	--	(a)	PRIMER COATING, SYNTHETIC		TT-P-664	—
26	--		ENAMEL, LUSTRELESS		TT-E-516	—
27						
28						
29	(b)	C122-2-127	CARD, INSTRUCTIONS			—
30						

APPLICATION	
NEXT ASSY	
DL122-2-6	
END ITEM CODE NO.	
616	

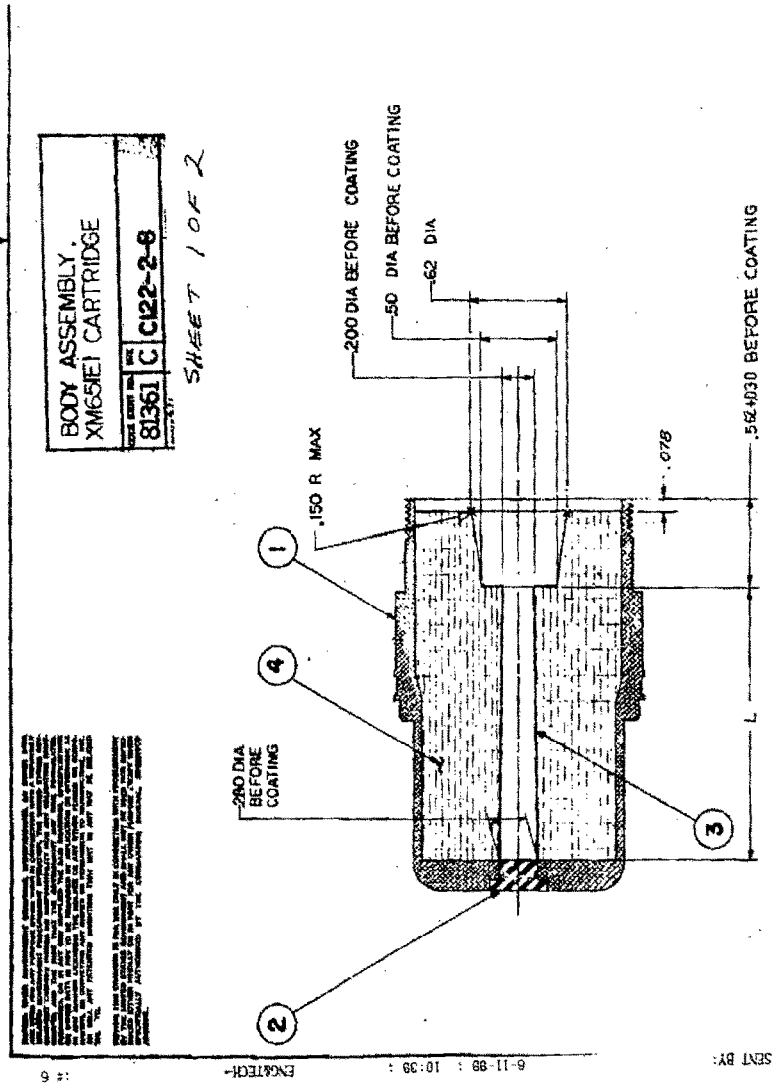
DRAWING DATE OF CHANGES: 26 AUG 1966
DRAFTSMAN: MAB | CHECKED: END | BY LEADER: FJH
SUBMITTED: [signature]
APPROVED: [signature]
APPROVED BY ORDER OF C.O.: [signature]

DEPT OF THE ARMY
U.S. ARMY EDGEWOOD ARSENAL
EDGEWOOD ARSENAL, MARYLAND

CARTRIDGE, 40MM,
CS, XM651E1

CODE IDENT NO.	SIZE	
81361	B	LM 122-2-6

SCALE


BODY ASSEMBLY,
XM65IE1 CARTRIDGE
81361
C
C122-2-8
SHEET 1 OF 2
.150 R MAX
.200 DIA BEFORE COATING
.50 DIA BEFORE COATING
.62 DIA
.078
.564030 BEFORE COATING
.280 DIA BEFORE COATING
L
1
2
3
4
ENGATECH
6-11-88 : 10:39 :
SENT BY:

SENT BY: 8-11-89 ; 10:40 ; ENGATECH- # 7

BODY ASSEMBLY, XM65IE1 CARTRIDGE		
81361	C	C122-2-8

SHEET 2 OF 2

NOTES:

1. THIS DRAWING SHALL BE INTERPRETED IN ACCORDANCE WITH APPLICABLE STANDARDS LISTED IN MIL SPEC MIL-D-1000
2. THE FOLLOWING ARE MANDATORY WHEN INDICATED BY ■
   - ☐ REMOVE BURRS ☐ BREAK SHARP EDGES .010 MAX
   - ☐ FILLETS .010 MAX R.
   - ☐ [illegible]V ALL OVER, EXCEPT AS NOTED
   - ☐ DIMENSIONS APPLY AFTER PLATING
   - ☐ TOLERANCES ON STOCK MATERIAL SIZES, SHALL BE AS SPECIFIED IN APPLICABLE SPECIFICATIONS.
3. FILL WITH 53 GRAMS OF ITEM NO. 4. CONSOLIDATE AT 4000 POUNDS DEAD LOAD (.ADVISORY)
4. COAT INSIDE SURFACE ALONG LENGTH "L", BOTTOM OF .50 DIA. FUZE CAVITY AND TO A MAXIMUM HEIGHT OF 1/8 INCHES OF THE TAPERED SIDES OF THE .50 DIA FUZE CAVITY WITH ITEM NO. 3. MINIMUM INSIDE DIA OF .268 TAPERED CENTER HOLE TO BE .16 DIA AFTER COATING.
5. FOR [illegible] SEE FD156-132-036.
6. [illegible] TO BE CONSOLIDATED BY [illegible] EQUAL INCREMENTS (ADVISORY).

SENT BY: 8-11-99 ; 10:40 ; ENG&TECH→ ;# 8

REVISIONS			
LTR	DESCRIPTION	DATE	APPRD
A	INC 2,0, 616-44 AND 616-46	29 FEB 68	[illegible]
B	INC E.O. 616-48	28 MAR 68	[illegible]

* PURCHASE DESCRIPTION

LIST OF MATERIALS

LINE	QTY REQD	DRAWING OR PART NO.	NOMENCLATURE	MATERIAL	SPECIFICATION
1	1	D 122-2-64	BODY		
2	1	B 122-2-81	PLUG, BASE		
3	--	B 143-7-3	STARTER MIXTURE VI		
4	--	C 143-14-8	CS, IRRITANT MIXTURE		
5					
6	--		CHEMICAL FINISH		MIL-C-5541
7	--	C 122-2-8	BODY ASSEMBLY XM651E1 CARTRIDGE	*	196-131-836
8					
9					
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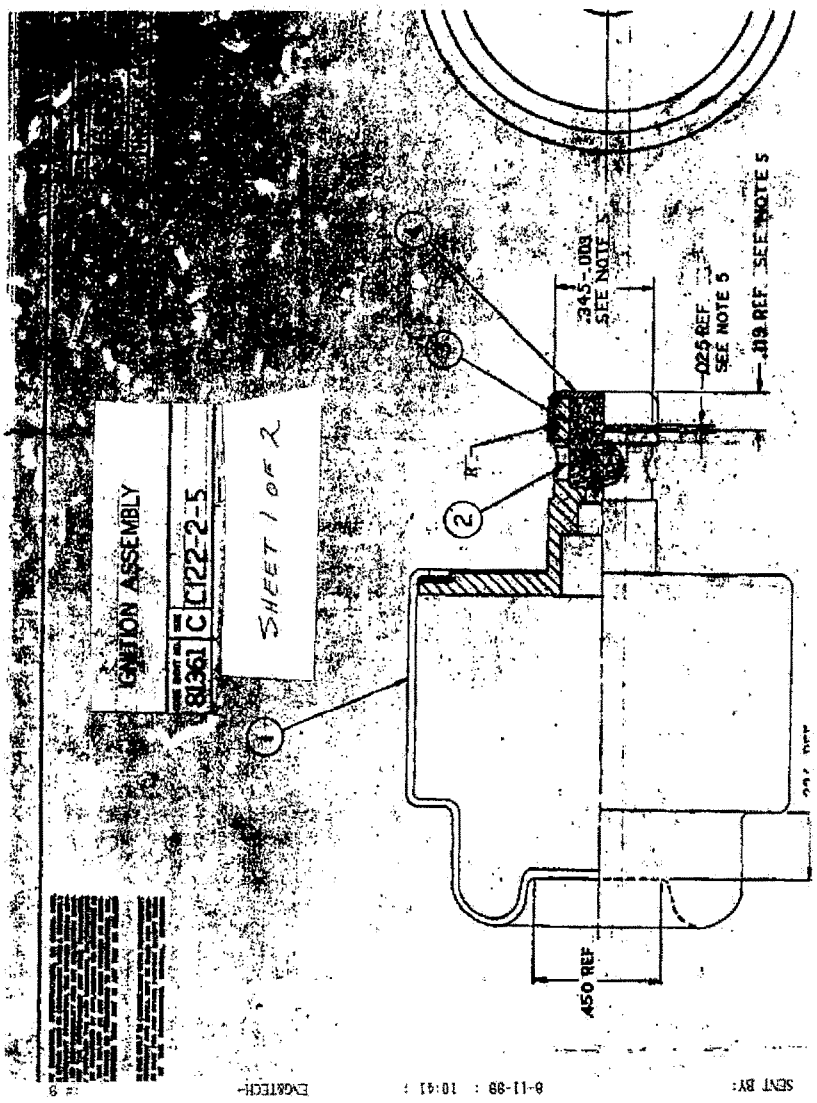
APPLICATION	SPECIAL DATE OF ISSUANCE 26 AUG 1966	DEPT OF THE ARMY	
39-133-9-8	MPD 9170	U.S. ARMY EDGEWOOD ARSENAL	
	DESIGNED Albert K Chang	BODY ASSEMBLY, XM651E1 CARTRIDGE	
	APPROVED PE Zaber		
616	APPROVED BY DIRECTOR OF ENG. Thomas [illegible]	CAGE DRWG NO. 81361	SIZE B LM 122-2-8
		SCALE —	SHEET


IGNITION ASSEMBLY
81361
C
C122-2-5
SHEET 1 OF 2
.345-.003
SEE NOTE 5
.025 REF.
SEE NOTE 5
.119 REF. SEE NOTE 5
.450 REF
SENT BY:
8-11-99 : 10:41 :
ENG&TECH-

IGNITION ASSEMBLY

81361 | C | C122-2-5

SHEET 2 OF 2

NOTES:

1. THIS DRAWING SHALL BE INTERPRETED IN ACCORDANCE WITH APPLICABLE STANDARDS LISTED IN MIL SPEC MIL-D-1000
2. THE FOLLOWING ARE MANDATORY WHEN INDICATED BY ■
   - ☐ REMOVE BURRS ☐ BREAK SHARP EDGES .010 MAX
   - ☐ FILLETS .010 MAX R.
   - ☐ =/ ALL OVER, EXCEPT AS NOTED
   - ☐ DIMENSIONS APPLY AFTER PLATING
   - ☐ TOLERANCES ON STOCK MATERIAL SIZES, SHALL BE AS SPECIFIED IN APPLICABLE SPECIFICATIONS.
3. PLACE ITEM NO.3 FLUSH INTO ITEM NO.1.
4. LOAD ITEM NO.3 WITH 3.0-.5 GRAINS OF ITEM NO.2.
5. PRESS ITEM NO.4 ON ITEM NO.1; CRIMP 360° ACCORDING TO DIMENSIONS. ITEM NO.4 SHALL BE IN INTIMATE CONTACT WITH ITEM NO.1 AFTER CRIMPING.

SENT BY: 8-11-89 : 10:45 : ENGRTECH- :#10

SENT BY: 8-11-99 ; 10:45 ; ENG&TECH→ ;#11

REVISIONS

LTR	DESCRIPTION	DATE	APPROVED
A	IAC E.O. 010-46	26 AUG 66	[illegible]

LIST OF MATERIALS

LINE	QTY REQD	DRAWING OR PART NO.	NOMENCLATURE	MATERIAL	SPECIFICATION	ITEM NO.
1	1	9219774	FUZE, PD XM581 E1			1
2						
3	3 GR	C143-8-2	IGNITION MIXTURE III (W/B			2
4	1	B122-2-12	BAG, POWDER			3
5	1	B122-2-13	CAP			4
6	--	C122-2-5	IGNITION ASSEMBLY			
7						
8						
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APPLICATION

LM 122-2-5

PROJECT DATE OF DRAWING 26 AUG 66

DRAFTSMAN JMH | CHECKER VG | BY LEADER [illegible]

Albert E. Thomas

P.E. Fraker

DEPT OF THE ARMY
U.S. ARMY EDGEWOOD ARSENAL
EDGEWOOD ARSENAL, MARYLAND

IGNITION ASSEMBLY

SHIP WITH CODE NO. 616

APPROVED BY CHIEF OF ENGINEERING

CODE IDENT NO. 81361 | SIZE B | LM 122-2-5

	DEPT OF THE ARMY U. S. ARMY EDGEWOOD ARSENAL EDGEWOOD ARSENAL, MARYLAND	81361	DL122-2-6		F
	DATE (REV) 14 APR 65	CODE IDENT NO.	SHEET 1 OF 3 SHEETS		REV.

	SPECIFICATION	DESIGNATION	USED ON	END ITEM CODE NO.	ITEM NOMENCLATURE:
GOVT	196-131-635	XM 651 E1		616	CARTRIDGE, 40MM, CS, XM651E1
CONTR					
CONTRACT NO.					

DWG SIZE	CODE IDENT	DOCUMENT IDENT NUMBER	REV	DOCUMENT NOMENCLATURE	LINE NO.
				SUBORDINATE DATA LIST	1
		DL 122-2-42	-	BANDOLEER FOR 40mm CARTRIDGE	2
					3
		DL122-2-5	B	BODY ASSEMBLY, XM651E1 CARTRIDGE	4
		DL122-2-17	C	CASE ASSEMBLY, XM651E1 CARTRIDGE	5
	19203	8799925	7-1-65	PRIMER, PERCUSSION M42 ASSEMBLY PARTS LIST	6
	19203	9219778	10-3 66	FUZE, P.D. (M587E1 PARTS LIST	7
D		D122-2-6	B	RETAINER	8
C		C122-2-8	C	IGNITION ASSEMBLY	9
B		LM122-2-8	A	IGNITION ASSEMBLY	10
D		D122-2-6	E	CARTRIDGE, 40MM, CS, XM651E1	11
B		LM122-2-6	C	CARTRIDGE, 40MM, CS, XM651E1	12
					17
					14
B		B122-2-10	C	BAND	15
B		B122-2-12	D	BAG, POWDER	16
B		B122-2-13	A	CAP	17
B		B122-2-14	A	CUSHION	18
					19
					20
C		C122-2-18	C	HEAD ASSEMBLY	21
C		C122-2-25	B	PLUG	22
					23
					24
C		C122-2-37	B	HEAD, CASE, CARTRIDGE	25
B		B122-2-38	B	CUP, PROPELLANT	26
B		B122-2-47	D	WASHER	27
C		C122-2-87	---	PROTECTIVE COVER	28
B		L122-2-126	A	FORMED DISK	29
C		C122-2-127	A	CARD, INSTRUCTIONS (SHEET 1)	30
C		C122-2-127	B	CARD, INSTRUCTIONS (SHEET 2)	31
C		C122-2-128	---	MARKING DRAWING - SHIPPING CONTAINER FOR	32
				CARTRIDGE, 40mm., CS, XM651E1 (SHEET 1)	33
C		C122-2-128	---	MARKING DRAWING - SHIPPING CONTAINER FOR	34
				CARTRIDGE, 40mm., CS, XM651E1 (SHEET 2)	35
C		C122-2-124	---	PALLETIZATION, CARTRIDGE, 40mm., CS, XM651E1	36
					37
C		C148-6-2	P	IGNITION MIXTURE 111 (M/S)	38
					39

CONTINUATION SHEET	81361	DL122-2-6	F
	CODE IDENT NO.	SHEET 2 OF 3 SHEETS	REV.

DWG SIZE	CODE IDENT	DOCUMENT IDENT NUMBER	REV	DOCUMENT NOMENCLATURE	LINE NO.
				SPECIFICATIONS AND STANDARDS	1
	19203	MIL-P-50206	1	PROPELLANT, M9, FOR USE IN 40 MM CARTRIDGES	2
	19203	ADC-55-1		ADDENDUM PROPELLANT AND PROPELLANT, IGNITION TO PD, PA-PD-55	3
		PD 196-131-635	A	CARTRIDGE, 40MM, CS XM651E1	4
			b.	PLASTIC SHEET: VINYL CHLORIDE POLYMER AND VINYL CHLORIDE-	5
				VINYL ACETATE COPOLYMER, RIGID	6
		L-P-378	b	PLASTIC	7
			c	ACETONE, TECHNICAL	8
		QQ-A-200	c	ALUMINUM ALLOY, BAR, ROD, SHAPES, TUBE, AND WIRE, EXTRUDED	9
				AND STRUCTURAL SHAPES, GENERAL SPECIFICATIONS FOR	10
		QQ-A-200/1	c	ALUMINUM ALLOY BAR, ROD, SHAPES, TUBE AND WIRE EXTRUDED	11
				2024	12
		QQ-A-225	b	ALUMINUM ALLOY BAR, ROD, WIRE OR SPECIAL SHAPES;	13
				ROLLED, DRAWN, OR COLD FINISHED; GENERAL	14
				SPECIFICATION FOR	15
		QQ-A-225/6	C	ALUMINUM ALLOY BAR, ROD AND WIRE; ROLLED, DRAWN	16
				OR COLD FINISHED, 2024	17
		QQ-A-250	d	ALUMINUM AND ALUMINUM ALLOY PLATE AND SHEET GENERAL	18
				SPECIFICATION FOR.	19
		QQ-S-637	------	STEEL BAR, CARBON, COLD FINISHED	20
		QQ-A-250/11	d	ALUMINUM ALLOY 6061 PLATE AND SHEET	21
		QQ-B-613	C	BRASS, LEADED AND NON-LEADED; FLAT PRODUCTS	22
		QQ-P-416	b	PLATING, CADMIUM	23
		RR-S-366	d	SIEVE, TEST	24
		SS-G-659	a	GRAPHITE,DRY	25
		TT-E-515	- --	ENAMEL, LUSTRELESS, QUICK-DRYING STYRENATED	26
				ALKYD TYPE	27
		TT-I-558	c	INK, MARKING STENCIL, OPAQUE, FOR NONPOROUS	28
				SURFACES	29
		TT-P-375	----	PIGMENT, INDIAN RED AND BRIGHT RED DRY	30
		TT-P-664	b	PRIMER COATING, SYNTHETIC, RUST-INHIBITING,	31
				LACQUER-RESISTING	32
		UU-P-[illegible]	f	PAPER, BOOK	33
		MIL-H-244	A(2)	NITROCELLULOSE	34
					35
		MIL-Z-00389	B	ZIRCONIUM, POWDERED	36
		MIL-B-[illegible]	---	BOARD, COMPOSITION, WATER-RESISTANT, SOLID.	37
		MIL-D-1000	----	DRAWINGS, ENGINEERING AND ASSOCIATED LISTS	38
		MIL-C-5541	A	CHEMICAL FILMS AND CHEMICAL FILM MATERIALS FOR	39
				ALUMINUM AND ALUMINUM ALLOYS	40
		MIL-S-5855	B(3)	SYNTHETIC RUBBER SHEET, STRIPS, MOLDED OR	41
				EXTRUDED SHAPES	42

CONTINUATION SHEET		81361	DL 122-2-6		F
		CODE IDENT NO.	SHEET 3 OF 3 SHEETS		REV.

DWG SIZE	CODE IDENT	DOCUMENT IDENT NUMBER	REV	DOCUMENT NOMENCLATURE	LINE NO.
		MIL-A-8625	B	ANODIC COATINGS, FOR ALUMINUM AND ALUMINUM ALLOYS	1
					2
					3
		MIL-P-[illegible]	C	PRIMER COATING; LACQUER, RUST INHIBITING	4
		MIL-T-13405	C	TITANIUM POWDER	5
		MIL-V-13750	A (1)	VARNISH, PHENOL-FORMALDEHYDE, CLEAR AND	6
				ALUMINUM PIGMENTED	7
		MIL-P-15328	B (1)	PRIMER, PRETREATMENT	8
					9
					10
		MIL-S-45180	A (1)	SEALING COMPOUND, GASKET, HYDROCARBON FLUID AND	11
				WATER RESISTANT	12
		MIL-P-46213	A(1)	PRIMER, PERCUSSION, M42, PARTS FOR	13
					14
					15
					16
					17
		MIL-STD-9	A	SCREW THREAD CONVENTIONS AND METHODS OF	18
				SPECIFYING	19
		MIL-STD-171	B(1)	FINISHING OF METAL AND WOOD SURFACES	20
					21
		FED-STD-595	(2)	COLORS	22
					23
					24
					25
		MS 29513	C	PACKING, PREFORMED, HYDROCARBON FUEL RESISTANT	26
				"O" RING	27
					28
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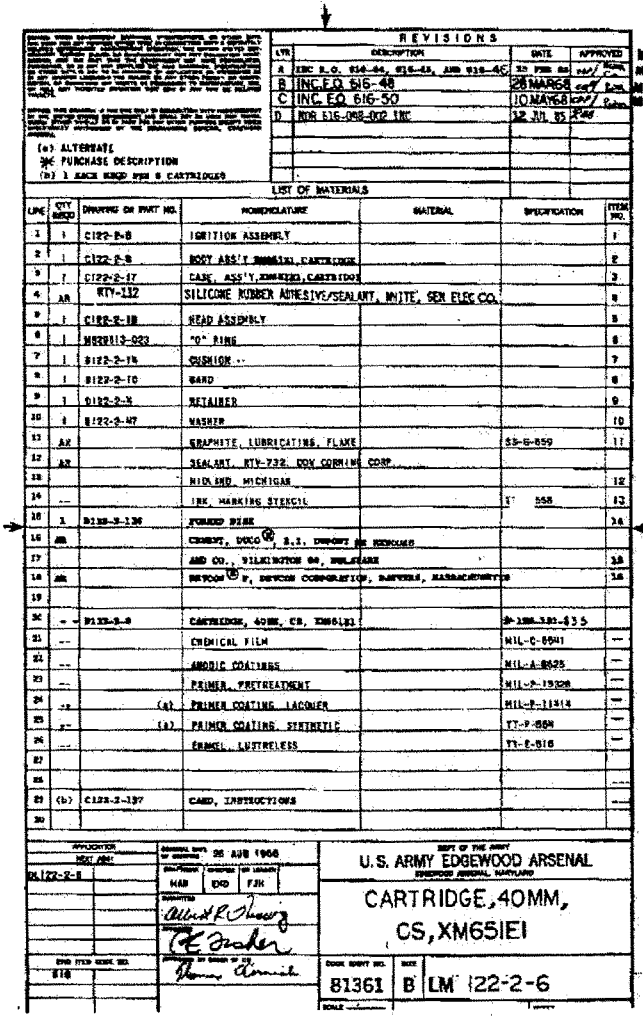


REVISIONS			
LTR	DESCRIPTION	DATE	APPROVED
A	INC R.O. 616-44, 616-45, AND 616-46	25 FEB 66	
B	INC.E.O. 616-48	28 MAR 68	
C	INC. E.O. 616-50	10 MAY 68	
D	NOR 616-068-002 INC	12 JUL 85	

(a) ALTERNATE
✱ PURCHASE DESCRIPTION
(b) 1 EACH REQD PER 6 CARTRIDGES

LIST OF MATERIALS

LINE	QTY REQD	DRAWING OR PART NO.	NOMENCLATURE	MATERIAL	SPECIFICATION	ITEM NO.
1	1	C122-2-8	IGNITION ASSEMBLY			1
2	1	C122-2-8	BODY ASS'Y, XM65IE1, CARTRIDGE			2
3	1	C122-2-17	CASE, ASS'Y, XM65IE1, CARTRIDGE			3
4	AR	RTV-132	SILICONE RUBBER ADHESIVE/SEALANT, WHITE, GEN ELEC CO.			4
5	1	C122-2-18	HEAD ASSEMBLY			5
6	1	M82913-023	"O" RING			6
7	1	B122-2-14	CUSHION			7
8	1	B122-2-10	BAND			8
9	1	D122-2-4	RETAINER			9
10	1	B122-2-47	WASHER			10
11	AR		GRAPHITE, LUBRICATING, FLAKE		SS-G-659	11
12	AR		SEALANT, RTV-732, DOW CORNING CORP.			
13			MIDLAND, MICHIGAN			12
14	--		INK, MARKING STENCIL		T 558	13
15	1	B122-2-136	FORMED DISK			14
16	AR		CEMENT, DUCO®, E.I. DUPONT DE NEMOURS			
17			AND CO., WILMINGTON 98, DELAWARE			15
18	AR		DEVCON® F, DEVCON CORPORATION, DANVERS, MASSACHUSETTS			16
19						
20	--	B122-2-8	CARTRIDGE, 40MM, CS, XM65IE1		[illegible]-335	
21	--		CHEMICAL FILM		MIL-C-8541	—
22	--		ANODIC COATINGS		MIL-A-8625	—
23	--		PRIMER, PRETREATMENT		MIL-P-15328	—
24	--	(a)	PRIMER COATING, LACQUER		MIL-P-11414	—
25	--	(a)	PRIMER COATING, SYNTHETIC		TT-P-664	—
26	--		ENAMEL, LUSTRELESS		TT-E-616	—
27						
28						—
29	(b)	C122-2-137	CARD, INSTRUCTIONS			—
30						

APPLICATION
NEXT ASSY
DL122-2-6

END ITEM CODE NO.
616

ORIGINAL DATE OF DRAWING 26 AUG 1966
DRAFTSMAN MAR CHECKED EXD ENGINEER FJH
SUBMITTED
APPROVED
APPROVED BY ORDER OF CO.

DEPT OF THE ARMY
U.S. ARMY EDGEWOOD ARSENAL
EDGEWOOD ARSENAL, MARYLAND

CARTRIDGE, 40MM,
CS, XM65IE1

DOCK EDGY NO. 81361 SIZE B LM 122-2-6
SCALE

ATTACHMENT
G

Technical Manual TM 31310-243-10
Operator's Manual CTG-40-MM
Tactical CS, M651 January 1975

TM 3-1310-243-10

TECHNICAL MANUAL

OPERATOR'S MANUAL, CARTRIDGE, 40-MM: TACTICAL CS, M651 (NSN 1310-00-849-2083)

HEADQUARTERS,
DEPARTMENT OF THE ARMY

JANUARY 1975

			Paragraph	Page
CHAPTER	2.	OPERATING INSTRUCTIONS		
Section	I.	OPERATING PROCEDURES		
		Loading and unloading, firing and targets	2-1	11
		Failure to fire	2-2	12
	II.	AMMUNITION		
		Identification	2-3	14
		Safety precautions	2-4	14
		Preparing for firing	2-5	16
APPENDIX	A.	REFERENCES		17

CHAPTER 1
INTRODUCTION

Section I. GENERAL

1-1. Purpose and Scope

This manual is for your use in operating and maintaining the M651 tactical CS 40-mm cartridge.

1-2. Accidents, Malfunctions, and Forms

a. Accidents involving injury to personnel or damage to material will be reported as specified in AR 385-40.

b. Accidents or malfunctions in combat or training will be reported as specified in AR 75-1.

c. Maintenance forms and records are explained in TM 38-750.

1-3. Recommending Improvements

You can help to improve this manual by recommending improvements. Mail your comments to Commander, Edgewood Arsenal, Attn: SAREA-DE-ET, Aberdeen Proving Ground, Md 21010, using DA Form 2028 (Recommended Changes to Publications and Blank Forms) or a letter. A reply will be sent direct to you.

1-4. Use

Your M651 cartridge can be used in combat against any target vulnerable to its CS agent. Fire the cartridge from the M79 grenade launcher or the M203 grenade launcher which attaches to the M16A1 rifle. This cartridge is especially effective when fired into an enclosed area. The projectiles will penetrate window glass or up to 19 millimeters (3/4 inch) thick pine wood at 200 meters (656 feet) and release CS after penetration. The projectiles will also function against other materials such as earth, gravel, brush, sandbags, and bamboo. You can engage targets at ranges up to 400 meters (1312 feet).

Section II. DESCRIPTION AND DATA

1-5. Description

a. Cartridge. The M651 cartridge (fig. 1-1) is similar in appearance to other 40-mm cartridges but has a flat nose. Two ridges act as projectile rotating bands when the round is fired. The cartridge case contains a percussion primer and has six equally spaced notches located around the cartridge case base.

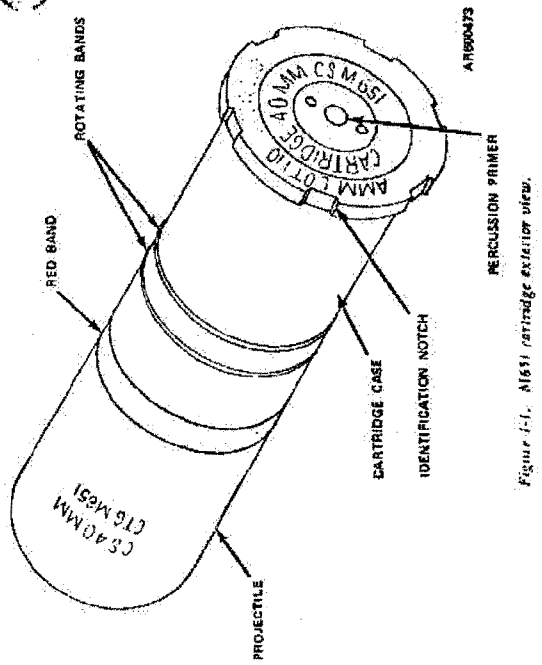


Figure 1-1. M651 cartridge exterior view.

b. Packaging. Six cartridges are packed in a bandolier. The bandolier (fig. 1-2) consists of six molded cups with flaps and a web carrying strap.

c. Packing. Your bandolier is packed in one compartment of a four-compartment fiberboard box. An instruction card is packed with each bandolier. A filled fiberboard box containing four bandoliers (24 cartridges) is wrapped in vapor barrier material and is packed in a wirebound wood box.

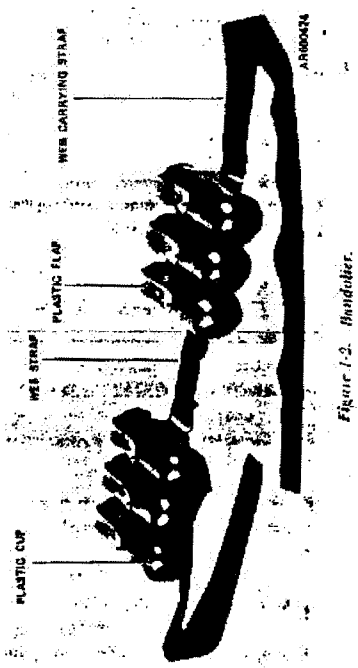


Figure 1-2. Bandolier.

1-6. Tabulated Data (approximate)

Length of round	11 cm (4½ in)
Caliber	40-mm
Weight of round	282 grams (10 oz)
Length of projectile	10 cm (4 in)
Weight of projectile	205 grams (7¼ oz)
Type of filling	CS-pyrotechnic mixture
Weight of filling	53 grams (2 oz)
Maximum accurate range	200 meters (656 ft)
Maximum range	400 meters (1312 ft)
Fuze arming distance	10 to 30 meters (32.8 to 98.4 ft)
Burning time	20 to 30 sec
National Stock Number (NSN)	1310-00-849-2983

CHAPTER 2
OPERATING INSTRUCTIONS

Section I. OPERATING PROCEDURES

CAUTION

Keep your powder dry. Firing the M651 cartridge into water will increase the dud rate and decrease the amount of CS cloud disseminated. Immersion of unpacked M651 cartridges in water may cause the cartridges to misfire.

2-1 Loading and Unloading, Firing and Targets

a. Loading and Unloading.

(1) Load and unload the M651 cartridge from the M79 grenade launcher in accordance with procedures outlined in TM 9-1010-205-10.

(2) Load and unload the M651 cartridge from the M203 grenade launcher in accordance with procedure outlined in TM 9-1010-221-10.

b. Firing. Make sure you carry your field protective mask when firing the M651 cartridge. The M651 cartridges are not explosive rounds; however, a malfunctioning projectile may explode upon target impact. Adequate protection should be afforded friendly troops in the immediate vicinity of the target. Make sure that someone informs friend-

ly personnel to wear their masks to avoid temporary irritation from the CS cloud which will result from the use of the M651 cartridge.

c. Targets. When firing into thinly constructed or easily penetrable buildings, the projectile should enter the building at a point close to the ground so that the munition does not pass through the building before functioning. When used against personnel in the open, the point of impact should be upwind of the target area.

2-2. Failure to Fire

Any time a launcher fails to fire an M651 cartridge, assume a hangfire has occurred and observe the procedures listed below until the round has been fired or removed from the launcher.

a. Keep the launcher aimed at the target and keep all personnel clear of the muzzle.

b. Wait 30 seconds, open the breech to recock the weapon, and examine the percussion primer (fig. 1-1) to see if it has been dented. If the percussion primer has not been dented, the firing mechanism of the weapon may be at fault. The round may be reloaded and fired after the cause of failure to fire has been corrected.

c. If the percussion primer has been dented, attempt to fire the round again. If the round fails to fire, consider the round a misfire.

d. Wait 30 seconds and then remove the round from the launcher.

e. After the round is removed from the launcher, keep the round separate from other ammunition. If it is determined that the round is faulty, keep it separate from other ammunition and notify Explosive Ordnance Disposal (EOD) personnel for disposal.

NOTE

A hangfire is a temporary failure or delay in the action of a primer, igniter or propelling charge. For a few seconds it cannot be distinguished from a complete failure or misfire.

NOTE

A misfire is the failure of a primer or the propelling charge of a projectile to function wholly or in part.

NOTE

A dud is an explosive munition which has not been armed as intended or which fails to explode after being armed.

179

2-3. Identification

a. Cartridge. The base of each cartridge case is marked with the nomenclature and ammunition lot number as shown in figure 1-1. The 1/4-inch wide red band on the gray projectile indicates that the CS filling is a nonpersistent-effect irritant agent. The cartridge nomenclature is also marked in red on the projectile.

NOTE

The ammunition lot number and nomenclature may be marked on the side of the cartridge case, instead of on its base.

b. Packing Box. The wood packing box is marked with nomenclature, weight, cubic feet, and National Stock Number. The box is also marked on diagonally opposite edges with a red stripe and a brown stripe on a gray background. The red stripe signifies that the box contains a nonpersistent-effect irritant agent. The brown stripe signifies a low explosive.

2-4. Safety Precautions

a. Cartridges must be free of sand, mud, grease, moisture, ice or other foreign matter when loaded into an M79 grenade launcher or M203 grenade launcher attached to an M16A1 rifle.

b. A damaged, corroded, or separated cartridge shall not be fired. Friendly personnel must never be immediately forward of the muzzle of a launcher.

c. Cartridges shall not be dropped. If the cartridge accidently functions, the cartridge-case and/or projectile will cause injury to personnel in its path.

d. The CS cloud is irritant in nature and will temporarily incapacitate unmasked personnel. Make sure that masks are worn by the firer and friendly troops who may be exposed to the CS cloud either in enclosed areas or downwind of the impact area.

e. Any time a cartridge fails to fire, keep the muzzle end of the launcher on target. Keep all friendly personnel clear of the muzzle end of the launcher.

f. Always wait 30-seconds before unloading a cartridge that has failed to fire.

g. Refer any damaged or misfired ammunition to Explosive Ordnance Disposal (EOD) personnel.

h. Do not handle fired projectiles. Notify Explosive Ordnance Disposal (EOD) personnel of the quantity and location of projectiles.

i. When des ; cartridges, take cover to avoid being hit ojectiles or cartridges which may be propelle ugh the air.

j. The M651 tile will cause injury to personnel in its path

k. Always carr eld protective mask.

2-5. Preparing for g

a. Open the to the wood box and remove the vapor-barrier d fiberboard box.

b. Remove the r barrier, open the top of the fiberboard box, remove the bandolier with six cartridges and struction card.

c. Fit the bando in a carrying position to suit the user.

TE

Unfired cartridges m returned to their original packing boxes or to suitable packing boxes. Repackaged cartridg st be used first in subsequent firings, so the s of open boxes will be kept to a minimum.

APPENDIX A
REFERENCES

AR 75-1	Malfunctions Involving Ammunition and Explosives, Reports Control/ Symbol AMC-152 (MIN)
AR 310-25	Dictionary of United States Army Terms (Short Title: AD)
AR 310-50	Authorized Abbreviations and Brevity Codes
AR 385-40	Accidents Reporting and Records
AR 385-63	Regulations for Firing Ammunition for Training, Target Practice and Combat
FM 23-31	40-mm Grenade Launchers M203 and M79
TM 9-1005-249-10	Operator's Manual M16A1 Rifle
TM 9-1010-205-10	Operator's Manual 40-mm Grenade Launcher M79 (1010-00-691-1582)
TM 9-1010-205-24	Organizational, Direct Support and General Support Maintenance Manual Including Repair Parts and Special Tools List for 40-mm Grenade Launcher M79 (1010-00-691-1582)
TM 9-1010-221-10	Operator's Manual 40-mm Grenade Launcher M203
TM 9-1300-206	Ammunition and Explosives Standards
TM 38-750	The Army Maintenance Management Systems (TAMMS)

ATTACHMENT H

Mil Specs on the M651 E1
Includes the Addendum: Technical Data Packet (TDP) for the XM 651 E1

Texas
Department of Public Safety
Courtesy - Service - Protection

Pursuant to federal law, this record is currently unavailable on the DPS website. You may request a copy of this record and if it is available it will be provided to you in accordance with the Texas Public Information Act, Texas Government Code, Chapter 552. Written requests should be sent to the following address:

DPS Legal Services—Open Records
[redacted]

ATTACHMENT I

Photograph of Fired Gray and Red-Banded Projectile

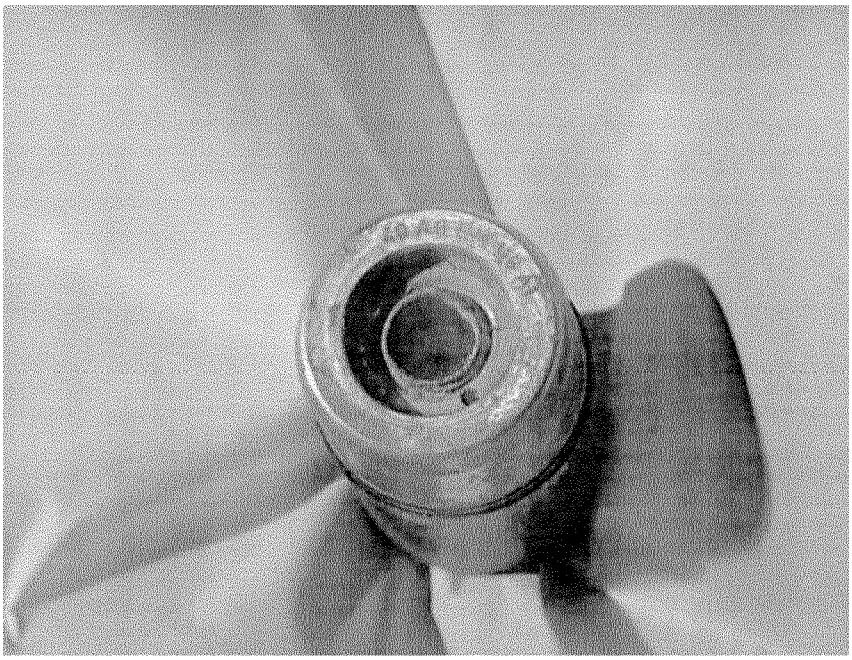


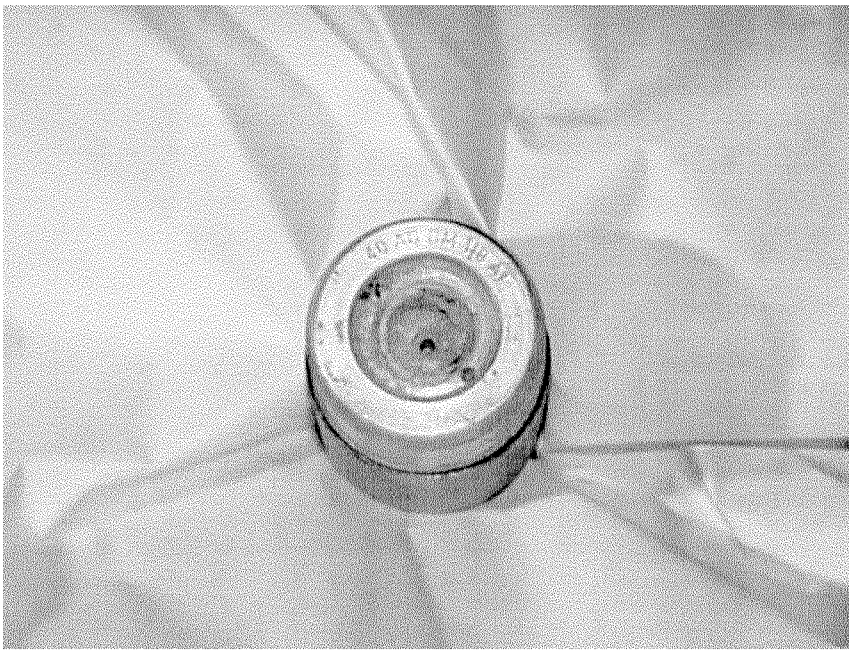
ATTACHMENT
J

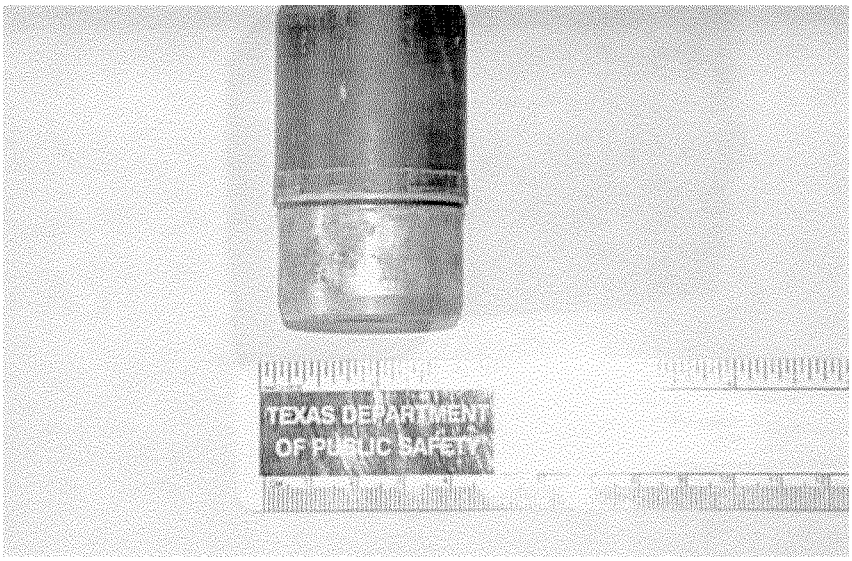
Photograph of Q380

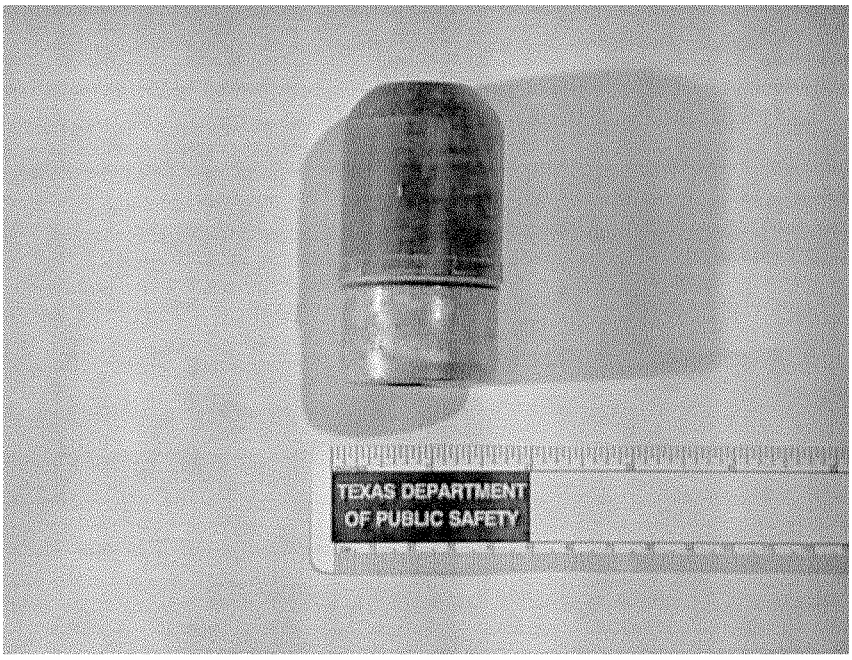

TEXAS DEPARTMENT
OF PUBLIC SAFETY


TEXAS DEPARTMENT
OF PUBLIC SAFETY






TEXAS DEPARTMENT
OF PUBLIC SAFETY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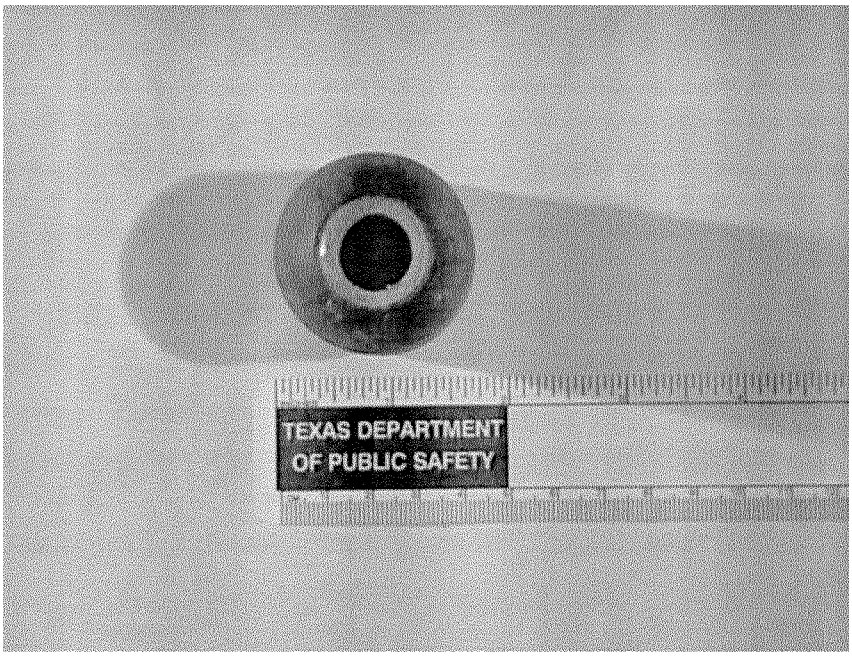
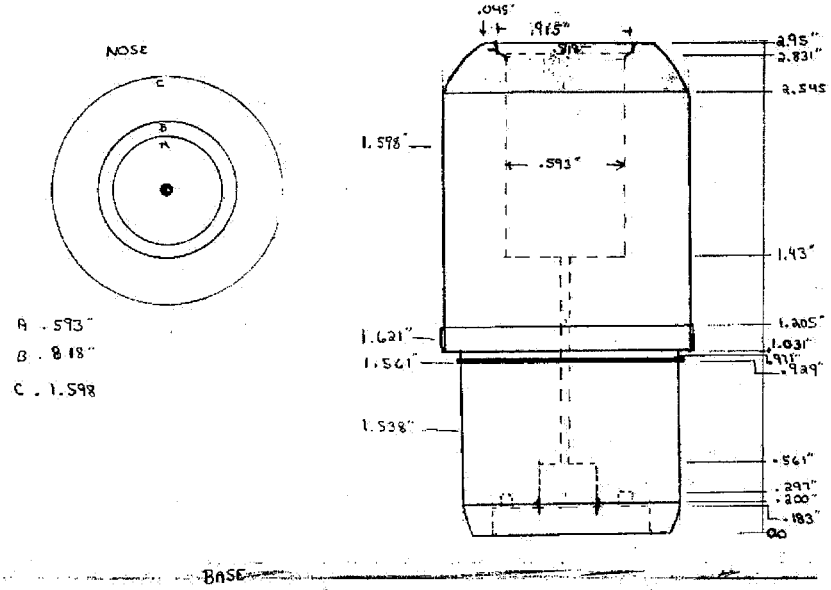
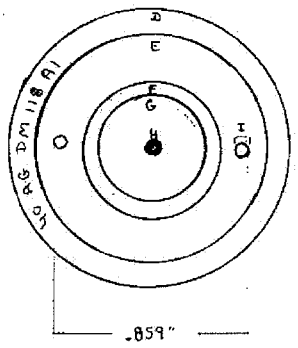
OF PUBLIC SAFETY


TEXAS DEPARTMENT
OF PUBLIC SAFETY

ATTACHMENT
K

Diagram of Q 380 made by
Ranger Sergeant Joey D. Gordon



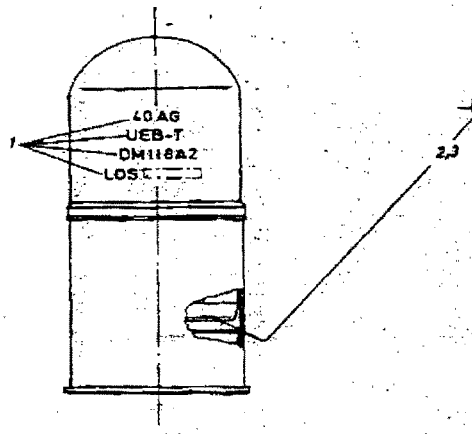


D - 1.538"
E - 1.375
F - .923
G - .451
H - .120
I - .1

Q380

ATTACHMENT
L

Diagram of 40 AG DM 118 A1 Projectile



Fax - No.

[redacted]

ATTN
Mr. Howback

1 Schrift DIN 1451 – 2 C 3

2 Schrift DIN 1451 – 1 C 2, geprägt

3 Kaliber und Kennbuchstabe der Waffenart; Modellkennzeichnung des Geschosses.

– Loskennzeichnung nach ZDv 34/101

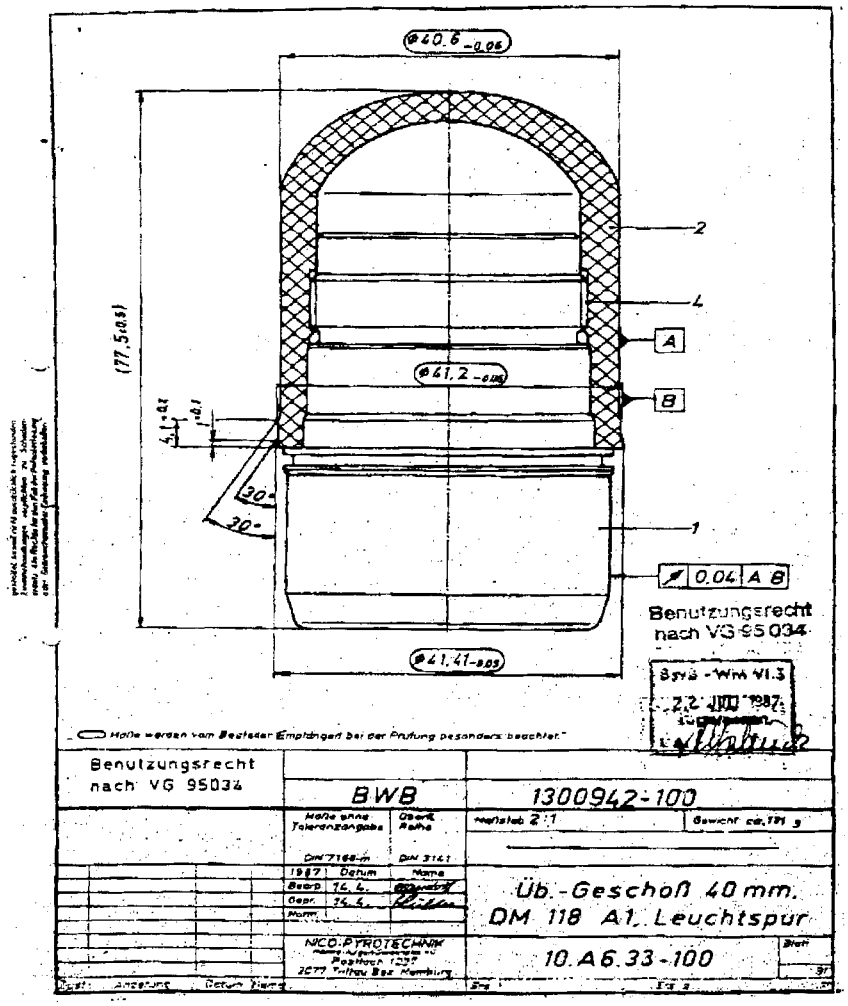
– Geschoßkunststoff: lichtblau RAL 5012

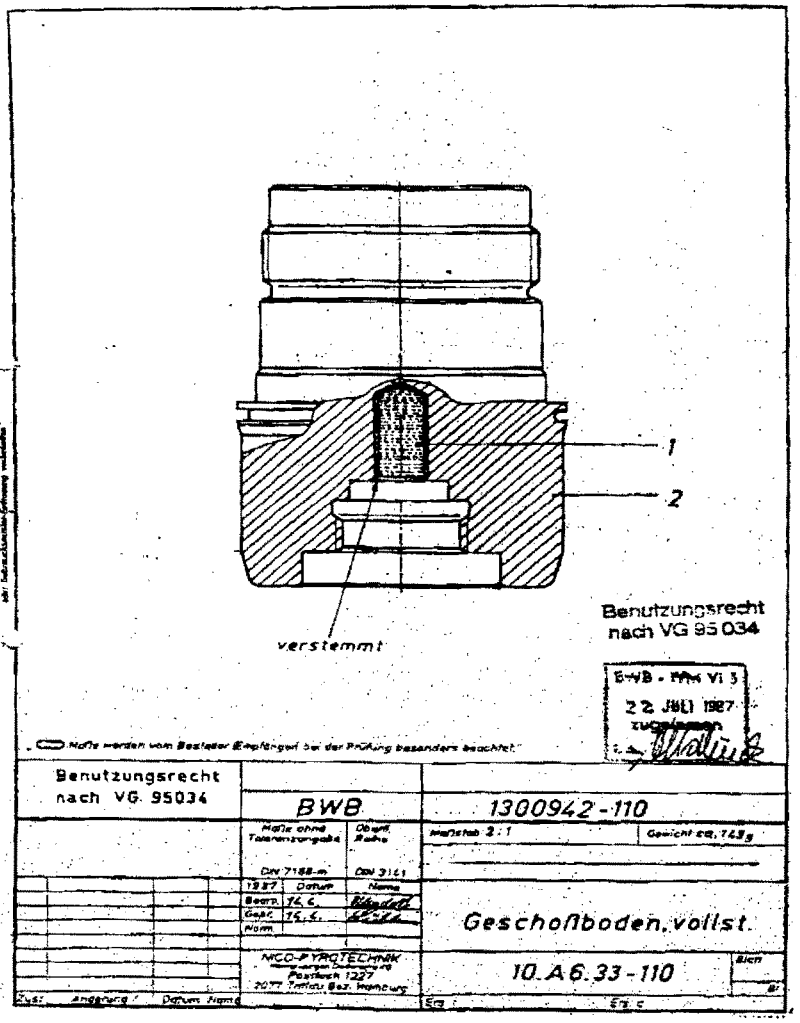
– Schrift: Cremeweiß RAL 9001

1 Lettering DIN 1451 – 2 C 3
2 Lettering DIN 1451 – 1 C 2, embossed
3 Caliber and weapon identification letter; projectile identification letter

- Lot marking in accordance with ZDv 34/101
- Projectile color: pale blue RAL 5012
- Lettering: cream white RAL 9001

Kennzeichnung Identification		1 : 1	PATRONE,UEBUNG, 40MMx46,DM118A2, Leuchtspur Training round, 40mm x 46, DM 118A2 Tracer
			MATERIALAMT DER BUNDESWEHR	1310-18-040AG-118.2 BWB 1300942


Ø40.6 -0.06
(77,5±0,5)
2
4
A
Ø41,2 -0.06
B
30°
30°
1
0.04 A B
Benutzungsrecht nach VG 95034
Ø41,41 -0.05
Maße werden vom Besteller Empfänger bei der Prüfung besonders beachtet.
Benutzungsrecht nach VG 95034
BWB
1300942-100
Maßstab 2:1
Gewicht ca. 171 g
Datum
Name
Bearb. 14.4.
Gepr. 14.4.
Norm.
Üb.-Geschoß 40 mm.
DM 118 A1, Leuchtspur
NICO-PYROTECHNIK
Postfach 1237
2077 Trittau Bez. Hamburg
10.A6.33-100
Blatt
Datum
Name


1
2
verstemmt
Benutzungsrecht
nach VG 95 034
BWB - FAM Vi 3
22. JULI 1987
Benutzungsrecht
nach VG. 95034
BWB
1300942-110
Maßstab 2:1
Geschoßboden, vollst.
10.A6.33-110
NICO-PYROTECHNIK
Postfach 1227
2077 Trittau Bez. Hamburg

ATTACHMENT
M

Correspondence with NICO Pyrotechnik

FROM : NICO-USA [redacted] Aug. 17 1999 12:20PM P1

NICO PYROTECHNIK HANNS-JURGEN DIEDERICHS GMBH & CO. KG
U.S. OFFICE

TO: DEPARTMENT OF PUBLIC SAFETY
TEXAS

FOR ATTN: MR JOEY GORDON

FROM: MR PETER McAULEY

DATE: 17 AUGUST 1999

SUBJECT: NICO 40mm X 46 CARTRIDGE

Dear Mr Gordon,

1. Further to your requests for information on the identity of a 40mm projectile, I have relayed the photographs you sent by e-Mail to NICO's Technical Department in Germany. Our Technical Department has provided the following information:

1.1 The projectile appears to be from a NICO 40mm x 46 Sound & Flash (S & F) Cartridge of the prototype design which was manufactured in approximately 1990. Approximately 1,000 of these were produced. This design was subsequently modified for volume production.

1.2 The markings on the base of the projectile " 40 AG DM 118A1" indicate that the projectile was modified, by NICO, from a NICO Training cartridge which was in volume production for the German Army at that time.

1.2 The cartridge was designed and developed by NICO in response to a requirement identified by several Law Enforcement agencies around the world. It was designed and developed to NICO's "Technical Specifications and Acceptance Regulations", not to a MILSPEC as it was developed for Law Enforcement customers not for the Military.

1.3 Specific contents of the projectiles NICO manufactured are:
1.2.1 Propellant: Approx. 0.4 grams of NC
1.2.2 Delay Composition: Approx. 0.5 grams
1.2.3 Report Composition: Approx. 4.0 grams
(Report Composition consists of Aluminum Powder & Potassium Perchlorate).

7422 Hallcrest Drive
McLean VA 22102
[redacted]

NICO PYROTECHNIK
U.S. OFFICE

1.4 Due to the time that has elapsed since this cartridge was manufactured, a search of records to ascertain who were the customers for this device will take some time.

2. The original 40mm x 46 Sound & Flash cartridge was developed for Law Enforcement agencies to be used as a distraction device in stand off type situations when there was a need to project a distraction effect. The popularity of this type of cartridge has since led to further developments and modifications.

3. Enclosed please find a copy of the original basic technical data for this cartridge together with a basic drawing. Basically, the function of the cartridge was that the propelling charge would ignite a centrally located delay column which in turn would initiate the report charge. The delay was approx. 1.3 seconds which would give a distance to the initiation of the report charge of approx. 100 metres.

4. Your e-Mail included a photograph, the last one of those included, of a projectile lying in water. We have not been able to identify this projectile from the photograph provided.

5. Please do not hesitate to contact me if I can be of any further assistance.

Yours faithfully
NICO PYROTECHNIK

Peter J. McAuley
Manager Asia Pacific Area

Enclosures: 1. Basic Technical Data Sheet (1 Page)
2. Drawing (1 Page)

NICO PYROTECHNIK

40 mm x 46 SOUND AND FLASH

Technical Data:

Length	approx. 99 mm
Weight complete	approx. 230 g
Weight projectile	approx. 180 g
Material:	
Projectile Body	aluminium
Cap	plastic
Cartridge Case	aluminium
Weapons used with	HK 69, M 203, M 79, G41-TGS and G3-TGS with grenade launcher
Propelling Charge	approx. 0,4 g
Delay Comp.	approx. 0,5 g
Report Charge	approx. 4 g

Performance:

Range max.	up to 250 metres (delay 3 sec.)
Muzzle velocity	approx. 78 m/sec. Std. deviation <1.5 m/sec. (20 rounds)
Delay	approx. 1,3 sec.
Report	130 dBA
Std. deviation at 100 m	<30 cm

Temperature limits

Firing	-35 Grad C +50 Grad C
Storage	-35 Grad C +63 Grad C

Environmental requirements MIL-STD 810 C/D

Packing: 80 rounds per box

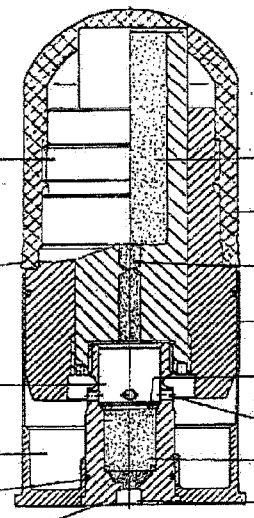
weight	gross approx. 24 kg net approx. 18 kg
dimensions	approx. 710 x 322 x 205 mm

For more information please contact us.
This information is a guide and does not constitute an offer.

[redacted]

FROM : NICO-USA [redacted] Aug. 17 1999 12:21PM P4
17-AUG-1999 14:46 NICO-TECHN.-LEITUNG +49 4154 805111 S.03/03

40 mm x 46 SOUND AND FLASH



CONFIDENTIAL
PROPRIETARY DATA OF NICO PYROTECHNIK
Hanns-Jürgen Diederichs GmbH & Co KG
Copying of this document and giving it to others and the use or communication of the contents thereof are forbidden without express authority. Offenders are liable to the payment of damages. All rights are reserved in the event of the grant of a patent or the registration of a utility model or design. Contravention is made to alterations

NICO PYROTECHNIK
HANNS-JÜRGEN DIEDERICHS GMBH & CO.KG

GESAMT SEITEN 03

[redacted]

NICO PYROTECHNIK
U.S. OFFICE

TO: TEXAS RANGERS
ATTN: RANGER JOEY GORDON

FROM: NICO PYROTECHNIK
FRED PICKLER

SUBJECT: IDENTIFICATION OF NICO PYROTECHNIK 40mm x 46 S&F

DATE: 27 AUGUST 1999

Dear Ranger Gordon:

Regarding our meeting yesterday, I have spoken with our technician in Germany and he has provided me with additional information you requested.

An updated drawing follows, with additional identification and chemical information.

1. The two aluminum parts of the body, which we examined yesterday, are secured with "Loctite 270, which is Green in color. This material is utilized to bond the blast chamber housing to the base piece. Both pieces of material are in fact aluminum, and not steel as previously mentioned.

2. The "plastic casing" is the outer housing or windscreen, and in the two rounds we examined yesterday, are black in color. The plastic is described as a Delrin plastic, standard grade as manufactured by Du Pont.

3. The lower part of the delay column, identified as "delay charge" consists of a mixture of 80% silicum powder (Si) and 20% red lead (Pb3 O4). Mr. Haeselich said the red lead is an oxidizer, and the two chemicals (Silicum and red lead) are blended and pressed into a delay column within the base of the projectile. The spelling of silicum is correct according to him.

4. The report charge is according to Mr. Haeselich, a mixture of Potassium perchlorate and aluminum powder. This material is placed in the effect chamber of the upper portion of the inner aluminum tube.

5. The tip of the projectile, when it left the factory had a sealing cover which was partially, internally machined, and the cut would not have passed through the nose of the outer portion of the plastic material. This area is identified as the shear off point in the drawing.

6. Before assembly into the actual projectile, the black powder in the lower portion of the chamber holding the report charge was placed in position. The delay charge was then pressed into the same housing. The report charge was then placed in the top opening, and a sealing disc, which contained a thin aluminum foil on both sides, was placed over the report chamber, in the nose section of the round. This disc was then sealed with a crimp at the rim of the chamber.

7 A thin bead of epoxy glue was placed on the outer wall of the aluminum base piece, as marked on the drawing, and bonded to the inner wall of the outer "windscreen" or black plastic casing.

8. The two metal pieces were then placed in a fixture and with one section (the outer body) being held in a non marking fixture, spun together with the aid of a tool which fitted in the two small holes that appear in the base of the cartridge. We refer to this tool as a spanner wrench.

9. Once the projectile is assembled, it is placed in a primed cartridge case, which has been charged with propellant, and the two are screwed together. This process joins the projectile to the high-pressure chamber.

10. When the primer is struck by the firing pin, igniting the propellant (Nitrocellulose Powder) and the pressure in the high pressure chamber bleeds over into the low-pressure chamber. When the internal pressure reaches a predetermined level, the projectile and the upper portion of the high pressure chamber shears off on a pre weakened line, and goes down range attached to the projectile.

11. The firing process initiates the delay charge. Approximately 1.3 seconds later the black powder charge initiates into the report charge and builds sufficient pressure to cause the cardboard disc and the shear off point to break away from the projectile and a brilliant flash and high report are released in the surrounding area.

12. The duration of the flash is approximately 2.5 milliseconds. This short duration is not likely to support a fire under normal circumstances as outlined in previous reports.

While it may seem we are a bit disorganized, please keep in mind these articles I have examined thus far were early production and design. They were most likely hand built. As we developed a customer requirement and learned of shortcomings of the design, it was changed, to what is our most current design, and brought into full production. I have been assured less than 1,000 rounds of this design were ever produced, and thus far are only aware of one shipment to the United States. Records are still being researched to determine how many and to whom they were shipped.

If identifying the actual customer becomes an issue, there are other avenues that can be explored to make positive identification of the recipient.

Best regards,

NICO PYROTECHNIK
HANNS-JÜRGEN DIEDERICHS GmbH & Co. KG

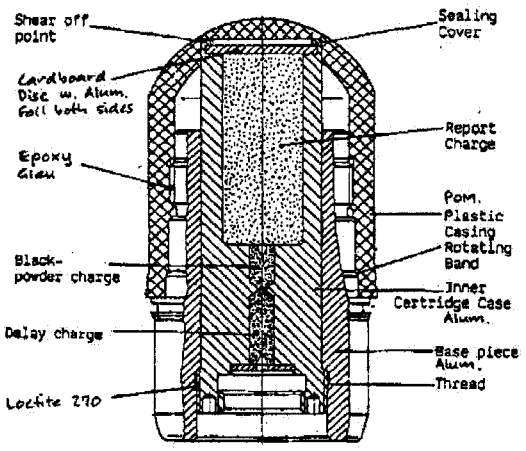
FRED PICKLER-MANAGER
LAW ENFORCEMENT PRODUCTS
NORTH AMERICA

One additional page follows-technical drawing

5.2 Projectile

The projectile body consists of a plastic molded casing with rotating band and an aluminium base piece which are screwed and sealed together to form one piece.

The report charge and the delay charge are filled in a inner cartridge case which is screwed into the projectile aluminium base piece.
The ogive is preformed in order to open the projectile body after initiating of the report charge

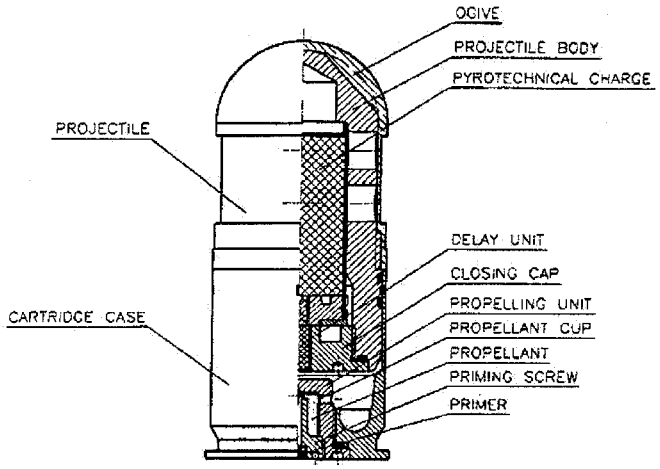


Remark: There is no special fuze necessary for function of the projectile

ATTACHMENT
N

Information on
ARGUS 40 MM x 46 Flashbang 93

40 mm x 46 FLASHBANG 93 PRACTICE GRENADE



Technical Data

Cartridge length:			102mm
Cartridge weight:			265g
Projectile weight:			190g
Muzzle velocity:			76m/s
Firing range:			50m
Self-destruct time:			after approx.1,2sec at 21°
Operating temperature:			-42.8°C to +51.6°C
Storage temperature:			-53.8°C to +73.9°C
Color:	Projectile	black	RAL 9005
	Markings	white	RAL 9001
	Case	natural	
Packing:			50 rounds/plywood box
			or on customer's request

FROM : MGA Entertainment
ARGES
A-4690 Schwanenstadt/Ritstorf

40 mm x 46 FLASHBANG 93
PRACTICE GRENADE

Item no. A0.05220



General

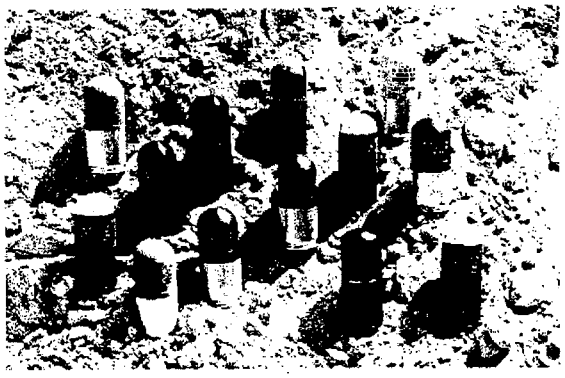
The cartridge 40 mm x 46 FLASHBANG 93 is used for training purposes and simulates a real detonation by means of flash and light effects without endangering the operating crew.
It is available with various self-destruct times depending on the desired firing range.

FROM : MDA Entertainment PHONE NO. Aug. 18 1999 04:32PM P2

ARGES
Armaturen-Gesellschaft m.b.H.
A-4690 Schwanenstadt/Rüstorf

THE 40 mm x 46 LOW VELOCITY GRENADES

for M79, M203, HK 69, HK 79, CIS 40GL and GL6
(other weapons on request)



Their advantages

- higher precision by a novel patented ignition system
- guaranteed dispersion pattern at a distance of 100m: 1m x 1m
- V_0 : 76m/s ($\bar{x}_{V_0}$= 76m/s ± 2m/s, $\sigma_{v_0} \leq$ 1m/s)
- use of the standard sight without additional correction of the adjusted actual firing range for all types
- maximum range: 400m

DRAKE ASSOCIATES, INC.
2941 SUNRISE HIGHWAY
ISLIP TERRACE, NY 11752

ATTACHMENT O

Copy of letter from Assistant United States Attorney Bill Johnston to United States Attorney General Janet Reno

U.S. Department of Justice

United States Attorney
Western District of Texas

700 S. University Parks
Suite 770
Waco, Texas 76706

[redacted]

BY FACSIMILE

August 30, 1999

Honorable Janet Reno
Attorney General of the United States
Washington, D.C.

Dear Madam Attorney General Reno:

As I have watched the responses made by the Department of Justice to the recent Davidian evidence controversy, I have formed the belief that facts may have been kept from you - and quite possibly are being kept from you even now, by components of the Department. Therefore, this letter is written in an attempt to advise you of facts which might allow you to better deal with the issues at hand.

As you recall, shortly after the failed February 28, 1993, raid by ATF, I asked the Texas Rangers to come into the case as an objective agency which could investigate the circumstances of the shootout and present evidence for a possible prosecution. Thankfully, the Rangers agreed. Their job was not to be an easy one, and their work was made more difficult when the FBI altered the crime scene by using armored vehicles to push Davidian vehicles away from the compound. This problem, along with others, caused me to write the letter to you dated March 23, 1993, seeking help with what I termed, "...a crisis within our District... ." You responded shortly thereafter in an attempt, I know, to gain control over a very difficult situation.

In addition to their role as investigators, the Rangers have been the primary custodians of the evidence gathered during the investigation. In 1998, an independent film-maker from Colorado named Mike McNulty began making requests to view the evidence. He contacted the Public Affairs section of the Department of Justice and he contacted me. After we had both received numerous phone calls from McNulty, Bert Brandenburg and I spoke about how to respond to his requests. We both had some reservations about dealing with Mike McNulty, in part, because of his first film, "Waco- Rules of Engagement." I felt at that time that the film was inaccurate, if not irresponsible. However, I expressed to Mr. Brandenburg that to stonewall McNulty tended to lend some credence to his already held belief that the government had something to hide. Because much of the evidence which McNulty sought to view had been in the public domain at trial, and because McNulty was not

a litigant, I believed that some reasonable but limited access should be granted him. Sometime after our discussion, Bert Brandenberg telephoned me to say that I should serve as the Department's contact with McNulty and that if I could get the Rangers to assist in allowing McNulty reasonable access to the evidence, then I should proceed in allowing him access. I have recently been told that Bert Brandenberg now distances himself from that decision and states that it was "Johnston's idea." No matter how he casts it, I am glad that McNulty was allowed to see the evidence.

Following my call to them, the Rangers kindly allowed McNulty to view the evidence. I was present on one occasion when McNulty came to Austin to see the evidence. I did not attend when he came a couple of times later. I know that his visits were closely supervised by the Rangers. At no time did he alter or disturb the integrity of any item of evidence. Following his viewing of the evidence, McNulty sought permission to interview you and me for his film. This request was denied by Bert Brandenberg. In his letter denying the request, Brandenberg discusses the fact that McNulty had been given access to the evidence (letter attached).

Based upon his observation of the evidence, Mike McNulty began to believe that evidence existed that the FBI had fired some sort of 40 millimeter projectile which could have started the fire on April 19, 1993. He has stated to me that in November of 1998, he wrote a letter to the Department of Justice, alleging facts in connection with the 40 millimeter projectiles.

On a Saturday morning in June of 1999, I received a telephone call at my home from DOJ Torts Branch lawyer Marie Hagen. Ms. Hagen was extremely upset with me. She demanded to know whether or not I had allowed Mike McNulty to view the Davidian evidence. I responded that I had. Ms. Hagen asked me what I thought I was doing, and inquired if I had received permission from the Torts Branch to allow McNulty access. She next asked if I had received permission from the Criminal Division. I responded as to both demands that the permission to do so had come from the Chief of Public Affairs, and that I figured that he had checked with the necessary folks before allowing me to coordinate with McNulty. She ended the conversation unquenched in her anger. I think that I now know why. Then within a day or so, I received a letter from Marie Hagen which directed that I account for my dealings with McNulty, Brandenburg, "...and anyone else in connection with these materials." About the same time, our office received a similar letter over the signature of Jeffrey Axelrad, Chief of the Torts Branch (letters attached).

In mid-June of this year, I received a letter from an attorney for the Texas Department of Public Safety (DPS). He later telephoned me. The attorney stated that DPS desired to cease being custodians of the Davidian evidence. I told the attorney that I would help them in any way, since DPS, particularly the Rangers, had done more than what was expected of them. DPS personnel have since explained to me that their agency simply did not have the time or resources to continue to deal with the many issues regarding the evidence, particularly the ever-increasing number of Open Records requests. DPS has felt somewhat slighted by the Department of Justice in this regard since the Department has apparently avoided dealing with Freedom of Information Act requests about the evidence by stating something like, "We don't have the evidence, the Rangers do." This response may be a little disingenuous because the Rangers actually have the evidence as Special Deputy U.S. Marshals. Genuine or not, this manner of response by the Department has caused DPS to be burdened with a large number of requests. DPS then chose to file a motion with U.S. District Judge Walter Smith, Jr., of Waco. The motion sought an order transferring responsibility for the evidence to another agency. Wisely, the Chairman of the DPS Commission asked the Rangers to take stock of the evidence before it was released. As they looked at the task of inventorying and reviewing the

evidence, the Rangers were determined to be particularly attentive to "controverted" evidence. That is, evidence which by claim of McNulty, or others, was meaningful to some alleged misconduct or misrepresentation.

A couple of months ago, Rangers began the task of looking again at the evidence. After some initial work, certain "40 millimeter" evidence became the focus of their inquiry. Because of my relationship with both the Rangers and the case, I was asked by the Rangers to work with them in their effort. This I did. Since I was the one who brought the Rangers into this case at the beginning, I figured that I should help them see it through to the end. Pretty soon, a 40 millimeter shell casing marked "M-118" and a photograph of a grey projectile with a red stripe became very significant. As soon as their significance was even suspected, I notified my U.S. Attorney, in writing, of what was going on. Soon, it was determined that the casing had been fired by the FBI on April 19, 1993, --by their own admission. This admission had been made to a Ranger in late 1993 or early 1994. The Ranger simply did not understand the significance of the casing at that time. The full significance was figured out by the Rangers just in the past couple of weeks. The photo of the projectile mentioned above shows what the Rangers now know is an M-651 pyrotechnic tear gas round. The casing goes with the projectile. As early suspicions of these problems made their way to the media via the DPS Chairman Jim Francis, I was astounded to see the Department's response was that this was "more nonsense." My surprise was based upon the fact that I had been updating my U.S. Attorney for weeks about this evidence. Attached are some of the "e-mails" which I have been able to find having to do with these discussions. Last week, I expressed this frustration to current Public Affairs Chief Myron Marlin (document attached). I am in disbelief that someone in the Department did not advise you of these developments. I hope that you can find out why they did not. In addition to the "e-mails," I sent to my U.S. Attorney, by facsimile, copies of the specifications for the M-651 tear gas round which the Rangers had obtained. Again, this was done by me weeks ago.

As you recall, when Congress investigated the Davidian matter in 1995, I was called as a witness. Once it was determined that I would have to testify, I was kept at a distance from the Department. It was not the Department that brought me to Washington to prepare for the hearing, but the Treasury Department. Although I was treated courteously by Richard Scruggs, I was not assisted by anyone with DOJ in any real way in preparing for my testimony. In fact, I was handled as if I had some strain of intellectual leprosy. A couple of days before the hearing, an AUSA named Zipperstein told me that I needed to write out a statement of my recollection of the events. This, he said, was so that I could have these matters placed into the record in case I was not given the opportunity to have my say on certain matters. An office and computer were provided to me to prepare this statement. For the next several hours, I worked feverishly on my statement. Upon completion, I walked proudly to Mr. Zipperstein's office with statement in hand only to be told that I did not need to do a statement after all. When I asked what had changed and why I would not be allowed to give the statement, Zipperstein told me simply that nothing had changed - he just did not need for me to do the statement. Naively, stupidly, I accepted his response. With the hearing beginning the next day, I made my way down the street to the Treasury Department where Undersecretary Ron Noble, who was neither ashamed of me, nor afraid of what I might say, talked with me about some of the issues which might arise at the hearing. I mention the foregoing about the previous experience because I anticipate the same or worse may occur. In fact, it may have already begun. Last week, a fax which originated with the Department of Justice came to me. The

fax was in three pages. The first was a copy of handwritten notes which had apparently been written by a paralegal who assisted in the Davidian trial preparation. The notes were of an interview of an FBI agent which was probably conducted in 1993. The notes reflect that the agent said that he fired ferret rounds and a "military gas round." An accompanying document is an outline of the witness' testimony which bears the name of the paralegal and my name. This suggests that I was present during the interview. Although I do not specifically recall the interview, I probably was present if the document says that I was. I can certainly tell you that, assuming I heard the entire conversation, the term "military gas round" would not have meant anything to me at the time. The third page of the fax was an FBI report of an agent who heard radio traffic about a military round being fired. It has been suggested to me that these documents were sent to me to "hang over my head," or to say that I'd better look out stirring this matter up, as I may have to explain this paralegal's memo. So long as it is the truth "hanging over my head," I am not afraid. I will not be intimidated by anyone with the Department of Justice. I will assist the Congress or any other body who seeks the truth in this case.

I mentioned above that I think that I understand why Marie Hagen was so upset that I had worked with Mike McNulty in allowing him access to the Davidian evidence. I believe that the three pages faxed to me last week hold the answer. At the top of the typewritten document, someone has written, "...privileged." At the bottom it appears that someone wrote, "DOJ witness do not disclose." It appears that someone was making decisions about whether the plaintiffs in the civil case, or others, should have access to these documents. It is my own hypothesis that the Torts Branch has had these documents for years, and that they decided not to make them available to the plaintiffs. The Torts Branch or some other component also apparently decided not to let you know about these documents. Certainly, as attention focused in the past year on the fire issue, the full import of these documents must have been known to whomever possessed them. I now wonder whether or not you were ever advised that two Deputy U. S. Marshals in Waco were falsely accused of leaking raid information to the media back in 1993. These allegations were completely false, if not malicious. Not only was no action taken against the accusers who were both Deputy Marshals as well, but one of them has since been promoted. Similarly, although two ATF supervisors lied to the Rangers about whether or not they knew the element of surprise had been lost before the raid, representatives of the Department of Justice chose to not prosecute these individuals – and they were rehired with ATF. This sort of non-accountability, as described above, cuts at the credibility of the Department of Justice.

You may recall that in my March 23, 1993, letter I closed by saying "...[I] am willing to accept any consequences..." for writing the letter. There have been some consequences. I will close this letter to you by briefly describing a few. Essentially, since the letter, I have been seen by many as a mutineer. The Waco Division office which I supervise has been given little help to deal with an ever more complex caseload. To deal with the caseload which we produce, the U.S. Probation Office in Waco has gone from a staff of three, to a staff of twenty in the past ten or so years. Our office saw only modest growth from one to three attorneys by 1993, with no real growth over the past six years. For most of the past six years, our office has been comparable in caseload and complexity of cases to that of the Austin office, an office which hosts more than three times as many attorneys and three times the support staff. Although our entire District has yet to prosecute a capital case, my office currently has three federal capital murder cases pending. In fact, we now have ten defendants charged in or in relation to homicide cases. If our office does not deserve resources,

certainly the victims' families do. We also have a couple of 50 ton marijuana cases and a methamphetamine case involving a ton or more pending amongst our current case load of 81 cases against some 156 defendants.

It is a reality of our large government that its department heads cannot learn of every significant event taking place within their purview. If this has happened to you, I hope that this letter can assist you in learning of some of the facts which have been known by individuals under your supervision. In an order issued some years ago, Judge Smith referred to the Davidian case as, "An American tragedy of epic proportion." It was. I hope that the truth may be learned so that the tragedy does not continue.

Sincerely,

William W. Johnston
Assistant U. S. Attorney
Chief, Waco Division
Western District of Texas

The Dallas Morning News
Dallas, Texas, Wednesday, July 28, 1999

DPS head raises questions about Davidian fire

Justice Department denies incendiary devices used

By Lee Hancock
Staff Writer of The Dallas Morning News

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WACO, Texas — The head of the Texas Department of Public Safety said Tuesday that evidence held by the Texas Rangers since the 1993 Branch Davidian siege calls into question the federal government's claim that its agents used no incendiary devices on the day that a fire consumed the sect's compound.

"There's some evidence that is at least problematic or at least questionable with regard to what happened," said James B. Francis Jr. of Dallas, chairman of the Texas Department of Public Safety.

Mr. Francis declined to detail the evidence but said, "With the proper experts analyzing it, it might shed light as to whether an incendiary device was fired into the compound that day."

Myron Marlin, a spokesman with the Justice Department in Washington, D.C., dismissed the allegation.

"It's more nonsense. We know of no evidence to support an allegation that any incendiary device was fired into the compound on April 19, 1993," Mr. Marlin said.

He declined to comment further, citing a continuing wrongful-death lawsuit filed by surviving sect members and families of the more than 70 people who died when the compound burned.

Sources close to the government's Davidian investigation say the current questions center on several 40 mm munitions found in the compound wreckage.

In repeated sworn statements and testimony, FBI and Department of Justice officials have maintained that FBI agents did not fire a shot during the 51-day siege.

FBI and Justice officials have insisted that FBI agents did not use any pyrotechnic or incendiary devices during the tear-gas assault that ended with the compound consumed by fire.

The Texas Rangers have had custody of the evidence from the Davidian investigation since 1993, when they were assigned to investigate the standoff and its fiery ending. The siege began with a firefight and the deaths of four agents from the Bureau of Alcohol, Tobacco and Firearms, which had tried to

Please see FBI on Page 16A.



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FBI may have used incendiary devices on Davidians, official says

Continued from Page 1A.

search the compound for illegal weapons and arrest Branch Davidian leader David Koresh.

Mr. Francis said Tuesday that some FBI officials made statements to Texas Rangers immediately after the fire "that are contradictory" to the federal government's account of what happened.

Complaints studied

Mr. Francis told *The Dallas Morning News* that he only recently became aware of those statements as he began looking into complaints about the lack of public access to evidence in the Davidian investigation.

Mr. Francis said he became concerned enough to contact U.S. District Judge Walter Smith of Waco, who has presided over all the cases arising from the deadly standoff. DPS recently filed a motion asking Judge Smith to take control of the evidence in the case.

"I took the steps to turn it over to the court so the court could decide what to do," Mr. Francis said. "I think it's very important that whatever the evidence is and whatever it shows, that all of it come out and let the chips fall where they may."

Judge Smith, who heard the criminal case arising from the Davidian siege, is presiding over the wrongful-death lawsuit filed by sect members against the federal government.

In a ruling issued July 1, Judge Smith refused to dismiss Davidian claims that the FBI may have fired at the compound April 19 and allegations that FBI negligence was responsible for the final tragedy. A trial has been set for mid-October, but both sides have said the complexity of the case may mean it will not go to trial until next year.

Mr. Francis said he told Judge Smith that a Justice Department policy blocking all public access to the Davidian evidence had created what amounted to an "absurd" shell game, with the DPS stuck in the middle.

"I said, 'It is in effect a cover-up. It is not intended to be, but in effect it is,'" Mr. Francis said. "It is a complete stonewall."

Mr. Francis said he doesn't think there was "some grand conspiracy to hide the evidence. I think it evolved into a situation where that was the effect of it."



David Koresh ... An attempt to arrest the sect leader prompted a 51-day standoff.

He said the judge asked only "how much space are we going to need," when Mr. Francis proposed turning over the evidence in the case to his federal court in Waco.

Material gathered

After the siege, about 40 Texas Rangers were assigned to investigate and gather evidence in the case, and their investigation became the backbone of a 1994 criminal trial in which eight Branch Davidians were convicted of charges ranging from manslaughter to weapons violations.

More than 24,000 pounds of evidence was gathered from the burned wreckage of the Branch Davidian compound, and much of that remains in federal storage in Waco.

Evidence used in the federal prosecutions was transferred to DPS headquarters in Austin for safekeeping. Although Texas Rangers had custody of the material, Justice Department officials retained authority over who could see it. They ordered DPS officials to route requests for access to Washington.

Mr. Francis and others in the agency said DPS officials became increasingly frustrated as they learned that Justice Department officials routinely sent those requests back to Austin with the explanation that the evidence was in the custody of Texas officials.

"It was a perfect Catch-22 to block everybody from seeing the evidence," Mr. Francis said. "There is some evidence there that the world needs to see, in my opinion. The government does not want this evidence out, and yet, that's not right."

Justice Department lawyers filed a response Friday asking the judge to delay action on the DPS motion until next week to allow federal authorities to try to negotiate an agreement.

The lawyers declined to comment on the matter Tuesday. But several said privately that the dispute is nothing more than a legal issue.

"It's not a matter of trying to hide anything," one lawyer said.

The issue began coming to a head last spring when DPS officials began fielding complaints that a Colorado documentary researcher had been allowed access to the evidence.

Evidence reviewed

The researcher, Michael McNulty, was a producer and principal researcher in a 1997 documentary that alleged that government agents fired into the Davidian compound and set off devices that started the fire. He is preparing a new documentary on the standoff, with release expected in September.

Mr. McNulty's visits were approved by a Justice Department public-affairs official who has since left the agency, and they were supervised by Assistant U.S. Attorney Bill Johnston, the Waco-based federal prosecutor who handled the Branch Davidian case from its inception.

Mr. Johnston said he supported the decision to give Mr. McNulty access because "I didn't want to be a party to even a perception that we had something to hide."

"Although I may not agree with him on many things, I believe that Mr. McNulty has a right to his opinions," Mr. Johnston said.

In those visits, Mr. McNulty said, he and an expert assisting his film company examined a 40 mm shell casing and two 40 mm projectiles that he contends are pyrotechnic devices.

He said they also found that at least six items listed in Texas Ranger inventories as silencers or suppressors were not.

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FBI may have used incendiary devices on Davidians, official says



File photo

The Branch Davidian compound was consumed by fire April 19, 1993. FBI and Justice officials say FBI agents did not use any pyrotechnic or incendiary devices during their tear-gas assault in which more than 70 sect members died.

dence.

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He said they also found that at least six items listed in Texas Ranger inventories as silencers or suppressors were actually "flash-bang" devices. Those devices are commonly used by law-enforcement officers to stun suspects, and they sometimes ignite fires in enclosed spaces because they emit a loud bang and flash driven by a small pyrotechnic charge.

Mr. McNulty said he thinks those devices could be key evidence because Texas Rangers' evidence logs indicate they were recovered from areas of the compound in which the fires broke out.

Mr. McNulty said he shared his information about the devices with Mr. Johnston and with lawyers representing Branch Davidians in their wrongful-death lawsuit.

"It's our belief that these pieces of ordnance could — and probably did — have an impact on the fire on April 19th," he said.

A fire investigation conducted after the standoff concluded that the fire was set by sect members.

Mr. McNulty said he was contacted last week by Mr. Johnston and asked to speak with a Texas Ranger who questioned him for more than two hours.

Mr. McNulty said the discussion led him to think the Rangers have opened a preliminary criminal investigation.

Mr. Johnston, Mr. Francis and DPS officials in Austin declined to say whether the agency has opened an investigation.

FBI may have used incendiary devices on Davidians, official says

After Mr. McNulty's last visit in March, Mr. Johnston said, lawyers from the Justice Department who are handling the Davidian wrongful-death lawsuit contacted him to complain that anyone had been allowed access to the evidence.

Dallas Morning News *Washington bureau staff member David Jackson contributed to this report.*

The Dallas Morning News

Dallas, Texas, Tuesday, August 24, 1999

2 pyrotechnic devices fired at Davidians, ex-official says

Government denies former FBI agent's statements

By Lee Hancock
Staff Writer of The Dallas Morning News

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A former senior FBI official has said that the agency fired two pyrotechnic tear gas grenades on the last day of the 1993 Branch Davidian siege, a day on which federal authorities have long insisted they used nothing capable of starting a fire.

The former official, Danny O. Coulson, said in an interview that two devices known as M651 CS tear gas grenades were fired from FBI grenade launchers hours before the compound erupted in flames April 19, 1993. He said they were used with permission from FBI supervisors and that they played no role in starting the fire.

The federal government has consistently disputed accusations that the FBI started the fire that consumed the Branch Davidian compound with David Koresh and more than 80 followers inside. Government officials have maintained that the FBI used only nonburning devices to insert tear gas into the compound on April 19 because of fears that pyrotechnic tear gas might spark a fire in the flimsy wooden structure.

The statement by Mr. Coulson, founding commander of the FBI's hostage rescue team and a deputy assistant FBI director at the time of the incident near Waco, marks the first time that any government official has publicly contradicted those claims.

On Monday, a spokesman with the U.S. Justice Department again denied that any pyrotechnic devices were used.

"We are aware of no evidence to

Please see DEVICE on Page 7A.



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Device capable of starting fire used on Davidians, ex-official says

Continued from Page 1A.

support the notion that any pyrotechnic devices were used by the federal government on April 19," Justice Department spokesman Myron Marlin said. "We've said that all along."

Even if the devices played no role in the final fire, however, a former Texas Ranger captain who headed the investigation of the 1993 tragedy said Mr. Coulson's statement is "mind-boggling."

"The stance has always been that they used no pyrotechnics out there that day," said David Byrne, who retired from the agency in August 1996. "There are some serious criminal violations if they did. They have testified. They have done it before Congress. They've done it in court. They've caused other people to testify that there were no pyrotechnics used.

"If that turns out not to be right, then somebody will have some serious problems on a federal level," Capt. Byrne said.

The issue of whether pyrotechnic devices were used by the FBI on April 19, 1993, is a major focus of an ongoing inquiry by the Texas Rangers and a key allegation in a pending federal wrongful-death lawsuit filed against the government by surviving Davidians and families of those who died.

The issue was also a factor in a decision by the Texas Department of Public Safety to persuade a federal judge in Waco to take control of all the evidence in the case. In response to a DPS motion, U.S. District Judge Walter Smith issued a sweeping order Aug. 8 requiring the federal government to turn over all physical evidence, documents, recordings and photographs related to the Davidian tragedy.

James B. Francis, chairman of the commission that oversees DPS, said Monday that Mr. Coulson's statement heightens his concern that evidence gathered by Texas Rangers immediately after the tragedy contradicts the federal government's account of what happened.

"It goes a long way toward confirming why I say that some of the evidence that DPS has or had in its possession is problematical and needs to be evaluated by independent experts," he said.

"A fair-minded person who looks at this evidence would see that there is a problem with some of the things that the federal government has said happened that day," Mr. Francis said.

The Texas Rangers have had custody of key evidence from the Davidian investigation since 1993, when they were assigned to investigate the Feb. 28, 1993, shootout that began the tragedy.

The standoff

Four federal agents with the Bureau of Alcohol, Tobacco and Firearms died when a shootout erupted as they tried to search the compound and arrest sect leader Koresh.

The ensuing 51-day standoff ended when FBI agents used tanks to spray CS tear gas and launch nonburning CS "Ferret" rounds into the compound to try to force the sect's surrender. Ever since, Justice Department officials ranging from Attorney General Janet Reno to the FBI's chief spokesman in Waco repeatedly insisted to the media, Congress and the courts that all of the CS tear gas used was nonpyrotechnic.

But Mr. Coulson, then a deputy assistant director of the FBI's criminal investigative division, said he learned last week from members of the hostage rescue team and other FBI officials that two M651 CS cartridges were fired at an area known as "the pit," an underground structure that led to tunnels that opened into the compound.

"There were at least two pyrotechnic devices used that day," said Mr. Coulson, who helped supervise the government's handling of the siege. "The HRT doesn't think it was a big secret."

He said members of the FBI's hostage rescue team asked to use the pyrotechnic devices because the "Ferret" rounds they had been issued did not adequately penetrate the pit.

Mr. Coulson said two devices were fired after the request was approved by FBI supervisors, including rescue unit Commander Richard Rogers. Mr. Rogers, who has since retired, could not be reached for comment Monday.

Mr. Coulson said that the devices are military ordnance not commonly used or kept by the hostage unit.

A military manual produced by the U.S. Army describes the M651 as "pyrotechnic," with a burning time of 20 to 30 seconds. The manual also warns that while not explosive, malfunctioning M651 canisters have been known to explode on impact.

A CBS television camera recorded footage of white smoke billowing from the pit area between 8:30 and 9:30 a.m., and Mr. Coulson said that smoke probably came from the two pyrotechnic grenades.

"The fire did not start there. That's a lot of nothing," he said, noting that the fire erupted shortly after noon. Independent arson investigators concluded it began simultaneously in three separate places inside the compound.

Fire plans

FBI bugs picked up voices of Davidians discussing spreading fuel and planning a fire hours before the compound burned. Arson investigators also found evidence that five different accelerants, including gasoline, charcoal lighter fluid and camp stove fuel, had been poured inside the compound.

Arson investigators have said their conclusion that the FBI's tear gas played no role in the fire was partially based on the agency's assurance that it used no pyrotechnic devices on April 19.

Mr. Coulson said he had no idea why FBI officials did not acknowledge the use of the pyrotechnic devices in their statements to Congress and to investigators who conducted a lengthy Justice Department Review of FBI actions in Waco.

"The first thing they should've said, if we knew, they should've said we fired," said Mr. Coulson, who now lives in North Texas. "That's a problem."

The evidence in custody of the Texas Rangers includes one crime-scene

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Device capable of starting fire used on Davidians, ex-official says

TEAR GAS AND THE BRANCH DAVIDIAN STANDOFF

From U.S. Army data sheet and operating instructions on the M651 CS cartridge tear-gas grenade, the device that a former FBI official said was used at the standoff:

- **Type of filling: pyrotechnic mixture.**
- **Burning time: 20 to 30 seconds.**
- **The M651 cartridges are not explosive rounds; however, a malfunctioning projectile may explode upon impact.**

Prior statements by federal officials and weapons experts that the CS tear gas used at Waco was nonpyrotechnic.

- **From April 28, 1993, testimony of Attorney General Janet Reno before the House Judiciary Committee:** "I wanted and received assurances that the gas and its means of use were not pyrotechnic. I was concerned about intentional or accidental explosions."
- **From April 28, 1993, testimony of William Sessions, then director of the FBI, to the House Judiciary Committee:** "One critical factor was that CS gas can be used without pyrotechnics. It will not start or contribute to a fire."
- **From written responses from Ms. Reno to questions raised by the committee:** "With respect to the introduction of tear gas on April 19, it was my understanding that the tear gas produced no risk of fire. ... Again, we regarded the use of tear gas to be safe since it is nonpyrotechnic and was injected in a liquid form that could not have caused a fire."
- **From the October 1993 Report to the Deputy Attorney General on the Events at Waco, Texas, under heading titled False Accusations That the FBI Started the Fire :** "In addition, a nationally recognized team of arson experts . . . has concluded that the Davidians started the fire, that the fire could not have been started by accident at a single point of origin, and that the gas delivery systems the FBI used were completely nonincendiary."
- **From the July 1995 congressional testimony of British government chemical weapons expert David Upshall about the use of nonpyrotechnic devices called ferret rounds to deliver CS tear gas in Waco:** "It is deliberately chosen, I believe in the United States of America, to replace the pyrotechnic device because your buildings have a very high wood content. They are wood frame buildings, and, therefore, in the case of pyrotechnic devices, they have tended to catch fire."

SOURCE: *Dallas Morning News* research

The Dallas Morning News

photograph taken just after the compound fire that shows what arms experts say is a spent M651 CS canister, a projectile that delivers gas. The device was found in a pool of water outside the compound.

A small-arms and ammunition expert with Jane's Defense Information who examined a crime-scene photograph of the device for *The Dallas Morning News* said its distinctive design — a two-toned, gray-and-gun-metal canister ringed with a bright red band — is unique to U.S. military pyrotechnic tear gas grenades.

"The color coding is indicative of a 40 mm CS grenade," said the expert, Charles Cutshaw.

Rangers began trying to find the device in their evidence lockers after the photograph was brought to their attention by an independent researcher long critical of the government's actions in the standoff.

The researcher, Mike McNulty, was allowed to view evidence in DPS custody last fall and this spring when a Justice Department official reversed the agency's long-standing policy barring all public access.

After Mr. McNulty asked to see the device in the crime-scene photograph, the Rangers could not find it in their evidence lockers. They also learned from Mr. McNulty that other evidence in their custody had been mislabeled.

Mr. McNulty's questions about evidence unleashed an uproar in the Justice Department earlier this summer, federal officials have said. Lawyers defending the government against the Davidians' wrongful-death lawsuit did not learn he had been allowed to view the evidence until his visits were mentioned in pleadings by the Davidians' lawyers.

The matter then came to the attention of Mr. Francis, chairman of the DPS commission, who asked Judge Smith to take control of the evidence to safeguard it. Mr. Francis also ordered the Rangers' inquiry. Federal prosecutor Bill Johnston in Waco acknowledged Monday that he is assisting in the inquiry, but he declined further comment.

"I wouldn't want to comment on the specifics, but I am confident that the Rangers will get to the bottom of this," he said.

If the Rangers confirm Mr. Coulson's assertion, former Ranger Capt. Byrne said, it could "open the floodgates" in what is already among the most troubling failures for U.S. law enforcement.

"Then we're going to say, 'Wait. Did they fire something more? Some other kind that was consumed by the fire or was not recognized?' I see where this is going to be an endless thing," he said.

"This affects the credibility of law enforcement. Not only the FBI, but it puts all law enforcement in question," he said.

United States General Accounting Office

GAO

Report to the Secretary of Defense, the Attorney General, and the Secretary of the Treasury

August 1999

DEPARTMENT OF DEFENSE

Military Assistance Provided at Branch Davidian Incident





GAO/NSIAD/OSI-99-133



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United States General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-276428

August 26, 1999

The Honorable William S. Cohen
The Secretary of Defense

The Honorable Janet F. Reno
The Attorney General

The Honorable Lawrence H. Summers
The Secretary of the Treasury

In 1993, the Bureau of Alcohol, Tobacco, and Firearms (ATF) received assistance from the U.S. military, including counterdrug program support, while investigating violations of federal firearms laws by members of an obscure sect, the Branch Davidians, and their leader, Vernon Howell (also known as David Koresh), in Waco, Texas. On February 28, 1993, as the ATF tried to serve warrants on the sect's compound, a gunfight erupted, killing and wounding agents and Davidians. A standoff ensued that soon involved the Federal Bureau of Investigation (FBI). The military provided support to the two federal law enforcement agencies (LEA) throughout the 51-day standoff, which ended April 19, 1993, when the compound was destroyed by fire.

In August 1996, the House Committees on Government Reform and Oversight and on the Judiciary issued a report, "Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians" (Report 104-749).[1] The report recommended that we review certain aspects of the military assistance provided to the LEAs in this incident. We have reviewed the nature and extent of the assistance, including that from counterdrug programs, provided to these operations, as well as the counterdrug aspects of ATF's plans to serve a search warrant at the Davidian compound. We pursued three specific objectives:

- Determine whether the ATF's requests for support from military counterdrug programs met requirements for authorizing that support.

[1] This report was based on a joint investigation by the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, and the Subcommittee on Crime of the Committee of the Judiciary.

- Identify the measures ATF took to deal with any drug activity it might find during its warrant service, and determine whether those measures were appropriate for such operations where a methamphetamine laboratory might be encountered.
- Account for the types, costs, and reimbursements of all military support, including that from counterdrug programs, provided to the ATF and the FBI.

Results in Brief

ATF's two requests for military counterdrug support of its Davidian operations met requirements to authorize provision of that support under the relevant statutes.[2] The ATF cited possible drug-related activity at the compound in both its written requests—the first to the Texas National Guard and the second to Operation Alliance, a coordinating center for counterdrug assistance. The military's decision in both cases to provide the counterdrug support was a reasonable exercise of agency discretion and was authorized under the relevant statutes.

ATF's planning for the warrant service addressed the possibility of encountering hazardous drug materials. ATF agents were made aware of the suspected drug laboratory and the appropriate precautions. Moreover, a team from the Drug Enforcement Administration (DEA) was at the command post the day of the operation to handle any drug-related materials that might be found. This planning was consistent with ATF's own policies—and those of other federal LEAs—governing operations to secure armed suspects and facilities, including those where a drug laboratory is present.

Military assistance (both counterdrug and other) to the ATF and the FBI included surveillance, reconnaissance, and transport; equipment and supplies; training and instruction; and maintenance and repairs. The military provided several items of major equipment, including helicopters and unarmed tactical ground vehicles. We estimated the total cost of military assistance to be about $1 million, of which nearly 90 percent was incurred by the Texas National Guard and active Army units and the rest by the Alabama National Guard and active Air Force. Under the Economy Act,

[2] The military is authorized to provide support to LEAs under a number of statutes. Generally, these agencies must reimburse the military for the cost of its assistance. However, the active military can support counterdrug activities on a nonreimbursable basis under section 1004 of the National Defense Authorization Act of 1991, as amended (P.L. 101-510), and the National Guard can do so under 32 U.S.C. §112.

the ATF and the FBI reimbursed the Texas National Guard, the Army, and the Air Force for about three-quarters of the support. Repayment of another 14 percent, which came from counterdrug programs, was waived by the military, which has the authority to do so if the supported agency suspects a drug connection. These nonreimbursable expenses represented less than $140,000. The military also mistakenly undercharged these two agencies by a comparatively small amount (about 10 percent of the total), which should have been reimbursed. The Army does not plan to collect these undercharges, as it would realize no current benefit—it would have to apply any collection to prior-year obligations. Finally, under applicable statutes,[3] the military gave the ATF and the FBI without charge some excess military items, mostly office and camp equipment, clothes, and tools.

Scope and Methodology

The events we examined occurred several years before we performed our work. Moreover, the ATF's investigation of Vernon Howell during 1992–93 focused on firearm violations, not on illegal drugs; neither the ATF nor any other agency, federal or state, performed a comprehensive, in-depth drug investigation of Howell or any other Davidian residing at the compound at the time.

For our first two objectives, we interviewed many current and former employees of the military and of those federal, state, and local LEAs that had dealings with the case. We also reviewed pertinent case files and material provided to the Waco Administrative Review.[4] We did not try to substantiate actual drug activity by Howell or other compound residents. To obtain information concerning the authority under which their components assisted the LEAs, we contacted the Department of Defense (DOD), the National Guard Bureau, Joint Task Force Six, and the Texas National Guard.

For our third objective, we sought to determine the types and costs of military assistance provided to the ATF and the FBI. To this end, we reviewed available records maintained by DOD, the Army, and the Texas National Guard (requests and authorizations for assistance, hand receipts,

[3] P.L. 101–189 § 1208 and P.L. 102–484 § 1044.

[4] A group convened by the Department of the Treasury to review all aspects of ATF's investigation of Howell and the Davidians, including the ATF's effort to serve the arrest and search warrants on Feb. 28, 1993.

flight logs, DOD reports, etc.). We also interviewed officials at Operation Alliance, Joint Task Force Six, the Texas National Guard counterdrug program, and the Army. In addition, we reviewed the military's documentation concerning cost and reimbursement by the LEAs, including the accounting and recovery records. This information we compared with our data on the support rendered by the military.

For all objectives, we visited or contacted various military and law enforcement organizations, reviewed hundreds of pertinent documents, and viewed other relevant media. Appendix I describes our contacts and sources in greater detail.

We conducted our work between January 1997 and February 1999 in accordance with generally accepted government auditing standards.

Background

Throughout the ATF's investigation and the standoff at the compound, the military provided the ATF and the FBI a wide variety of assistance. A detailed discussion of the statutes authorizing the support is provided in appendix II.

LEAs operating in Texas may obtain military assistance for investigations having a counterdrug component from the Texas National Guard counterdrug program. This program can provide a range of investigative support services, from aerial reconnaissance to logistics.[5] In accordance with regulations,[6] requests for support from National Guard counterdrug programs must cite in writing a suspected drug connection. LEAs can also seek military counterdrug assistance via Operation Alliance, a clearinghouse representing the counterdrug interests of many federal, state, and local LEAs.[7] The Alliance only accepts requests that cite in writing a suspected drug connection.

[5]Program personnel will not normally become involved in arrests of suspects, chain-of-custody of evidence, searches, interdiction, or the physical security of law enforcement officers.

[6]National Guard Regulation 500–2.

[7]The Alliance comprises state and local representatives from several states and agents from the DEA, the Customs Service, the Border Patrol, Coast Guard, the FBI and the ATF, the Internal Revenue Service, U.S. Marshal's Service, the Secret Service, and U.S. Attorneys. Representatives from DOD and the National Guard serve on the group as advisors only.

Requests that the Alliance approves can be referred to military organizations, which review the requests to ensure, among other things, that a suspected drug connection is explicitly stated.[8] Each military organization can decline to provide the support despite the referral. In addition to the National Guard program, the Alliance may refer the request to Joint Task Force Six. This task force, an active service organization, identifies military units that can provide the assistance and coordinates with the requester.[9] It also has a rapid support unit to respond to any immediate need.

Finally, LEAs can receive items without charge from DOD's Regional Logistics Support Office; these items come from its excess inventory. The agencies can request this support directly, and their operations need not have a counterdrug component.

According to the ATF, the drug connection in this operation was a possible clandestine methamphetamine laboratory, perhaps active, that it suspected was somewhere on the extensive Davidian compound. Drug laboratories, active or not, are extremely volatile and toxic, and specialized training and equipment are necessary to safely deal with the chemical materials. The DEA, having lead responsibility for counterdrug activities, provides extensive, highly detailed procedures that its agents are supposed to follow when dealing with clandestine laboratories. These procedures, which cover planning, entry, assessment, processing, exit, and follow-up, include such requirements as

- planning with a lab-certified chemist the entry of the suspect premises,
- assigning safety officers for the entry,
- having self-contained breathing apparatus and lab-certified teams on hand,
- giving specific warnings to the entry team, and
- supplying the entry team with full heat- and chemical-resistant clothing.

However, other federal LEAs, including the ATF, which do not have drugs as their primary focus and which lack DEA's extensive training and equipment have less elaborate drug-lab policies. In ATF's case, its instructions in this matter are quite explicit—agents are to call upon DEA

[8]The statutes, however, do not require a full discussion of the possible connection.

[9]Joint Task Force Six neither plans nor coordinates civilian operations, and active Army units can perform only support roles, not law enforcement functions.

to handle any possible drug evidence they encounter during their investigations. ATF entry teams must be made aware of the drug laboratory and of standard precautions. There is, however, no requirement that ATF teams making a "dynamic entry"[10] wear fully protective counterdrug suits with self-contained breathing apparatus. This is also true for DEA entry teams. According to officials from both agencies, such equipment would restrict an entry team's vision and mobility and place it at unacceptable risk, as suspects are often armed.

Military Counterdrug Support to ATF's Davidian Operation Was Authorized Under Statutes

The ATF made two requests for military counterdrug support to its Davidian operations. The first was made directly to the Texas National Guard counterdrug program, and the second was later made to Operation Alliance, which approved and forwarded the request to the Texas National Guard counterdrug program and Joint Task Force Six for their consideration. Some counterdrug support to the ATF during its attempt to serve the warrant extended through the ensuing standoff, constituting a continued response to the agency's second request.

For both of its requests, ATF cited a possible drug connection to its Howell investigation. Although ATF conducted a firearms investigation of Howell and other Davidians, it also acquired information on possible drug activity when it decided to seek support from military counterdrug elements. Not all of this information was shared with the military, but it formed the backdrop to and reinforced the data that was shared.

During our review and in the following narrative, we focused on what the ATF knew about a possible drug connection, when the ATF knew it, and what information the ATF provided to the military counterdrug programs. These points are central to determining whether the military was authorized to provide counterdrug assistance under the relevant statutes.

[10]A very rapid, vigorous, sudden, unexpected entry. It is intended to surprise suspects and prevent them from getting to their guns or from destroying evidence and is used to prevent harm to agents and civilians alike.

ATF's First Counterdrug Request: Assistance From the Texas National Guard Counterdrug Program

In 1992, the local sheriff's office discovered that, between March and June of that year, Howell and other Davidians at the Waco compound had received frequent shipments of weapons, explosive components, and related materials.[11] By June 1992 those shipments totaled more than $40,000. Realizing that matters were now beyond its capabilities, the local sheriff's office contacted the ATF and on June 4, 1992, briefed it on (1) the situation at the compound, including armed guards at the site and (2) the group's violent history, including a 1987 gun battle between Howell and the Davidians' former leader. On June 9, 1992, theATF formally opened an investigation of Howell and his associates.[12] The agency focused on the conversion and manufacture of weapons and explosives, gathering information on Davidian connections and gun related deliveries that continued to arrive at the compound.

In late June, the sheriff's office notified ATF of a recent delivery to the compound of "chemicals, instruments, and glassware." The sheriff's explosives technician did not regard these items as consistent with the manufacture of explosives; an ATF agent thought these items could be used to manufacture drugs, suggesting a current operation. Later, in November 1992, while pursuing its firearms investigation, the ATF acquired information about a possible drug connection when the sheriff's office told the agency about one of Howell's associates. A search of criminal databases showed that this individual had a long history of drug involvement and had been paroled to the Waco area in April 1992 after serving time for his latest drug conviction.

From the first months of the investigation, ATF had kept in touch with the DEA office in Waco, seeking information it might have about the suspects. The DEA agents offered their help on the case, including undercover work, and performed some minor investigative assistance. In the summer or fall of 1992, the ATF and DEA agents speculated on how the Davidians were financing their heavy gun purchases and substantial building projects while supporting 100 or so compound residents. Based on their enforcement

[11]Assault rifles and conversion kits, ammunition, inert grenades, sensors, night-vision devices, chemicals, combat vests, etc. According to the Treasury Department report, some of these items could be used to illegally manufacture and possess machine guns and destructive devices contrary to the National Firearms Act (26 U.S.C. § 5845).

[12] The sheriff's office gave ATF the names of more than 30 current residents of the compound, which ATF checked for criminal histories.

experience, it seemed possible to the agents that a resident might be dealing in illegal drugs.

Having decided that it needed military assistance, on December 4, 1992, ATF discussed with a liaison from DOD[13] how the military might help. The liaison suggested that the military could provide aerial thermal (infrared) photography of the site. He also informed ATF that it would have to reimburse the military unless there was a drug connection to its investigation.

On December 11, 1992, ATF contacted officers of the Texas National Guard counterdrug program to learn what aid it could provide to the Howell investigation. The Texas National Guard discussed the types of assistance available, including surveillance overflights, but explained that, to receive help from this program, the investigation must have a drug connection. The Texas National Guard advised the ATF to determine whether it might have a drug connection and, if so, to send a formal written request citing that connection.

On December 14, 1992, ATF wrote the Texas National Guard counterdrug program, requesting it to support the investigation with aerial photography and surveillance but mentioning no drug connection. The Texas National Guard told ATF it must submit a revised request that contained a possible drug connection.[14]

The ATF decided to inquire of all its contacts in this case whether they had knowledge of any drug activity in connection with the suspects. The first to be asked was a former resident of the compound; on December 16, 1992, this individual responded in writing with the following statements.

- Howell had told him that drug trafficking was a desirable way to raise money.
- Howell had told him about finding a methamphetamine laboratory when he took over the compound.

[13]This position was filled by a military officer under the Office for Drug Enforcement Policy and Support; he was stationed at ATF's Special Operations Division, Washington, D.C.

[14]According to Texas National Guard counterdrug officers, it is not unusual for LEAs to make requests without stating a drug connection. In those cases the Texas National Guard returns the request with an explanation of the need for a written statement of possible drugactivity.

- Howell had told him that he turned the laboratory over to the sheriff's office, but another former resident maintained to this individual that Howell had not surrendered any drug materials.
- Another former resident was rumored to have trafficked in drugs while living at the compound.

ATF discussed this information with the sheriff's office, which confirmed that a methamphetamine laboratory was thought to have existed at the compound at one time. The sheriff's office denied ever receiving drug evidence from Howell or any other Davidian.[15] This raised the possibility that the illegal equipment might still be at the compound.

The sheriff's office also confirmed for ATF that the alleged drug trafficker named by the former resident had lived at the compound along with another suspicious person. ATF searched the state's criminal database and found that (1) the first individual had an extensive history of narcotics and firearms violations and was in prison and (2) the second had violated federal firearms laws and was in prison for possessing a firearm during a drug-trafficking crime. It may also be at this time that the ATF learned of a third former resident who had produced methamphetamine at the compound. ATF's computer checks also showed that several current compound residents had prior drug involvement, including possession of marijuana, cocaine, and "tablets of dangerous drugs."

This information suggested to ATF that there were reasonable grounds to suspect a drug connection to its investigation. Consequently, on December 17, 1992,[16] ATF notified DEA to that effect, informing it of the suspected laboratory, and asked DEA to handle all drug evidence when the warrants would be served. ATF also informed the DOD liaison that a methamphetamine laboratory might be at the compound. The next day the ATF sent a revised request for aid to the Texas National Guard counterdrug program, this time citing a drug connection—specifically, that Howell was "suspected of unlawfully being in possession of firearms and possibly narcotics."

Since its requirement for a drug connection was met in this new letter, the Texas National Guard approved the request. In all, six reconnaissance

[15] In our discussions with the sheriff's office, it denied receiving drug material from Howell.

[16] Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell, also known as David Koresh (Sept. 1993).

overflights would be made, with thermal imaging used on at least two flights to search for armed guards and drug-manufacturing facilities.[17]

ATF's Second Counterdrug Request: Assistance From Joint Task Force Six and the Texas National Guard Counterdrug Program

By late January 1993, the ATF had taken statements from other former Davidians and their relatives that suggested a drug connection:

- Information about affidavits and testimony in a 1992 court case that a methamphetamine laboratory was still at the compound after it had supposedly been turned over to the sheriff's office.
- Reports that Howell may have used the laboratory.
- Reports that Howell gave illegal drugs to some of his followers.

At the same time, an ATF undercover agent reported that Howell had told him, in conversation at the compound, that (1) the site would be a good place for making methamphetamine and (2) the sheriff suspected him of manufacturing drugs. Another Davidian resident, according to two undercover ATF agents, told them that he himself had been involved in drugs at one time. In addition, thermal images made by National Guard overflights had shown a "hot spot" inside the compound, possibly indicating a methamphetamine laboratory.

Meanwhile, in preparation for serving warrants at the compound, ATF sought operational and logistical help from other agencies, including the military. It updated the DOD liaison on its case, mentioning that counterdrug support would soon be requested, and it gave information on the drug connection to the head of the Texas National Guard counterdrug program. On January 22, 1993, after some confusion over the appropriate route to take, the ATF's written request for military support of the upcoming warrant service arrived at Operation Alliance. It asked for certain training, as well as a loan of Bradley infantry fighting vehicles and other equipment, for "a continuation of the firearms and drug case."[18] When the ATF filled out the Alliance's request form, it noted that the operation involved a "possible meth lab."

[17]At that time, clandestine manufacture of methamphetamine was thought to produce considerable heat, which infrared imaging could pick up. LEAs, including the DEA, sometimes used aerial thermal imaging to detect the heat produced in illegal narcotics manufacture.

[18]The letter noted that no weapon systems on the Bradleys would be used; it requested floodlights, loudspeakers, smoke generators, gas masks, night-vision goggles, and office and camping gear.

On February 2, 1993, the Alliance and its military advisers met to consider the request for support. The ATF discussed some of the indications of a drug laboratory—statements by former residents; the suspicious delivery of materials possibly intended for use in making drugs (sometimes referred to as "precursor materials");[19] and the hot spot, which was identified on an aerial photograph of the compound. Since its requirement for a possible drug connection was met, the Alliance referred the request to Joint Task Force Six and the Texas National Guard counterdrug program. In its letter forwarding the request, the Alliance cited "a dangerous extremist organization believed to be producing methamphetamine."

On February 4, 1993, representatives of the Texas National Guard counterdrug program and Joint Task Force Six met with the ATF to discuss the request that Operation Alliance had passed on to them. This meeting concentrated on parameters, limits, and training objectives but did discuss the drug connection. The ATF presented indications of a possible methamphetamine laboratory at the Davidian compound: reports by former residents, deliveries of possible precursor materials, and thermal images from reconnaissance overflights that indicated the possible location of the laboratory. The ATF also noted in its presentation that some current residents had recent drug-related arrests. According to one military attendee, the evidence of a possible drug connection was not the strongest they had ever seen, nor was it the weakest.

At this meeting the Texas National Guard agreed to provide the ATF operation with vehicles, office and camp equipment.[20] Approval by Joint Task Force Six took somewhat longer. After its parent organization, the Army Forces Command, had reviewed and modified the support requested, Joint Task Force Six agreed on February 17, 1993, to provide range practice and some limited training. During February 25–27, Joint Task Force Six's rapid-support unit trained ATF agents at Fort Hood, Texas.[21]

[19]The glassware, instruments, and chemicals mentioned earlier (p. 7).

[20]This request to the Texas National Guard was later modified (February 24, 1993) because the ATF now needed support for a dynamic entry rather than a siege, as earlier planned.

[21]They did not receive training on securing or removing drug material. Texas National Guard helicopters and crews also traveled to Fort Hood (February 27) to practice with the ATF their support of the operation.

Continuation of Military Assistance During the Standoff

On the day that the ATF attempted to serve arrest and search warrants at the compound, the Texas National Guard joined several local, state, and federal LEAs to support the operation. ATF had planned a dynamic entry to secure the Davidians before they could get to their weapons. However, the Davidians were warned of the ATF's approach and met the agents with gunfire. A 51-day standoff resulted, from February 28 to April 19, 1993, during which the ATF and the FBI (which took control of the operation) requested and received a range of support from the active military and the Texas National Guard.

The bulk of support during the standoff qualified as military assistance to civilian authorities, which requires no connection to drugs in order to be provided but which generally must be repaid. However, Texas National Guard counterdrug assistance (mainly helicopters and personnel) continued to be provided after the attempted warrant service became a standoff because, upon the Davidians' eventual surrender, this support would be needed to finish the counterdrug mission.[22]

Approval of Military Counterdrug Support Was Reasonable and Authorized

DOD provided support for counterdrug activities of the Davidian operation under section 1004 of the National Defense Authorization Act of 1991 (P.L. 101-510). The Texas National Guard also provided counterdrug support under 32 U.S.C. § 112. These laws authorize certain types of support of LEAs' counterdrug activities.[23] However, neither law provides a formal standard for determining the level of counterdrug activity that a particular operation must include for authorization of such support. Because there is no formal standard, the military officials involved have considerable discretion in determining the degree of counterdrug activity necessary to approve the support. Based on our review of the relevant statutes, events leading up to the decision by military officials to approve the support, and interviews with key personnel, we found no basis to conclude that the officials involved abused that discretion. We also found no indication that ATF officials misrepresented the information provided to the military in order to obtain the support. Therefore, we conclude that the military's decision to approve the counterdrug support was reasonable and authorized under the relevant statutes.

[22]According to the Texas National Guard, this counterdrug support did not require a new request, as it was provided as a continuation of the ATF's second request approved February 4, 1993.

[23]See app. II for a more detailed discussion of these laws.

ATF Planning for Warrant Service Included Measures for Drug Laboratory

ATF spent several months planning the operation to serve warrants at the Davidian compound. Although the possible drug laboratory was not a major part of this effort, ATF did plan and take certain measures to deal with it.

As recounted earlier, in December 1992 the ATF had already asked the DEA to handle the illegal drug laboratory that it thought might be hidden on the compound.[24] By the end of January 1993, its plans reflected that agreement: A team of DEA agents, including one certified to handle clandestine laboratories, would be on hand the day of the warrant service specifically to deal with drug evidence. If ATF agents should encounter any drug materials while securing people or weapons/explosives evidence, they were to pull back from that particular location, cordon it off, and call in the DEA team. The DEA agents would manage the drug evidence and supervise cleanup. This solution was in keeping with standard practice by ATF and other federal LEAs.

These plans were shared with the military organizations supporting the operation. At the February 4 meeting between ATF and the military, participants discussed the dangers of operating around volatile substances (chemicals for making methamphetamine and explosives are very volatile), especially with gunfire and diversionary devices.[25] The ATF also assured the military representatives that it would have a DEA team ready to "take down the lab." Indeed, some days before the warrant service occurred, the ATF informed DEA of the date, time, and place of the operation and confirmed that DEA would have a certified clandestine-laboratory agent at ATF's command post to handle the drug evidence.

ATF also took certain standard measures to guard against explosives, weapons, and hazardous chemicals:

- During final training for the operation, according to ATF and military sources, ATF leaders discussed with their agents the suspected laboratory and urged caution in the use of weapons. Those few agents

[24]Its location was not known.

[25]These devices, sometimes referred to as "flashbangs," are useful in diverting criminal suspects. Their explosions create a very brilliant flash and a very loud noise to disorient or stun people in the immediate vicinity.

carrying diversionary devices were reminded to look before deploying them.
- Before ATF attempted to serve the warrants, at least one ATF leader went over routine cautions with the agents—do not taste, smell, or touch anything, do not interfere with any chemical reaction, be sure to undergo decontamination if you get drug material on yourself or weapons, etc.
- During the attempted warrant service, ATF teams wore helmets, anti-ballistic vests, protective gloves, sturdy boots, and eye protection. They also had first-aid kits and fire extinguishers on hand.

These measures also conform in large part with DEA's drug-laboratory safety measures for initial-entry teams. They differ only in that the entire clothing of DEA teams (hoods, gloves, pants, and jackets) are made of Nomex,[26] whereas only the gloves of ATF agents are made of this material.

ATF planners acknowledged that their entry teams were not heavily protected against hazardous drug materials. This did not concern them, however, because the laboratory was not a tactical consideration. They believed they could eliminate some parts of the main residence (e.g., bedrooms, dining room, and entrances) as likely sites for a drug laboratory. Moreover, the need to secure the weapons and armed suspects overrode the hazards of a possibly disassembled laboratory.

On the day of the warrant service, DEA agents with special gear were at the command post specifically to handle any drug laboratory ATF might encounter. According to the DEA, it had arranged for a state chemist to be on standby to assist it, and its hazardous-materials van was on standby that day at its Waco office. Moreover, DEA agents, including the laboratory-certified individual, remained part of the law enforcement support during the standoff to handle any drug evidence that might be uncovered once the residence had been secured and vacated.[27] At DEA's request, the state chemist was also at the command post at least 1 day during the siege.

[26]Nomex is a highly fire-resistant commercial material used in protective clothing.

[27]At some point in the standoff, the DEA asked to be part of the final clearing of the site after removal of the Davidians, but that task was later assumed by another LEA in the aftermath of the fire.

Types, Cost, and Reimbursement of Military Support to the Davidian Operation

Military support of the Davidian operation came from both active and National Guard units. The cost of all that support amounted to almost $1 million, of which about 76 percent was reimbursed to the military and another 14 percent ($137,400) waived as counterdrug support. The remaining 10 percent represent the military's billing discrepancies.

Types and Costs of Military Support

Military support for the Davidian operation ranged from aircraft and vehicles to equipment, supplies, and services (training, maintenance, etc). We have estimated the cost of this support to be at least $982,400.[28] The Alabama and Texas National Guard, the Army (including Special Forces units), the Air Force, and other DOD activities—the Uniformed Services University of the Health Sciences, the Regional Logistics Support Office and its Defense Reutilization and Marketing Offices—all provided some form of military assistance.

Table 1 summarizes the types and costs of this support. The FBI incurred the largest single costs—about $230,000 for damages to an Army UH-1 helicopter and $170,000 in operational costs for three Army UH-1s. In these two instances, assistance was provided during the standoff; the helicopter damage was due to pilot error, not Davidian gunfire.

[28]This total does not include a cost for medical support from the Uniformed Services University of the Health Sciences (which provided 133 staff days of services to the FBI during the standoff) because the military no longer has documents available. The total also does not include the value of material provided by the Regional Logistics Support Office and Defense Reutilization and Marketing Offices, since those items, as excess inventory, were provided free of charge.

Table 1: Types and Costs of Military Assistance to the ATF and the FBI in Their Branch Davidian Operations

Types of support	Description	Cost
Aircraft	Reconnaissance and surveillance overflights, aerial diversion, transportation, standby for medical evacuation, and recovery of loaned items (helicopters and fixed-wing aircraft)	$548,400
Vehicles	Surface transportation, protection, and recovery (tanks and other combat vehicles, utility vehicles, and various tracked and wheeled transport and recovery vehicles)	196,600
Equipment and supplies	Flak vests, helmets, masks, night-vision goggles, cameras, binoculars, electronic jammers, cellular telephones, ammunition for grenade launcher, tents, generators, lighting, clothing, fuel for vehicles and generators, and medical dressings	68,200
Personnel	Coordination, liaison, logistics, maintenance, 24-hr. medical and health clinic, operation of classified equipment, driver training, grenade-launcher training, mine-detector training, communications training, medical training, and firing-range support	169,200
Total		**$982,400**

Note: In figuring costs for active-duty military participants, incremental costs alone—per diem and travel, but not pay and benefits—were used.

Source: DOD and the Texas National Guard.

Reimbursement of Support

As required by the Economy Act, the ATF and the FBI reimbursed the military for most of its assistance. Reimbursements covered 76 percent (about $747,300) of the costs, of which the FBI paid about 96 percent (about $718,300) and the ATF the remainder (about $29,000). The FBI also paid directly for the services of the Uniformed Services University of the Health Sciences. Appendix III provides more detail on reimbursements.

Billing Discrepancies

In five instances the active Army failed to properly bill the FBI for services, equipment, and supplies, resulting in undercharges totaling about $100,000. The largest instance was an undercharge of $73,000 in operational expenses for the UH-1 and CH-47 helicopters lent by Fort Hood. According to a Fort Hood official, the Army does not plan to collect these undercharges, since it would realize no current benefit—that is, it would have to apply any collection to prior-year obligations. There were also two minor Texas National Guard overcharges for vehicle parts and helmets. Appendix IV provides more details on these billing discrepancies.

Waivers of Reimbursement for Counterdrug Support

The military waived reimbursement for the costs of support from its counterdrug programs. This assistance represented a small part of the overall military support to the Davidian operation, accounting for only

14 percent of costs (about $137,400) and consisting of aerial overflights, helicopter logistical support, fuel, telephone service, and training. Most of this nonreimbursable assistance was provided by the Texas National Guard counterdrug program at a cost of about $130,600 (about 37 percent of the Texas National Guard's total support). The Alabama National Guard and Joint Task Force Six waived the minor costs of the counterdrug support they provided—$1,200 and $5,600, respectively. Appendix V contains more details on these waivers.

Conclusions

The ATF requests for assistance from military counterdrug programs met the requirements of the relevant statutes for authorizing such support. In these written requests, ATF cited its suspicions of drug activity. In both cases, the military reasonably exercised its discretion in providing that support as authorized under the relevant statutes.

In planning how it would serve warrants at the compound, ATF planned for the possibility of encountering a methamphetamine laboratory or other hazardous drug materials. As required by agency policy, ATF agents in the operation were made aware of the suspected laboratory and of the appropriate precautions. Moreover, DEA agents were at the command post to handle any drug-related materials.

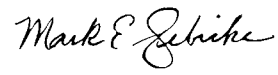
Agency Comments

In oral comments on a draft of this report, the Department of Defense stated it accepted the report as presented and the Department of Justice (including the Drug Enforcement Agency and the Federal Bureau of Investigation) stated it concurred with the substance of the report. In written comments on a draft of this report, the Department of the Treasury (including the Bureau of Alcohol, Tobacco, and Firearms) stated it concurred with the report's conclusions. All three departments provided technical comments that we incorporated as appropriate.

We are sending copies of this report to interested congressional committees. We are also sending copies to the Honorable Louis Caldera, Secretary of the Army; the Honorable Russell C. Davis, Chief of the National Guard Bureau; the Honorable John W. Magaw, Director of the Bureau of Alcohol, Tobacco and Firearms; the Honorable Louis J. Freeh, Director of the Federal Bureau of Investigation; and the Honorable

Thomas A. Constantine, Administrator of the Drug Enforcement Administration. Copies will also be made available to others upon request.

Please contact me at (202) 512-5140 if you have any questions concerning this report.



Mark E. Gebicke
Director, National Security and
Preparedness Issues

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, and Firearms
DOD	Department of Defense
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
LEA	law enforcement agencies

Organizations Visited and Documents Reviewed

To obtain the information needed for our review, we visited or contacted the following organizations:

- Military organizations
  - The Office of the Deputy General Counsel, the Department of Defense (DOD); the Office of the Coordinator for Drug Enforcement Policy and Support, Office of the Deputy Assistant Secretary of Defense; and the National Guard Bureau, all in Washington, D.C.
  - Joint Task Force Six, Fort Bliss, Texas.
  - Texas National Guard, Camp Mabry, Texas.
  - U.S. Army Aviation and Troop Command, St. Louis, Missouri.
  - U.S. Army, III Corps, Fort Hood, Texas.
  - Defense Finance and Accounting Service, Fort Monmouth, New Jersey.
- Law enforcement organizations
  - Alcohol, Tobacco, and Firearms (ATF), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and Customs in Washington, D.C.
  - Local offices of federal law enforcement agencies (LEA) (ATF, DEA, and the U.S. Attorney's Office) in Texas.
  - Operation Alliance, Fort Bliss, Texas.
  - State and local LEAs—the McLennan County Sheriff's Department and District Attorney's Office, the Texas Department of Public Safety, and the Texas Department of Protective and Regulatory Services.

We also reviewed hundreds of documents and other media, including the following:

- Investigation into the Activities of Federal Law Enforcement Agencies toward the Branch Davidians, Committee on Government Reform and Oversight in conjunction with the Committee on the Judiciary, House of Representatives Report 104-749 (Aug. 2, 1996), Union Calendar No. 395.
- Activities of Federal Law Enforcement Agencies toward the Branch Davidians, Joint hearings before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, Committee on the Judiciary Serial No. 72 (July 19-21, 24-28, 31, and Aug. 1, 1995), in three parts.
- Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas, House Judiciary Committee hearing (Apr. 28, 1993).

- Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell, also known as David Koresh (Sept. 1993).
- Guidelines for the Cleanup of Clandestine Drug Laboratories, Joint Federal Task Force of the Drug Enforcement Administration, Environmental Protection Agency, and Coast Guard (March 1990).
- "ATF Policy Regarding Investigations Involving Clandestine Laboratories," dated April 25, 1990 (subsequently incorporated into ATF Order 3210.7B).
- Excerpts from the DEA agent's manual.
- All Waco Administrative Review documents.
- ATF investigative files.
- Final report by Brigadier General Sagsveen on the Waco/Mt. Carmel incident (July 30, 1996).
- Results of the focal group review of Texas National Guard support to the ATF, known informally as the "Spence Report" (Apr. 28, 1993).
- After-action report of Texas National Guard counterdrug support in Waco, Texas (Apr. 29, 1993).
- Other relevant DOD provisions, policies, and procedures as well as information on the National Guard counterdrug program, other Guard material, and the operational support planning guide for Joint Task Force Six.
- Operation Alliance procedures for reviewing counterdrug requests.
- Videotapes of overflights of the Davidian compound and of selected operational briefings.

Statutes Related to Military Support of Branch Davidian Operations

National Defense Authorization Act of 1991

Section 1004 of the National Defense Authorization Act of 1991 authorized the Secretary of Defense to provide the support of active military units for the counterdrug activities "of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency."[1] In 1993, when the Davidian operations occurred, the act limited active military support for counterdrug activities to the following nine categories:[2]

- Maintenance and repair of equipment made available by DOD to a federal department or agency or to a state or local government.
- Maintenance, repair, and upgrading of non-DOD equipment to ensure that it will be compatible with equipment used by DOD.
- Transportation of personnel, equipment, or supplies.
- Establishment and operation of bases of operation or training facilities.
- Training of law enforcement personnel, including associated support expenses for trainees and the provision of materials necessary to carry out such training.
- Detection, monitoring, and communication of movement of air, sea, and surface traffic.
- Construction of roads and fences and installation of lighting to block drug-smuggling across international boundaries of the United States.
- Establishment of command, control, communication, and computer networks to improve integration of law enforcement, active military, and National Guard activities.
- Provision of linguist and intelligence analysis services.

10 U.S.C. §§ 371–382

Sections 371–382 of title 10 of the U.S. Code authorize the Secretary of Defense to provide certain types of support by active military units to federal, state, or local law enforcement officials. LEAs are not required to reimburse DOD for the support if it (1) is provided in the normal course of military training or operations or (2) results in a benefit to DOD that is "substantially equivalent" to that which would otherwise be obtained from

[1] P.L. 101–510, div. A, title X, § 1004, as amended. Congress was extended the authority through 2002. See P.L. 105-261, div. A, title X, § 1021

[2] In 1993, Congress added a tenth purpose for which the Secretary may provide support—aerial and ground reconnaissance. See P.L. 103–160, div. A., title XI, § 1121(b).

military operations or training.[3] Otherwise, DOD must be reimbursed as required by the Economy Act.[4]

Title 10 authorizes the following types of support:

- Any information collected during the normal course of training or operations that may be relevant to a violation of any federal or state law within the jurisdiction of the officials supported.
- Equipment (including associated supplies or parts) and base or research facilities.
- Training in the operation and maintenance of DOD equipment.
- Relevant expert advice.
- Maintenance of equipment.
- The operation of military equipment for (1) monitoring air and sea traffic; (2) monitoring surface traffic outside U.S. borders, as well as 25 miles within U.S. borders if the initial detection occurred outside the United States; (3) aerial surveillance; (4) intercepting vessels or aircraft detected outside the land area of the United States; (5) facilitating communications with federal LEAs; and (6) transporting and staffing an operational base for civilian law enforcement personnel.[5]

32 U.S.C. § 112

Under 32 U.S.C. § 112, the Secretary of Defense may provide funds appropriated for National Guard activities to the governor of a state who submits a drug-interdiction and counterdrug-activities plan that meets certain statutory requirements. To obtain funding, a state's plan must (1) specify how National Guard personnel and equipment will be used in such activities, (2) certify that the use of the National Guard of the state is consistent with state law, and (3) certify that the activities included in the plan serve a state law enforcement purpose. If a state's plan is approved and DOD provides funding, the state may use the funds to pay expenses related to the use of its National Guard personnel (while not in federal

[3] 10 U.S.C. § 377.

[4] The Economy Act, 31 U.S.C. § 1535, generally mandates prompt repayment for goods and services provided by one agency to another.

[5] See 10 U.S.C. § 374. Federal LEAs responsible for enforcing the Controlled Substances Act (21 U.S.C. § 801 et seq.), certain Immigration and Naturalization Act provisions (8 U.S.C. §§ 1324–1328), section 401 of the Tariff Act of 1930, and the Maritime Law Enforcement Act may request such aid.

service) and equipment for drug interdiction and counterdrug activities.[6] DOD considers support requests that are not specifically included in the original plan on a case-by-case basis if accompanied by a certification from the state's attorney general that the operations requested are consistent with state law.[7] LEAs are not required to reimburse the National Guard for this support.

National Defense for Authorization Act for Fiscal Year 1990

Section 1208 of the National Defense Authorization Act[9] allowed DOD to give federal and state agencies equipment—free of charge—that the Secretary of Defense had declared excess to the military's needs. Under this statute, the Secretary of Defense was required to determine that the equipment was suitable for use in counterdrug activities.

[6] The act defines "drug interdiction and counter drug activities" as "the use of National Guard personnel in the drug interdiction and counter-drug law enforcement activities authorized by the law of the State and requested by the Governor of the State."

[7] National Guard (NGR) 500-2.

[8] P.L. 101-189.

[9] In 1996, Congress repealed § 1208. P.L. 104-201, div. A., title X, section 1033(a) contained similar language now codified as 10 U.S.C. § 2576a.

Appendix III

Reimbursements to the Military From the ATF and the FBI for Assistance to Their Branch Davidian Operations

Support	Recipient	Reimbursement
Aircraft		
Active Army—3 UH-1 utility helicopters and 3 CH-47 helicopters	FBI	$375,179
Active Air Force—C-141 transport of FBI's hostage rescue team (and its equipment) to and from Waco	FBI	73,112
Vehicles		
Texas National Guard—2 M-35A2 2½-ton cargo trucks with transport trailers, 5 M-818 5-ton tractor trucks with trailers, 12 M-1009 high-mobility multi-purpose wheeled vehicles	ATF	6,858
Texas National Guard—10 M-2 Bradleys (infantry fighting vehicles), 3 M-332 tractor trailers, 5 M-728 combat engineer vehicles, 1 M-88A1 tracked recovery vehicle (tank retriever), miscellaneous vehicles	FBI	174,313
Active Army—8 M-998 high-mobility multi-purpose wheeled vehicles, an M35A2 2½-ton cargo truck, 2 5-ton trucks, 14 heavy equipment transports, miscellaneous vehicles	FBI	15,466
Equipment		
Texas National Guard—unrecovered photographic and observation equipment, 100 canteens, 50 first-aid dressings, 130 empty magazines for M-16A1 rifles, assorted field clothing	ATF	5,022
Texas National Guard—16 helmets, 13 helmet covers, 12 M-16A1 rifle slings, 54 empty magazines for M-16A1s, an M-25A1 protective mask, 180 tent pins	FBI	5,190
Active Army—2,488 gallons of generator fuel, fencing, 200 sandbags, 6 boxes of chemical lights, cellular-phone charges	FBI	5,523
Supplies		
Texas National Guard—286 cases of field rations and 2,036 gallons of diesel fuel	ATF	17,015
Texas National Guard—62 cases of field rations, 10,529 gallons of diesel fuel, and transportation costs of tracked vehicles	FBI	19,133
Personnel (per diem, transportation, and travel costs)		
Active Air Force—electronic jammers and travel costs	FBI	34,340
Active Army—liaison to LEAs and HQs; maintenance of aircraft, vehicles, and equipment; operation of equipment; and local transportation costs for DOD personnel	FBI	16,135
Uniformed Services University of the Health Sciences—24-hr. medical control, 24-hr clinic, drafting of Waco medical plan	FBI	Reimbursed 133 staff-days*
Total of known amounts reimbursed		**$747,286**

*A flat rate plus all travel was used under a Memorandum of Understanding between the two parties. All travel vouchers were sent directly to the FBI for payment; FBI paid for expendable medical supplies.

Appendix IV

Discrepancies in Billing the FBI for Military Support to Its Branch Davidian Operations

Undercharges	Amount
Active Army used the wrong flying-hour rates when determining charges for: • flights by UH-1 helicopters for transport, deployment, medical evacuation support, and recovery • flight by CH-47 helicopter on medical standby	$73,073
Active Army did not bill for the loss of two night-vision goggles	9,168
Active Army did not bill for 40-mm grenade-launcher ammunition (200 target-practice rounds, 50 illumination rounds, and 250 high-explosive rounds)	5,066
Active Army did not bill for 9 cases of field rations consumed by Army personnel while supporting the siege	164
Active Army (Special Operations) did not bill for the following services provided during the siege: • observers and technical liaisons to the FBI's hostage rescue team • operation of classified/special equipment • training federal agents in use of classified equipment	10,793
Total undercharges	**$98,264**
Overcharges	
Texas National Guard overcharged for vehicular parts	$41
Texas National Guard overcharged for the loss of 8 Kevlar ground-troop helmets	498
Total overcharges	**$539**
Net undercharges	**$97,725**

Appendix V

Costs Waived by the Military in Support of the Branch Davidian Operations

Support	Recipient	Cost	Authority for waiver
Alabama National Guard			
2 overflights for reconnaissance photography of the compound	ATF	$1,238	32 U.S.C. § 112 (counterdrug)
Subtotal		**$1,238**	
Active Army (Joint Task Force Six)			
Counterdrug training • Communications • Medical evacuation • First aid • Firing-range support • Minor construction	ATF	5,610	10 U.S.C. § 377 (substantial training benefit) P.L. 101–510 § 1004 (b) 4–5 10 U.S.C. § 373
Subtotal		**$5,610**	
Texas National Guard			
UC-26 aircraft • 4 overflights of the compound for reconnaissance photography • 1 flight in support of siege	ATF	8,032[a]	32 U.S.C. § 112 (counterdrug)
Helicopter flights in support of warrant service	ATF	15,388[b]	32 U.S.C. § 112 (counterdrug)
Helicopter flights in support of siege	ATF	2,454	32 U.S.C. § 112 (counterdrug)
Personnel services in siege • Liaison, command and control • Helicopter flight crews, drivers of various vehicles • Vehicle and equipment maintenance	ATF and FBI	102,301[c]	32 U.S.C. § 112 (counterdrug)
Fuel for non-tracked vehicles	ATF and FBI	410	32 U.S.C. § 112 (counterdrug)
Landline and cellular telephone service	ATF and FBI	1,995	32 U.S.C. § 112 (counterdrug)
Subtotal		**$130,580**	
Total amount of expenses waived by the military		**$137,428**	

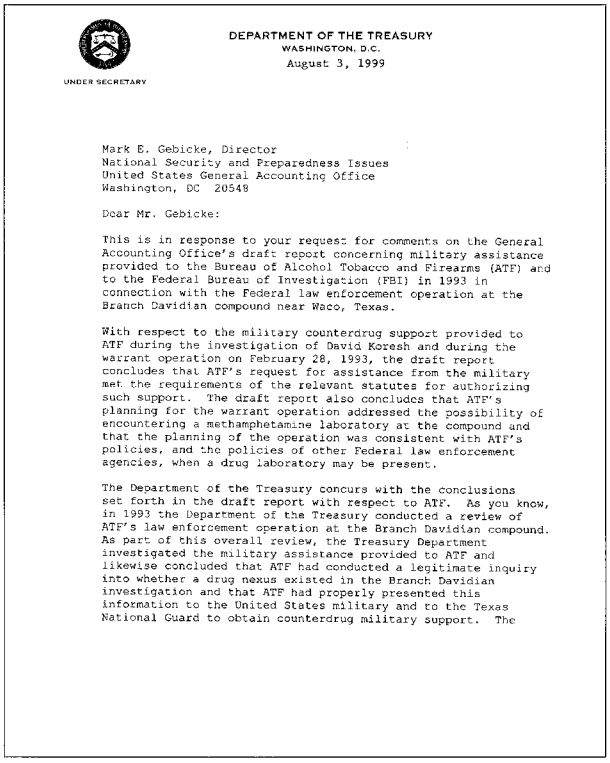
[a] Includes costs for flying hours, personnel, and special maintenance contract.

[b] Includes repair of gunshot damage sustained in warrant service.

[c] Total pay, per diem, and travel (896 staff-days). All personnel were in title 32 (counterdrug program) status.

Appendix VI

Comments From the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.
August 3, 1999

UNDER SECRETARY

Mark E. Gebicke, Director
National Security and Preparedness Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Gebicke:

This is in response to your request for comments on the General Accounting Office's draft report concerning military assistance provided to the Bureau of Alcohol Tobacco and Firearms (ATF) and to the Federal Bureau of Investigation (FBI) in 1993 in connection with the Federal law enforcement operation at the Branch Davidian compound near Waco, Texas.

With respect to the military counterdrug support provided to ATF during the investigation of David Koresh and during the warrant operation on February 28, 1993, the draft report concludes that ATF's request for assistance from the military met the requirements of the relevant statutes for authorizing such support. The draft report also concludes that ATF's planning for the warrant operation addressed the possibility of encountering a methamphetamine laboratory at the compound and that the planning of the operation was consistent with ATF's policies, and the policies of other Federal law enforcement agencies, when a drug laboratory may be present.

The Department of the Treasury concurs with the conclusions set forth in the draft report with respect to ATF. As you know, in 1993 the Department of the Treasury conducted a review of ATF's law enforcement operation at the Branch Davidian compound. As part of this overall review, the Treasury Department investigated the military assistance provided to ATF and likewise concluded that ATF had conducted a legitimate inquiry into whether a drug nexus existed in the Branch Davidian investigation and that ATF had properly presented this information to the United States military and to the Texas National Guard to obtain counterdrug military support. The

Department's findings in this regard were set forth in the September 1993 Report on the Bureau of Alcohol, Tobacco and Firearms' Investigation of Vernon Wayne Howell, also known as David Koresh.

Finally, we have enclosed proposed technical corrections to certain information in the draft report.

Thank you for the opportunity to review and comment on the draft report.

Sincerely,

James E. Johnson
Under Secretary
(Enforcement)

Enclosure

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A2 Wednesday, October 6, 1999

Expert Concludes FBI Fired Shots During Waco Siege

by David A. Vise
and Richard Leiby
Washington Post Staff Writers

Carlos Ghigliotti, retained by the House Government Reform Committee, reviewed tapes of the siege, including a newly released FBI audio recording.

An expert retained by the House Government Reform Committee said yesterday that he believes an FBI agent fired shots during the bureau's 1993 siege of the Branch Davidian compound near Waco, Tex., a view that is at odds with the FBI's consistent position that none of its agents fired at any time.

Carlos Ghigliotti, an expert in thermal imaging and videotape analysis who has done work for the FBI, said he has spent hundreds of hours reviewing various tapes of the siege, including a newly released FBI audio recording that was part of a videotape turned over to Congress recently in response to a subpoena.

Based on his review, Ghigliotti said he is convinced that during the final assault on April 19, 1993, an FBI agent shot in the direction of the Branch Davidian compound.

"I conclude that the FBI fired shots on that day," Ghigliotti said in an interview yesterday. "I conclude this based on the ground-view videotapes taken from several different angles simultaneously and based on the overhead thermal tape. The gunfire from the ground is there, without a doubt."

After being briefed yesterday by Ghigliotti, Rep. Dan Burton (R-Ind.), chairman of the committee that retained Ghigliotti as a witness, said: "What we have heard from this expert is troubling, but we think it is premature to make any final determination. We don't want to go off half-cocked. As soon as we get all the necessary information, we will hold hearings and present the information to the American people."

Ghigliotti, owner of Infrared Technologies Corp. in Laurel, said the tapes also confirm that the Davidians fired at FBI agents repeatedly during the assault. Although FBI agents were operating under rules that permitted them to return fire, bureau officials have maintained that no agents fired any shots, a position that has not changed since the day of the raid.

About 75 Branch Davidians perished in a fire that erupted during the assault. Ghigliotti is not asserting that any injuries or deaths were caused by FBI gunfire.

For years, there have been allegations that federal agents fired automatic weapons at the Branch Davidians from behind the compound, an area that was not visible to the media. These assertions were popularized in the 1997 documentary "Waco: The Rules of Engagement."

Ghigliotti said he has not arrived at any conclusion on those allegations. Rather, he has focused on three videotapes taken by news agencies that day and on the new audio tape, which is part of an FBI surveillance video.

The newly released FBI recording indicates that someone was firing shots about 12:44 p.m. and includes expressions of surprise from FBI employees circling in a plane overhead. "You can hear it," one FBI employee in the plane says of the gunfire, which federal agents believed was coming from a man with a handgun north of the compound. However, the tape does not make clear who was firing, and an FBI effort to locate the gunman was unsuccessful.

Ghigliotti said he believes the gunfire came from an FBI agent and was picked up by his microphone as he fired. He said the videotapes he reviewed show gunfire toward the compound at the time that the audio is picking up the shots. Several armored vehicles were clustered in the area of the gunfire, according to Ghigliotti.

From 1991 to 1995, Ghigliotti, 42, was paid by the FBI as a thermal imaging expert on an array of environmental dumping cases, according to an FBI document. Ghigliotti "performed reliable work for the FBI," the 1995 document states.

In 1993, Ghigliotti was sentenced to 18 months of unsupervised probation and fined $250 for assaulting the owner of a dump site. Ghigliotti, who had prepared documents for a Maryland environmental agency, alleged that the dump site owner duped him by posing as a county watchman to improperly gain access to the documents.

Ghigliotti's allegation of FBI gunfire came as former Missouri senator John C. Danforth met yesterday in Texas with attorneys for families of Branch Davidians who died in the siege, who have filed a wrongful-death suit. Danforth was appointed Waco special counsel last month by Attorney General Janet Reno, who directed him to answer a number of key questions, including whether FBI agents fired their weapons.

Michael Caddell, the lead lawyer in the $100 million wrongful-death suit, claimed that he also has new information relating to possible FBI gunfire and said that he intends to give it to Danforth. Based on clearer, newly released FBI infrared surveillance tapes, Caddell contends that there was a gun battle between Davidians and federal agents on April 19 and that gunfire was coming from at least three government positions.

"Folks are shooting from both sides," he said.

FBI spokesman John Collingwood said, "We would hope in the end that both Congress and Senator Danforth will have access to every single piece of information — that has emerged relating to Waco. That, more than anything, will help the FBI restore its credibility on this issue."



EXHIBIT
5

11:23:23- CENTER OF PICTURE. THE TANK IS COMPLETELY IN THE GYM.

11:23:25-Q2 (1) THERMAL ANOMALY NEXT TO THE TANK, THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:23:34-Q1 6TH TIME THE TANK BACKS UP.

11:24:17-Q2 7TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM. 2 UNKNOWN SUBJECTS APPEAR FROM UNDERNEATH THE TANK.

11:24:30:16-Q2 TO 11:24:30:29-Q4 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE. FROM THE BOTTOM UNKNOWN SUBJECT.

11:24:31:05-Q4 TO 11:24:31:11-Q2 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE. FROM THE BOTTOM UNKNOWN SUBJECT.

11:24:31:16-Q2 TO 11:24:31:20-Q2 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE. FROM THE BOTTOM UNKNOWN SUBJECT.

11:24:31:28-Q2 TO 11:24:32:04-Q4 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE. FROM THE BOTTOM UNKNOWN SUBJECT.

11:24:31:28-Q2 TO 11:24:33:07-Q4 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE FROM THE TOP UNKNOWN SUBJECT. THIS WEAPON APPEARS TO HAVE A FLASH SUPPRESOR THAT UNABLED US TODETERMINE THE TOTAL AMOUNT OF ROUDS FIRED. THE TOTAL TIME WAS 1 AND 9/30TH OF A SECOND.

11:24:35:00-Q3 TO 11:24:36:00-Q1 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE, FROM THE TOP UNKNOWN SUBJECT. THIS WEAPON APPEARS TO HAVE A FLASH SUPPRESOR THAT UNABLED US TO DETERMINE THE TOTAL AMOUNT OF ROUND FIRED.THE TOTAL TIME WAS 1 SECOND.



11:24:50-Q4 (1) THERMAL ANOMALY OVER THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:24:51-Q4 (1) THERMAL ANOMALY OVER THE ROOF.THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:25:02-Q4 (1) THERMAL ANOMALY OVER THE ROOF.THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:25:04-Q4 (1) THERMAL ANOMALY OVER THE ROOF.THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:25:07-Q1 7TH TIME THE TANK BACKS UP AND OVER THE 2 UNKNOWN SUBJECTS.

11:25:38-Q2 8TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:25:55-Q3 SMALLER TANK PASSES BY.

11:26:04-Q2 TANK BREAKS THROUGH THE FRONT WALL OF THE GYM.

11:26:13-Q1 (1) THERMAL ANOMALY, NEXT TO THE REAR ENTRANCE BEHIND THE TANK, NEAR THE BLACK SPOTS.THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:26:26-Q1 8TH TIME THE TANK BACKS UP AND OVER THE 2 UNKNOWN SUBJECTS.

11:26:27-Q1 (1) THERMAL ANOMALY, NEXT TO THE REAR OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:26:39 -Q4 (1) UNKNOWN SUBJECT EXITS OUT THE FRONT PART OF THE DEMOLISHED GYM.

11:27:04-Q1&Q3 9TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:27:04-Q2 SMALLER TANK STANDS BY.

11:27:23-Q4 9TH TIME THE TANK BACKS UP.

11:27:52-Q3 10TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:28:04:13 & 14-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:28:06-Q3 10TH TIME THE TANK BACKS UP.

11:28:06:09 & 10-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

11:28:07:23 & 24-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

11:28:07:29 TO 11:28:08:02-Q4 (2) THERMAL ANOMALIES IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:28:13:13 TO 11:28:14:04-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE TOTAL TIME WAS 17/30TH OF A SECOND. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE. THIS WEAPON APPEARS TO HAVE A FLASH SUPPRESSOR THAT UNABLED US TO DETERMINE THE AMOUNT OF ROUNDS FIRED.

11:28:18-Q4 (1) THERMAL ANOMALY OVER THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:28:21-Q4 (1) THERMAL ANOMALY OVER THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:28:22-Q4 (1) THERMAL ANOMALY OVER THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCUTURE.

11:28:36-Q1 SMALL TANK POSITIONS ITSELF BY THE PORTABLE LIGHTS.

11:29:00-Q2 11th TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:29:12-Q2 11TH TIME THE TANK BACKS UP.

11:29:46-Q2 SMALL TANK ARRIVES TO DEMOLISH THE FRONT PART OF THE BUILDING.

11:30:07-Q4 1ST TIME THE SMALL TANK APPEARS AND ENTERS THE FRONT MIDDLE SECTION OF THE BUILDING.

11:30:08-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:30:09-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:30:10-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:30:11-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OG THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:30:15-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS GOING INTO THE STRUCTURE.

11:30:27-Q4 (2) THERMAL ANOMALIES ON THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:31:09-Q1 1ST SMALL TANK BACKS UP FROM THE FRONT MIDDLE SECTION AND LEAVES THE AREA.

11:31:24-Q4 12TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:31:26-Q4 (1) THERMAL ANOMALY TO THE LEFT FRONT OF THE TANK. (D-2). THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:31:33-Q4 12TH TIME THE TANK BACKS UP.

11:32:22- CENTER OF THE PICTURE. 13TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:32:31-Q1 13TH TIME THE TANK BACKS UP.

11:33:23-Q4 14TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:33:31-Q2 14TH TIME THE TANK BACKS UP.

11:33:51-Q4 (1) THERMAL ANOMALY BETWEEN THE SWIMMING POOL AND THE GYM. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

11:34:32-Q4 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE DIRECTED AT THE UNKNOWN SUBJECT AT FRAME 11:34:33

11:34:33-Q3 TO 11:34:34-Q3 UNKNOWN SUBJECT CENTER OF THE COURTYARD BEING SHOT AT.

11:34:45-Q4 (1) THERMAL ANOMALY ON THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:35:03-Q3 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:38:31-Q3 (1) THERMAL ANOMALY IN FRONT OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:38:34-Q3 TO 11:38:36-Q3 UNKNOWN SUBJECT HIDING IN FRONT OF THE TANK.

11:38:45-Q1-Q2 & 11:38:46-Q3 (1) THERMAL ANOMALY ON THE CENTER OF THE BROKEN ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:38:48-Q3 (1) THERMAL ANOMALY BETWEEN THE POOL & THE GYM. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

11:41:01-Q1 REAR TANK IS DISABLED.

11:42:01:00-Q3 TO 11:42:02:00-Q3 (5) THERMAL ANOMALIES. THE DIRECTION OF THE MACHINEGUN FIRE IS COMING OUT OF THE STRUCTURE.

11:42:26-Q2 2ND TIME TANK APPEARS AND ENTERS THE FRONT MIDDLE PART OF THE STRUCTURE.

11:42:32-Q3 (1) THERMAL ANOMALY IN THE DEMOLISHED AREA. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:42:40-Q2 2ND TIME THE TANK BACKS UP FROM THE FRONT MIDDLE PART OF THE STRUCTURE.

11:43:09-Q1 3RD TIME THE TANK STARTS TO ENTER THE FRONT MIDDLE PART OF THE STRUCTURE.

11:43:14-Q2 ANOTHER TANK APPEARS TO ASSIST THE DISABLED TANK.

11:43:31-Q3&Q4 TANK IS ALMOST COMPLETELY INSIDE THE FRONT MIDDLE PART OF THE STRUCTURE.

11:43:33-Q4 (1) THERMAL ANOMALY ON THE ROOF IN FRONT OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:43:34-Q4 3RD TIME THE TANK BACKS UP FROM THE FRONT MIDDLE SECTION OF THE STRUCTURE.

11:43:35-Q4 (1) THERMAL ANOMALY ON THE ROOF IN FRONT OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:43:36-Q4 (1) THERMAL ANOMALY ON THE ROOF IN FRONT OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:43:37-Q4 (2) THERMAL ANOMALIES ON THE ROOF IN FRONT OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:43:38-Q4 (1) THERMAL ANOMALY ON THE ROOF IN FRONT OF THE TANK. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:44:34-Q3&Q4 THE DISABLED REAR TANK IS BEING ASSISTED AND LATER LEAVES THE AREA.

11:44:48-Q3 (1) THERMAL ANOMALY ON THE REAR ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:44:52-Q3 (2) THERMAL ANOMALIES ON THE REAR ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:44:53-Q3 (1) THERMAL ANOMALY ON THE REAR ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:44:54-Q3 (1) THERMAL ANOMALY ON THE REAR ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:45:44-Q4 4TH TIME THE TANK ENTERS THE FRONT MIDDLE SECTION OF THE STRUCTURE. APPROXIMATELY 50% OF THE TANK IS IN THE STRUCTURE.

11:46:11-Q3 & Q4 4TH TIME THE TANK BACKS UP FROM THE FRONT MIDDLE SECTION OF THE STRUCTURE.

11:46:34-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:46:43-Q1 (1) THERMAL ANOMALY AT THE BASE OF THE TOWER. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:48:46-Q1&Q2 5TH TIME THE TANK ENTERS THE FRONT MIDDLE SECTION OF THE STRUCTURE.

11:49:02-Q1 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:49:02-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:49:04-Q1 (2) THERMAL ANOMALIES ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:49:05-Q1 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:49:08-Q1 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:50:01-Q2 5TH TIME THE TANK BACKS UP FROM THE FRONT MIDDLE SECTION OF THE STRUCTURE.

11:50:17-Q3 (1) THERMAL ANOMALY NEAR THE REAR TOWER. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCUTRE.

11:50:20-Q2 & Q4 6TH TIME THE TANK ENTERS THE FRONT MIDDLE SECTION OF THE STRUCTURE.

11:50:28-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE PICTURE REAR OF THE TOWER. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:50:32-Q2 6TH TIME THE TANK BACKS UP FROM THE FRONT MIDDLE SECTION OF THE STRUCTURE.

11:50:59-Q1 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:51:00-Q1 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:51:04-Q1 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:54:41-Q2 1ST TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

11:54:48:Q2 1ST TIME THE TANK BACKS UP FROM THE MAIN FRONT ENTRANCE.

11:55:14-Q4 2ND TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

11:55:30-Q2 2ND TIME THE TANK BACKS UP FROM THE MAIN FONT ENTRANCE.

11:55:46-Q1&Q3 (2) THERMAL ANOMALIES ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:55:47-Q1&Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:55:48-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:57:25-Q4 SAMPLE OF TANK TRACKS ON THE GROUND.

11:57:26-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:57:27-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:57:28-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:57:35-Q2 3RD TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

11:57:51-Q3 3RD TIME THE TANK BACKS UP FROM THE MAIN FRONT ENTRANCE.

11:58:04-Q4 4TH TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

11:58:19-Q4 4TH TIME THE TANK BACKS UP FROM THE MAIN FRONT ENTRANCE.

11:58:39-Q4 5TH TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

11:58:50-Q4 5TH TIME THE TANK BACKS UP FROM THE MAIN FRONT ENTRANCE.

11:59:03-Q4 6TH TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

11:59:03-Q3 (2) THERMAL ANOMALIES ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

11:59:37-Q3 6TH TIME THE TANK BACKS UP FROM THE MAIN FRONT ENTRANCE.

12:00:27-Q3 15TH TIME THE REAR SECTION OF THE GYM IS DEMOLISHED.

12:00:41-Q2 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:01:00-Q2 (1) THERMAL ANOMALY ON THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:01:06-Q1 15TH TIME THE TANK BACKS UP.

12:01:06-Q2 (1) THERMAL ANOMALY. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:01:53-Q2 7TH TIME THE TANK ENTERS THE MAIN FRONT ENTRANCE OF THE STRUCTURE.

12:02:11-Q2 7TH TIME THE TANK BACKS UP FROM THE MAIN FRONT ENTRANCE.

12:03:00-Q1 & Q2 16TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

12:03:14-Q1 16TH TIME THE TANK BACKS UP.

12:03:59-Q2 TO 12:04:16-Q4 UNKNOWN SUBJECT NEXT TO THE TANK.

12:04:06-Q4 17TH TIME THE TANK DEMOLISHES THER REAR SECTION OF THE GYM.

12:04:15-Q4 17TH TIME THE TANK BACKS UP.

12:04:39-CENTER OF THE PICTURE 18TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

12:04:46-Q3 18TH TIME THE TANK BACKS UP.

12:05:15-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:05:16-Q3 (2) THERMAL ANOMALIES ON THE FRONT ROOF. THE DIRECTION OF THE GUNFRE IS COMING OUT OF THE STRUCTURE.

12:05:17-Q3 (1) THERMAL ANOMALY ON THE FRONT ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:05:17-Q2 1ST TIME THE TANK INSERTS THE BOOM INTO THE CORNER OF THE FRONT TOWER.

12:05:30-Q1 19TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

12:05:36-Q1 19TH TIME THE TANK BACKS UP.

12:06:06-Q1 1ST TIME THE TANK BACKS OUT OF THE FRONT CORNER TOWER AND LEAVES THE AREA.

12:07:33-Q1 THE WATER LEAKING OUT FROM THE TOWER ON THE SECOND FLOOR IS ALMOST EVAPORATED.

12:07:42-Q4 FIRE STARTS TO EXIT FROM THE WINDOW ON THE SECOND STORY OF THE CORNER TOWER.

12:08:12-Q4 UNKNOWN SUBJECT COMES OUT OF THE TANK AND SHOWS UP AT 12:08:51 SHOOTING AT THE UNKNOWN SUBJECT THAT APPEARS AT 12:08:34-Q4.

12:08:31-Q4 TO 12:08:32-Q3 THERMAL ANOMALIES (POSSIBLE CLUSTER OF FLASHBANG DEVICES) ON THE CORNER OF THE GYM.

12:08:34-Q4 to 12:08:44-Q4 UNKNOWN SUBJECT RUNS FROM AREA WHERE THE FLASHBANG DEVICE IS. THE SUBJECT HOPS OVER THE RUBBLE AND HIDES IN THE GYM.

12:08:37-Q2 (1) THERMAL ANOMALY ON THE TOP CORNER OF THE ROOF. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:08:46-Q4 EXAMPLE OF FIRE FROM THE KITCHEN AREA.

12:08:50-Q4 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:08:51:28-Q3 TO 12 08:52:17-Q3 (6) THERMAL ANOMALIES NEXT TO THE TANK. THE DIRECTION OF THE GUNFIRE IS INTO THE AREA WHERE THE UNKNOWN SUBJECT AT 12:08:44 WAS HIDING.

12:09:00-Q4 (1) THERMAL ANOMALY IN THE TOWER AREA. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:09:02-Q3 REAR TANK STARTS TO LEAVE THE AREA.

12:09:23-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:10:41-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:43-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:44-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCUTRE.

12:10:45-Q3 (2) THERMAL ANOMALIES IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:46-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:47-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:48-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:50-Q3 (1) THERMAL ANOMALY ON THE TOP CORNER OF THE GYM. THE DIRECTION OF THE GUNFIRE IS COMING OUT OF THE STRUCTURE.

12:10:51-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:52-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:53-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:54-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:55-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:56-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:57-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:10:58-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCUTURE.

12:10:59-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF TEHGUNFIRE IS INTO THE STRUCTURE.

12:11:00-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTIONOF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:01-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCUTURE.

12:11:02-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:03-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO TH ESTRUCTURE.

12:11:04-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCUTURE.

12:11:05-Q3 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:06-Q1 (2) THERMAL ANOMALIES IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:09-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:10-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:13-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCUTURE.

12:11:15-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:17-Q1 (1) THERMAL ANOMALY IN THE CENTER OF THE COURTYARD. THE DIRECTION OF THE GUNFIRE IS INTO THE STRUCTURE.

12:11:23-Q2 BRANCH DAVIDIAN IS OVERCOME BY SMOKE AND LAYS ON THE FRONT ROOF.

CONCLUSIONS:

No additional gunfire is detectable on the videotape because the infrared detector on the FLIR overloaded with the infrared energy emitted by the fire. The gunfire did continue on. There is visible video evidence taken by the media to support this and there is gunfire recorded on the audio track of the aerial FLIR tape # 4 taken by the same aircraft.

Total number of gunfire shots coming out of the structure	69
Total number of gunfire shots going into the structure*	57
Total number of flash devices	1 cluster
SUB TOTAL	127
Total number of times the tanks penetrated into the structure**	33
Total number of times the tanks penetrated thru the structure	1
TOTAL NUMBER OF EVENTS	161

- *THERE ARE 3 THERMAL FLASHES WHERE THE WEAPON USED, HAD A POSSIBLE FLASH SUPPRESSOR DEVICE INSTALLED, THEY OCCURRED AT 11:24:31:28,11:24:35:10 AND 11:28:14:13.THEREFORE THE POSSIBLITY EXISTS THAT MORE THAN ONE ROUND OF AMMUNITION WAS FIRED DURING EACH OF THE 3 EVENTS. ALTHOUGH ONLY ONE ROUND OF AMMUNITION WAS USED AS THE AMOUNT FIRED FOR THIS LIST.

- **AFTER REVIEWING THE VIDEOTAPE NUMEROUS TIMES. THE FOLLOWING PATTERN APPEARD, WITH ONLY A FEW EXCEPTIONS. THE BRANCH DAVIDIANS SHOT AT THE TANKS, ONLY AFTER THE TANKS PENETRATED THE STRUCTURE.

  TOTAL NUMBER OF TIMES, UNKNOWN SUBJECTS APPEAR ON THE FLIR VIDEOTAPE. 7

TOTAL NUMBER OF EVENTS THAT OCURRED BETWEEN 10:41:57 AND 12:16:13 (FLIR TAPE # 3) 198

Summary of the most important events that occurred on April 19, 1993

A complete analysis of the FLIR videotape (#3) taken between 10:41:57 and 12:16:13 was made using the equipment listed in volume 1.

An electronic grid was placed on the videotape and divided into 4 quadrants.
The top left section is quadrant 1 or (Q1). The top right section is quadrant 2 or (Q2). The bottom left section is quadrant 3 or (Q3) and the bottom right section is quadrant 4 or (Q4). A videotape was recorded with this grid pattern and provided.

At 11:16:27 the tank or CEV (combat engineering vehicle) first appears.

At 11:18:40-Q1 the tank starts to demolish the rear wall of the gym. This continues on until 12:09:02-Q3 when the tank leaves the rear area of the gym.
There were a total of 19 instances that the tank penetrated the gym.

At 11:23:02-Q3 & Q4 the tank has penetrated the gym for the 6th time.

At 11:23:23 the tank is completely inside the gym.

At 11:24:17-Q2 two unknown subjects appear from underneath the tank.

Between 11:24:30:16-Q2 and 11:24:36-Q1 the unknown subjects shoot into the hole made by the tank in the gym wall.

Between 11:24:50-Q4 and 11:25:04 there is a response in the form of gunfire from the inside of the gym directed at the 2 unknown subjects.

At 11:26:04-Q2 the tank breaks through the front wall of the gym.

Between 11:26:13-Q1 and 11:26:27-Q1 additional gunfire comes out of the gym directed at the 2 unknown subjects. This gunfire has pinned down the 2 unknown subjects on the ground.

At 11:26:26-Q1 the tank backs over the 2 unknown subjects. The approximate height of the tank is 20 inches and 6 feet in width between the tracks.

At 11:26:39-Q4 one of the 2 unknown subjects is clearly visible exiting out the hole in the front wall of the gym the tank previously made. The unknown subject turns to the right into the courtyard.

Between 11:28:04-Q1 and 11:28:14:04-Q4 there is gunfire emitting from the position the unknown subject was seen at 11:26:39-Q4 (the courtyard) the direction of this gunfire is into the structure.

Between 11:28:18-Q4 and 11:28:22-Q4 there is a response of gunfire coming out of the structure.

Between 11:30:09-Q4 and 11:30:15-Q4 there is gunfire from the same area in the courtyard directed into the structure.

At 11:33:51-Q4 there is gunfire between the gym wall and the swimming pool. The direction of this gunfire is into the structure (possibly unknown subject #2) since the infrared signature from this weapon is different from the rounds fired in the courtyard.

At 11:34:32-Q4 there is one gunshot directed at the unknown subject on 11:34:33-Q3 that is running and hiding between the gym and the swimming pool.

Between 11:34:33-Q3 and 11:34:34-Q3 unknown subject is being shot at.

Between 11:34:45-Q4 and 11:38:31-Q3 there is gunfire coming out of the structure.

Between 11:38:34-Q3 and 11:38:36-Q3 an unknown subject is seen hiding in front of the tank.

At 11:43:34-Q4 is the 3rd time the tank enters the front middle section of the structure. This is the side facing the cameras from the media. The tank enters the front part of the structure on numerous occasions and is fired upon every time it enters the structure.

Between 11:43:36-Q4 and 11:59:03-Q3 there is gunfire from the second floor front side directed at the tank.

At 12:03:59-Q2 unknown subject appears next to the tank in the rear of the structure.

At 12:05:17-Q2 1st time the tank inserts the boom into the corner of the front tower.

At 12:07:42-Q4 the fire is now visible in the infrared spectrum coming out from the window of the second story tower.

At 12:08:12-Q4 unknown subject comes out of the tank and shows up at 12:08:51-Q3 shooting at the other unknown subject that appears at 12:08:34-Q4

Between 12:08:31-Q4 and 12:08:32-Q3 a cluster of thermal anomalies appear at the corner of the gym.

Between 12:08:34-Q4 and 12:08:44-Q4 unknown subject runs from the area where the thermal anomalies are. The subject hops over the rubble and hides in the gym.

Between 12:08:51-Q3 and 12:08:52-Q3 there is automatic gunfire into the area where the unknown subject at 12:08:44-Q4 was hiding.

12:09:02-Q3 rear tank leaves the area.

Between 12:10:41-Q3 and 12:11:15-Q1 numerous rounds of gunfire are shot from the center of the courtyard and all are directed into the structure.

No additional events of importance are viewable due to the fire overloading the detector on the FLIR.

DETAILED LIST OF EVENTS AS THEY OCURRED ON APRIL 19, 1993

10:55:04-Q1&Q2 (1) THERMAL ANOMALY ON A TANK (GUNFIRE EFFECTS OF A DIRECT HIT ON A TANK).

11:08:57-Q4 WATER LEAKS OUT FROM THE TOWER ON THE SECOND FLOOR.

11:16:27-CENTER OF PICTURE. FIRST APPEARANCE OF THE TANK ASSIGNED TO THE REAR SECTION.

11:18:22:00-Q2 TO 11:18:23:02-Q2 (1) THERMAL ANOMALY FROM THE REAR SIDE OF TANK. THE DIRECTION IS INTO THE STRUCTURE. (POSSIBLY TEAR GAS).

11:18:40-Q1&Q2 1ST TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:18:47-Q1 & Q2 1ST TIME THE TANK BACKS UP.

11:20:10- CENTER OF PICTURE. 2ND TIME THE TANK DEMOLISHIES THE REAR SECTION OF THE GYM.

11:20:16-Q2 2ND TIME THE TANK BACKS UP.

11:20:43-Q1 & Q2 3RD TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:20:53-Q2&Q4 3RD TIME THE TANK BACKS UP.

11:21:21-Q1 & Q2 4TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:21:27-Q1&Q2 4TH TIME THE TANK BACKS UP.

11:22:25-Q2&Q4 5TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

11:22:36-Q4 5TH TIME THE TANK BACKS UP.

11:23:02-Q3&Q4 6TH TIME THE TANK DEMOLISHES THE REAR SECTION OF THE GYM.

Exhibit 7

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ASSESSMENT OF WACO, TEXAS FLIR VIDEOTAPE

Prepared for

US House of Representatives Committee on Government Reform

Pursuant to Letter contract dated 24 February 2000

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Prepared by
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1 Executive Summary

The US House of Representatives Committee on Government Reform has conducted an investigation into the activities of federal law enforcement agencies during the 1993 siege of the Branch Davidian compound in Waco, Texas. An important piece of evidence in the investigation is the video tape recorded by a forward looking infra-red (FLIR) camera mounted on a surveillance aircraft flown by the Federal Bureau of Investigation (FBI). The FLIR video recorded on 19 April 1993, the last day of the siege, is of particular interest, since it records the final assault on the compound and the fire in which some 80 members of the Davidian sect died.

Some members of the public and legal counsel of the surviving children of the Davidians have claimed that the US government is at least partly responsible for starting the fire and for the loss of life. In particular, it is believed by some that agents of the FBI or the Bureau of Alcohol, Tobacco, and Firearms (ATF) involved in the final assault fired weapons into the compound, preventing the occupants from leaving after the fire started. Attention has focussed on a number of apparent "flashes" recorded on the FLIR videotape. Some have claimed that these flashes are the result of weapons fire, and thus are evidence that federal agents fired into the Davidian compound, in spite of repeated and consistent denials by the agents at the scene.

The Committee on Government Reform engaged the author, as an expert in infrared technology and weapons signatures, to examine the FLIR videotape and give an informed, unbiased assessment of the likely source of the flashes seen on the tape. The author has also examined the recorded videotapes of the re-enactment[1] conducted at Fort Hood, Texas on 19 March 2000. The results of the re-enactment are consistent with and strengthen the conclusions reached based on the 1993 tape alone. After reviewing the 1993 and 2000 videotapes, taking into consideration the details of FLIR video technology and the characteristics of small arms muzzle flash, the following conclusions have been reached with nearly 100% certainty:

(1) The flashes seen on the tape during the four critical time periods cannot be weapons muzzle flash. Their duration is far too long and their spatial extent is far too great. They are almost certainly the result of solar energy or heat energy from nearby vehicles reflected toward the FLIR by debris or puddles.

(2) The FLIR video technology has a very low probability of detecting small arms muzzle flash.

(3) As a consequence of (2) above, the absence of muzzle flash detection on the FLIR tape does not prove that weapons were not actually fired during the final assault. Indeed, there is ample evidence (not presented here) that the Davidians were firing at the federal agents throughout this period, but none of their muzzle flashes are detectable on the videotape.

---

[1] "Protocol For A Forward Looking Infra-Red Imagery Trial," prepared for the Office of Special Counsel and the United States District Court for the Western District of Texas, Vector Data Systems (UK) Ltd., 16 February, 2000.

2 Properties of FLIR Video cameras

Understanding the operating principles of the FBI FLIR video camera is essential to interpreting the images obtained. The author has consulted with engineers who have designed and built FLIR systems and with the personnel who operate the FLIR for the FBI. A consistent description of the operation of the FLIR has emerged from these discussions.

2.1 The FBI FLIR Scanner

The FBI FLIR uses SPRITE (Signal PRocessing In The Element) detector elements[2]. This technology is important only in that it achieves a higher signal to noise ratio with simpler electronics than previously developed detectors. The FLIR's detector consists of an eight-element array of SPRITEs. Sensitivity is restricted to the 6-12 μm region by an infrared filter in the optical train.

The FLIR's optical system forms an image of the scene. The image is scanned across the detector by two mirrors. A six-sided prismatic mirror spins around a vertical axis, scanning the scene horizontally across the detector array. A simple flat mirror tilts around a horizontal axis, scanning the image across the detector in the vertical direction. Together, the two mirrors scan the entire scene across the detector.

The rotation of the two mirrors is synchronized to match the NTSC (National Television Standards Committee) video standard. This standard applies to television signals broadcast in the US, Canada, Mexico, and Japan. The broadcast television signal converts to 525 lines of vertical resolution at 30 frames per second.[3] These vertical resolution lines may be numbered from 1 at the top to 525 at the bottom. In practice, the odd-numbered lines are first scanned, followed by the even numbered lines, resulting in two interlaced "fields" that constitute an entire "frame" when put together. Fields are therefore scanned at 60 per second.

Not all of these scan lines can be used to form an image. Some of the "real estate" is used for synchronization and resetting the scan, and for other purposes. In effect, the vertical resolution is 480 lines, with a horizontal resolution of 640 "spots."

The primary purpose of a FLIR is to create an image for real-time viewing, rather than to collect scientific or engineering data. Most FLIRs have a selectable automatic gain control (AGC) feature. The AGC's purpose is to adjust the gain, or amplification, applied to the detector signal so that the image is formed with acceptable brightness and contrast, regardless of lighting conditions. Unfortunately, AGC makes the sensitivity of the FLIR at any instant impossible to recover. On 19 April 1993, the FBI's FLIR was set for AGC rather than manual gain control. Since sensitivity information is not accessible, it will not be possible to consider the likelihood that the FLIR could or could not detect muzzle flash based on brightness arguments. The

[2] "Optimization of Spatial Resolution in SPRITE Detectors," T. Ashley, C.T. Elliott, A.M. White, J.T.M. Wotherspoon, M.D. Johns, Infrared Physics Vol. 24(1), pp. 25-33, 1984

[3] "Complete Guide to Video," J.J. Adams, Howard W. Sams & Co., 1997, ISBN 0-7906-1123-6.

conclusions of this report will be based therefore almost entirely on the temporal behavior of the "flashes". The only use of brightness arguments will be to make internal comparisons to other, known events observable on the videotape.

2.2 Implications for the Analysis of the Waco FLIR tape

The FLIR video scanning arrangement described in the previous section implies that the detector is observing only a small part of the scene at any given instant. For ordinary objects that persist for long periods of time, the effect is not noticeable. For fast motion, it results in blurring. For very brief events, such as a muzzle flash, it can result in the event being missed entirely.

In the next section we present evidence that muzzle flash from small arms lasts only about 1 ms. The FLIR camera scans a field in 1/60 s. During the 1 ms that a muzzle flash is observable, the camera therefore scans only 6% of the scene. This figure may be taken as a first order approximation of the probability that the FLIR can detect a small arms muzzle flash that occurs within its field of view. This estimate does not take into account the sensitivity of the camera, which may prevent muzzle flash from ever being detected at useful ranges.

3 Origins and Properties of Muzzle Flash

Since the key goal of this investigation is to determine whether certain flashes observed by a FLIR are or are not caused by muzzle flash, a brief discussion of the origins and structure of muzzle flash is in order. Three regions of muzzle flash have been discussed in the literature, primary, intermediate, and secondary[4]. Primary flash is generally weak and occurs at the muzzle of a small caliber weapon, and intermediate flash is the result of shock heating the combustion products. In this investigation, we are primarily concerned with secondary muzzle flash, which is often called "afterburning."

3.1 Origin of Secondary Muzzle Flash

Designers of chemical propulsion systems, whether for missiles, artillery, or small arms, are concerned with achieving the greatest projectile velocity for a given weight of propellant. This is subtly different from releasing the greatest energy from the propellant. Chemical propulsion is usually achieved by a combustion process creating a large quantity of gases at high pressure in a confined volume. The high pressure exerts a force on the projectile, accelerating it. The kinetic theory of gases predicts that a higher pressure is attained if a larger number of molecules is created in the combustion process, regardless of the number of atoms in each molecule. It is also advantageous for each molecule to have a low molecular weight. Low molecular weight combustion products achieve higher momentum for a given energy release, resulting in greater

[4] "Gun Muzzle Blast and Flash," Günter Klingenberg and Joseph M. Heimerl, Progress in Astronautics and Aeronautics Volume 139, A. Richard Seebass, Editor-in-Chief, American Institute of Aeronautics and Astronautics, Inc., 1992, p. 10.

thrust. These considerations have been applied to rocket propulsion[5] and to gun projectile propulsion.[6]

In the case of projectiles, the relationship between final projectile velocity and propellant parameters is[7]

$$u_{max} = \left(\frac{\mu}{\mu+3}\right)^{\frac{1}{2}}\left[\frac{6}{\gamma}(\gamma-1)\right]^{\frac{1}{2}} a$$
$$a = \left(\frac{\gamma RT}{m_m}\right)^{\frac{1}{2}} \qquad (1)$$

where μ is m_c/m_p, m_c is the mass of the propellant charge, m_p is the mass of the projectile, γ is the ratio of specific heats (a pure number near 1.25), a is the speed of sound in the gas, R is the universal gas constant, T is the absolute temperature, and m_m is the molecular weight of the gas. Equation 1 shows that the final projectile velocity increases when the molecular weight of the propellant combustion products decreases. The best propellant product would therefore be hydrogen, H_2. Hydrogen would be much preferred to water, H_2O, and carbon monoxide, CO would be preferred over carbon dioxide, CO_2.

To achieve the desired combustion products, a mixture of substances is often required. Smokeless powder, for example, is a mixture of nitroglycerin and partially nitrated cellulose[8]. Nitroglycerin by itself is too heavily oxygenated to produce the desired products, While cellulose, and even nitrated cellulose (commonly called nitrocellulose) is too rich in carbon, producing carbon particle smoke. But by chemically adjusting the degree of nitration of cellulose and the relative proportions of the nitroglycerin and nitrocellulose, a good propellant can be made.

Carbon monoxide, hydrogen, and nitric oxide are the most desirable conventional propellant exhaust products, and can be produced by a suitable chemical formulation. However, from a thermodynamic point of view, they are incompletely burned. When the propellant combustion products exit the gun muzzle, they are moving at high velocity and they are at high temperature. Turbulent mixing with the ambient air occurs within a few hundred microseconds, and allows further combustion to take place, so that carbon dioxide, water, and NO_2 are ultimately produced. This process also occurs in rocket propulsion; in both cases, it is commonly

[5] "Space Technology," Howard S. Seifert, ed., John Wiley and Sons, New York, 1959, p. 14-11.
[6] "Gun Muzzle Blast and Flash," Günter Klingenberg and Joseph M. Heimerl, Progress in Astronautics and Aeronautics Volume 139, A. Richard Seebass, Editor-in-Chief, American Institute of Aeronautics and Astronautics, Inc., 1992
[7] ibid. p. 19.
[8] "Basic Principles Of Organic Chemistry," J.D. Roberts and M.C. Caserio, W.A. Benjamin, Inc., New York, 1965, p., 612

called "afterburning." Afterburning is accompanied by a release of energy and radiation, which can then be observed in both the visible and infrared spectral regions. In the next subsection, we describe this structure of this process.

3.2 Spatial and Temporal Structure of Muzzle Flash

We are chiefly concerned with the temporal and spatial extent of muzzle flash. A full discussion of these topics is beyond the scope of this report. However, muzzle flash of small caliber weapons has been measured by a number of authors using a variety of methods. We will illustrate some of the results here.

One method of observing muzzle flash is simply to take a photograph with a shutter speed that is slow enough to capture the entire flash. This method is simple and records the spatial extent of the flash at the expense of discarding all of the temporal information. Since photographic film is being used, the radiation that is recorded is nominally in the visible wavelength region, i.e. from 400 nm to 700 nm wavelength.

An example of this method is shown in Figure 1. It indicates that the visible secondary muzzle flash of the NATO 7.62 mm rifle appears about 0.4 m (16 inches) from the muzzle and that the intermediate flash is weaker and closer to the muzzle than the secondary flash.

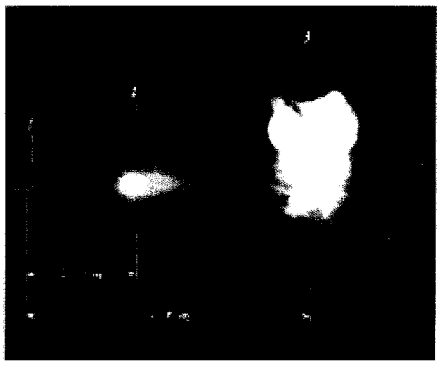

Figure 1. Time-integrated (open shutter) photograph of the muzzle flash of the NATO G3 (7.62 mm) rifle. 1 - Primary flash; 2 - Intermediate flash; 3 - Secondary flash. Note that the secondary flash extends to 0.4 m (16 inches) from the muzzle. (Photograph taken from Reference 3, p. 217)

An alternative method, the drum camera, retains both spatial and temporal information at the expense of a slight increase in the difficulty of interpretation. In this method, a strip of photographic film is mounted on a spinning drum. The optical system focuses a slit image onto the film in a direction perpendicular to the direction of spin. The image on the film therefore displays spatial information across the film and temporal information along the film. An example

of this method is shown in Figure 2. This figure shows a drum camera image of a NATO G3 7.62 mm rifle firing a normal round.

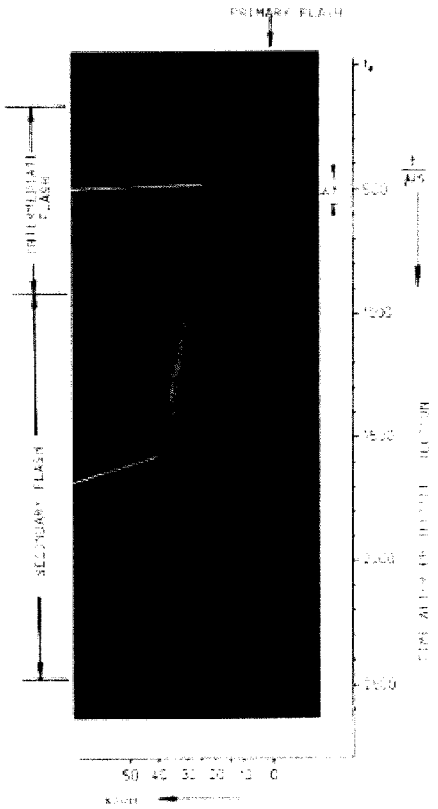

Figure 2. Drum camera image of the muzzle flash of the NATO G3 7.62 mm rifle. The rifle is firing from right to left. Zero on the spatial (horizontal) axis is at the muzzle. The temporal (vertical) axis starts at the top of the figure at the moment that the projectile emerges from the barrel. This photograph indicates that secondary flash extends 0.4 m from the muzzle, and further shows that the flash ends about 2000 μs, i.e. 2 ms after projectile emergence. (Photograph taken from Reference 3, p. 221.)

The current state of the art for recording muzzle flash is the high speed focal plane array

(FPA) detector. An FPA can form a series of complete images of an event, since the focal plane of the camera consists of a rectangular array of small, light-sensitive, semiconductor detector elements. Light falling on any of these elements generates a proportionate electrical charge that is stored until the whole array of stored charge is read out. The whole imaging process can be repeated more than 1000 times per second. Colleagues of the author have built such a system for measuring muzzle flash. Their focal plane is nominally sensitive to infrared radiation having wavelengths from 3 to 5 μm. Some of their results[9] are shown in Figure 3.

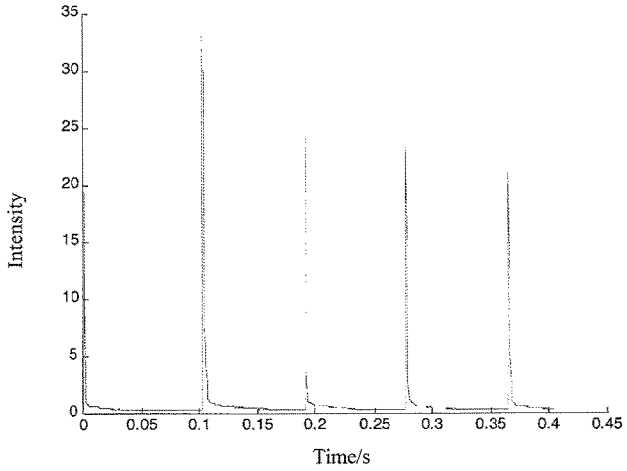

Figure 3. Infrared FPA camera recording of a machine gun similar in caliber to the NATO 7.62 mm rifle. Although it is not obvious from this graph, the duration of the flashes is 1 to 2 ms.

3.3 Spectral Distribution

Emission from weapons derives from both molecular species and from particulates. Molecular species emit at more or less discrete wavelengths that are characteristic of the species in question. Particulates are much like solid objects, which emit at all wavelengths with a distribution described by the blackbody function[10]. A graph showing schematically the emission from molecular species and particulates (blackbody radiation) is shown in Figure 4.

[9] The author has agreed to keep confidential the names of the organization(s) that provided these data. The author has verbally informed the committee as to their identity.
[10] "Elements of infrared technology: generation, transmission, and detection," P.W. Kruse, L.D. McGlauchlin, and R.B. McQuistan, John Wiley & Sons, New York, 1963, p. 29.

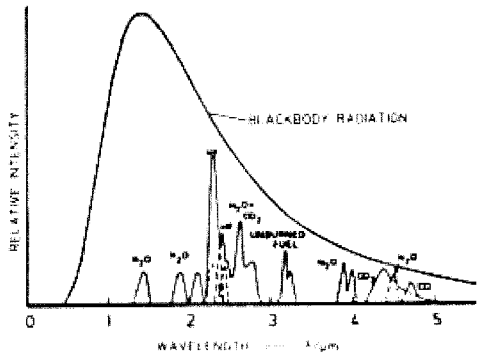

Figure 4. Spectral distribution of molecular species emission and blackbody radiation from particulates. The blackbody radiation is characteristic of an emitting species having a temperature near 2000 K (~3000 °F). (Drawing taken from Ref. 3, p. 198.)

Muzzle flash pictures taken with photographic film such as Figures 1 and 2 display information about visible light emission (wavelengths from 400 to 700 nm). The data shown in Figure 3 are from an FPA sensitive to wavelengths from 3 to 5 μm. The fact that the temporal distribution of emission is similar in the two cases is not entirely coincidental. After all, both forms of emission require thermally excited chemical species or particulates, and for the most part, all emitting species at any given point in the propellant flow are at the same temperature (local thermal equilibrium). Figure 4 shows a generalized spectral distribution of emission superimposed on a blackbody emission curve. The local thermal equilibrium property implies that temporal structure of emission at the wavelength range of the FBI FLIR, from 6 to 12 μm, will also be similar. However, it is always useful to check for direct evidence that this is so.

First we must confirm our suspicion that there is any radiation at all that can be observed in the 6 to 12 μm region. There is a chain of evidence from a number of sources that indicate that the emission from many weapons has similar spectral properties. For example, the spectral distributions of emission from the M-1 rifle and the 105 mm tank gun have been shown to be similar in the 400 to 1100 nm (blue to near infrared) spectral region[11]. It is plausible that the distributions should be the same in other spectral regions also.

[11] "Spectral Irradiance Measurements of the Muzzle Flash of the 105 mm Tank Gun and the M-1 Rifle," R.L. Hesser, R.M. Goodwin, and C.B. Hamre, US Army Nuclear Defense Laboratory, Edgewood Arsenal, MD, NDL-TR-123, May, 1969, AD 856473

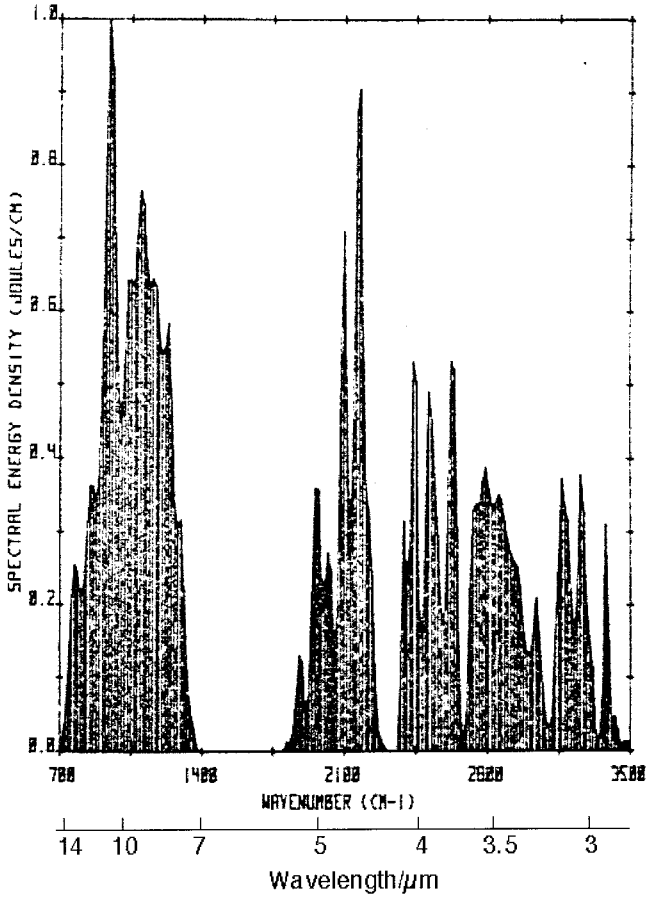

Figure 5. Spectral distribution of emission from a 105 mm howitzer at 1 km range. The horizontal axis is in frequency units (cm^{-1}) in this case. An equivalent wavelength scale has been added at the bottom to assist the reader. The graph indicates that there is as much emission in the 8-12 μm region as in the 3-5 μm region. (Original photograph from Reference 11, p. 30)

Figure 5 shows the spectral distribution of emission from a 105 mm tank gun[12] from 700 to 3500 cm^{-1} (14.3 to 2.8 μm.) The data in this figure confirm that there is indeed muzzle flash emission in the 6-12 μm wavelength region. In effect, however, detected emission is in the 8-12 μm region, because atmospheric water vapor strongly absorbs emission from 5-7 μm.

4 Analysis Methodology

4.1 Video Capture

Three videotapes taken on 19 April 1993 and two taken on 19 March 2000 were supplied to the author by the Committee. They are listed in Table 1. No analysis was performed on tapes 1 or 2 because of an incompatibility with the VCR used for playback. Tapes 3, 4, and 5 were analyzed in detail.

Table 1. FLIR video tapes considered in this study.

	Videotape Label	Date	Start Time	End Time	Quality
1	"First Generation S-VHS Copy of the FLIR videotape taken at Waco; Tape #3 copy made on 10/15/99"	19 April 1993	10:41:57	12:16:13	S-VHS[13]
2	"First Generation S-VHS Copy of the FLIR videotape taken at Waco; Tape #4 copy made on 10/15/99"	19 April 1993	12:16:37	13:39:07	S-VHS
3	"Second Generation VHS copy from the D-2 copy of the FLIR videotape taken at Waco; Tape #3 copy made on 10/12/99"	19 April 1993	10:41:58	12:16:13	good
4	"Lynx FLIR Tapes 1&2 Waco Test"	19 March 2000	10:51:04	12:24:56	fair
5	"Night Stalker FLIR Waco Test"	19 March 2000	13:00:00	13:50:00	good

To analyze the videotape it was necessary to convert the analog (continuous) signal produced by the VCR to digital form. The device needed to do this is called a video capture board, which is installed in a personal computer. The author surveyed a number of manufacturers and suppliers for the best set of features, performance, and software. The board selected was a National Instruments[14] model IMAQ PCI 1411. IMAQ Vision Builder™ software was also purchased to control the board, to perform statistical processing of the images, and to save the results to disk. The board and the software were installed in a personal computer already on hand in our office.

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[12] "Gunflash Detection: Spectral/Temporal Flash Data Base (U)," J.A. D'Agostino, R.E. Dixon, F.J.Elmer, and R.S. Rohde, US Army Electronics Research & Development Command, Night Vision and Electro-Optics Lab., Fort Monmouth, NJ, DELV-TR-78-3, November, 1978, AD C016626

[13] S-VHS format provides 400 lines of horizontal resolution, compared to less than 300 for standard VHS. The S-VHS tapes are incompatible with the standard format VCR used for playback.

[14] National Instruments Corp., 11500 North Mopac Expressway, Austin, TX 78759-3504

1.2 Flash Area Statistics and Analysis

Enough memory and disk space were available on the computer to collect about 2 s of video at any one time. Therefore, for most of the events analyzed, multiple captures were needed. Linking captured sequences together was tedious, but straightforward. The Vision Builder software supported the creation of scripts that apply analysis steps to all selected images. Using graphical selection tools, regions could be selected in each image and statistics could be derived, notably brightest and dimmest value in the selected region. The statistical information was then saved to a text file and plotted using spreadsheet software already on hand. Time was derived from the time displayed in the video itself. Plotting was facilitated by noting the frame in which the time display changed from one second to the next, and adding the appropriate fraction of a second to each successive frame.

5 Analysis of Four Time Periods at Waco on 19 April 1993

5.1 Local Time 11:24:17

A video frame from this period is shown in Figure 6.

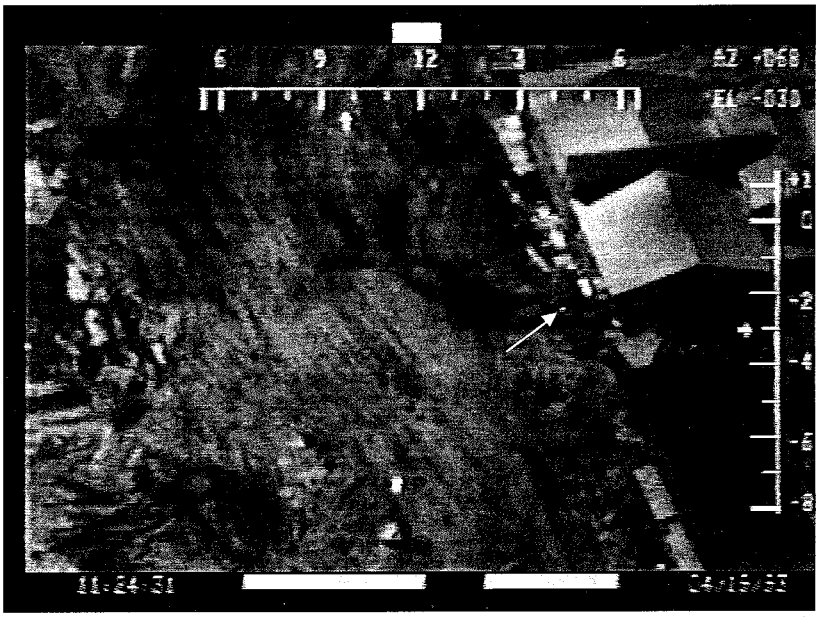


Figure 6. Waco FLIR video frame near 11:24:31 on 19 April 1993. The CEV is almost completely inside the "gymnasium". The white arrow (added by the author) indicates a "flash" area subjected to analysis.

At this time, the Combat Engineering Vehicle (CEV) has begun destroying the rear wall of a part of the Branch Davidian compound known as the "gymnasium". Two dark patches appear on the ground behind the CEV and persist for a while. Flashes occur within these dark patches. A plot of the gray scale value of the brightest element in the patches is shown in Figure 6.

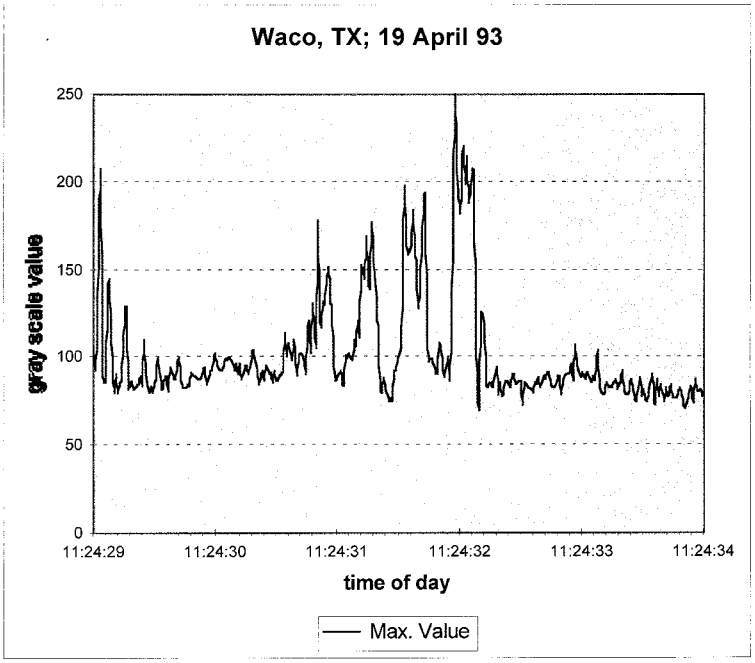


Figure 7. Intensity of the bright flash behind the gymnasium shown in Figure 6. The intensity scale is simply the 8-bit gray scale level of the video tape, 0-255. This chart was produced by examining the video fields in order and recording the brightest value of the flash area. Note that each of the "rhythmic" flashes last for several tenths of a second. This is about 100 times longer than a small arms muzzle flash is expected to last.

As Figure 7 shows, the "rhythmic flashes" last for several tenths of a second (several hundred ms). Since this is 50 to 100 times longer than the muzzle flash from small arms lasts, these flashes cannot be muzzle flash. They are most likely a reflection of the CEV engine's hot parts, which themselves are clearly visible in the videotape.

5.2 Local Time 12:08:31

By 12:08:31, the CEV has finished demolishing the "gymnasium" at the back of the Branch Davidian compound. Much of the roof of the gymnasium has been destroyed and the roof of the neighboring room has sagged to the ground. The roof has a ridge over what may be a catwalk that extends to the roof of another part of the compound that may have been David

Koresh's quarters. This "catwalk ridge" has what appears to be a window at the end, where a bright flash appears.

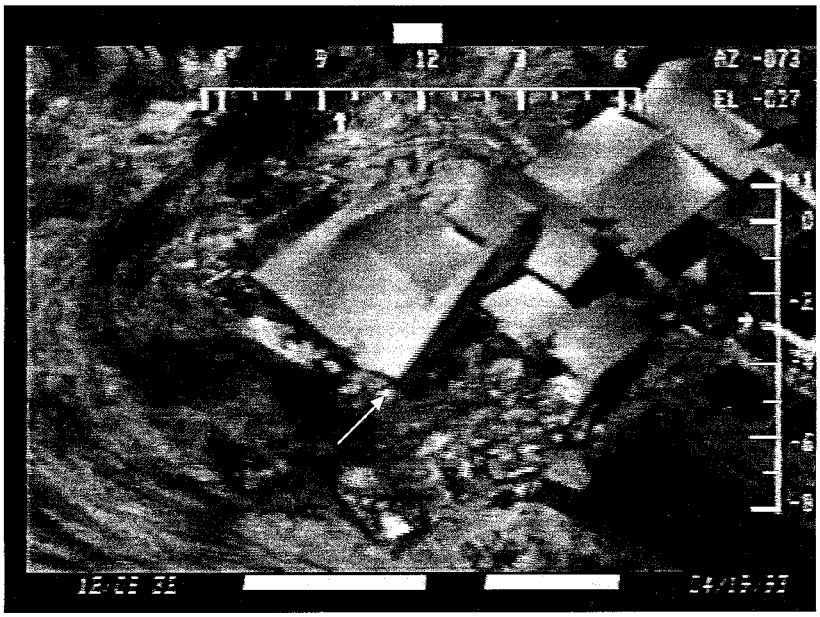


Figure 8. Full frame view of the Branch Davidian compound at 12:08:32 on 19 April 1993. The CEV has finished demolishing the "gymnasium." The white arrow (added by the author) indicates a bright "flash" that appears in the window of a roof ridge that has by this time collapsed to the ground.

A chart showing the temporal history of this flash is shown in Figure 9 below. Note that this flash lasts for over a second. This is 500 to 1000 times longer than a muzzle flash would last. It cannot be from a small arms weapon firing.

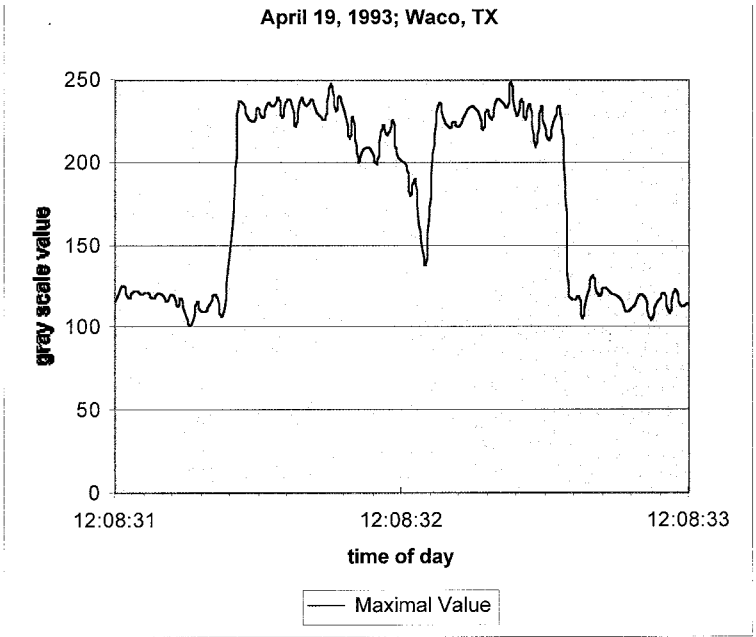


Figure 9. Intensity of the bright flash in the catwalk window shown in Figure 7. The vertical scale is the 8-bit gray scale level of the video tape, 0-255. This chart was produced by examining the video fields in chronological order and recording the brightest value of the flash area. Note that the "rhythmic" flashes last for over a second. This is far longer than a small arms muzzle flash is expected to last.

One might ask whether this flash came from some other event occurring inside the building. The answer is that it is unlikely to have arisen from any event that may have occurred inside the building. In spite of all the damage that has been done by the CEV, the window at the end of the catwalk does not appear to be broken. If the window is made of glass as expected, then virtually no infrared light that the FLIR could detect would emerge from inside the building, because glass has no appreciable transmission beyond 4 μm wavelength[15]. Even glasses specially made for infrared transmission manage only to lose their transmission more slowly from 4 to 5 μm wavelength, as Figure 10 shows.

[15]"Handbook of Military Infrared Technology," W.L. Wolfe, ed., Library of Congress Catalog Card No. 65-62266, published by the Office of Naval Research, 1965, p. 317

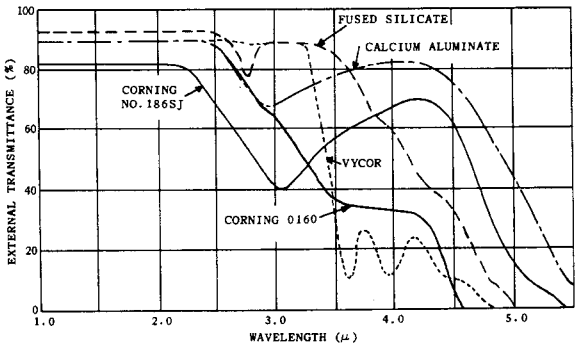


Figure 10. Transmission curves of specially made infrared glasses. Note that transmission falls to zero beyond about 5 μm wavelength. Ordinary window glass has zero transmission beyond 4 μm wavelength. The FBI FLIR's sensitivity begins beyond the atmospheric water absorption at about 8 μm, cf. Figure 5. Figure taken from Ref. 15, p. 317.

Since it is unlikely that any 8-12 μm light from inside the building could emerge, this flash is most likely sunlight reflected from the window. A general analysis of the reflection hypothesis will be given in Subsection 6.5 below.

5.3 Local Time 12:08:51

Twenty seconds after the flash appears in the catwalk window, another flash appears within a dark spot apparently on the ground near the CEV. A frame of video of this incident is shown in Figure 11 below.



Figure 11. Full frame view of the Branch Davidian compound at 12:10:52 on 19 April 1993. The CEV has finished demolishing the "gymnasium." The white arrow (added by the author) indicates a bright "flash" that appears within a dark spot apparently on the ground near the CEV.

Figure 12 is a graph showing the apparent gray scale intensity of this flash as a function of time. Once again, the flashes last roughly ten times longer than a muzzle flash from small arms lasts. This flash cannot be small arms muzzle flash; rather it is most likely reflected sunlight. A further discussion of the reflected sunlight hypothesis is given in Subsection 6.5 below.

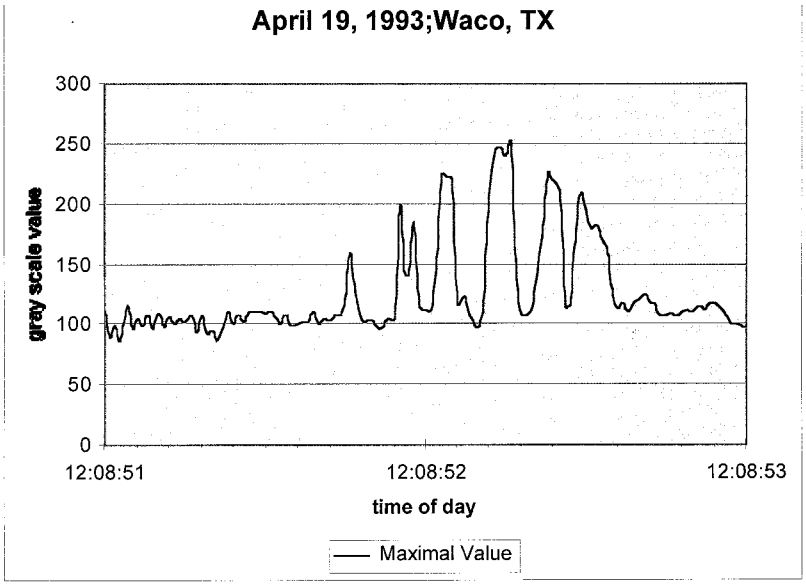


Figure 12. Intensity of the bright flash on the ground shown in Figure 11. The vertical scale is the 8-bit gray scale level of the videotape, 0-255. This chart was produced by examining the video fields in chronological order and recording the brightest value of the flash area. Note that the "rhythmic" flashes last for nearly a tenth of a second or more. This is roughly ten times longer than a small arms muzzle flash is expected to last.

5.4 Local Time 12:10:55 to 12:11:07

By 12:10:55, fire has already broken out at several places in the Branch Davidian compound. Because the fire is so bright in the 8-12 μm wavelength region, the FLIR's AGC dramatically reduces the brightness of the entire scene. An example is shown in Figure 13. With so much of the already demolished buildings on fire, the most likely cause of any flash would have to be a flickering ember. For completeness, a suspected region of the compound was nevertheless captured and plotted in the same way as the other time periods. These plots are shown in Figures 15 and 16.

As before, the "flashes" last much longer than a muzzle flash would last. In this case, however, the most likely source of the flashes is a piece of smoldering building material that ignites and extinguishes from time to time.



Figure 13. Full frame view of the Branch Davidian compound at 12:10:59 on 19 April 1993. At this time the compound is burning in at least three places. The white arrow (added by the author) indicates a bright "flash" that appears near the courtyard near the "gymnasium". The FLIR video camera is moving so rapidly at this time that the flash appears in slightly different places in the two fields that comprise this frame, making the flash appear double.

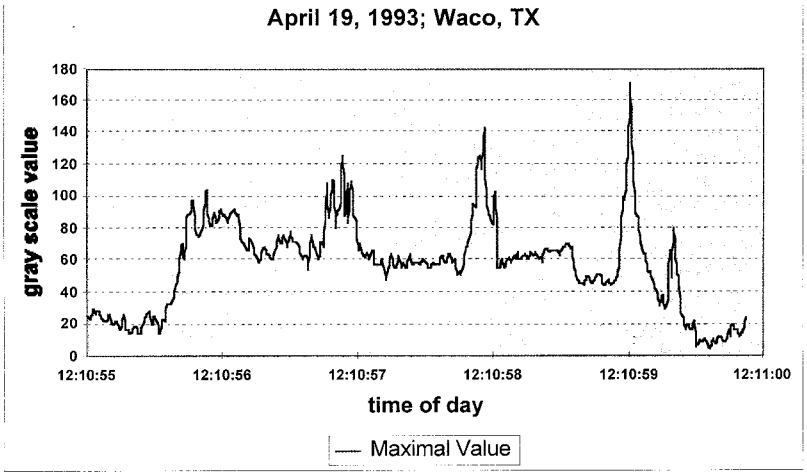


Figure 14. Intensity of the bright flash near the gymnasium in Figure 13 from 12:10:55 to 12:11:00. The vertical scale is the 8-bit gray scale level of the videotape, 0-255. Because of the brightness of the fire, the AGC has reduced the gain of the system so that the flashes have roughly half the gray scale value of the earlier examples. This chart was produced by examining the video fields in chronological order and recording the brightest value of the flash area. Note that the shortest of the "rhythmic" flashes lasts for a tenth of a second. This is far longer than a small arms muzzle flash is expected to last.

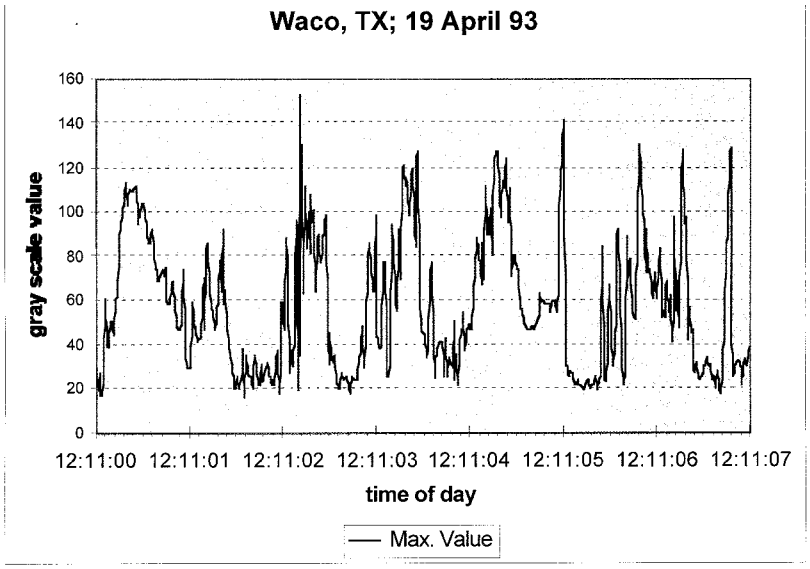


Figure 15. Intensity of the bright flash near the gymnasium in Figure 13 from 12:11:00 to 12:11:07. The vertical scale is the 8-bit gray scale level of the videotape, 0-255. Because of the brightness of the fire, the AGC has reduced the gain of the system so that the flashes have roughly half the gray scale value of the earlier examples. This chart was produced by examining the video fields in chronological order and recording the brightest value of the flash area. Note that many of the "rhythmic" flashes last for more than a second. This is far longer than a small arms muzzle flash is expected to last.

5.5 Local Time 10: 53:23 and 11:28:10 - Examples of Solar Reflection

For the first three time periods examined in this report, the most likely cause of flashes has been attributed to solar reflection from debris or window glass, rather than gun muzzle flash. Since the 8 to 12 μm wavelength region is often selected to avoid solar-induced background, we must examine the plausibility of the solar reflection hypothesis.

Support for the solar reflection hypothesis comes from a number of sources. First, we have an observation of the Branch Davidian compound's swimming pool near 10:53:23. One frame from this time is shown in Figure 16. 19 April was a windy day in Mt. Carmel near Waco, TX. The water's surface in the pool shows numerous sunlight reflections when the FLIR's line of sight is near the plane formed by the sun, earth, and FLIR. Clearly, the FLIR is not completely immune to reflected sunlight.

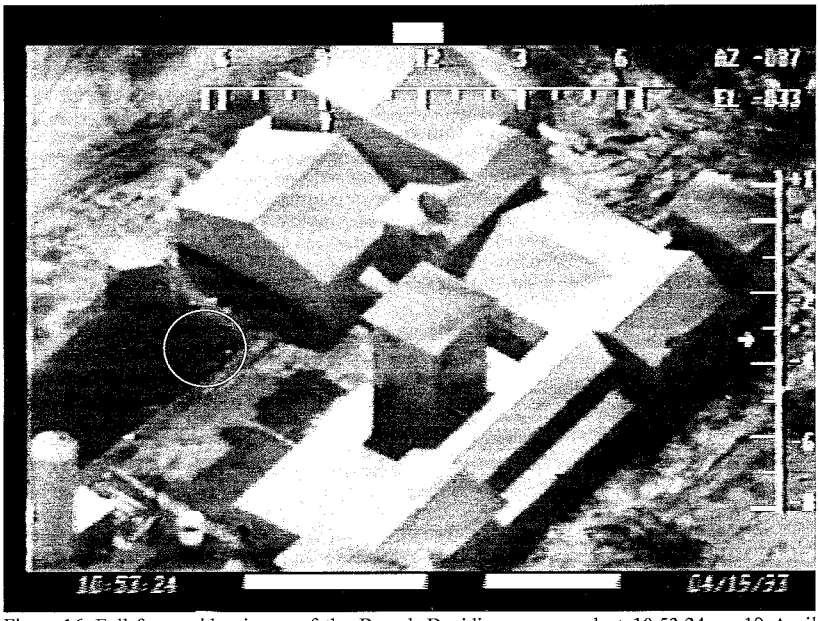


Figure 16. Full frame video image of the Branch Davidian compound at 10:53:24 on 19 April 1993. The white circle (added by the author) indicates a region where a number of sun glints appear on the surface of the swimming pool. These glints originate on wind-driven ripples on the water's surface and are visible for several seconds.

Another interesting example of reflected sunlight occurs at around 11:28:10. At that time, the CEV has knocked down enough of the rear wall of the "gymnasium" that the roof has noticeably sagged. In fact, it has sagged enough that the CEV can push directly on the roof frame on its next thrust forward. When it does, pieces of debris fall off the far side of the gym, some of which flash when they hit the ground. The most plausible explanation for this flash is reflected sunlight. Figure DSF 17 shows the flash that occurs in this area. Flashes occur again in this same area about a minute later when the Night Stalker aircraft has completed another circuit of the compound and returns to a position where the sun-debris-FLIR angle favors reflection.



Figure 17. Full frame video image of the Branch Davidian compound at 11:28:05 on 19 April 1993. The CEV has just pushed on the roof frame, causing it to shift as a unit, breaking down the rear wall. Pieces of building material have fallen off at the back. The white arrow (added by the author) indicates the point where a piece of debris produces a flash. Note that the flash is just beyond the shadow of the building. This flash is most likely reflected sunlight.

Reflections such as these occur because of a difference in refractive index between two media. In the cases considered in this subsection, the media are air and either water (swimming pool) or glass (catwalk window). The reflectivity of water in the 8 to 12 μm region varies from 1 to 3%[16]. The reflectivity of glass at these wavelengths is similar. A rough estimate of the solar irradiation expected in this wavelength region using published solar data[17] indicates that reflected solar light can easily rival the diffuse thermal emission seen everywhere else in the FLIR image.

6 Analysis of the Re-enactment at Fort Hood on 19 March 2000

To examine the question of whether muzzle flash and solar glint would be detectable in

[16] ibid., p. 166.
[17] "Handbook of Geophysics for Air Force Designers," C.F. Campen, Jr. A.E. Cole, T.P. Condron, W.S. Ripley, N. Sissenwine, and I. Solomon, eds., Geophysics Research Directorate, Air Force Cambridge Research Center, 1957, p. 16-19.

FLIR video images, the US District Court for the Western District of Texas ordered a re-enactment of weapons fire to be performed[18] under the supervision of Vector Data Systems (UK) Ltd.[19]. The test was conducted on 19 March 2000 at Fort Hood, TX. Two FLIRs were used in the test. The first was a Royal Navy (RN) Sea Owl FLIR flown on a RN Lynx Mk 8 helicopter. This FLIR was chosen as being closest in performance to the FLIR used by the FBI in 1993. The other FLIR was the FBI's FLIR in its current configuration, which has been upgraded since 1993. The FBI's FLIR was flown on a Night Stalker aircraft.

The re-enactment sought to assess the visibility of personnel in the FLIR images as well as gunfire. Personnel are not clearly visible in the FLIR video of 19 April 1993. It is tempting therefore to conclude that no flashes could be weapons fire, because there was no shooter. This argument has been considered and rejected. Visibility in a FLIR depends in large measure on temperature contrast, i.e. differences in temperature between an object and its background. The author regards the results of the re-enactment as inconclusive in this regard, largely because of the significant difference in ambient temperature on the two days in question. The air temperature during the re-enactment was around 68°F. This is about 20°F cooler than the temperature on the last day of the siege.

Personnel conducting the re-enactment test (shooters) are clearly visible in the video, especially when they are moving about. When they take up their positions and are nearly motionless, they are much less conspicuous. In either case, they are being viewed against a (roughly) 68°F background.

The shooter visibility may be compared with the videotape of 19 April 1993, when the ambient temperature was around 85°F. After the fire at the Branch Davidian compound has died down, personnel on the ground are clearly visible walking on the tarred roof of the incomplete structure. Tar absorbs sunlight efficiently, and should be considerably warmer than the earth and the personnel, giving good contrast. Indeed, the tarred roof is the brightest structure in the FLIR video. However, when the personnel walk off the roof onto disturbed earth, they virtually disappear. We may put some rough bounds on personnel temperature as being lower than a tarred roof and nearly the same as the disturbed earth on an 85° day. Personnel are probably warmer than the earth on a 68°F day, and thus are visible. It is therefore risky to conclude on the basis of the re-enactment video that personnel should have been visible in the 19 April 1993 FLIR video. None of the conclusions of this report are based on the visibility of personnel.

The weapons and corresponding ammunition tested during the re-enactment are listed in Table 2. During the test, the shooter commander, speaking on the radio and audible on the audio track of the videotape, refers to shooters by number. It is assumed that the numbers correspond to the alphabetical position of the weapons in the protocol, as given in Table 2.

---

[18] Dallas Morning News, 11/16/1999

[19] "Protocol For A Forward Looking Infra-Red Imagery Trial," prepared for the Office of Special Counsel and the United States District Court for the Western District of Texas, Vector Data Systems (UK) Ltd., 16 February, 2000

Table 2. Weapons and Ammunition Tested in the Waco re-enactment[20]:

Firing Lane	Weapon	Ammunition
A	Heckler & Koch MP-5 Submachine gun (suppressed)	9mm 147 grain Hydroshock hollow point
B	Remington Automatic Shotgun M870	Magnum 00 buck, rifled slug
C	Heckler & Koch MP-5 Submachine gun	9mm 147 grain Hydroshock hollow point
D	M-16 rifle	.223 standard military issue and Flashbangs
E	CAR-15	.223 standard military issue
F	Browning 88 9mm pistol	9 mm 147 grain Hydroshock hollow point
G	M60	7.62 belt fed standard military issue
H	Mk-19	40 mm flashbangs
Outside Bradley	M-79 launcher	M-79 Ferret, M651 and Flashbang rounds

6.1 The Royal Navy FLIR

The first phase of the re-enactment, when the RN FLIR was being tested, was beset with difficulties. The shooter commander was often inaudible during the first phase of the test when the RN Sea Owl was being used. It was therefore often difficult to know when and which weapon was being fired. The pointing of the Sea Owl was also not stable. Pointing instability had two unfortunate consequences. First, the test area was often outside the FLIR's "stable pointing zone". At these times the FLIR would not point at the test site and the operator indicated to the shooter commander that the test should be stopped while the helicopter maneuvered to a better position. Several times the shooter commander failed to receive the message, and the test proceeded without being observed by the FLIR. Significant portions of the test protocol were therefore missed entirely. Second, even while the test area was within the field of view, the FLIR's line of sight was often unstable. A muzzle flash could be missed for this reason alone.

Despite these problems, flashes were observed occasionally during the test. Most flashes came from the debris pile, confirming the possibility that the source of the flashes observed in 1993 were solar reflections. An example of a debris flash from the re-enactment is shown in Figure 18. This flash, observed by the RN FLIR, lasts for 14 frames, or nearly half a second. This would confirm that debris is quite capable of producing the flashes seen in the 1993 video.

[20] "Protocol For A Forward Looking Infra-Red Imagery Trial," prepared for the Office of Special Counsel and the United States District Court for the Western District of Texas, Vector Data Systems (UK) Ltd., 16 February, 2000

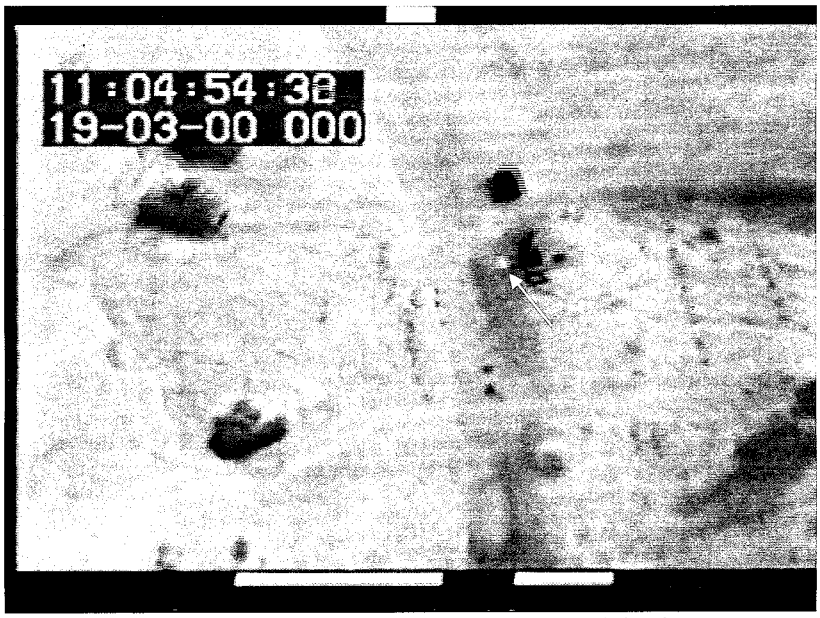


Figure 18. Full frame video image captured by the RN Sea Owl FLIR during the re-enactment at Fort Hood on 19 March 2000. The white arrow (added by the author) indicates a flash from the debris field. This flash persists for 14 video frames, or nearly half a second. This flash closely resembles the flashes analyzed on the 1993 FLIR videotape.

The RN and the FBI FLIRs observed only a tiny fraction of all the shots fired. This result is consistent with the estimate made earlier that a video scan has at best a 6% chance of observing a muzzle flash within its field of view. Those few shots that were observed appear quite different from the flashes examined on the 1993 videotape. They last for one or at most two frames, and are quite small. Examples of muzzle flashes recorded by the RN FLIR are shown in Figures 19, 20, and 21. Figure 21 is an example of a single field scan. It appears compressed in the vertical direction because only one half of the scan lines are present. The flash shown in this figure is much dimmer in the next field (not shown), and disappears thereafter.

The RN FLIR also detected one other interesting event, the detonation of a "flashbang". These loads are not strictly weapons, but are designed to generate bright light and noise to distract personnel in the target area. The bright light of the flashbang is detected in one or possibly two frames near 12:23:23, after which hot smoke is observed to drift with the wind until it dissipates after about one half second. A second such flash is observed at 12:23:43. A video frame with the first flashbang is shown in Figure 22.



Figure 19. Full frame video image captured by the RN Sea Owl FLIR during the re-enactment at Fort Hood on 19 March 2000. The white arrow (added by the author) indicates a muzzle flash from a weapon being fired. This flash lasts for a single frame, far less than the flashes analyzed on the 1993 FLIR videotape. It is also much smaller and dimmer.

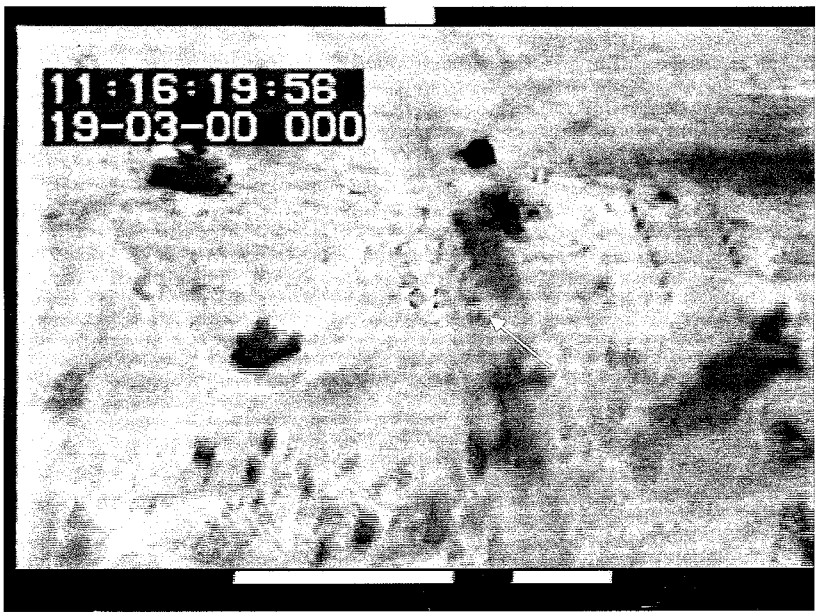


Figure 20. Full frame video image captured by the RN Sea Owl FLIR during the re-enactment at Fort Hood on 19 March 2000.The white arrow (added by the author) indicates a muzzle flash from a weapon being fired. This flash lasts for a single frame, far less than the flashes analyzed on the 1993 FLIR videotape. It is also much smaller and dimmer.

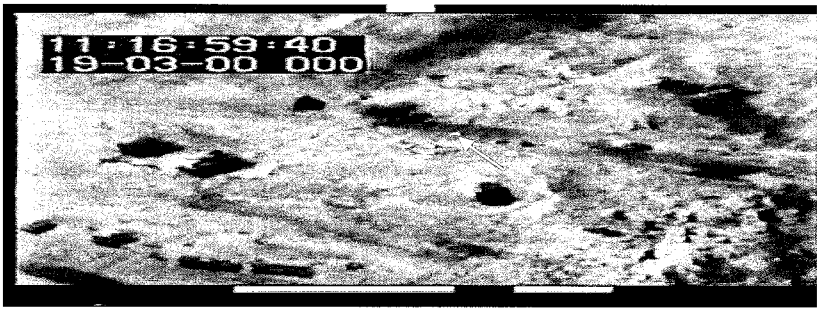


Figure 21. Single field video image captured by the RN Sea Owl FLIR during the re-enactment at Fort Hood on 19 March 2000. The white arrow (added by the author) indicates a muzzle flash from a weapon being fired. This flash lasts for a single frame, far less than the flashes analyzed on the 1993 FLIR videotape. It is also much smaller and dimmer.

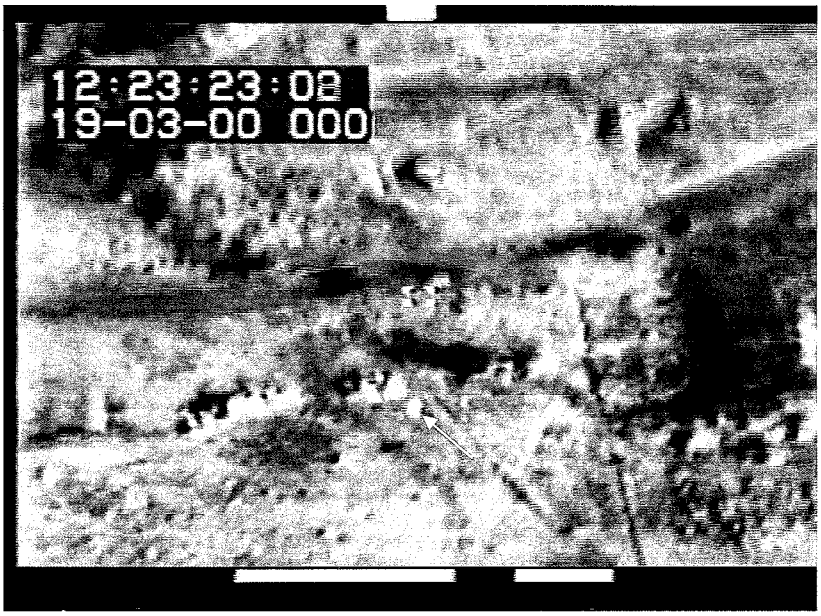


Figure 22. Full frame video image captured by the RN Sea Owl FLIR during the re-enactment at Fort Hood on 19 March 2000. The arrow (added by the author) indicates the detonation of a "flashbang" round. This flash appears abruptly in this frame and lasts for one frame (1/30 s), after which a cloud of hot smoke is apparent drifting to the right in the image. The smoke dissipates after one half second.

6.2 The FBI FLIR

The FBI also participated in the re-enactment test at Fort Hood, TX on 19 March 2000. Their FLIR has been modified and improved since it was used at Waco in 1993. The overall image quality of the FBI video is significantly better than that of the RN FLIR. The pointing stability of the FBI FLIR is also much better, so that none of the tests were missed, and motion blurring is not a factor.

The FBI FLIR detected more muzzle flash events than the RN FLIR, but still detected only a small fraction of all the shots fired. Those shots that were detected are similar in appearance and duration to those detected by the RN FLIR.

The FBI FLIR made a significant observation that the RN FLIR was not in a favorable position to observe. At 13:20, the protocol called for the CEV to move forward, and then back.

Construction debris had been placed under the CEV to test the hypothesis that reflected emission from engine hot parts could account for some of the flashes observed on the last day of the siege. The FBI Night Stalker aircraft was in a favorable position to detect reflections when this part of the test was carried out. An example video image from this time period is shown if Figure 23. The reflection first appears as the CEV is moving forward. It persists for much of the time that the CEV is moving backwards, about 5 seconds.



Figure 23. Full frame video image captured by the FBI FLIR at the re-enactment on 19 March 2000 at Fort Hood, TX. The CEV had been parked for about an hour, leaving a dark "thermal scar" where the soil was not heated by direct sunlight. The test protocol called for the CEV to move forward on command, making this scar visible to the FLIR. The arrow (added by the author) indicates a reflection of engine hot parts from debris deliberately placed under the CEV in its original position.

Figure 23 supports the hypothesis that some flashes are caused by thermal emission from engine hot parts reflecting off objects on the ground. The flash shown in Figure 6, which shows the CEV entering the gymnasium, is a possible example of such a reflection.

7 Summary and Conclusions

The conclusions presented in this report are based on a number of sources of information:

1. The FBI's FLIR operators
2. Independent sources of FLIR design technology
3. Independent sources of muzzle flash signature measurements
4. US Government reports and texts and open source literature on infrared technology and muzzle flash
5. The FLIR videos of the final day of the siege of the Branch Davidian compound
6. The FLIR videos of the re-enactment at Fort Hood, TX

7.1 FLIRs have low probability of detecting muzzle flash

Open source literature on muzzle flash indicates that there is emission in the 8 to 12 μm wavelength region. Open source and independent measurements of muzzle flash further indicate that the flash events should be 1 to 2 ms in duration.

Since the FLIR video cameras are sensitive to 8 to 12 μm wavelength radiation, muzzle flash should be detectable, in principle. However, the image scanning technique used by FLIRs, while it makes them compatible with standard video displays and recording equipment, greatly reduces their probability of detecting events that are as brief as a muzzle flash. Both of these conclusions are supported by the re-enactment conducted at Fort Hood, where muzzle flashes were in fact detected by the FLIRs, but only in a small fraction of cases.

7.2 If we don't see it, do we know it's not there?

Examination of the FLIR videotape of the last day of the siege of the Branch Davidian compound fails to identify any events that resemble the muzzle flashes observed during the re-enactment. One might have hoped that the apparent lack of muzzle flash would prove that the FBI agents did not fire their weapons. But because of the FLIR's low probability of muzzle flash detection, it is not possible to make such a statement with much confidence.

7.3 The bright flashes are not muzzle flash.

Unlike the conclusion stated in Subsection 8.2 above, it is possible to state with 100% confidence that the bright flashes that occur at the four 1993 time periods covered by this report are not muzzle flash. They are all far too long in duration to be muzzle flash. Comparison with the re-enactment videos also indicates that they are too bright compared to their surroundings, and too great in spatial extent. The most plausible sources for these flashes varies from case to case, but include sunlight reflected from debris, puddles of water, or window glass, and CEV

engine hot parts thermal radiation reflected from debris or puddles of water. After the compound catches fire, it is hard to discount burning construction material as the source of flashes.

8 About the Author

DR. DONALD FRANKEL
Senior Scientist Manager

EDUCATION:

Ph.D., Physical Chemistry, MIT, 1974.
B. A., Chemistry, Haverford College, 1969

TECHNICAL EXPERTISE:

Dr. Frankel has technical expertise in analysis of, and technique development for, KTAADN's Measurement and Signal Intelligence (MASINT) areas of work including EOINT and IRINT. He has developed neural network models and Bayes statistical models of missiles and explosions; implemented a Monte Carlo multiple scattering model to simulate the transmission and spread of electromagnetic radiation through clouds; and developed predictive models using auto-regressive analysis techniques. Dr. Frankel performed the first application of Monocular Passive Ranging (MPR) to a target from space and developed a neural network-based spectrum analyzer. He managed the development of the data processing and analysis code for the AF Geophysics Laboratory's Multi-Spectral Measurements Program, which included infrared and ultraviolet radiometers, spectrometers, and spatial radiometers and provided technical interface to the High Explosives Advisory Group.

EXPERIENCE:

1/1/00 – Present, Photon Research Associates, Inc., Newton, MA
Senior Scientist Manager

Dr. Frankel has more than 20 years of experience in the area of analyzing data under government sponsorship. He plays a key role in developing technologies to exploit COBRA BRASS data, including algorithms based on neural networks and Bayes classifiers for rapidly recognizing a variety of military targets. He was the first to demonstrate ranging to a boosting missile from space using MPR techniques. Dr. Frankel is currently the Project Manager for PRA's MASINT work in support of the National Air Intelligence Center.

12/1986 – 12/31/00, KTAADN, INC., Newton, MA
Director of Research

Dr. Frankel was the Project Manager for all of KTAADN, INC.'s MASINT work in support of the COBRA BRASS Program at the National Air Intelligence Center, Wright-Patterson Air Force Base. He was the first to demonstrate MPR to a target using COBRA BRASS observations. Dr. Frankel pioneered the application of neural network techniques to a variety of classification and prediction problems,

including a lightning predictor for Kennedy Space Center, a predictor of off-flavors in farm-raised catfish, and a classifier of phytoplankton and blood cells, respectively, using optical measurements from flow cytometers. As part of these projects, he designed a data acquisition system and developed software for performing the cell classifications in real time. Under NASA funding in support of the International Space Station, in which air quality and the risk of fire are vital concerns, Dr. Frankel developed a neural network processor for analyzing the mass spectra of air samples. This analyzer was a natural extension of other work performed for a private customer in which optical spectra of mixtures simulating a plasma etching process were analyzed for their chemical constituents.

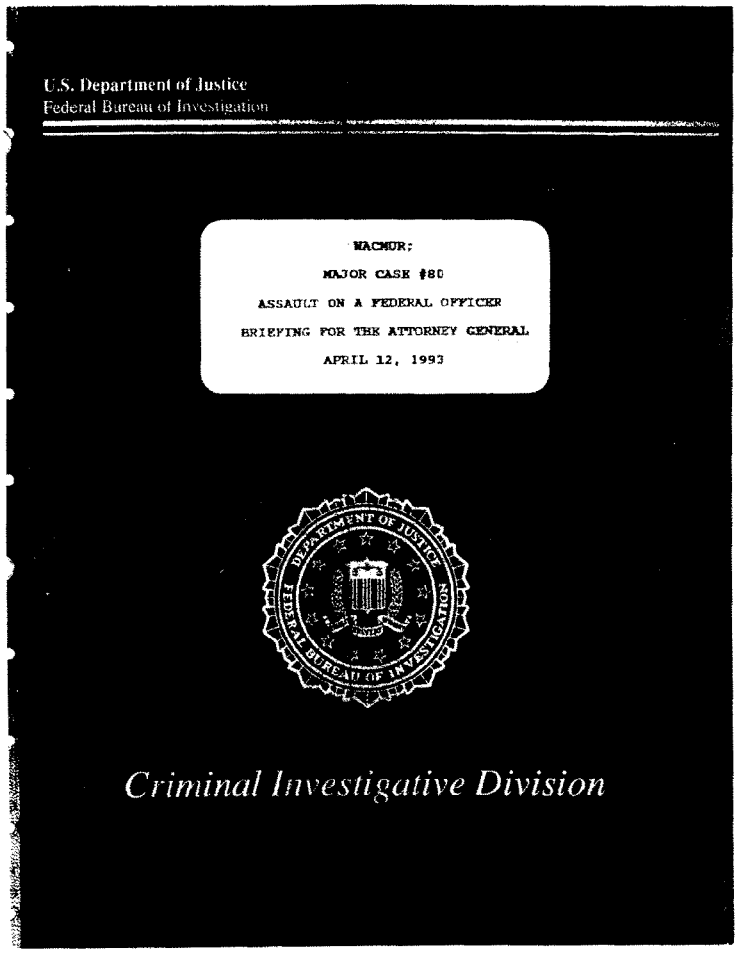
1985 – 1986, Geo-Centers, Inc., Newton, MA
Senior Scientist

Dr. Frankel developed a laser and fiber optic cable system that delivered one watt of electrical power over a one kilometer optical fiber.

1977 – 1985, Aerodyne Research, Inc., Billerica, MA

Dr. Frankel had the major responsibility for analysis of the high altitude rocket plume data collected in the Air Force's Multi-Spectral Measurements Program, which included infrared and ultraviolet spectrometers, radiometers and spatial radiometers. He developed pattern recognition techniques that allowed a mixture of substances to be analyzed into component classes using the infrared spectrum of the mixture. Dr. Frankel designed, built, and operated a Fourier Transform Infrared (FTIR) Spectrometer remote sensing system for diagnosing the efficiency of combustion in gas- and oil-fired municipal or industrial power plants.

DOD SECURITY CLEARANCE: DoD Top Secret/SCI level clearances



DOJ CSTS

WWC142-0403
CNG027-0403

EXHIBIT
9

WACNUR;

MAJOR CASE #80

ASSAULT ON A FEDERAL OFFICER

BRIEFING FOR THE ATTORNEY GENERAL

APRIL 12, 1993

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BACKGROUND

VERNON HOWELL, aka David Koresh is the present leader and prophet of the organization known as the Branch Davidian, located at Mount Carmel, Texas. Branch Davidian, a splinter group of the Seventh-Day Adventist Church, was founded in the late 1950s by Benjamin Rhoden. At the time Rhoden founded the Branch, he moved his followers to a 77-acre ranch just outside of Waco, Texas. In 1978 Rhoden died leaving his wife Lois as the leader of the Branch until 1986. In 1986, Lois passed away and her son, George Rhoden and Vernon Howell became the co-leaders of the organization.

In November of 1987, Howell, and several of his followers who had split from the group, attempted to overtake the ranch by force. Rhoden and his followers attempted to defend the property. During a 45-minute shootout Rhoden was wounded. Howell was subsequently charged with attempted murder and was later acquitted. Rhoden was later sentenced to prison for an unrelated murder in Texas and is currently serving his sentence.

Based on source information and investigation that Howell and his followers had been obtaining unknown quantities of firearms, assorted machine gun conversion parts and chemicals which when assembled would be classified as a destructive device, Bureau of Alcohol, Tobacco, and Firearms (BATF) obtained a Federal arrest warrant for Howell and a search warrant for Mt. Carmel.

On the morning of 2/28/93, 80 BATF Special Agents and numerous local law enforcement officials attempted to effect the arrest of Howell and the search of his property. During the execution of the warrants, a gun battle ensued between BATF and members of the Branch Davidian. By 12:00 p.m. 2/28/93, four BATF agents had been killed and 16 wounded (all required various degrees of hospitalization). Six other ATF agents were injured but did not require hospitalization.

On the afternoon of 2/28/93, BATF requested assistance from the Federal Bureau of Investigation (FBI) Hostage Rescue Team (HRT). Assistant Director (AD) Larry A. Potts, Criminal Investigative Division (CID), FBI Headquarters (HQ), authorized HRT advance team to proceed to Waco, Texas along with Special

Agent in Charge (SAC) Jeffrey Jamar, San Antonio Division. It was further agreed between AD Potts and Associate BATF Director Dan Hartnett, that once HRT was fully deployed the FBI would assume complete operational control of the crisis to include tactical response and negotiations. BATF would maintain investigative jurisdiction over the Assault on a Federal Officer, per previous Memorandum of Understanding.

On 3/1/93, Under Secretary of Treasury Ronald Noble advised that he and Director Stephen Higgins, BATF, had agreed to turn over command and control of the crisis situation to the FBI. Concurrent with this, SAC Jamar and two other senior executives of the FBI, SACs Oklahoma City and New Orleans were on scene to facilitate the transition of command and control from the BATF.

B

STRATEGY

Acting Attorney General Stuart Gerson advised President Clinton of the details of the crisis in Waco, Texas, on the morning of 3/1/93. The President was also informed that the FBI was in charge of the crisis site and that it was the FBI's philosophy in addressing this situation to negotiate until it was resolved.

Prior to final deployment of FBI resources, the Rules of Engagement were agreed upon by AD Potts, SAC Jamar, and HRT Commander Richard Rogers. It was agreed that the standard rules of engagement would apply. Those being: FBI Deadly Force Policy remains in effect which states "Agents are not to use deadly force against any person except as necessary in self-defense or the defense of another, when they have reason to believe they or another are in danger of death or grievous bodily harm" All personnel being deployed were advised of these Rules of Engagement.

All tactical responses to this crisis scene are under the command and control of SAC Jamar who is assisted by the HRT Commander Richard Rogers. HRT's mission is to secure the surrender and arrest of all adult occupants of the compound while providing the maximum possible security for the children within the compound.

Two U. S. Army UH-1 helicopters piloted by FBI personnel and nine assorted Bureau fixed-wing aircraft are providing aerial surveillance, photographic coverage, and security over the compound. One U. S. Customs Service helicopter has also been deployed to assist FBI aerial requirements.

On 3/4/93, court authorized electronic and video surveillance of the Mt. Carmel compound was initiated. An extension was signed on 4/2/93.

C

WACMUR, MC 80 PERSONNEL AS OF 4/9/93

The total number of personnel presently committed to the Waco, Texas siege stands as follows;

As of 4/12/93	**547**
Anticipated on 4/15/93	**640**

FBI PERSONNEL:

EXECUTIVE (Special Agents in Charge)	6
OPERATIONS SUPPORT (Command Post)	21
NEGOTIATORS	9
HRT	67
SWAT	77
RAPID START	8
(Information Management Division Personnel used to maintain and assist in the management information developed during the course of the investigation)	
SPECIAL PHOTO	2
TECHNICAL OPERATIONS	32
(Technically trained agents)	
AIR OPERATIONS	30
(Pilots for fixed wing and helo aircraft 24 hours per day)	
TOTALS: Special Agents	210
Support	42
	252

* On 4/15/93, seven additional SWAT teams, totalling 93 additional agents, will be deployed in WACO. This will bring the total FBI commitment in Waco, Texas to 345.

WACMUR, MC 80 PERSONNEL AS OF 4/9/93
OTHER FEDERAL LAW ENFORCEMENT

BATF		136
CUSTOMS		6
	TOTAL	142

WACMUR, MC 80 PERSONNEL AS OF 4/9/93
LOCAL AUTHORITIES

WACO POLICE DEPARTMENT

Lieutenant	01
Sergeants	03
Officers	01
Special Ops Unit	13
TOTAL	18

MCLENNAN COUNTY SHERIFFS OFFICE

Sheriff JACK HARWELL	01
Chief Deputy DAN WEYENBERG	01
LARRY LYNCH	01
Deputies on Patrol	10
Deputies at County Jail	04
TOTAL	17

TEXAS DEPARTMENT OF PUBLIC SAFETY

RANGERS

Captain	01
Lieutenants	03
Sergeant Rangers	31

DPS PATROL

Captain	01
Lieutenants	02
Sergeants	06
Troopers	80
Intel/Officers	03
Uniform Communications Officers	04
TOTAL	131

MILITARY PERSONNEL AND EQUIPMENT

Active Duty
Personnel 15

Texas National Guard
Personnel 13

Equipment
Track Vehicles

	Model #	Quantity
Bradley fighting vehicle	(OMZ)	9
Combat Engineer vehicles	(M728)	5
Tank Retrieval vehicle	(M88)	1
Abrams Tanks	(M1A1)	2
	TOTAL	17

Additional Military Equipment

Equipment	Model #	Quantity
Helicopters	UH-1	2
Night Vision Goggles	PVF7B5	100
Tents	GP Medium	4
Generators	3KW	2
Generators	15KW	1
Cots	NA	66
Sand Bags	NA	1,400
Spotlights (portable)	NA	2
Mine Detectors	PSS11	2
Gas Masks	M17	34
Vehicles	M151A2	2
Search Lights	VSS-Xenon (6 million candlepower)	2

D

WACMUR
POSITIVE POLICE ACTIONS
AS OF 4/9/93

DATE	ACTION	RESPONSE OF BD
2/28/93	Broadcast scriptural message, on KRLD so that children would be released 2 by 2.	14 children out
3/02/93	Played an hour-long tape recorded message by KORESH over national radio and television.	6 children out
3/04/93	DAVIDIANS are given a new telephone and a 150-foot cord per their demand.	2 children out
3/04/93	Allowed DAVIDIANS to move dead dogs away from the compound.	Moved dogs
3/05/93	A suture kit is sent in for KORESH's injured wrist.	1 child out
3/06/93	Request granted to obtain audio tape from vehicle outside compound.	Retrieved tape
3/07/93	DAVIDIANS are offered the removal of the Bradleys in exchange for the release of sect members.	None
3/08/93	Allow DAVIDIANS to bury PETER GENT's body.	None
3/08/93	Deliver 6 gallons of milk into compound per DAVIDIANS' demand.	None
3/09/93	Three released children are reunited with a parent, William Mabb.	None

3/09/93	Two video tapes of released children sent into compound.	None
Numerous dates	Videos of released children are sent into the compound to show the care the children are receiving.	None
3/12/93	Deliver 6 gallons of milk into compound per DAVIDIANS' demand.	2 adults out
3/12/93	Radio station KGBS AM 1090 contacted re broadcasting a message refuting an earlier broadcast as per the DAVIDIANS' demand.	None
3/12/93	Video tape sent in of SCHROEDER & son reuniting.	None
3/12/93	Put physicians on telephone to assist JUDY SCHNEIDER & others.	None
3/14/93 & 3/15/93	Sheriff HARWELL contacted compound by phone & also spoke to STEVE SCHNEIDER & WAYNE MARTIN personally.	None
Numerous dates	Compound advised of identities of attorneys and message from relatives.	None
3/16/93	5 audio cassettes of family members & a tape player delivered to compound.	None
3/19/93	Legal documents, copies of Newsweek, Time, People and audiotape delivered to compound.	2 adults out
Numerous dates	Return phone calls to compound by numerous children in addition to KATHY SCHROEDER, BRAD BRANCH, KEVIN WHITECLIFF, & SHELIA MARTIN.	None
Numerous dates	Medical attention for those released.	None

3/19/93	Bible placed in KEVIN WHITECLIFF's cell.	None
3/20/93	Turned off loudspeakers in honor of Sabbath.	None
3/21/93	Lowered loudspeakers volume during prayer session.	7 adults out
3/21/93	Female agents obtained for frisk of women who came out of compound.	None
3/22/93	A letter promising the Davidians access to: 1) DAVID's teachings while in custody and 2) the media via CBN's CRAIG SMITH, is delivered to the compound. The offer is conditioned upon the release of all Davidians.	None
3/28/93	Milk, cheese and crackers delivered to compound for the children.	None
3/28/93	Attorney DEGUERIN allowed a private telephone conversation with KORESH.	None
3/29/93	A face-to-face meeting between KORESH and his attorney DEGUERIN is allowed to take place on the compound property. A second telephone call is also allowed.	None
3/30/93	A second face-to-face meeting between KORESH and DEGUERIN is allowed to take place.	None
Numerous dates from 3/29/93 through 4/4/93 (see attached)	Lengthy face-to-face meetings between KORESH & SCHNEIDER and their respective attorneys DEGUERIN and ZIMMERMAN are allowed to take place.	None
4/3/93	The Davidian's Sabbath is respected with no contact initiated.	None

4/7/93	This date marks the beginning of the Davidians 7-day Passover period. It is agreed that this period of time will be respected.	None
4/9/93	(1) One person allowed to exit compound and ignite 7 cans of incense in keeping with Davidians' Good Friday observations. (2) One person also allowed to deliver a letter from Koresh to law enforcement. (3) Agreed to dispense with noise from 3-4 pm again in deference to Good Friday.	None

E

ATTORNEY FACE TO FACE CONTACTS

DATE	TIME	
3/29/93	12:05 P.M.	KORESH telephonic contact privately by Attorney RICHARD DEGUERIN
	01:29 P.M.	Another private telephone contact
	04:00 P.M.	DEGUERIN at compound door
3/30/93	10:07 A.M. till Noon	DEGUERIN at door
	02:00 P.M. till 6:00 P.M.	DEGUERIN inside
	03:18 P.M.	Attorney ZIMMERMAN telephonic contact privately to SCHNEIDER
3/31/93	09:51 A.M. till 12:12 P.M.	DEGUERIN in compound
	03:08 P.M. till 6:05 P.M.	DEGUERIN in compound
4/01/93	10:00 A.M. till 6:00 P.M.	DEGUERIN & ZIMMERMAN in compound
4/04/93	10:49 A.M. till 4:10 P.M.	DEGUERIN & ZIMMERMAN in compound

F

DEMANDS/STATUS
AS OF 4/9/93

	DEMANDS	STATUS
1.	2/28/93 - (14:20) First demand: that KRLD broadcast a message that BATF is holding their fire and will not attack further.	Granted 2/28/93, 16:15 and 16:45.
2.	2/28/93 - (18:10) Play recorded message of KORESH on KRLD and kids will be released two by two.	Granted 2/28/93, 19:38.
3.	3/02/93 - (02:34) SCOTT: Play tape on National T.V. and we will come out.	Granted 3/02/93, 13:32.
4.	3/02/93 - (04:55) RITA: Play tape during prime time and rest of women/children will come out.	Granted 3/02/93, 13:32.
5.	3/03/93 - (09:47) DAVID wants 150' cord.	Granted 3/04/93, 15:20.
6.	3/03/93 - (13:31) Allow DAVID to give a Bible study and MARK will come out.	Granted 3/03/93, 14:48.
7.	3/03/93 - (17:27) STEVE: Wants smelly dog removed	Granted 3/04/93, 15:38.
8.	3/04/93 - (23:29) DAVID: Requests suture kit for hand.	Granted 3/05/93, 12:59.
9.	3/05/93 - (7:43) DAVID wants to see kids with relatives and 6 gallons of milk.	Milk demand granted 3/08/93, 15:50. Kids with relatives 3/09/93, 15:50.
10.	3/05/93 - (17:53) STEVE: Wants PETER GENT's body removed.	Granted 3/08/93, 11:04.

11.	3/06/93 - (8:43) STEVE requests a media line or they will not come out.	Davidians are advised that they will not be allowed a line to the media.
12.	3/06/93 - (9:02) KATHY wants Bradleys off property.	Requested and refused on 3/07/93. This demand is still often repeated.
13.	3/06/93 - (9:11) KATHY wants line to media.	This demand is often repeated, but refused.
14.	3/6/93 - (12:01) DK wants Peter Gents body removed and buried on compound.	Granted 3/08/93, 11:04.
15.	3/06/93 - (16:35) DK wants to talk to UCA and then he'll release MELISSA.	The demand to talk with UCA is often repeated, but DK is advised that UCA is un-available.
16.	3/06/93 - (17:25) STEVE: Demands that Bradleys be removed, 6 gallons of milk and body removed.	Milk demand granted 3/08/93, 15:50. Body buried 3/8/93, 11:04.
17.	3/06/93 - (22:43) Repeated demand for additional phone line.	Denied
18.	3/07/93 - (12:51) DAVID: You show me the 3rd Seal and I'll release the kids.	On 3/07/93, 14:50 C.P. attempts to "show" DAVID the 3rd Seal; at 15:52 DAVID says that we have failed and refuses to release anyone.
19.	3/07/93 - (15:50) DAVID: You show me the 7 Seals and everyone will come out.	Denied.

20.	3/09/93 - (9:24) DAVID: Turn the power on or I will not communicate	Granted 3/9/93, 10:25.
21.	3/11/93 - (22:19) KATHY SCHROEDER: Demands "a couple of gallons of milk" to be delivered to the compound.	C.P. delivers six gallons of milk on 3/12/93 at 14:58.
22.	3/11/93 - (22:19) KATHY SCHROEDER demands copies of Newsweek and Time magazines containing articles on DAVIDIANS.	Granted 3/19/93, 11:49.
23.	3/12/93 - (9:33) KATHY SCHROEDER: Demands that she be allowed to call back into the compound after she leaves.	Numerous attempts have been made to contact the compound while KATHY SCHROEDER was at the command post with negative results (as of 3/12/93, 15:58).
24.	3/12/93 - (10:30) STEVE SCHNEIDER: Demands that radio station KGBS AM 1090 be contacted and told to refute negative statements broadcast by the station against the DAVIDIANS.	Granted 3/12/93, radio station contacted, they advised that they would broadcast a message on 3/13/93.
25.	3/12/93 - (11:46) STEVE SCHNEIDER: Demands a copy of the transcript from the Phil Donahue show that had SHERRY JEWELL as a guest.	Denied
26.	3/12/93 - (11:50) STEVE SCHNEIDER: Demands that attorneys and/or the media be allowed to contact the DAVIDIANS.	Granted 3/28/93, 18:00.

27.	3/12/93 - (11:53) STEVE SCHNEIDER: Through DAVID, demands that radio personality ENGLEMANN (phonetic), be made the DAVIDIANS' press representative.	Denied
28.	3/16/93 - (1508) STEVE SCHNEIDER: Demands a copy of the search warrant that BATF initially intended to serve on 2/28/93 along with other documentation.	Granted 3/19/93, 11:49.
29.	3/16/93 - (1936) STEVE SCHNEIDER requests that PHIL ARNOLD, Ph.D discuss the book of Revelations with KORESH.	Tape by Dr Arnold is delivered to compound on 3/18.
30.	3/23/93 - (15:40) STEVE SCHNEIDER: Demands that compound members be allowed to speak to released LIVINGSTON FAGAN.	Denied
31.	3/26/93 - (15:40) RACHEL KORESH: Requests to see the video of LIVINGSTON FAGAN's CNN interview.	Denied
32.	3/27/93 - (14:23) STEVE SCHNEIDER: Requests that a neutral negotiator be introduced.	Atty's Deguerin and Zimmerman allowed into compound on several occasions.
33.	3/28/93 - (15:58) DAVID KORESH: Requests 6 gallons of milk be sent into the compound.	Granted 3/28/93
34.	3/28/93 - (16:06) STEVE SCHNEIDER: Requests antibiotics for DAVID KORESH.	Denied
35.	4/9/93 - (18:00) STEVE SCHNEIDER: Requests permission to ignite 7 cans of incense outside the compound	Granted 4/9/93

20.	3/09/93 - (9:24) DAVID: Turn the power on or I will not communicate	Granted 3/9/93, 10:25.
21.	3/11/93 - (22:19) KATHY SCHROEDER: Demands "a couple of gallons of milk" to be delivered to the compound.	C.P. delivers six gallons of milk on 3/12/93 at 14:58.
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35.	4/9/93 - (18:00) STEVE SCHNEIDER: Requests permission to ignite 7 cans of incense outside the compound	Granted 4/9/93

	in keeping with Good Friday observations.	
36.	4/9/93 - STEVE SCHNEIDER: Requested permission to deliver a letter from Koresh to "the commanders" and asked that noise be dispensed with from 3-4 pm in deference to Good Friday.	Granted 4/9/93

G

PERSONS RELEASED

	NAME	AGE	DATE	NATION
1.	ANGELICA SONOBE	6	2/28	U.S.
2.	CRYSTAL SONOBE	3	2/28	U.S.
3.	RENAE FAGAN	6	2/28	U.K.
4.	NEHARAH FAGAN	4	2/28	U.K.
5.	TAMAREA WENDEL	5	3/1	U.S.
6.	LANDON WENDEL	4	3/1	U.S.
7.	JAUNESSA WENDEL	8	3/1	U.S.
8.	PATTEON WENDEL	5 MOS.	3/1	U.S.
9.	SCOTT MABB	11	3/1	U.S.
10.	CHRISTYN MABB	7	3/1	U.S.
11.	JACOB MABB	9	3/1	U.S.
12.	BRYAN SCHROEDER	3	3/1	U.S.
13.	JAMIE MARTIN (SEVERELY HANDICAPPED)	10	3/1	U.S.
14.	JOSHUA SYLVIA	7	3/1	U.S.
15.	NATALIE NOBEREGA	11	3/2	U.K.
16.	JOAN VAEGA	7	3/2	U.S.
17.	DANIEL MARTIN	6	3/2	U.S.
18.	KIMBERLY MARTIN	4	3/2	U.S.
19.	MARGARET LAWSON	75	3/2	U.S.
20.	CATHERINE MATTESON	77	3/2	U.S.
21.	MARK ANTHONY JONES	12	3/3	U.S.
22.	KEVIN JONES	11	3/4	U.S.
23.	HEATHER JONES	9	3/5	U.S.
24.	KATHRYN SCHROEDER	34	3/12	U.S.
25.	OLIVER GYARFAS	19	3/12	AUSTR
26.	BRAD BRANCH	34	3/19	U.S.
27.	KEVIN WHITECLIFF	31	3/19	U.S.
28.	VICTORINE WILME HOLLINGSWORTH	59	3/21	CANADA
29.	ANNETTE RICHARDS	64	3/21	U.S.
30.	RITA RIDDLE	35	3/21	CANADA
31.	GLADYS OTTMAN	67	3/21	U.S.
32.	SHELIA MARTIN	46	3/21	U.S.
33.	OPILIAH SANTOYA	62	3/21	U.S.
34.	JAMES LAUTER	70	3/21	U.S.
35.	LIVINGSTON FAGAN	33	3/23	U.K.
36.	JESSE AMEN	40	4/4	U.S.

On 3/11/93, Koresh advised that 43 men, 47 women and 17 children remained in the compound. Since that date 5 men and 7 women have left the compound leaving the following estimated number of people still inside the compound at this time.

men		38
women		40
children		17
	Total	95

Of the seventeen children remaining in the compound our estimates based on information provided to date of the ages are as follows

1 - under one year of age
1 - one year old
3 - two years old
2 - four years old
1 - six years old
2 - eight years old
1 - ten year old
1 - eleven year old
12

There are believed to be five additional children whose ages cannot be accounted for.

H

DOJ CSTS

WWC142-0432
CNG027-0432

PERSONS ENTERING THE COMPOUND

	NAME	AGE	DATE	NATION
1.	LOUIS ANTHONY ALANIZ	24	3/24/93	U.S.
2.	JESSE AMEN (Amen subsequently departed the compound on 4/4/93)	40	3/26/93	U.S.

I

POWER TO THE COMPOUND

DATE/TIME		ON	OFF
03/09/93	02:15 AM		X
03/09/93	10:28 AM	X	
03/10/93	02:20 AM		X
03/10/93	10:15 AM	X	
03/12/93	11:07 PM		X

J

DEPLOYMENT OF WIRE BARRIER AROUND THE MT. CARMEL COMPOUND

The compound has been circled with concertina (razor wire) in order to improve the security of the crisis site. The deployment of this protective barrier is important for the following reasons:

1. Protection of FBI and other law enforcement personnel. The current perimeter encompasses an extremely large area of open land. If an attempt at flight is made by the subjects currently in the compound, they will have the ability to move over large distances before they can be physically encountered and detained by law enforcement personnel. The current perimeter provides for observation from various sniper positions and by air assets with Forward Looking Infra-Red (FLIR) capability. Where weather conditions deny us the ability to utilize aircraft to assist in observing the crisis site, our ability to intercept those who would attempt to flee the compound or to launch sorties against our positions would be diminished.

2. The wire barrier will also assist in preventing outsiders from gaining entrance to the crisis site.

3. The wire barrier would assist in the surrender process by channeling those who wish to surrender to a specific area where they can be placed under control.

4. In the event it is necessary to introduce chemical agents into the compound, it would be of tremendous assistance in channeling those who flee the gas or who voluntarily leave the crisis site into an area of control.

5. In the event that subjects attempt to come out en masse and to engage law enforcement in a firefight, the wire barrier would restrict their movements and offer a greater degree of control to law enforcement authorities.

6. The wire barrier would be helpful in the maintenance of the integrity of the crime scene once this crisis is resolved.

K

PROPOSED OPERATIONS PLAN

I. SITUATION

A. **SUBJECT:** On Sunday, 2/28/93, Special Agents from the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Treasury Department, were attempting to serve a Federal search and arrest warrant on Vernon Wayne Howell, for violation of Federal Firearms Laws. Howell, 33 years old, who also uses the name David Koresh, is the leader of a group that call themselves the Branch Davidian. The majority of this group appear to reside at the Mount Carmel Center, a 77-acre compound near Waco, Texas.

As ATF Agents approached the compound, a protracted firefight ensued during which four ATF Agents were killed, and at least 16 Agents were wounded or injured. A subsequent confrontation, that appears to have been primarily on the perimeter, occurred later that day. On 3/3/93, the body of a Branch member was located by law enforcement personnel on the perimeter of the compound. On 3/6/93, via negotiators, a compound resident indicated they had located the body of another compound member near the main building. Both fatalities are believed to have been the result of the firefights that took place on 2/28/93. Koresh has indicated to negotiators that he was wounded as well. Information from various sources indicates there may have been additional injuries and possibly fatalities to other members.

Information indicates that there is an extensive weapons inventory inside the compound including .50 caliber sniper rifles, AR-15s (possibly 100) converted to automatic fire, handguns, improvised hand grenades, night vision equipment, large quantities of ammunition, chemicals that could be used to manufacture explosives, and possibly LAW rockets.

Negotiations have been ongoing since 2/28/93. Initially, most of the dialogue has been with Koresh, but with time the individual who is possibly his second in command, Steve Schneider, has also become a primary part of the negotiations from inside the compound. A total of 40 compound members have spoken with negotiators from inside the compound. Twenty-one children, nine women and six men have been released since 3/2/93, when it appeared that Koresh might end the stand-off. According to Koresh, the number of individuals, as of 4/5/93, that remain in the compound is 40 women, 39 men, and 17 children.

B. LAW ENFORCEMENT:

1.	HRT with attachments	67
2.	HRT medical	3 Doctors (1 - Pediatrician) 3 Paramedics 3 EMTs
3.	FBI SWAT	77
4.	ATF Tactical Personnel	60
5.	State and Local Personnel	
6.	Aviation Assets	3 UH1, 1-MD-530 5 Fixed Wing Aircraft

C. WEATHER:

Will be briefed on order

II. **MISSION:**

Secure the surrender/arrest of all adult occupants of the compound while providing the maximum possible security for the children within the compound.

On order, utilize two Combat Engineer Vehicles (CEVs) to deliver tear gas (CS) into White/Green section of the compound structure. Four Bradley Vehicles (BV) will be positioned around the compound ready to supplement the CEV in gas delivery, if needed. One of the four BV's will insert Ferret liquid tear gas rounds into the black covering of the new unoccupied construction on the green side immediately after the introduction of tear gas into the previously referenced white/green section of the compound structure. Simultaneously, advise occupants of the structure that gas is being inserted in order to force them out of their building, but that they are not being attacked and that no weapons should be shown or used, and that no one is to go into the tower section of the compound.

Demand, through the use of the loud speaker system and telephone, that all subjects leave the building unarmed and surrender to lawful authorities. Wait a period of time, which will depend on the subjects response to the initial gas delivery and subsequent negotiations if any are possible, and deliver additional tear gas utilizing a CEV into the Black/Red corner. Again, demand surrender by the occupants. Continue delivery of tear gas into different parts of the compound structure at regular intervals for 48 hours or until all subjects have exited compound and surrendered. After the third delivery of tear gas by the CEVs, all subsequent gas deliveries will utilize BVs shooting Ferret liquid tear gas rounds into the upper and lower windows as well as the use of CEV's.

If, during the CEV gas delivery operations, subjects are observed in the center tower which has been previously placed "off limits" to them, then Ferret liquid tear gas rounds will be delivered from the BVs by M-79s into the center tower. If during any tear gas delivery operations, subjects open fire with a weapon, then the FBI rules of engagement will apply and appropriate deadly force will be used. Additionally, tear gas will immediately be inserted into all windows of the compound utilizing the four BVs as well as the CEVs.

If all subjects fail to surrender after 48 hours of tear gas, then a CEV with a modified blade will commence a systematic opening up/disassembly of the building structure until all subjects are located.

III. CONCEPT OF THE OPERATION:

A. Two CEVs will remove all fortifications, obstacles, and vehicles from the White side the day prior to the execution of the operation order. Place double rows of concertina wire on White side to complete wire around entire compound.

On order, two CEVs will enter the compound inside the concertina wire prior to sunrise. One CEV will penetrate the structure on the 1st floor, at the White/Green corner utilizing the boom and project tear gas via the Mark 5 delivery system secured to the boom. After delivery, the CEV will retreat from the structure and stand-by. The second CEV will stand by and upon retreat by the 1st CEV, will insert additional tear gas into the 2nd floor of the White/Green corner. Prior to the entry of the CEVs, the BVs will be engaged in routine spotlight maintenance. Upon delivery of the tear gas by the CEV, a BV on the Green side will deliver Ferret liquid tear gas rounds into the top of the black covering on the unfinished and unoccupied construction in order to deny access to this area. If firing commences from the Compound, the BVs will be prepared to deliver Ferret liquid tear gas rounds into all windows/openings in the compound structure.

If all subjects fail to exit the compound structure after 48 hours of tear gas, then, on order, a modified CEV will proceed to open up/disassemble the structure at the location where the structure was least gassed until all subjects are located.

If subjects are observed in the previously denied center tower, Ferret liquid tear gas will be immediately delivered from the BVs into the tower.

As subjects exit the compound, they will be directed by loud speakers to go to a large "Red Cross Flag" established at Rally Point in the vicinity of the EE Road and the compound road. This rally point will be fortified with the M-88 and the Hotel Team BV. All subjects will be moved to the "T" intersection for processing and decontamination.

On the ground, security positions will be established to prevent "runners" from escaping the crisis site.

B. SPECIFIC ASSIGNMENTS:

Hotel Team - Provide one driver and one Tank Commander (TC) to operate CEV #1 and one driver and one TC to operate the M-88. Mount the remainder of the team in BV #1.

Golf Team - Man the crew served weapons position at Sniper #1. Mount the remainder of the team in BV #2.

Charlie Team - Provide one driver and one TC to operate CEV #2. Mount the remainder of the team in BV #3.

Echo Team - Man the crew served weapons position at Sniper #2. Mount the remainder of the team in BV #4.

Blue Snipers - Snipers will occupy the Sniper #1 position and provide real time tactical intelligence, long range precision and suppressive fire to support an armored vehicle approach to the compound. (See attached Annex for details.)

Gold Snipers - Snipers will occupy the Sniper #2 and Sniper #3 positions and provide real time tactical intelligence, long range precision and suppressive fire to support an armored vehicle approach to the compound. (See attached annex for details.)

FBI SWAT Team ASSIGNMENTS:

Denver - San Antonio: Denver SWAT and San Antonio SWAT will maintain a position at the "T" intersection to accept the escorted prisoners from the crisis site. Denver and San Antonio will also be responsible for maintaining the integrity of the perimeter and ensuring no

unauthorized personnel move forward of their position.

Omaha - Omaha SWAT will be assigned to the FBI helicopter as a response force for potential fleeing subjects from the crisis site.

Mobile - Mobile SWAT will be assigned in support of the medical response and will be responsible for security of the medical personnel and wounded. Mobile will additionally provide a driver and T.C. for the Bradley vehicle assigned to the medical personnel.

Jackson - Jackson SWAT will be responsible for maintaining the integrity of the perimeter at the "Y" intersection and ensuring that no unauthorized personnel move forward of their position, and liaison with ATF representative at that location.

Miami - Miami SWAT will establish blocking positions along Double EE Ranch Road north of the crisis site.

Kansas City - Will establish blocking positions from the "T" intersection to ATF checkpoint #3 utilizing Bradley Vehicles and Abrams for cover.

ATF - Provide outer perimeter coverage and blocking positions from checkpoint #2 on Old Mexia Road east to the power line and south along the power line to checkpoint #3.

DPS - Provide line of sight coverage from the intersection of Rt. 31 and 84 East to Frazier Road. South on Frazier Road to DPS check point #5.

C. SCHEME OF MANEUVER

1. **CEV #1** - When directed, penetrate structure using CEV boom and deliver CS to the 1st floor Level, White/Green corner. Move away from structure and stand by.

2. **CEV #2** - When directed, penetrate structure utilizing boom and deliver CS to the 2nd floor Level, White/Green corner. Move away from structure and stand-by at the Black/Red corner. Upon command, insert tear gas into Black/Red corner of structure.

3. **M-88** - Standby for recovery operations, if necessary. Establish designated rally point.

4. **BV #1** - On command establish a position in the vicinity of the red side. Deliver gas into the red windows when directed. In order Red D-1, C-3, B-3, B-4, C-1, C-2, B-1, B-2, A-3, A-4, A-1, A-2, A-5, A-6.

5. **BV #2** - On command establish a position on the white side in coordination with the CEV when directed. Deliver gas into the white side, beginning with D-1, C-1, A-9 and A-11. Stand ready to direct exiting subjects to the processing location.

6. **BV #3** - On command, establish a position on the green corner. Immediately following the CEV gas delivery, insert Ferret liquid tear gas into black covered construction project. When directed, deliver gas into the green side. In order D-1, C-1, B-2, B-1, C-2, C-3, B-3, B-4, A-10.

7. **BV #4** - On command proceed to the vicinity of the black side. When directed deliver CS into the black side. In order B-1, D-1, C-1, B-2, A-16, A-15, A-13, A-12 through A-1.

8. **BV #5** - On command establish the rally point in conjunction with M-88.

9. **BV #6** - Establish blocking position at Miami SWAT position.

10. **BV #7** - Establish blocking position between ATF Check Point and the "T".

11. **Medical BV** - Remain at the "T" intersection until re-directed.

12. **BV #9** - Stand-by at "T" intersection as reaction BV with Denver SWAT.

13. **Command Abrams** - White side at the rally point with HRT Commander.

D. COORDINATING INSTRUCTIONS

1. Time of Departure: To be determined.

2. Organization of Movement: As previously briefed.

3. Rally Points: "T" intersection, "Y" intersection.

4. Rules of Engagement: FBI Deadly Force Policy remains in effect which states "Agents are not to use deadly force against any person except as necessary in self-defense or the defense of another, when they have reason to believe they or another are in danger of death or grievous bodily harm".

5. All units should be prepared to utilize smoke for masking movements if directed.

6. Medical Plan - See Medical Annex.

7. SWAT teams should be prepared to provide personnel for security to transport medical evacuees and assist with prisoner control.

8. Aviation.

IV. ADMINISTRATIVE AND LOGISTICS:

A. UNIFORM AND EQUIPMENT

HRT personnel - tactical gear, body armor (with plate), gas mask, Model 88s, CAR-15, ballistic helmets, saber radio, green flight suits, FBI armband on left arm. Specialty weapons per team leader discretion. Sniper personnel per Sniper Annex.

FBI SWAT - Same as above except weapons will be standard FBI SWAT issue and camouflage utilities.

B. PRISONER HANDLING

Subjects who exit the compound and surrender will be directed via loudspeaker to proceed to the designated Bradley vehicle. These individuals will then be escorted on foot by Bradley vehicle in a single file line to the area of the "T" intersection. At the "T" intersections FBI SWAT personnel, from a position of cover and concealment, will hold the subjects in front of the pre-positioned Bradley vehicles. In an orderly fashion, the subjects will be moved to a designated area behind the Bradley vehicles where FBI SWAT personnel will search the prisoners and turn them over to awaiting ATF personnel for handcuffing and transport. Subjects attempting to flee from the crisis site will be responded to by one orbiting FBI Huey helicopter with FBI SWAT personnel on-board, who will act as arrest teams. Transport of these subjects will be effected by helicopter back to a designated landing zone (LS) at the "T" intersection. All prisoners will be thoroughly searched and secured prior to transport on board the helicopter. The

helicopter will maintain an orbit at a safe distance from potential hostile acts by subjects from within the compound. The FBI helicopter will move into position upon execution of the surrender initiative and will maintain their orbit until further directed by the HRT Commander.

V. **COMMAND AND COMMUNICATION:**

A. COMMUNICATIONS PLAN

B. COMMAND LOCATION

1. SAC - Forward Command Post

2. HRT Commander - Sniper 1

3. BATF Command Element

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WWC142-0447
CNG027-0447

CS GAS DELIVERY METHODS (TEAR GAS)

A. M79, grenade launcher uses a 40 mm liquid-filled ferret round which delivers 25 grams of CS liquid on impact. In Waco there are approximately 400 rounds of the 40mm liquid-filled gas ferret rounds available for HRT and SWAT use. These rounds when fired from 20 yards or less are capable of penetrating a hollow core door.

B. M60 CEV with cylinder delivery system. One cylinder has 15 one-second bursts per charge. Each burst will extend out approximately 55 feet from the cylinder creating a fog or gas mist in the area. Each cylinder can be recharged 20 times. There are 6 cylinders on hand in Waco with enough raw materials to recharge all 6 cylinders 20 times each.

Tear Gas Decontamination Unit

Three (3) units on hand, two (2) belong to the military, one (1) belongs to the FBI. These units use a high volume of warm/hot water to wash off individuals that have been exposed to CS gas.

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SNIPER POSITIONS

SIERRA 1 (white side)
8 shooting positions
- 4 inside house
- 4 outside house

SIERRA 1A
Technical coverage
- 1 M60

SIERRA 2 (black side)
5 shooting positions
- 1 M60
- 1 SAW

SIERRA 3 (red side)
2 shooting positions
- 1 M79 position

SIERRA 4 & 5 (green side)
Observation positions only

The sierra positions will have at least one observer in each position to overlook each side of the compound. This will insure that snipers do not become fixated and do not see or detect a subject out of their field of view.

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DOJ CSTS

WWC142-0451
CNG027-0451

SWAT TEAM LOCATIONS (4)

A) 550-600 yards out on green side
B) T intersection red side
C) Y intersection, forward CP area
D) Helicopter support

.308 cal sniper rifle
7.62 mm
velocity - 2640 fps
grain - 168
range - 1,000 yards

.50 cal
velocity - 2,850-3,000 fps
grain - 650 or 750 or 1,000
range - 2,500 to 3,000 yards

The above listed ranges are effective ranges. The maximum range or the terminal velocity (range) of a particular round is dependant on many factors, some of which are, temperature, wind, projectile weight, projectile design and trajectory.

The below listed calibers have approximate ranges of:

9mm	1000 yds
223 (5.56)	1500 yds
7.62 (.308)	1500 yds
.50 cal	5000 yds

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MEDICAL ANNEX
INTEGRATED MEDICAL SUPPORT PLAN:
WACO, TEXAS

Great effort has been directed toward achieving a medical support plan which incorporates all elements directly involved in operations within the outer perimeter. For this operation, integration is critically important due to the potentially large number of casualties which could exceed the current medical capabilities of any single agency present. The anticipated transfer of custody of subjects between agencies requires a coordinated and consistent plan to allow efficient care of any casualties.

PERSONNEL

Minimum required staffing is 12 dedicated medical care providers.

Actual medical staffing of the integrated medical support plan is variable but consists of the two HRT medical support teams (4 medical providers) and STAT Team personnel, (Alamo Area Narcotics Task Force) provided under contract to ATF. Nonmedical personnel included are drivers for three patient transport vehicles and military augmentees within the medical staging facility. One local ambulance with three local EMS personnel is maintained at the staging facility at all times.

LOCATIONS

HRT Medical is stationed in the first mobile home of the Forward TOC area and is marked "Medical Support Team." This facility is staffed 24 hours for medical control and health maintenance functions.

STAT Medical Team is located in the mobile home across the road from the Forward TOC area.

The Transfer Point is located at the T intersection where casualties are evaluated and initially treated during transfer from Bradley extraction vehicle to Suburban ambulance. This forward medical treatment site is staffed by one medical officer, one paramedic, and one flight medic.

Medical Staging area is located at the entrance to the Forward TOC area in the GP medium tentage.

Primary LZ is located on the road at the Medical Staging area, marked by a painted blue H on the road.

A hot LZ for immediate evacuation has been designated in the field to the east of the T intersection.

The Decon site is located in the depression northeast of the road block at the entrance of the forward TOC area. One GP medium tent is located at this site for water decon if necessary.

ASSETS

Bradley vehicle #3 with seats removed
HRT Suburban ambulance
San Antonio SWAT Suburban
AANTF Suburban ambulance

35

ALS equipment including Lifepack 5 X 2
AMT ambulance pre-deployed at Medical Staging Area
3 military GP medium tents
Medical treatment facility equipment

COMMUNICATIONS

HRT W-12 primary medical channel (repeated)
HRT W-5 alternate medical channel (simplex)
USUHS radio channel 1

CONCEPT OF OPERATIONS

1. DELIBERATE INTERVENTION

- All casualties will be extracted from the crisis site by Bradley vehicle (preferably #3, medically configured) to the T intersection.
- Security for subjects will be provided by ATF personnel at and beyond the T intersection on a one-to-one basis.
- Weapons, pyrotechnic devices, and hazardous items will be removed from LEO patients and secured by his team, agency, or any other LEO available.
- Subjects will be searched prior to medical evaluation.
- Casualties will be removed from the Bradley vehicle behind the sandbag wall (transfer point) and evaluated by on-site medical for triage and immediate treatment.
- Non-ambulatory patients will be placed on litters and MUST be secured with litter straps or tape before being moved.
- Casualties will be placed in Suburban ambulance vehicles and driven to the Medical Staging area accompanied by ATF security personnel and medical attendant.
- Upon arrival at the Medical Staging area, all casualties will be tagged with a numbered wrist band. Any available patient identification data will be recorded on a similarly numbered clinical notes form and entered into the patient log book.
- Patients will be moved into the Medical Staging area, stripped, evaluated, and treated. Treatment will be recorded on the clinical notes.
- Patient's clothing and personal effects will be placed in a plastic bag and labeled with the individuals number and name, if available. Subject's personal effects bag will be immediately given to the ATF agent providing security for that individual.
- When initial treatment is complete, patients will be moved to transport vehicles, either local (AMT) ground ambulance or Care Flight helicopter. Patients will be transferred to transport litters on the road or at the vehicle. Subjects will be escorted by ATF to security personnel. ATF will arrange for security at receiving hospitals.
- A transport officer will monitor the status of receiving hospitals and will designate to the pilot/driver the destination of the patient. Transport Officer must inform ATF representative and Department of Public Safety (DPS) of destinations.
- Transport will be requested by calling (817) 754-0355 for AMT ground vehicles or 1-800-442-6342 for Care Flight. Ambulances have radio contact with local receiving hospitals. Care Flight frequencies are Law

Enforcement 165.287 and Tactical frequency
462.675.

- Local hospitals for all injuries except major burns are:

Hillcrest Hospital 756-8611
3000 Herring
Waco, Texas
Lat 31 32.6 N / Long 97 10.2 W
20 minutes by ground, 5 minutes by air

(no regular pediatric care)
Providence Medical Center 751-4180
6901 Medical Parkway
Waco, Texas
Lat 31 30.7 N / Long 97 12.2 W
20 minutes by ground, 3 minutes by air

(if air evacuation available)
Scott and White Hospital 774-2222
2401 South 31st Street
Temple, Texas
Lat 31 04.4 N / Long 97 21.48 W
45 minutes by ground, 20 minutes by air

- Secondary hospitals

(primary for major burns)
Parkland Hospital (214) 590-8848
Dallas, Texas
Lat 32 48 N / Long 96 51 W
Contact Care Flight dispatch with patient information on FM 131.45

45 minutes by air

(for major pediatric trauma)
Cook Ft. Worth Children's Medical Center (817) 885-4093
801 7th Avenue
Ft. Worth, Texas
Lat 32 44.12 N / Long 97 20.55 W
50 minutes by air

- UH-1 Helicopters piloted by FBI personnel are available for emergency medical transport in the event local EMS transport is not immediately available. FBI helicopter will land and make aircraft available for evacuation when requested through HRT Main TOC.
- Two flight medics will be designated every 24 hours and will remain at the Medical Staging area for Medevac flights requiring medical attendants. One additional flight medic will be available at the T intersection.

2. IMMEDIATE AND SHORT WARNING RESPONSE

In the event of the development of casualties without warning, medical personnel will not be prepositioned. Supplementary evacuation assets and subject security agents will not be available. Since removal of casualties from the crisis site will be limited to the capacity of the extraction vehicle, the deliberate evacuation plan will be followed with available staff and assets while the full plan is implemented. Forward TOC will be requested to assist in mobilizing medical resources and attempting to provide interim assets for evacuation and subject security.

3. MASS SURRENDER

In the event of mass surrender, initial subject processing is planned for the T intersection. The Transfer Point medical staff will be increased to enable rapid evaluation of any subject referred to medical authority. Subjects in need of further hospital evaluation or treatment will be evacuated through the previously described process.

DECON PLAN:

In the event of the use of irritating gas, casualties may require decontamination prior to treatment and evacuation. Decontamination is of particular importance in casualties to be evacuated by helicopter. The use of large amounts of gas may result in residual contamination of uninjured personnel to the extent that decontamination may be necessary prior to processing. The determination of significant residual contamination will be made by medical control at the T intersection. Contaminated casualties will be transported to the Decon point. After processing casualties, any contaminated uninjured personnel can utilize the decontamination facility.

The primary means of decontamination is the removal of clothing. Residual agent may be retained in scalp hair and the axilla and groin area. This contamination may be removed by simple water washing if necessary. This process will be done in the Decon Tent. Contaminated clothing will be sealed in plastic bags and labeled.

ADDENDUM TO DECONTAMINATION PLAN

The following addendum to the Decontamination Plan is designed specifically to address the situation in which large numbers of CS-contaminated casualties are taken in to custody.

1. Subjects will be directed to walk from the compound to the T. They will be supervised by operators from the protective cover of the Bradleys. Elderly, infirm, and/or injured can be transported by Bradley, if necessary.

2. Subjects will be frisked by FBI SWAT and turned over to ATF agents. ATF agents will flexicuff prisoners and secure them in the T intersection area.

3. The Decontamination Area is located in the GP Medium tent positioned on the grass next to the Medical Tent. The Processing Area is another GP Medium located immediately adjacent to Decontamination Area. Prisoners will be transported via a rental truck (with ramp), or military 2 1/2 ton truck (backup), to the Decontamination Area in groups of ten. The subjects will be moved one at a time into the Processing Tent where they will be tagged and photographed. Near the exit of the Processing Tent, subjects will be uncuffed and permitted to strip completely. All personnel clothing and items will be bagged and tagged by ATF agents. Female agents will be available when appropriate.

4. Subjects will then be directed to the adjacent Decontamination Area. They will be sprayed with warm water from the "hot dog", allowed to soap up and then rinsed down with more warm water. They will be given a towel or sheet for drying and will be issued jail clothing by ATF agents.

5. After dressing, subjects will be escorted by ATF agents to waiting jail buses.

6. When all prisoners in the transport vehicle have entered the processing area, the truck will return to the T for another shuttle.

7. Decontamination will be done in the following order:

   a. Wounded
   b. Pre-adolescent children and accompanying adult, if needed
   c. Women and adolescent girls
   d. Men and adolescent boys

MEDICAL CARE PLAN FOR CHILDREN

The handling and care of any children released or removed from the compound is included in the Integrated Medical Support Plan. Specific procedures in the event of injury to children are summarized below.

Appropriate equipment and expert personnel have been assembled for the complete emergency care of pediatric patients of all ages within the compound.

Since preadolescent children present minimal security concerns, they can be immediately evacuated from the crisis site. Subjects will be extracted for initial evaluation and stabilization at the "T" intersection as soon as they become accessible to tactical personnel in Bradley vehicles. In the event of critical injuries and limited ground extraction capability, children would be evacuated with any LEO casualties on law enforcement aircraft. Facilities capable of receiving these casualties and providing pediatric trauma care have been identified and are designated in the evacuation plan.

Experience with the effects of CS on children including infants has been extensively investigated. Available reports indicate that, even in high concentrations or enclosed areas, long term complications from CS exposures is extremely rare. Children exposed to CS would be decontaminated first along with any accompanying adult caretaker/parent.

The possibility of mass poisoning presents a particularly difficult medical problem. Intensive treatments must be provided before lethal doses are metabolized. Specific antidotes for cyanide poisoning have been assembled at the Forward TOC area sufficient for all of the children and a large number of adult survivors.

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ESTIMATED COSTS OF INVESTIGATION

WACMUR (2/28/93 - 4/8/93)

PERSONNEL COSTS	# of Personnel	Per Day	Days	Cost
AGENT				
Prior Period 2/28-4/1				$2,597,791
Current Period				
FBIHQ	72	$448	7	$225,792
Field	138	$359	7	346,794
Total	210			$572,586
NON-AGENT				
Prior Period 2/28-4/1				$162,672
Current Period				
FBIHQ	15	$154	7	$16,170
Field	27	$131	7	24,759
Total	42			$40,929
Total estimated personnel costs				$3,373,978
EXTRAORDINARY COSTS				
Per Diem				$715,976
Equipment (RentaL)				170,100
Transportation				52,050
Supplies				27,000
Overtime for non-Agents @ $20/hr				132,480
Planes (Nightstalker on scene)				377,443
Helicopters (2) @ $675/hr				111,398
Miscellaneous				44,926
Total estimated extraordinary costs				$1,631,373
TOTAL ESTIMATED COSTS				$5,005,351

ESTIMATED COST EXTENDED THROUGH 4/15/93

PERSONNEL COSTS			
Average cost per day	$87,645 x 7 =		613,515
Personnel cost	2/28 to 4/8		$3,373,978
Total personnel costs	2/28 to 4/15		$3,987,493
EXTRAORDINARY COSTS			
Per Diem			$853,568
Equipment			180,000
Transportation			54,000
Supplies			28,000
Overtime			158,980

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Planes		452,930
Helicopters		133,776
Miscellaneous		49,000
Total estimated extraordinary costs		$1,910,754
TOTAL ESTIMATED COSTS	2/28-4/15	$5,898,247

The average cost per day for the WACMUR operation is $128,429 with the average personnel and non personnel expenditures per day as follows:

personnel - $87,645.00

non personnel - $40,784

LETTERS RECEIVED FROM KORESH AND ANALYSIS OF LETTERS

On 4/9/93, David Koresh dictated a four page letter to fellow Branch Dividian member Judy Schneider that was then provided to the FBI at Waco, Texas. Copies of the letter were subsequently provided to Dr. Murray S. Miron, a psycholinguist, who has served as a consultant to the FBI in the past. A synopsis of Dr. Miron's comments follow.

Dr Miron believes that the communication "evidences all of the hallmarks of rampant, morbidly virulent paranoia", which provides Koresh with a shield of imagined invulnerability and unmitigated power. This condition could be chronic in form and would be revelational and charismatic to his followers

Dr Miron does not see any indication that Koresh intends to give up or that he is suicidal and he does see that Koresh may be contemplating a counter assault. He further states that Koresh's pathology leaves him functional enough to plan effectively and to vie against his adversaries.

In summary, Dr Miron believes that Koresh is determined and has no intention of surrendering himself or his followers and that he is in fact waiting for an assault. He believes that the members of the sect have hardened themselves against the eventuality of a siege and are prepared for an attack from the "infidels" outside the compound.

The letter was also provided to Dr. Joseph Krofcheck, MD, PHD of Yarrow Associates and SSA Clinton R. Van Zandt, Training Division for review and analysis. Their assessment often parallels that of Dr Miron and indicates that Koresh is probability a functional, paranoid type psychotic. He is a "charismatic, manipulative person with a core delusional system that sees himself as his own form of the trinity consisting of God, Jesus Christ, and David Koresh".

They believe that Koresh is able to move in and out of his different personalities which enables him to deal with both reality and his delusion. He is a user of others and people are simply things for his pleasure, glory and purpose. However, even though he is delusional he is not "stupid".

Dr Krofcheck and SSA Van Zandt, believe that the threat level in the letter is clear but the immediacy of the threat level is not apparent. He may believe that he can last longer than the government can wait, he does not need to take any action. His promises to us and his attorneys are not based in truth or reality.

Koresh may be indicating that his snare is set for the authorities and he plans to catch us similarly unaware. He is willing to kill, to see his followers die, and to die himself.

The threat posed by Koresh and followers include both a possible mass break-out or a massive explosion. Koresh's clock is running and he is fully capable of creating circumstances to bring the matter to a "magnificent end", in his mind, a conclusion that could take the lives of all of his followers and as many of the authorities as possible. Koresh will not come out under any conditions other than his own.

In summary, Krofcheck and Van Zandt are of the opinion that the threat level posed by Koresh is clear but his ultimate timetable is not. Further, they are firm in their belief that we have no clear ability to influence the exit of him and his followers from their compound short of tactical intervention.

A second letter received on 4/10/92 was submitted to Dr Miron for analysis. Dr. Miron indicates that except for the closing paragraphs, the letter is nothing more that a verbatim rendering of texts from the King James version of the bible. He is of the opinion that there is no content which suggests that Koresh is weakening in his resolve and to the contrary Koresh assumes that he will ultimately triumph and even that he can convert his adversary

Who are you fighting against? The law is mine, the truth is mine. Will you be acquited in My judgment? Will your turn back the punishments of My hand? No!

Be it known unto you, Oh sons of men, My Christ died for man's breaking of My law (not just the Jews). But who will atone for your rejecting of My Spirit? I am your God and you will bow under My feet.

Do you know My seals? Do you dare call Me a liar? Look and see into My "right hand." I AM your life and your death. I AM the Spirit of the prophets and the Author of their testimonies. Look and see, you fools, you will not

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proceed much further...

I Offer to you My Wisdom.
I offer to you My Sealed
secrets. Your days you turn
away My invitations of mercy.
I know your sins and your
iniquities. None are hid from
me! When will you ever fear
and be wise? Your only saviour
is My Truth. My Truth is
the Seven Seals.

Your're not rejecting a man
by fighting against David
My servant no, for I have
given and revealed My Name
to Him. Read Isaiah 45. The
name Koresh is My surname.
And all men are my sons and
the work of My hands.

Do you think you have power
to stop My will? I have

to My prophets regarding "time no longer." My "seven thunders" are to be revealed (Revelation 10:7). Is it your judgment that time is not now?! Your judgment will not stand. Read Psalms 2. Do you want me to laugh at your pending torments? Do you want me to pull the heavens back and show you My anger?! Why not listen to your brother David, and see if he witnesses to the truths of My hand?

I am your God and I love you for My mercys sake. I see your evil and pride and yet you fear me not. Do not fear the fear of man - fear Me, for I have you in my snare (Jeremiah 50:22-25; Revelation 18).

I will surely show you the

meaning of Psalms 18, unless you open your eyes and not your mouth. Fear Me and "the hour of My judgment," for it has come.

Learn from David Koresh or, as you have said, bear the consequences I forewarn you. The Lake Waco area of Old Mount Carmel will be terribly shaken. The waters of the lake will be emptied through the broken dams. The heavens are calling you to judgment.

Please consider these tokens of great concern.

יהוה צבאות

Yahweh Tzvaot

REVELATION 19

"And after these things I heard a great voice of much people in heaven, saying, 'Alleluia! Salvation, and glory, and honour, and power, unto the Lord our God: for true and righteous are his judgments: for he hath judged the great whore, which did corrupt the earth with her fornication, and hath avenged the blood of his servants at her hand.' And again they said, 'Alleluia! And her smoke rose up for ever and ever!' And the four and twenty elders and the four beasts fell down and worshipped God that sat on the throne, saying, 'Amen; Alleluia!' And a voice came out of the throne, saying, 'Praise our God, all ye his servants, and ye that fear him, both small and great!'

And I heard as it were the voice of a great multitude, and as the voice of many waters, and as the voice of mighty thunderings, saying, 'Alleluia: for the Lord God omnipotent reigneth. Let us be glad and rejoice, and give honour to him: for the marriage of the Lamb is come, and his wife hath made herself ready.' And to her was granted that she should be arrayed in fine linen,

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clean and white: for the fine linen is
the righteousness of saints.

And he saith unto me, Write, Blessed
are they which are called unto the
marriage supper of the Lamb. And he
saith unto me, These are the true
sayings of God. And I fell at his
feet to worship him. And he said unto
me, See thou do it not: I am thy
fellowservant, and of thy brethren that
have the testimony of Jesus: worship God:
for the testimony of Jesus is the spirit
of prophecy.

And I saw heaven opened, and behold
a white horse; and he that sat upon
him was called Faithful and True,
and in righteousness he doth judge
and make war. His eyes were as
a flame of fire, and on his head were
many crowns; and he had a name
written, that no man knew, but he
himself. And he was clothed with a
vesture dipped in blood: and his
name is called The Word of God.
And the armies which were in heaven
followed him upon white horses,
clothed in fine linen, white and
clean. And out of his mouth goeth

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sharp sword, that with it he should smite the nations: and he shall rule them with a rod of iron: and he treadeth the winepress of the fierceness and wrath of Almighty God. And he hath on his vesture and on his thigh a name written, KING OF KINGS AND LORD OF LORDS.

And I saw an angel standing in the sun; and he cried with a loud voice, saying to all the fowls that fly in the midst of heaven, Come and gather yourselves together unto the supper of the great God; That ye may eat the flesh of kings, and the flesh of captains, and the flesh of mighty men, and the flesh of horses, and of them that sit on them, and the flesh of all men, both free and bond, both small and great.

And I saw the beast, and the kings of the earth, and their armies, gathered together to make war against him that sat on the horse, and against his army. And the beast was taken, and with him the false prophet that wrought miracles before him, with which he deceived them that had received the mark of the beast, and them that worshipped his image. These both were cast alive into

a lake of fire burning with brimstone.
And the remnant were slain with
the sword of him that sat upon the
horse, which sword proceeded out of
his mouth: and all the fowls were
filled with their flesh."

K. J. V.

DOJ CSTS

WWC142-0473
CNG027-0473

PSALM 45

"To the chief Musician upon Shoshannim, for the sons of Korah. Maschil. A song of loves."

Gods "My heart is inditing a good matter: I speak of the things which I have made touching the King: my tongue is the Rev 5:11 pen of a ready writer. Thou art fairer than the children of men: grace is poured into thy lips: therefore God hath blessed thee for ever.

Gird thy sword upon thy thigh, O Christ most mighty, with thy glory and thy Rev 5:13,14 majesty. And in thy majesty ride 1ST SEE REV 6 1+2 prosperously because of truth and meekness and righteousness; and thy right hand shall teach thee terrible things. Thine arrows REV 6:1+2 are sharp in the heart of the King's enemies; whereby the people fall under thee.

Thy throne, O God, is for ever and ever: the sceptre of thy kingdom is a right sceptre. Thou lovest righteousness, and hatest wickedness: therefore God, even thy God hath anointed thee with the oil of gladness above thy fellows. All thy garments smell of myrrh, and aloes, and cassia, out of the ivory palaces, whereby they have made thee glad. Kings

DOJ CSTS

WWC142-0474
CNG027-0474

P.07

Psa 45

daughters) were among thy honorable
women: upon thy right hand did
stand the queen in gold of Ophir.
Hearken, O daughter, and consider,
and incline thine ear; forget also thine
own people, and thy father's house;
So shall the king greatly desire thy beauty:
for he is thy Lord; and worship thou him.
And the daughter of Tyre shall be there with
a gift; even the rich among the people shall
intreat thy favour.
The king's daughter is all glorious
within: her clothing is of wrought gold.
She shall be brought unto the king in
raiment of needlework: the virgins her
companions that follow her shall be
brought unto thee. With gladness and
rejoicing shall they be brought: they shall
enter into the king's palace.
Instead of thy fathers shall be
thy children, whom thou mayest make
princes in all the earth. I will make
thy name to be remembered in all
generations: therefore shall the people
praise thee for ever and ever."
KJV

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P.08

Your young ones do not understand. Your fathers, your mothers and your teachers — those in whom you have trusted, all have failed to show you the secret of My Love. I begin to do My "strange work," "a work you will not believe, though it be told you," Isaiah 28.

Ask My servant Moses, he tried to warn you in his song: "See now that I, even I, am He, and there is no god with me: I kill, and I make alive; I wound, and I heal: neither is there any that can deliver out of my hand. For I lift up my hand to heaven, and say, I live for ever," Deuteronomy 32:39-40. I have lifted up My hand, for My Word tells Heaven and Earth. The scales will either save you or destroy you.

Hear My servant Isaiah speak: "Lord, when thy hand is lifted up, they will not see: but they shall see, and be ashamed for their envy at the people; yea, the fire of thine enemies shall devour them." Isaiah 26:11.

Jeremiah says of me: "Therefore, behold, I will this once cause them to know, I will

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cause them to know mine hand and my might, and they shall know that my name is the LORD." Jeremiah 16:21.

Hear Micah say: "And the remnant of Jacob shall be among the Gentiles in the midst of many people as a lion among the beasts of the forest, as a young lion among the flocks of sheep: who, if he go through both treadeth down, and teareth in pieces, and none can deliver. Thine hand shall be lifted up upon thine adversaries, and all thine enemies shall be cut off." Micah 5:8&9.

Hear Habakkuk, "And His brightness was as the light; he had horns coming out of his hand: and there was the hiding of his power." Habakkuk 3:4.

(He I have horns coming out of My hand? Is not the Book in My hand? Is not this a revelation of My Son? Is not My Word - My Son, the Lamb? How many horns does the Lamb have? If He has seven (Revelation 5), then you know who is to teach you My Word (Jude). I warn you, do not hurt My Lamb (Psalms 2). For out of His side will come "bright beams" and there is the hiding of His power.)

-3-

Who do you think it is in Revelation 10, that raises his hand to heaven and swears by Me, "that there should be time no longer."

My hand made heaven and earth, My hand also shall bring it to the end. Read Psalms 50 and learn to be wise. Respect your brother David and those who have learned of Me from Him. Your sins are more than you can bear. Show mercy and kindness and you shall receive mercy and kindness.

The Seven Seals are the last prophecy to a lost world, consider it and what it means! You have a chance to learn My salvation. Do not find yourselves to be fighting against Me.

"Wherefore, my brethren, ye also are become dead to the law by the body of Christ; that ye should be married to another, even to him who is raised from the dead, that we should bring forth fruit unto God." Romans 7:4.

-4-

"And I saw when the Lamb opened one of the seals, and I heard, as it were, the noise of thunder, one of the four beasts saying, Come and see. And I saw, and behold a white horse: and he that sat on him had a bow; and a crown was given unto him: and he went forth conquering, and to conquer." Revelation 6:1-2.

Psalms 45

Revelation 19

Please listen, show mercy and learn of the marriage of the Lamb.

Why will you be lost?

יהוה עוזי

Yahweh Kawah

DOJ CSTS

WWC142-0479
CNG027-0479

TO: Director, FBI
ATTN: SSA D. Glasser, FBIHQ
FROM: M. S. Miron
RE: WACMUR

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This written communication bearing the signature of "Yahweh Koresh" evidences all of the hallmarks of rampant, morbidly virulent paranoia. Koresh speaks as the agent of God, the sort of "speaking in tongues" practiced by the Pentecostals. In such a state, he is experiencing the dissociative pathology which makes him oblivious to either reality or rationality. This multiple personality-like condition provides him with a shield of imagined invulnerability and unmitigated power. But unlike the mere personality disorder, Koresh's condition can be expected to be chronic in form. Such condition clearly would be revelational to his followers and charismatically overpowering.

Isaiah 45 references God's naming of Cyrus (Koresh in Hebrew), the mighty King of Babylon, and God's use of him as His right hand to crush His enemies. These verses coupled with those of Revelation's suggest that the mystery of God is given to Cyrus. All of Koresh's Biblical references speak to the overcoming of God's enemies and the destruction of Babylon's iniquities.

The content of this delusional communication patently implies that Koresh is preparing to do battle against his adversaries whom he casts as the Godless of Babylon. There is no indication that he intends to give up or that he is suicidal. If anything, the Biblical references suggest that he may be contemplating a counter assault which he views as protected by the shield of God.

DOJ CSTS

WWC142-0480
CNG027-0480

The specific and paradoxically mundane reference to Lake Waco is disquieting in its implication for some sort of attempt to attack the dam. Certainly, if this communication were to be made public, there are many who might seek to make this "prophet's" prediction real. Curiously, and significantly, the mistaken spelling of "dam" as "damn" implies a mind-set of aggressiveness which couples flood with punishment. Indeed, Psalms 18, which Koresh juxtaposes associationally with the paragraph of specific forewarning, references floods. Jeremiah 50:22-25 speaks of having "laid a snare for Babylon" in which "the lord has opened his armory and brought forth the weapons of his indignation". Such reference certainly implies that Koresh has provided for "snares" against an assault on the compound.

The 50th day following Easter, the day of Pentecost, commemorates the descent of the Holy Spirit on the Apostles and is marked by the celebration of the feast of Shaboth. This is a highly significant day in millennial religions which believe in the imminent coming of the Messiah. Koresh, undoubtedly, would consider the day of Pentecost to be an important milestone in his self imposed struggle.

There are no indications of the loosening of associations or dysfunctionality of crippling psychosis. His pathology leaves him functional enough to plan effectively and to vie against his adversaries. His delusions appear to be limited to the self-aggrandizements of his chosen status as God's hand. Such focused delusions are common to the paranoiac syndrome and differ from the broad dysfunctionality of the paranoid forms of schizophrenia.

The handwriting of this communication is strong and facile. There are no indications of the waning of strength which might indicate that his wounds have left Koresh incapacitated.

Significantly, there is no reference, either Biblical or secular, to the use of children as shields. The Biblical references cast the adversary as being powerful and mighty. Accordingly, it is not surprising that Koresh would seek some sign that God would assist in their destruction. Unfortunately, "the hour of judgment" which Koresh declares has come, is used by those of his beliefs only in the vague sense of imminence rather than immediacy.

In my judgment, we are facing a determined, hardened adversary who has no intention of delivering himself or his followers into the hands of his adversaries. It is my belief that he is waiting for an assault. I have no knowledge of the conditions inside the compound which might predict the inevitable depletion of vital necessities. Groups of similar mentality, however, have traditionally prepared themselves, in survivalist fashion, against the eventuality of a siege. Isolation from the outside world is a necessity for the purveyance of any disordered doctrine. All of the members of this group, as in other cults, have been inoculated against an attack from the "infidels" outside their barricades. Such warnings are an essential ingredient to the group's cohesion and fealty to its leader. Koresh's communication does not resemble the suicidal sermon made by Jim Jones in the last hours of Jonestown. His is not the language of those at Massada or Jonestown. He intends to fight.

4/9/93

TO: Director, FBI
ATTN: D. Glasser
FROM: M. S. Miron
RE: WACMUR

This second, much longer communication, except for the closing paragraphs, is merely a verbatim rendering of texts from the King James version of the Bible.

The opening quotations from Revelation 19 and particularly Psalms 45 appear to be at the initiative of Koresh's concubine scribe. The text of Psalms 45 is a bride's love poem made to her royal husband. She speaks of being "as full of words as the speediest writer pouring out his (the king's, i.e. Koresh's) story". The poem champions the king's majesty, truth, humility(?), and justice in overcoming his enemies. Revelation 19, the marriage supper of the Lamb, speaks of the avenging of the murder of God's servants. These are the writings of the Apostle John speaking the words given to him by God in a vision. The reading aloud of Revelation is said to bestow a special blessing from the Lord. Significantly, the Book of Revelation is meant to be spoken.

Setting aside the Biblical interpretations, it appears that Koresh and his followers are celebrating Easter with special ceremonies involving the reading of the Revelations, a banquet, and even the likelihood of some sort of symbolic sexual joining. This text also references hearing what sounds like "the shouting of a large crowd, or like the waves of a hundred oceans crashing on the shore, or like the mighty rolling of great thunder"; a reference, perhaps, to the loud speaker noises played into the compound. There is more reference in this Revelation chapter to the mystery of the name written on the forehead of the champion riding upon his white horse who vanquishes his enemies. The Hebrew Yahweh is actually a nonsense syllable concealing the true name of G-D (even this name must not be spelled out). As in the earlier letter from Koresh, these references to the mystery of names is likely to be central to Koresh's special knowledge of the true name of God which he alone knows. Such knowledge was thought to endow the possessor with God-like powers.

At many points, the quoted texts depart from the punctuation and paragraphing of the King James version. Exclamation marks are frequently used in a style which our research has more closely associated with female authors, and is consistent with a woman writing from dictation. Paragraphs are joined where the King James text is divided. But, otherwise, the text is amazingly accurate. The divergences suggest that the texts are being quoted from memory, a feat not so improbable given Koresh's preoccupation with the Bible. It is not unlikely that this communication is the record of Koresh's sermon to his followers on this special Easter occasion. In support of that interpretation, the communication uses Biblical quotations which suggest that he alternates between a posture of humility and mystical powers which might be designed to better impress his followers.

All of the quoted texts consistently employ themes of the triumph of the righteous over their adversaries led by some special, chosen one. As in the earlier communication, there is no content which suggests that Koresh is weakening in his resolve. On the contrary, he assumes he will ultimately triumph and even that he can convert his adversary.

The closing plea for mercy is anomalous. It contrasts sharply with the belligerence of the Biblical texts. It is possible that this is an addendum added by the scribe and could imply a weakness which might be exploited.

In my opinion, there is little point in releasing this communication to the media. There is scant little which is not Biblically derivative. Unlike the first communication, the paranoiac implications are concealed beneath scripture.

4/10/93

for official use only

April 10, 1993

TO: FBIHQ, SIOC, ATTN: Mike Kahoe & Jim Wright
FM: SSA Clinton R. Van Zandt
SUBJECT: WACMUR, MC - 80

On or about 4/9/93, DAVID KORESH dictated a four page letter to fellow Branch Davidian member JUDY SCHNEIDER that was subsequently provided to the FBI at Waco, Texas. The following represents a review and assessment of this letter by Dr. Joseph Krofcheck, MD, PHD of Yarrow Associates, and SSA Clinton R. Van Zandt, Training Division, National Center for the Analysis of Violent Crime (NCAVC).

Dr. Krofcheck is a psychiatrist who has provided threat assessments and negotiations support for many years to the FBI through the Nuclear Emergency Search Team (NEST). He has also consulted with the NCAVC on numerous projects and is currently a consultant working with the USAF and the CIA. The psychological terminology set forth in this assessment was provided by Dr. Krofcheck. SSA Van Zandt is currently the on-site Negotiations Coordinator for the WACMUR case.

Biblical References

In KORESH's letter, he makes reference to six Biblical references to include the following: Isaiah 45; Revelation 10:7; Psalms 2; Jeremiah 50: 22-25; Revelation 18, and Psalms 18.

Isaiah was a prophet, (as KORESH sometimes claims to be), who was martyred during the reign of Manasseh in 642 BC by being sawed in two inside a hollow log (Hebrews 11:37). More about the person and work of Christ is found in the Book of Isaiah than in

any other book of the Old Testament. Chapter 45 talks about the greatness of God in His use of Cyrus (who KORESH has claimed to be). Cyrus was a temporal deliverer of God's people who served as an illustration of Jesus Christ. Cyrus is an anointed ruler who carried out God's purpose. On the night the Persians captured Babylon, some of the Persian men entered the city via the dry river bed and opened the gates to their armies from the inside of the city. Babylon was caught by surprise by this action and overcome.

Revelation 10:7 (note that KORESH's "authority" stems from his knowledge of Revelations) talks of the mystery of God. Truth concerning God himself which will not be revealed until His kingdom is established on earth.

Psalm 2. Psalms has been referred to by the Old Testament Jews as "The Book of Praises." It was the hymnal for the Jewish people. Of the 150 Psalms written, 73 of them were thought to have been written by King David (who KORESH has claimed to be) and 12 by the sons of Korah. Psalm 2 is said to be a "Royal Psalm" because the theme is the Supreme King. In it King David reviles the resolve of world rulers to rebel against the Lord and His anointed King and also exhorts the world rulers to submit to the Son to avoid His wrath.

Jeremiah 50: 22-25. Jeremiah 50 discusses the prophecies against Babylon. Verses 22-25 (as in Isaiah 45) discusses the results of the surprise attack of the Persians against Babylon in 539 BC (by reference). Jeremiah 60:24 references (as in Isaiah

47:11) "a disaster (that) will come upon you and you will not know how to charm it away: and disaster will fall on you for which you cannot atone, and destruction about which you do not know will come on you suddenly." Verse 24 discusses a snare that had been set that caught them (Babylon) unaware/by surprise.

Revelation 18 again mentions Babylon and indicates, (with references to Isaiah 21:9 and Jeremiah 51-8), the fall and destruction of Babylon by fire in a single day.

Psalm 18 basically commemorates King David's overall deliverance from his enemies, again with a theme of explosion (verse 7) and fire (verse 8), and other references violence and coming out (verse 18). There is both a war/battle theme, and an escape and deliverance theme interwoven in this scriptural reference.

Assessment of KORESH based upon this letter

KORESH is probably a functional, paranoid type psychotic. He appears in a superior mode to the people whom he has gathered around him. These people have a great commitment to him, they obviously believe in him, and they have committed their money, their lives, and their very souls to him.

KORESH is a charismatic, manipulative person with a core delusional system that sees himself as his own form of the trinity consisting of God, Jesus Christ, and DAVID KORESH, the prophet through whom God speaks. He is not a multiple or split personality, but his own different external manifestation of the same personage, the persona is the same for him. This is a kind

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of fluid identity that KORESH moves through, and when he feels challenged, he smoothly moves from one identity to another to protect himself. KORESH will not let himself be "put down" by another person. He believes this is his world and he has no real intention to comply with the wishes, desires, or demands of anyone else. Expediency and manipulation are key to KORESH as is his psychotically organized self-identity as God, Jesus Christ, and the Prophet DAVID KORESH.

KORESH is slipping and sliding around with his identity. In this letter he is a prophet through whom God is talking, warning the authorities in this matter. In his last major paragraph in this letter he appears to take implied credit for the 4.2 earthquake felt in southern Texas on the date of this letter. He may also know that the dam on Lake Waco was constructed on a fault area. He has possibly incorporated this earthquake theme ("...terribly shaken...") into his concept of reality and used it as an example of his control and power, further evidence of his operational delusional nature. KORESH, through his own psychological self-deception, avoids the obvious, "If you are God, deal with us here and now."

KORESH appears to be able to move in and out of his different personalities [redacted] his "protective wrap" that lets him deal with both reality and his delusion. This psychological wrap allows him to adapt and posture when he finds it safe to do so. KORESH reads and interprets the Bible in his own unique way for his own means.

KORESH is a user of others. People are simply things for his pleasure, glory and purpose. His followers, to include his "wives," the media, the lawyers, and the authorities surrounding KORESH's compound, are looked upon by him as possessions, resources, and pawns. They are not valued as equals or human beings of significance. His prophesy is the doom of the army of man (ATF, FBI and other agencies) against God and His anointed (KORESH). KORESH is delusional at times but not stupid. He uses those around him for his own means and all of our (the governments) good intentions go unnoticed by him.

Threat Assessment

KORESH's reference to "...for I have you in my snare...." as set forth in the second paragraph on page three of his letter, again makes reference to Jeramiah 50:24 which discusses a snare that caught Babylon unaware. KORESH may be indicating his snare is set for the authorities and he plans to catch us similarly unaware. He and his followers have had more than adequate time to prepare this snare for us which could include many things, to include the destruction by fire and explosion eluded to in the scriptural references provided by KORESH in this letter.

There are two time lines running in this case. KORESH's and the Governments. The first is measured by his KORESH and his followers ability to withstand confrontation, confinement and containment. Although they may have supplies, they can not hold out indefinitely.

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The second time line is defined by his attitude toward the authorities, his "playing" with us. He may well be prepared to do what ever he has to do to fulfill his ultimate game plan. He may believe that he can last longer than the government can wait Although he may take some positive action after his passover, he does not need take any action. His promises to us and his attorney are not based in any concept or truth or honesty. He establishes his own reality and sets his own rules.

The threat level in this letter is clear but the immediacy of the threat level is not apparent. KORESH (the prophet) is warning us prior to any action on his part. He is willing to kill, to see his followers die, and to die himself. In his fluid identity mix, the delusional Messiah God is stronger than the human reality of his trial, television talk shows, and any book deal. For KORESH to give up power and omnipotence would be analogous to a crack cocaine addict who gets a sexual-like high from crack, to give up his habit cold turkey and obtain a meaningful job and accept the responsibilities of society.

KORESH has a grandiose power scheme that is in direct conflict with the reality base of the world. Power and dominion are his, he manipulates people, he controls life and death.

The threat posed by KORESH and his followers include both a possible mass break-out in which his followers, men, women and young children, run from their compound in all directions at the same time. We could find ourselves confronting young women carrying a baby in one arm while firing a weapon from the other.

A major, massive explosion would be another threat posed as referenced in both his letter and in the scripture references provided by KORESH.

KORESH's clock is running and he is fully capable of creating the circumstances to bring this matter to "a magnificent" end, in his mind, a conclusion that could take the lives of all of his followers and as many of the authorities as possible. KORESH will not come out under any conditions other than his own. It is hard to believe that KORESH will come out voluntarily, abdicating his godhood for limited notoriety and time behind bars.

The government is the hostage in this situation. Not withstanding the legal and moral responsibilities we have in this matter, we need to inform the public as to the threat posed by KORESH. We need to create an environment that allows us, in the American public's eyes, to both understand this threat and to support our actions in this matter. The American people should understand that some of KORESH's followers could be held against their will without our knowledge. That the health of the adult Davidians and the health and safety of the many young and innocent children is in question. That the potential for drastic action by the Davidians against themselves and the authorities is great. KORESH has indicated that he is upset over the media releases by the joint FBI/ATF news conferences, upset over how the public may perceive him and his followers. This level of

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concern by the authorities should be increased to expose KORESH to further public scrutiny.

We should consider additional ways to isolate KORESH from anyone and everything. Any outside intervention, any external stimulus simply creates new ideas and new strength for KORESH. We need to create as much sensory depravation as possible for KORESH and his followers. This could include severing contact with his attorney, blocking, if possibly, the am/fm radio reception of the compound and limiting contact with the negotiators. The use of a fence to surround the compound is another way to create a sense of confinement while at the same addressing the massive break-out consideration.

We know from the released Davidian children that there are "secrets" in the compound. These not only include KORESH's sexual contact with minor females, but also include the tunnels under the compound that the children were never allowed to enter. These could be used for anything from an escape area from a gas assault to part of KORESH's snare that could include explosives that radiate out from the compound. One does not need to be directly in the middle of a snare to be caught in it. We should consider, if not already done, the use of seismic instruments to chart or measure the tunnel system both under and possibly radiating away from the Davidian compound.

We can consider eliminating the water supply to the compound, but KORESH will surely use the young children as pawns

to obtain water or to place the health of the children on the shoulders of the government.

The threat level posed by KORESH and his followers is clear, his ultimate timetable is not. It is also clear that we have no clear ability to influence the exit of him and his followers from their compound short of tactical intervention. KORESH may well have a tactical mindset, i.e., he may have both the motivation and the intent to commit some major violent action. What we do not know is his logistical capability to carry out such an act. The threat of the snare is also very clear and something is usually done, some bait used, to lure someone into a snare. We need insure that our reactions to any action on his part does not draw us into this snare where we, like the Babylonians, are caught unaware.

R

RIOT CONTROL AGENT, C.S.
INFORMATION OBTAINED FROM BRITISH AND U.S. STUDIES

Effects of CS Exposure

- **British studies, over the course of a few years, and in "tens of thousands of military personnel" who have been exposed to CS in training, have been unable to determine any symptoms essentially different from those which have been determined in U.S. studies. These symptoms are as follows:**

Effects of CS Overexposure (Overexposure is defined as any exposure that brings on any of the effects listed here)

1. **Burning, pricking, peppery sensation in the eyes, nose, mouth, throat, and skin.**
2. **Lacrimation - excessive secretion of tears.**
3. **Rhinorrhea - excessive mucous secretion from the nose.**
4. **Salivation - produces excessive saliva.**
5. **Blepharospasm - uncontrollable winking caused by involuntary contraction of eyelid muscle.**
6. **Photophobia - abnormal intolerance of light (lasts less than one hour in 90% of subjects).**
7. **Tightness of the chest associated with gripping pain.**
8. **Breath holding - usually an attempt to defend against the effects - not a physical (involuntary) action.**
9. **Dysphea - shortness of breath.**
10. **Coughing and sneezing.**
11. **Vesiculation - blistering, small (prolonged or repeated exposure).**

12. **Erythema - redness of the skins caused by chemical poisoning or sunburn (prolonged or repeated exposure).**

13. **First, and possibly second degree burns in sensitive people.**

14. **Congestion of the nose-wall of the pharynx (section of the digestive tract from the oral cavity to the larynx).**

15. **Feeling of suffocation.**

- **All of these effects occur immediately and will persist 5-20 minutes after removal from a contaminated atmosphere.**
- **Determination difficult due to differences in motivation and tolerance i.e. Variability in humans.**

Children

- **In a case in Northern Ireland, a baby (no age given) was found crying in a bedroom that had been exposed to CS. The child was gasping for breath, tears were streaming down his cheeks and he was very pale. Upon removal from the affected room, the child recovered quickly.**
- **The British found cases of babies exposed to CS, in sufficient quantities to distress them and to awaken them crying from their sleep. In all of these cases, upon being removed from the contaminated area, these babies all recovered rapidly. There are no reported cases requiring admission to hospitals, and no instances in which illness in previously healthy infants could be attributed to CS.**

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- **Contact with the U.S. Army Chemical Research and Development Center, Edgewood, Maryland, indicates that they know of no laboratory studies that have ever been conducted with CS that utilized children as subjects. This Army facility has data bases that contain virtually every study on CS that has been conducted by any government or private facility in the world.**

Pregnancy

- **The British have conducted studies on the effects of CS on the developing embryo. This study found that no interference with embryonic development has been demonstrated.**
- **Following the use of CS in Northern Ireland, there has been no increase in the number of abortions, still-births or congenital abnormalities.**
- **British studies conclude that there are no grounds for believing that inhalation of CS can cause malformation of an unborn fetus.**
- **Experimental evidence indicates that CS does not interfere with the course of pregnancy.**

Elderly

- **British found no evidence of any special susceptibility to CS associated with old age. Effects on the elderly were reported, but these were in regard to exacerbations of previous ill health.**

- Human volunteers, of 50 years of age and upwards have been exposed to heavy concentrations of CS. The symptoms they experienced, and the time taken to recover from these, were no different than in young adults.

Miscellaneous

- Food and drink contaminated even by traces of CS is so repulsive to the taste that it could not be consumed inadvertently and, when it has been consumed voluntarily, no ill effects have followed.

- British evidence indicates that:

Liver

- With the concentrations possible in riot situations, it would be in the highest degree unlikely that CS would cause liver damage. Further, if by any chance it did, it would be temporary and clear up in 2-3 weeks. ("mild and transient")

- In experimental exposure of human subjects, no significant changes in liver function were detected.

- In the worst case of exposure in Northern Ireland, liver function gave normal results when tested ten months later.

Cancer

- There is no evidence that CS acts as a carcinogen.

- After CS exposure, no chromosome changes of any kind were found to develop in the cells of healthy volunteers or persons who had been exposed to CS during the riots in Northern Ireland.

Lethality

- LCt 50 is the concentration of any chemical substance that will kill 50% of any given population. (Concentration = mg/m3)
  - The smallest trace of CS that a man can detect is about **0.004 mg/m3.**
- **The concentration of CS that produces symptoms sufficiently unpleasant to cause people to leave an area is 0.5 mg/m3.**
- The concentration that will deter trained troops is **10 mg/m3.**
- The concentration that has been estimated to be lethal to man is **52,000 mg/min3.** This concentration, in the opinion of researchers, can only be attained in ideal laboratory conditions. Any concentration at this level, in relation to operational considerations, are essentially artificial.
- Research has determined that a high concentration of CS for a short time is less toxic than a lower concentration for a long time.

FEDERAL BUREAU OF INVESTIGTION

FAX TRANSMITTAL SHEET

DATE: 3/28/93 NO. OF PAGES: 15

TIME: _____

TO: FBI HQ, SIOC

ATTENTION: Ass't Dir. LARRY POTTS

PHONE NO.: _____ FAX NO.: _____

FROM: SAC JEFF JAMAR

SUBJECT / TITLE: WACMUR, MAJOR CASE 80
OO: SAN ANTONIO

INSTRUCTIONS: PLEASE PASS TO AD POTTS ASAP FOR HIS CONSIDERATION AND APPROVAL.

CONTACT PERSON: SSA Stephen R. WILEY

APPROVAL: JFW

FBI

WWC202-1107
CNG004-1107

9 PROPOSED OPERATIONS PLAN

Revision # 3 3/27/93

I. SITUATION

A. Subject: On Sunday, 2/28/93, Special Agents from the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Treasury Department, were attempting to serve a Federal search warrant on Vernon Wayne Howell, for violation of Federal Firearms Laws. Howell, 33 years old, who also uses the name David Koresh, is the leader of a group that call themselves the Branch Davidian. The majority of this group appear to reside at the Mount Carmel Center, a 77-acre compound near Waco, Texas.

As ATF Agents approached the compound, a protracted firefight ensued during which four ATF Agents were killed, and at least 16 Agents were wounded or injured. A subsequent confrontation, that appears to have been primarily on the perimeter, occurred later that day. On 3/3/93, the body of a Branch member was located by law enforcement personnel on the perimeter of the compound. On 3/6/93, via negotiators, a compound resident indicated they had located the body of another compound member near the main building. Both fatalities are believed to have been the result of the firefights that took place on 2/28/93. Koresh has indicated to negotiators that he was wounded as well. Information from various sources indicates there may have been additional injuries and possibly fatalities to additional members.

Information indicates that there is an extensive weapon inventory inside the compound including .50 caliber sniper rifles, AR-15s (possibly 100) converted to automatic fire, handguns, improvised hand grenades, night vision equipment, large quantities of ammunition, chemicals that could be used to manufacture explosives, and possibly LAW rockets.

Negotiations have been ongoing since 2/28/93. Initially, most of the dialogue has been with Koresh, but with time the individual who is possibly his second in command, Steve Schneider, has also become a primary part of the negotiations from inside the compound. A total of 33 compound members have spoken with negotiators from inside the compound. Twenty-one children and two elderly females have been released since 3/2/93, when it appeared that Koresh might end the stand-off. According to Koresh, the number of

individuals, as of 3/9/93, that remain in the compound is 47 women, 43 men, and 17 children.

B. Law Enforcement:

1.	HRT with attachments	64
2.	HRT medical	2 Doctors 2 Paramedics
3.	FBI SWAT	92
4.	ATF Tactical Units	60
5.	State and Local Units	
6.	Aviation Assets	2 UH1, 9 Fixed Wing Aircraft

C. Weather:

On Saturday 3/27/93 and Sunday 3/28/93, weather will be:

Saturday, 3/27/93

Mostly cloudy, high: mid-70s, winds: SE 10-20mph

PM - Mostly cloudy, chance of thunderstorms, lows: low 60s. Chance of rain 20.

Sunday, 3/28/93

Cloudy, high: upper 70s, chance of rain 30%.

II. MISSION:

Secure the surrender/arrest of all adult occupants of the compound while providing the maximum possible security for the children within the compound.

On order utilize two Combat Engineer Vehicles (CEV) and four Bradley Vehicles (BV) to deliver CS gas simultaneously into the compound structure. Thereafter, demand all occupants of the structure to surrender through the use of the loud speaker system and telephone. BV will also establish positions to deny subjects access to out-buildings as well as establish blocking positions. Sniper units will provide cover to both CEV's and BV's during movements in the vicinity of the structure. One M-88 will move into the compound and stand-by for any recovery operation if required.

III. CONCEPT OF THE OPERATION:

A. Two CEV's will remove all fortifications, obstacles, and vehicles from the white side the day prior to the execution of the operation order.

On order two CEV's will enter the compound and immediately penetrate the structure utilizing their booms and project CS gas via the Mark 5 delivery system secured to the booms. Additionally, the CEVs will establish escape/exit openings on the red/white and white/green corners. The BVs upon visual contact with the CEVs entering into the compound, will immediately move into pre-designated positions and deliver CS gas into pre-designated openings utilizing the M-79 and BV firing points. Prior to the entries of the CEVs the BV will be engaged in routine spotlight maintenance.

As subjects exit the compound, they will be directed to a large "Red Cross Flag" established at Rally Point in the vicinity of the EE Road and the compound road. This rally point will be fortified with the M-88 and the Hotel Team BV. All subjects will then be moved to the "T" intersection for processing and decontamination.

On the ground security positions will be established to prevent "runners" from escaping the crisis site.

B. Specific Assignments:

Hotel Team - Provide one driver and one Tank Commander (TC) to operate CEV #1 and one driver and one TC to operate the M-88. Mount the remainder of the team in Track #1.

Golf Team - Man the crew served weapons position at Sniper #1. Mount the remainder of the team in Track #2.

Charlie Team - Provide one driver and one TC to operate CEV #2. Mount the remainder of the team in Track #3.

Echo Team - Man the crew served weapons position at Sniper #2. Mount the remainder of the team in Track #4.

Blue Snipers - Snipers will occupy the Sniper #1 position and provide real time tactical intelligence, long range precision and suppressive fire to support an armored vehicle approach to the compound. (See attached Annex for details.)

Gold Snipers - Snipers will occupy the Sniper #2 and Sniper #3 positions and provide real time tactical intelligence, long range precision and suppressive fire to support an armored vehicle approach to the compound. (See attached annex for details.)

FBI SWAT Team Assignments:

Houston - San Antonic - Houston SWAT and San Antonio SWAT will maintain a position at the "T" intersection to accept the escorted prisoners from the crisis site. Houston and San Antonio will also be responsible for maintaining the integrity of the perimeter and ensuring no unauthorized personnel move forward of their position.

New Orleans - New Orleans SWAT will be assigned to the FBI helicopter as a response force for potential fleeing subjects from the crisis site.

Oklahoma City - Oklahoma City SWAT will be assigned in support of the medical response and will be responsible for security of the medical personnel and wounded. Oklahoma City will additionally provide a driver and T.C. for the Bradley vehicle assigned to the medical personnel.

El Paso - El Paso SWAT will be responsible for maintaining the integrity of the perimeter at the "Y" intersection and ensuring that no unauthorized personnel move forward of their position, and liaison with ATF representative at that location.

Dallas - Dallas SWAT will establish blocking positions along Double EE Ranch Road north of the crisis site.

Little Rock - Will establish blocking positions from the "T" intersection to ATF checkpoint #3 utilizing Bradley Vehicles and Abrams for cover.

ATF - Provide outer perimeter coverage and blocking positions from checkpoint #2 on Old Mexia Road east to the power line and south along the power line to checkpoint #3.

DPS - Provide line of sight coverage from the intersection of Rt. 31 and 84 East to Frazier Road. South on Frazier Road to DPS check point #5.

C. Scheme of Maneuver

1. CEV #1 - When directed, penetrate structure using CEV boom and deliver CS to the Bravo Level. First, Red B-3 and B-4, followed by White B-1. Return to the "T" for reload of the Mark 5 and further direction.

2. CEV #2 - When directed, penetrate structure utilizing boom and deliver CS to the Alpha Level. White A-1, A-6, Black A-3, Red A-4. Return to the "T" for reload.

3. M-88 - Standby for recovery operations, if necessary. Establish designated rally point.

4. Track #1 - On command establish a position in the vicinity of the red side. Deliver gas into the red windows. In order Red D-1, C-3, B-3, C-1, C-2, B-1, B-2, A-3, A-4, A-1, A-2. Establish a position at the rally point.

5. Track #2 - On command establish a position on the white side in coordination with the CEV. Deliver gas into the white side Stand ready to direct exiting subjects to the processing location.

6. Track #3 - On command establish a position on the green corner. Deliver gas into the green side.

In order D-1, C-1, B-2, B-1, C-2, C-3, B-3, B-4, A-10.

7. Track #4 - On command proceed to the vicinity of the black side deliver CS into the black side. In order A-16, A-15, A-13, A-12 through A-1.

8. Track #5 - On command establish the rally point in conjunction with M-88.

9. Track #6 - Establish blocking position at Dallas SWAT position.

10. Medical Track - Remain at the "T" intersection until re-directed.

11. Command Abrams - White side at the rally point.

D. Coordinating Instructions

1. Time of Departure: To be determined.

2. Organization of Movement: As previously briefed.

3. Rally Points: "T" intersection, "Y" intersection.

4. Rules of Engagement: FBI Deadly Force Policy remains in effect which states "Agents are not to use deadly force against any person except as necessary in self-defense or the defense of another, when they have reason to believe they or another are in danger of death or grievous bodily harm." In addition, the following applies:

   a. Subject is outside the building and has a visible weapon, deadly force can be used.

   b. No visible weapon, not responding to commands and approaching friendly positions, deadly force can be used.

5. All units should be prepared to utilize smoke for masking movements if directed.

6. Medical Plan - See Medical Annex.

7. SWAT teams should be prepared to provide personnel for security to transport medical evacuees and assist with prisoner control.

8. Aviation - See Aviation Annex.

IV. ADMINISTRATIVE AND LOGISTICS:

A. Uniform and Equipment

HRT personnel - tactical gear, body armor (with plate), gas mask, Model 88s, CAR-15, ballistic helmets, saber radio, camouflage utilities, FBI armband on left arm. **Specialty weapons per team leader discretion.** Sniper personnel per Sniper Annex.

FBI SWAT - Same as above except weapons will be standard FBI SWAT issue.

B. Prisoner Handling

Subjects who exit the compound and surrender will be directed via loudspeaker to proceed to the designated Bradley vehicle. These individuals will then be escorted on foot by Bradley vehicle in a single file line to the area of the "T" intersection. At the "T" intersections FBI SWAT personnel, from a position of cover and concealment, will hold the subjects in front of the pre-positioned Bradley vehicles. In an orderly fashion, the subjects will be moved to a designated area behind the Bradley vehicles where FBI SWAT personnel will search the prisoners and turn them over to awaiting ATF personnel for handcuffing and transport. Subjects attempting to flee from the crisis site will be responded to by one orbiting FBI Huey helicopter with FBI SWAT personnel on-board, who will act as arrest teams. Transport of these subjects will be effected by helicopter back to a designated landing zone (LS) at the "T" intersection. All prisoners will be thoroughly searched and secured prior to transport on board the helicopter. The helicopter will maintain an orbit at a safe distance from potential hostile acts by subjects from within the compound. The FBI helicopter will move into position upon execution of the surrender initiative and will maintain their orbit until further directed by the HRT Commander.

V. COMMAND AND COMMUNICATION:

A. Communications Plan - (See attached annex)

B. Command Location

1. SAC - Forward Command Post
2. HRT Commander - Sniper 1
3. BATF Command Element

SNIPER ANNEX
COPIES

COPY OF

HRT OPLAN VERNON HOWELL
3/10/93

HOSTAGE RESCUE TEAM
WACO, TX

UNCLASSIFIED

I. SITUATION

As per HRT OPORD, dated 3/8/93

II. MISSION.

HRT snipers will provide real time tactical intelligence, long range precision, and suppressive fire to support an armored vehicle approach to the Branch Davidian compound.

III. EXECUTION.

A. Concept of the Operation.

HRT snipers will support a phased operation intended to approach the compound with armored vehicles, demand the surrender of occupants and if necessary, employ chemical agents inside. From existing and reinforced sniper positions, HRT snipers will provide real time intelligence, long range precision and covering fire to tactical elements making the approach and delivering the chemical agents.

B. Coordinating Instructions.

1. BLUE SNIPER (+): Will occupy Sniper 1 position and provide coverage on the White (primary) and Red (secondary) side. Be prepared to engage hostile subjects in accordance with (IAW) stated Rules of Engagement (ROE).

2. GOLD SNIPER (-): Will occupy Sniper 2 position and provide coverage on the Black (primary) and Green (secondary) sides. Off duty members will reinforce Blue Sniper position. Be prepared to engage hostile subjects IAW stated Rules of Engagement.

3. Rules of Engagement.

A. Standard FBI Rules of Deadly Force remain in effect, with additions as stated in the Operations Plan.

4. Time of Departure: On command.

5. Time of Return: On command.

WWC202-1116
CNG004-1116

6. Aviation Support: Available 800 unit in general support.

7. Vehicle Support.

A. Bradley Vehicles (BV): (7) utilized to approach compound and employ chemical agents if necessary.

B. CEV: (1) utilized to clear obstructions from avenues of approach/egress from compound and make surrender announcements.

C. M-1 Abrams: (2) as per OPORD.

IV. SERVICE SUPPORT.

A. Arms, ammunition, equipment: as per previous OPORD.

B. Uniform and equipment: as per previous OPORD.

C. Medical: current medical plan remains in effect.

D. Rations, shift plan: as per previous OPORD.

E. Method of handling prisoners: HRT snipers will remain in sniper positions and provide coverage to friendly forces taking surrender of subjects.

V. COMMAND AND SIGNAL.

As per previous OPORD.

COMMUNICATIONS PLAN:

1. Overall tactical command and control communications will be on HRT Channel 13.

   A. Assault Elements: Primary: HRT CH-13
      ALTERNATE: HRT CH-15

      Assault elements will move to HRT Channel 13 upon direction from the tactical commander. Until directed HRT assault elements will continue to operate on Channel 15.

   B. Sniper Assets: Primary: HRT CH-14
      Alternative: HRT CH-13

      Sniper elements will operate on HRT Channel 14 primary. Channel 13 will be used as the secondary should the primary fail. Snipers will not jackrabbit to the assault channel.

   C. Emergency Communications Assets:

      Primary: Waco Special CH W-12
      Alternative: HRT CH-13

      Each team leader will have an additional radio programmed with the Channel 12 Medevac Channel for emergency traffic. HRT Channel 5 will be the alternate should the primary Channel 12 fail.

   D. Ground to Armored Vehicle FM Communications:

      Primary: TBD
      Secondary: TBD

      Communications between and to armored vehicles will be accomplished on military FM radios on frequency (TBD).

   E. Ground to Air FM Communications:

      Primary: TBD
      Secondary: TBD

      Communications between and to military aviation assets will be accomplished via military FM radios on frequency (TBD).

   F. Forward Tactical Operations Center to Command Post:

      Primary: Waco Special CH W-10


PENGAD-Bayonne, N. J.
EXHIBIT
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BRIEFING MATERIAL WACMUR

THERE ARE 15 SNIPERS THAT WILL BE DEPLOYED DURING THE INTRODUCTION OF CHEMICAL AGENTS. THEY HAVE MAINTAINED A 12 HOUR ROTATION WITH REGARD TO THEIR SLEEP. AT SIERRA 1 AND 2, COTS ARE AVAILABLE FOR REST. ASAC ROGERS HAS ADVISED THAT ON THE EVENING OF THE 15TH, THEY WILL BEGIN A SHORT ROTATION PROCEDURE TO BEGIN TO REST THE SNIPERS. THEY DO NOT FEEL COMFORTABLE SUBSTITUTING NEW NON HRT SNIPERS WHO ARE NOT FAMILIAR WITH THE COMPOUND OR PROCEDURES. IF DURING THE DAY OF THE 15TH, THERE IS LITTLE ACTIVITY, THEY WILL BEGIN THEIR REST ROTATIONS EARLIER. THEY ARE VERY MUCH AWARE OF THE NEED TO KEEP THIS ASSET FRESH AND READY TO PERFORM.

WITH REGARD TO THEIR PROTECTION AT SIERRA 1 AND 2, THE ONLY PEOPLE WHO WILL BE IN THESE POSITIONS ON THE 15TH ARE THOSE THAT ARE MANNING WEAPONS, AND THEY ARE ALL BEHIND PROTECTION. THERE WILL BE NO ONE IN UNPROTECTED AREAS. SIERRA 3 IS A BUNKER AND IS ENTIRELY FORTIFIED.

THE UNFINISHED AREA OF THE COMPOUND ON THE GREEN SIDE WILL BE THE TARGET OF CS INTRODUCTION USING THE M-79 GRENADE LAUNCHERS. IT DOES NOT APPEAR TO BE POSSIBLE TO USE HAND HELD CANISTERS TO ENGAGE THIS PART OF THE COMPOUND. THERE IS SOME QUESTION AS TO WHETHER THE FERRET WILL PENETRATE THE TAR PAPER COVERED PORTION OF THE UNFINISHED AREA.(DUE TO THE ANGLE), SOME OR ALL FERRETS MAY NOT PENETRATE. THE INTRODUCTION OF CS INTO THE WHITE GREEN COVER SHOULD GIVE SOME COVERAGE OF THE TRAP DOOR ENTRANCE TO THE TUNNEL, THUS DENYING SUBJECTS ACCESS TO THE TUNNEL AND THE UNDERGROUND BUS. THERE IS SOME INDICATION THAT THIS PORTION OF THE COMPOUND IS FLOODED.

THE CEVS USING THE BOOM AND THE MARK 5 LIQUID INJECTION SYSTEM WILL INTRODUCE CS INTO THE WINDOWS. THE BOOMS WILL PUSH ASIDE OBSTRUCTIONS AND IF NECESSARY SWEEP LEFT AND RIGHT INTO THE WINDOWS TO CLEAR THE OPENING FOR THE CS INJECTION. IF IT IS IMPOSSIBLE TO USE THE WINDOWS, THE BOOMS WILL PUSH THROUGH THE WALL, MAKING AN ALTERNATIVE OPENING TO FACILITATE THE INJECTION OF CS. THE CS COULD BE IMPEDED BY PLACING VERY HEAVY CURTAINS OF RUBBER, CANVAS OR OTHER MATERIAL THAT WOULD BE PUSHED AWAY BY THE BOOM AND THEN FALL BACK IN FRONT OF THE NOZZLE. THE BOOMS WILL SWEEP BACK AND FORTH TO REMOVE THESE OBSTACLES. THE OPTION OF OPENING NEW OPENINGS COULD THEN BE USED. IT SHOULD BE NOTED THAT ONE CEV IS SET UP FOR THE FIRST FLOOR AND THE SECOND FOR THE SECOND FLOOR. THIS ELIMINATES THE NECESSITY OF HAVING TO READJUST THE EQUIPMENT TO MOVE FROM FLOOR ONE TO FLOOR TWO.

THE M-79 LAUNCHED FERRET ROUNDS HAVE GOOD PENETRATION ABILITY. THEY ROUTINELY PENETRATE HOLLOW CORE DOORS, SOME SOLID CORE DOORS, 3/4 INCH PLYWOOD, SOME 5/8 INCH PLYWOOD, SIDING ON HOUSES, AND POSSIBLY CORRUGATED TIN DEPENDING ON ANGLE AND

EXHIBIT
11

CONDITION OF THE TIN. HRT BELIEVES THAT THE TOWER IS EASILY PENETRATED. BASED ON THERMAL IMAGERY EXAMINATION, IT APPEARS THAT IT IS VERY THIN AND HAS NO INSULATION. IT IS ACTUALLY BETTER IF THE PROJECTILE MEETS SOME RESISTANCE IN ORDER TO BREAK IT OPEN, LEAVING THE LIQUID TO CONTINUE ON INTO THE PREMISES. IF THE PROJECTILE PASSES THROUGH AN OPEN WINDOW AND IMPACTS INTO WALL BOARD, THE EFFECTIVENESS WILL BE DIMINISHED.

DICK ROGERS AND MONTY JET BELIEVE THAT THERE IS ENOUGH CS TO DO THIS JOB. WE HAVE 6 INJECTION BOTTLES FOR THE CEVS, AND ENOUGH IN RESERVE TO REFILL THEM 6 TIMES. WE HAVE 400 M-79 CS ROUNDS AND 200 12GA. SHOT GUN ROUNDS WITH CS. MONTY JET ADVISED THAT WE HAVE ENOUGH CS TO COMPLETELY COVER THE COMPOUND 4 SEPARATE TIMES. FOR INFORMATION IT TAKES APPROXIMATELY 1 HOUR TO REFILL THE MARK 5 SYSTEMS.(ALL SIX BOTTLES)

THE CHEMICAL AGENT PLAN CALLS FOR THE INTRODUCTION OF CS INTO THE WHITE GREEN CORNER AND SECTION INITIALLY. THE SECOND STAGE WILL INVOLVE THE INJECTION OF CS INTO THE BLACK RED CORNER AT THE GYM. HRT WANTS TO INTRODUCE CS AT OPPOSITE ENDS OF THE COMPOUND AND FORCE THE PEOPLE OUT THE FRONT DOOR. THEY BELIEVE IT IS IMPORTANT TO "SQUEEZE THEM INTO SMALLER AND SMALLER AREAS AND TO EVENTUALLY FORCE THEM OUT THE FRONT AND TO SURRENDER.

HRT HAS TALKED TO MILITARY ENGINEERS AND HAVE DEVELOPED INFORMATION REGARDING THE CONSTRUCTION OF THE COMPOUND. IT IS NOT OF GOOD QUALITY. INFORMATION HAS BEEN OBTAINED FROM INDIVIDUALS WHO HAVE WORKED IN THE COMPOUND REGARDING CONSTRUCTION. THEY BELIEVE THAT IF THEY USE THE RAIL ON THE CEV TO PENETRATE INTO THE WHITE SIDE, THE RESULT WILL BE A PEELING AWAY OF THE SIDING EXPOSING THE ROOMS ON THAT SIDE. THEY ANTICIPATE THE ROOF WILL REMAIN IN TACT. THE CONSTRUCTION OF THE BLACK SIDE (GYM) IS NOT OF GOOD QUALITY. IT IS BELIEVED THAT THE SAME TYPE OF ACTIVITY DIRECTED TOWARD THE GYM WILL RESULT IN THE COLLAPSE OF THE ROOF. HRT ADVISED THAT THEY HAVE ON OCCASION "BUMPED" THE COMPOUND USING THE CEVS AND IT IS NOT VERY STABLE.

COMMUNICATIONS WITH TRACK VEHICLES. EACH TRACK VEHICLE (TV) IS EQUIPPED WITH MILITARY FM RADIO THAT PROVIDES COMMUNICATION TV TO TV AND TV TO TOC. ADDITIONALLY EACH TV IS EQUIPPED WITH FBI RADIOS AND MAG MOUNT ANTENNAS FOR SECURE COMMUNICATIONS.

COMMUNICATIONS WITH PERIMETER. WE COMMUNICATE WITH THE FBI PERIMETER ON FBI CHANNELS. WE HAVE CONTACT WITH DPS AND ATF AND LOCAL OFFICERS VIA CONTACT WITH THEIR TOC FROM OUR TOC THROUGH LAND LINE. BOTH TOCS ARE LOCATED IN THE SAME IMMEDIATE AREA IN TRAILERS.

SNIPER COVERAGE APPEARS TO BE WELL COORDINATED. ALL OF THE 15 HRT SNIPERS WILL BE MANNING GUNS. SOME WILL HAVE ALTERNATE WEAPONS TO BE USED. DURING THE EARLY MORNING PRIOR TO DAY LIGHT THEY WILL MAN "NIGHT GUNS" AND LASER DESIGNATED WEAPONS FOR SUPPORT OF THE TEAM. WHEN THERE IS ENOUGH LIGHT THEY WILL

USE THEIR 308 SNIPER RIFLES. SIERRA ONE AND TWO ALSO HAVE AVAILABLE, ONE EACH BARRETT .50 CAL SNIPER RIFLE. THIS WILL BE USED ONLY IF THE 308 RIFLES ARE NOT EFFECTIVE IN NEUTRALIZING A TARGET.

THE HRT COMMANDER AND THE SNIPER COORDINATOR HAVE DIVIDED THE WINDOWS OF THE COMPOUND SO THAT THE SNIPERS HAVE MINIMAL WINDOWS AND AREA TO COVER. ON THE WHITE SIDE, EACH SNIPER IS RESPONSIBLE FOR 5 WINDOWS AND THERE IS OVER LAP OF COVERAGE. ADDITIONALLY THERE ARE ALPHA POSITIONS AT SIERRA ONE AND TWO THAT HAVE AS THEIR RESPONSIBILITY THE FULL OBSERVATION OF THE COMPOUND. THEY SWEEP WITH THEIR OPTICS THE BUILDINGS AND OUTSIDE AREAS AND ARE IN COMMUNICATION WITH THE SIERRA UNITS TO DIRECT THEIR ATTENTION AND FIRE IF NECESSARY TO SPECIFIC THREATS. DURING THE PERIOD OF THIS CONFLICT THEY HAVE PRACTICED COORDINATED COVERAGE OF THE ENTIRE CRISIS SITE. THE WHITE SIDE SNIPES ARE 275 YARDS FROM THE COMPOUND. BLACK SIDE SNIPERS ARE 330 YARD FROM THE CRISIS SITE.

THE ABRAMS AT THE "T" INTERSECTION WILL NOT BE MANNED BUT IS AVAILABLE IS NEEDED. ROGERS WILL BE IN ONE ABRAMS AT THAT LOCATION. STEVE MCGAVIN WILL BE IN A BFV WITH A RESERVE FORCE THAT CAN RESPOND TO PROBLEMS.

THE FIFTY CAL. GUNS WILL BE USED ONLY WHEN NECESSARY. THE 50. CAL ASSIGNED TO SIERRA 2 WILL ONLY BE USED TO ENGAGE TARGETS ON THE FIRST FLOOR. THE 50 CAL. AT SIERRA 1 CAN ENGAGE TARGETS AS NECESSARY.

ATF WILL CONTACT THOSE HOMES THAT ARE IN THE DANGER AREA AND REMOVE THEM SHORTLY BEFORE THE GAS INTRODUCTION IN ORDER TO INSURE THE SAFETY OF THE INHABITANTS.

WEAPONS

MODEL 70 7.62 CAL (.308) BOLT ACTION SNIPER RIFLES MAX EFFECTIVE RANGE 1,000 YDS. MAX RANGE 1500 YDS.

MODEL 88 9MM HAND GUN MAX EFFECTIVE RANGE 75 YARDS MAX RANGE 1000 YDS.

CAR 15 5.56 CAL (223) ASSAULT RIFLE ISSUED TO EACH OPERATOR MAXIMUM RANGE 800 YARDS MAXIMUM RANGE 1500 YDS.

M-79 GRENADE LAUNCHER. FOR CS, SMOKE, AND PRACTICE SPOTTING ROUNDS, MAX EFFECTIVE RANGE 100 YDS. MAX 300 YDS.

BARRETT SNIPER RIFLE, .50 CAL. MAX EFFECTIVE RANGE 2,500 TO 3,000 MAX RANGE MILES TO BE USED IN THIS MATTER ONLY TO GAIN PENETRATION INTO AREAS WHERE .30 CAL WEAPONS WILL NOT PENETRATE.

M-60 MACHINE GUN 7.62 (308) MAX EFFECTIVE RANGE 1,000

0001

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ISABEL G. ANDRADE, et al., Plaintiffs,	) C.A. NO. W-96-CA-139	
	) JUDGE WALTER S. SMITH	
	) and consolidated actions:	
VS.	) Holub v. Reno	W-96-CA-140
	) Ferguson v. Reno	W-96-CA-141
PHILLIP J. CHOJNACKI, et al.,	) Brown v. U.S.	W-96-CA-142
	) Riddle v. Reno	W-96-CA-143
	) Gyarfas v. U.S.	W-96-CA-144
Defendants.	) Martin v. U.S.	W-96-CA-145
	) Holub v. U.S.	W-96-CA-146
	) Brown v. U.S.	W-96-CA-147
	) Sylvia v. U.S.	W-96-CA-373

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ORAL VIDEOTAPED DEPOSITION OF
JEFFREY J. JAMAR
MARCH 15, 2000
C O N F I D E N T I A L

****

ORAL AND VIDEOTAPED DEPOSITION of JEFFREY J. JAMAR, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 15th of March, 2000, from 9:14 a.m. to 6:23 p.m., before Cynthia Warren, CSR in and for the State of Texas, reported by machine shorthand, at the office of the United States Attorney, 816 Congress Avenue, Suite 1000, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

0002

A P P E A R A N C E S

ATTORNEY IN CHARGE FOR PLAINTIFFS ANDRADE, FERGUSON, GYARFAS, MARTIN, RIDDLE AND SYLVIA, AND LEAD COUNSEL FOR THE HOLUB CASES:

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CADDELL & CHAPMAN
1331 Lamar, Suite 1070
Houston, Texas 77010-3027

ON BEHALF OF THE HOLUB PLAINTIFFS:

Mr. James H. Brannon
5847 San Felipe, Suite 1450
Houston, Texas 77057



0049

if I understand you correctly, what you're saying is that first there was a proposed plan of operations that had been prepared by -- primarily by HRT? 10:30
A. Uh-huh. 10:30
Q. They submitted it to you, you approved it in terms of -- I assume that means you were going to recommend that to the FBI leadership, and the plan was then sent up the chain of command for review and discussion by the FBI leadership? 10:30
A. Correct. 10:31
MS. HAGEN: Excuse me. 10:31
THE WITNESS: I'm sorry.
MS. HAGEN: I object to the form of the question. 10:31
Q. (By Mr. Caddell) And subsequent to that there was the decision made to have a meeting in Waco to discuss that particular plan, correct? 10:31
MS. HAGEN: Object to the form of the question. 10:31
You can answer it. 10:31
A. After discussions with them on the telephone, we recommended they come out, yes. That's what led to that discussion, yes. 10:31
Q. (By Mr. Caddell) All right, sir. Now, what was the conclusion of the meeting? 10:31

0050

A. The meeting in Waco? 10:31
Q. Yes, sir. What decisions were reached at the conclusion of the meeting in Waco? 10:31
A. That we would resubmit a plan with the modifications that we agreed to there. 10:31
Q. And what were those modifications? 10:31
A. Primarily the keeping the Bradleys back, as we discussed previously, and then the incremental insertion of gas. 10:31
Q. But the incremental would only be employed so long as the Davidians did not open fire, correct? 10:32
A. If they fired upon the tanks, that fire would be suppressed, yes. 10:32
Q. Well, "suppressed," you mean the insertion of tear gas would be accelerated, correct? 10:32
A. The gas would be first inserted into the tower and to the area where the gunfire is coming from and then the rest of the planned insertion would be implemented, yes. 10:32
Q. All right, sir. What provisions were there in the plan that was discussed at the meeting in Waco for 10:33

building with more than just the tear gas insertion booms? 10:48
A. I think it's part of implementation of the plan would be to get the -- to insert gas. 10:48
Q. My question is, is it your testimony that there was a specific reference contained in the plan of operations, the written plan of operations that was approved for April 19, 1993, that permitted you the authority to order penetration of the building with more than simply the tear gas insertion booms? 10:48
MR. SHER: Document speaks for itself. 10:49
MS. HAGEN: I object to the form of the question. We've been over this many times now as to what the source of his authority. 10:49
You can answer the question. 10:49
A. Yes, that was part of my discretion as -- in implementing plan was to do that, yes. 10:49
Q. (By Mr. Caddell) And it's your testimony that that was -- there was an explicit provision in the plan that permitted you to do that, correct? 10:49
MS. HAGEN: Object to the --
MR. SHER: Same objection. 10:49
(The reporter interrupted.)
MR. SHER: Same objection as previously. 10:49

0061

Document speaks for self. 10:49
MS. HAGEN: I object to the form of the question. Mischaracterizing his testimony. 10:49
A. My authority included inserting the gas inside the compound by letting the tanks go inside the compound, yes. 10:49
Q. (By Mr. Caddell) Okay. And just so we're clear, we're not talking about just the boom; we're talking about the penetration of the building by the entire body of the tank, correct? You understand the distinction? 10:49
A. In the plan itself -- I understand the distinction. The plan itself called for insertion of the gas starting out. If we needed to do more, it was within my discretion to do that. 10:50
Q. Well, okay. You understand I'm trying to differentiate between what the explicit provisions of the plan are -- you used the word "explicit." So I'm trying to find out what it is that you think was explicit in the plan versus what you think was implicit in the plan. Okay? 10:50
A. Okay. 10:50
Q. Was -- is it your testimony, is it your 10:50

FILED
SEP 20 2000
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

ISABEL G. ANDRADE, ET AL., Plaintiffs,	§	
v.	§	Civil No. W-96-CA-139 (Consolidated)
UNITED STATES OF AMERICA, Defendant.	§	

FINDINGS OF FACTS
AND
CONCLUSIONS OF LAW

The above-captioned cause of action came on for trial before the Court and an advisory jury on June 19 through July 14, 2000.

Before reaching the merits of the suit, the Court must address two motions recently filed by the Plaintiffs – a second motion to recuse and a motion for reconsideration. The attorneys for the Andrade plaintiffs request the undersigned recuse himself from further participation in this lawsuit because they contend there was bias against them and their clients. This motion is a further example of this attorney's abuse of the judicial process. As has been clear that for the past year, the attorneys representing the Andrade plaintiffs have attempted 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. None of the allegations contained in

EXHIBIT
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Plaintiffs' motion, either singularly or combined, forms a legal basis for recusal.

Although it should not be necessary, the Court reminds Mr. Caddell of a lawyer's responsibilities as set out in the Preamble to the Texas Disciplinary Rules of Professional Conduct:

> A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold the legal process.

Rule 8.02(a) further provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office." Many of the allegations contained in Plaintiffs' motion are either false or made with reckless disregard as to their truth or falsity.

As an example, Mr. Caddell asserts that the Court should recuse himself because the Government's attorneys presented gifts to the Court's staff. Having investigated, the Court has determined that as a prank played on a deputy marshal, some t-shirts were purchased by government attorneys and presented to deputy marshals. Deputy marshals are not part of the Court's staff. Neither the undersigned, nor his secretary, court reporter, or his law clerks (those persons who

constitute the Court's staff) received t-shirts, nor were even aware until now that the prank had occurred. Other "gifts" that Mr. Caddell may refer to involve the presentation of chocolate chip cookies to the clerk's office, baked by a representative of the government. Once again, the employees of the clerk's office are not members of the Court's staff, and neither the undersigned, his secretary nor law clerks received any cookies.

As a second example, Mr. Caddell complains of the Court's comments concerning Livingstone Fagan. That statement was off the record in response to another lawyer's humorous suggestion, and was not in any way intended to be taken seriously. The Court regrets the slight to Mr. Fagan's mother, should he have one.

Additionally, there is absolutely no legal basis for Plaintiffs' motion, but is merely another attempt to unnecessarily complicate this litigation. Accordingly, the Andrade Plaintiffs' Second Motion to Recuse is **DENIED**.

The Brown and Holub Plaintiffs seek reconsideration of this Court's decision to proceed to rule on the FLIR issue without an additional hearing. This decision was made as the Plaintiffs had no desire to go to London to depose the Court's expert or to appear before this Court to cross-examine him. Despite Plaintiffs' assertions, they have been on notice since the Court's Order of June 13, 2000 that the Court would resolve this issue on the pleadings and summary judgment proof that had already been filed and on the report from Vector Data Systems. The parties have had more than sufficient time since that date to present additional evidence or

argument regarding the FLIR issue. The failure to present such evidence is the fault of the parties in attempting to circumvent the clear intention of the Court that Mr. Oxlee's deposition occur in England rather than in the United States. Had the parties adhered to the Court's Order, Mr. Oxlee's deposition could have been taken and presented to the Court by this time.

The Court understands the financial straits that the Plaintiffs and their attorneys may face, but that is no more than is faced by any plaintiff in any civil suit. The fact that a party cannot afford to hire a particular expert or take as many depositions as they wish is merely a product of our legal system – there is no requirement that a defendant or the Court be forced to absorb such expenses merely because a plaintiff may wish it. In no other case has the Court required a defendant to defray as many pre-trial costs as in this one. There will be no further delay for the Plaintiffs to present any additional FLIR evidence.

The Brown and Holub Plaintiffs additionally object to being required to pay their proportionate share of the FLIR test that was conducted at Ft. Hood. The amount attributable to these Plaintiffs is a mere drop in the bucket to the total costs that were expended to hold the test and to transport the Lynx helicopter from Great Britain. There was no objection from any party at the time the protocol was finalized in St. Louis, even though all parties were represented; nor was there any objection made to the Court's Order mandating the FLIR test which clearly provided that the costs of the tests would be assessed among the parties as the Court deemed

appropriate. Accordingly, the Motion of the Brown and Holub Plaintiffs for Reconsideration of the Court's Order of August 29, 2000 is **DENIED**.

The Andrade Plaintiffs' latest attempt to delay this case is their Motion to Reopen the evidence. As with their Motion to Recuse, there is no basis for their request. Plaintiffs argue that they were prepared to present evidence regarding the Government's misconduct during the 51-day siege but did not because of the Government's stipulation that it would not seek an issue regarding contributory negligence. However, that evidence would not have been admissible regardless of the Government's stipulation. Plaintiffs obviously did not read the Court's previous Order partially granting the Government's and individual Defendants' Motions to Dismiss and/or for Summary Judgment which determined that there could be no liability for the Government's actions during the 51-day siege because those actions were covered by the discretionary function exception to the Federal Tort Claims Act. Additionally, the charge given to the jury was absolutely correct – Plaintiffs were under an obligation to submit to lawful authority and were in violation of the law for their failure to do so. Finally, the Plaintiffs' actions during that time preclude them from claiming negligence on the part of the Government as their own actions were the sole proximate cause of any injuries during that period. 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 February 28, 1993 through April

19, 1993. Accordingly, Plaintiffs' Motion to Reopen is **DENIED.**

The next issue the Court must address is the Plaintiffs' allegation that FBI agents fired into the Compound on April 19, 1993 to prevent the Davidians from exiting. As the Court previously noted, there is sufficient summary judgment proof contained in the record in this case, along with the report from Vector Data Systems, to rule upon this issue without the necessity for a hearing, although the Court did provide the opportunity for the parties to address these issues in a hearing. The basis for Plaintiffs' argument in this regard is the presence of flashes or glints of light that could be seen on the FLIR tape taken on April 19. The Court has carefully considered all of the expert testimony filed by both sides, as well as that of VDS, and has determined that Plaintiffs have failed to establish that any of those "anomalies" are gunfire. This is bolstered by the following: (1) the glints are too long in light of the signature flashes of the fastest weapons possessed by the FBI on that day; and (2) there is no detectable human presence in the vicinity of the glints. Plaintiffs' experts offer mere speculation that FBI agents could have been there and might have been wearing clothing that would not have been detected by the FLIR. Mere speculation does not constitute proof, and there is no further proof in support of those claims. Accordingly, it is **ORDERED** that the Government is entitled to Judgment as a matter of law on the FLIR issue.

After considering the pleadings, evidence, arguments and briefs, the Court enters the following findings of fact and conclusions of law:

Findings of Fact

A. Background

The background of the Davidians and the ATF investigation is set forth in the Court's July 1, 1999 *Memorandum Opinion and Order* and is incorporated herein. Therefore, the Court will not revisit those issues.[1]

B. The Events of February 28, 1993

1. The Branch Davidians (Davidians) initiated a gun battle when they fired at federal officers who were attempting to serve lawful warrants.

2. The Davidians provoked gunfire when they barraged ATF agents with gunfire directed from multiple locations.

3. The gunfire came from all floors of the Mt. Carmel Compound (Compound).

4. No ATF agent fired any shot nor used any force against residents of the Compound and the Davidians that was unprovoked.

5. Gunfire was directed at ATF agents by both male and female adult Davidians.

6. No ATF agent fired any shot nor used any force against residents of the Compound and the Davidians that was indiscriminate.

[1]The only factual issues that Plaintiffs have proven incorrect from the Court's Order were the presence of Army personnel at the scene and the use of pyrotechnic devices by the FBI. However, the Army personnel had no participation in any of the events that occurred on April 19, but acted merely as observers. Also, the pyrotechnic devices fired by the FBI did not penetrate the Compound and did not cause nor contribute to the fire.

7. ATF agents returned gunfire to the Compound in order to protect themselves and other agents from death or serious bodily injury.

8. At all times, the ATF agents' gunfire was directed at those areas of the Compound where they perceived deadly threats.

9. The ATF agents were prevented from serving the lawfully issued arrest and search warrants by the Davidians' superior fire power and defensive position.

C. The Events of April 19, 1993

1. A number of Davidians left the Compound after February 28 but before April 19, 1993.

When the FBI injected tear gas into the Compound on April 19, 1993, the remaining Davidians did not leave as instructed by the FBI. Instead certain Davidians directed gunfire at the CEV's and the Bradley vehicles.

2. 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.

3. During the course of the day, certain Davidians prevented others from leaving the Compound. During the stand-off, Davidians had blocked the doors, windows, and other areas of the Compound, thereby inhibiting egress from these areas on April 19, 1993. At least twenty-one of the Plaintiffs died of wounds that apparently were either self-inflicted or inflicted by other Davidians; twenty Davidians died of gunshot wounds and one child died of a stab wound to the chest.

4. The FBI did not prevent nor hinder any Plaintiff from leaving the building.

To the contrary, the FBI repeatedly asked the Davidians to leave the building, warned them that tear gas would be inserted, opened up egress routes, and cleared material that was blocking the front door.

5. The Davidians possessed large-caliber weapons and had used these weapons to kill and injure the ATF agents. Military vehicles were utilized to provide protection to the officers on the scene.

6. FBI agents operating the military vehicles inserted tear gas in accordance with the approved Plan of Operations on April 19, 1993. Because the plan could not provide for every contingency, it necessarily afforded discretion to the FBI agents on the scene to adapt to the evolving conditions, including, among other things, the failure of the Davidians to leave the building, the relative ineffectiveness of the tear gas due to the wind and the Davidians' gas masks, and the possibility that certain individuals inside were prevented from leaving because the exits were barricaded. Any deviation from the written plan was within the authority delegated to the agents on the scene.

7. One of the military vehicles, CEV-1, penetrated the left-front area of the compound with its boom only to insert tear gas. CEV-1 did not cause any debris to fall on nor block the trap-door located some twelve feet from the front of the building.

8. Although the FBI fired three so-called "military" CS tear gas rounds at approximately 8:00 a.m. on April 19, 1993 at the structure the Plaintiffs call the tornado shelter, no such rounds were fired into the main wooden structure. No

Plaintiff was injured by the firing of these rounds, and they had no causal relationship to the fires which broke out shortly after noon.

9. Three separate fires started within two minutes of one another, beginning shortly after noon on April 19, 1993.

10. These fires were started intentionally by Davidians, including but not limited to, Plaintiffs David Koresh,[2] Clive Doyle, Pablo Cohen and Derek Lovelock.[3]

11. The adult Davidians kept the children in the Compound after starting the fire rather than sending them to safety.[4]

12. The fires were neither caused nor contributed to by any act of the Defendant.

13. In fact, several of the Davidians were rescued by FBI agents, who faced gunfire and flames to pull them to safety. Special Agents Bryan Timmis and Mark Tilton left the protection of their Bradley Vehicles to come to the aid of Plaintiff Marjorie Thomas, who was on fire when she left the building. Special Agent James McGee actually entered the building when it was engulfed in flames and carried Ruth Riddle to safety. Neither would tell the agents where the children were located, nor

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[2]The entire tragedy at Mount Carmel can be laid at the feet of this one individual.

[3]The most telling evidence in this regard is the conversations of the Davidians captured by the FBI on the hidden microphones. While there was much discussion of spreading the fuel and starting the fire, there was no discussion of getting the children to safety.

[4]In contrast, agents of the Defendant acted reasonably in their efforts to protect the children.

would Clive Doyle after he left the building.[5]

14. The FBI's plan to combat a fire at the Compound, should any develop, did not violate any mandatory directive from the United States Attorney General. The FBI's plan relied on the firefighting resources of the local community. In accordance with the FBI's plan, the local authorities were contacted shortly after the fire started.

15. Generally, in order to rescue fire victims, firefighters must enter the structure and fight the fire from the inside. However, because gunfire continued to be heard in the Compound even as the fire consumed the building, the fire trucks were held away from the Compound temporarily, and the firefighters were not permitted to enter. In addition to gunfire, explosions from propane tanks and grenades increased the potential danger to the fire fighters.

16. The United States Attorney General did not mandate that the FBI have armored fire trucks or other equipment available on scene. In fact, she was aware that civilian firefighters would not be permitted to approach the Compound while the Davidians were shooting.

17. There is no proof that armored fire fighting vehicles that were available would have been effective due to their limited water reservoirs, the lack of a water supply at the scene, and the extreme speed in which the Compound was engulfed

[5]The actions of these agents are the most telling evidence that the Government did not plan to intentionally harm the Davidians either by shooting them or by setting fire to the Compound. It is inconceivable that these agents were the only ones not part of the "conspiracy." Likewise, had the Government intended to burn the Davidians out, the FBI would have used a true incendiary device rather than the ferret rounds actually used.

in flames .

18. The only gunfire on April 19, 1993 was generated by certain Davidians inside the Compound. There was no gunfire from any employee of the United States that day. None of the surviving Davidians saw or heard gunfire from any FBI agents, members of the military, or any person other than the Davidians at Mt. Carmel on April 19, 1993. Certain of the events that morning were recorded by the FBI's airborne forward looking infrared (FLIR) camera. Although the FLIR tapes do not show any people outside the Compound before the fire, the system did record a number of flashes in the area around the compound during the late morning. These flashes are too short in duration to have been caused by gunfire.

19. The Andrade and Holub Plaintiffs have stipulated that the following weaponry and ammunition were found in the Compound following the April 19, 1993 fire:

Sixty one (61) AK-47 rifles;

Sixty-one (61) M-16 rifles;

Thirty-four (34) semi-automatic AR-15 rifles;

Three (3) Galil rifles;

Eleven (11) FN-FAL Belgian rifles;

Ten (10) Ruger Mini-14 semi-automatic rifles;

Five (5) M-14 rifles;

Two (2) .50 caliber rifles;

Two (2) SP-89 firearms;

Five (5) MAC-11/9 firearms;

Thirteen (13) shotguns

Six (6) .30 caliber carbines;

Over fifty (50) pistols and revolvers;

A British semi-automatic Sten gun;

Other assorted rifles;

Forty-eight (48) of the firearms found in the Compound had been modified to shoot in a fully automatic mode;

Barrels for AR-15 or M-16 rifles; one barrel for a M-60 machine gun; and four (4) barrels for other firearms;

A number of illegal silencers and several silencer components;

Hundreds of cartridge magazines and magazine springs for various firearms;

Hundreds of thousands of rounds of ammunition, some cooked off;

Several hundred rounds of spent ammunition;

A number of grenade rockets, rocket heads and a wide variety of gun parts;

One live hand grenade;

Hundreds of pieces of exploded pineapple-type hand grenade fragments;

Hundreds of pineapple-type hand grenade hulls and several baseball-type hand grenade hulls, and seven (7) flare launchers.

20. Any finding of fact which would more appropriately be a conclusion of law

is deemed so.

Conclusions of Law

1. Jurisdiction is vested in this Court by virtue of the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and 2671, *et seq.* (FTCA). The FTCA is a limited waiver of sovereign immunity for claims sounding in tort.[6] Plaintiffs contend venue was proper in the Southern District of Texas, Houston Division, where Plaintiffs' claims were initially filed, but do not challenge venue at this point in the Waco Division of the Western District of Texas.

2. Under the FTCA, Texas law governs this case.

3. Under the FTCA, Texas negligence law governs this case.

4. As a matter of Texas law, the Government was negligent if one of its agents, a) failed to do what a person of ordinary prudence would have done under the same or similar circumstances; or b) did what a person of ordinary prudence would not have done under the same or similar circumstances.

5. As a matter of Texas law, the Government's agents must exercise that degree of care that an ordinary prudent person would have used under the same or similar circumstances.

6. As a matter of Texas law, although the duty owed to children by the Government's agents is generally the same as that owed to adults, the risk of injury

[6] Those Plaintiffs remaining in the lawsuit as of the filing of these Findings of Fact and Conclusions of Law have satisfactorily established that they have exhausted their administrative remedies under the FTCA.

to a child may be greater than that posed to an adult by the same condition or act. Therefore, the exercise of ordinary care toward a child may require different conduct than would be required toward an adult.

7. As a matter of Texas law, a child under five years of age cannot be negligent.

8. As a matter of Texas law, a child at least five years old and under fourteen years old was negligent only if that child, a) failed to do what an ordinary prudent child of the same age, experience, intelligence and capacity would have done under the same or similar circumstances; or b) did what such a child would not have done under the same or similar circumstances.

9. As a matter of Texas law, a child at least five years old and under fourteen years old must exercise only that degree of care that an ordinary prudent child of the same age, experience, intelligence and capacity would have used under the same or similar circumstances.

10. As a matter of Texas law, a person who is fourteen years old or older is negligent only if that person, a) failed to do what a person of ordinary prudence would have done under the same or similar circumstances; or b) did what a person of ordinary prudence would not have done under the same or similar circumstances.

11. As a matter of Texas law, a person who is fourteen years old or older must exercise that degree of care that an ordinary prudent person would have used under the same or similar circumstances.

12. As a matter of Texas law, the negligence of a parent will not be imputed to a child with respect to a cause of action by the child's estate for survivor damages.

13. As a matter of Texas law, only the negligence of a parent that was a proximate cause of the death of the child will be considered in allocating responsibility with respect to the parent's wrongful death cause of action.

14. As a matter of Texas law, proximate cause means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event, but if an act or omission of any person other than the defendant or the particular claimant (deceased or injured party) was the "sole proximate cause" of an event, then no act or omission of any other person could have been a proximate cause.

A. The Events of February 28, 1993

1. It is the law of the case that the United States cannot be held liable for any claims based upon the decision to use a "dynamic raid and entry" to serve the warrants because these claims are barred by the discretionary function exception to the waiver of sovereign immunity. Likewise is the decision not to attempt to arrest David Koresh away from the Compound.

2. Moreover, ATF's decision to use a "dynamic raid and entry" to serve the

warrants was reasonable under the circumstances in light of the accumulation of weapons by the Davidians.

3. The ATF agents complied with the law, including identifying themselves and their purpose at the outset, in attempting to execute the arrest and search warrants at the Compound.

4. Because ATF agents did not fire without provocation or in an indiscriminate manner, the use of force by ATF agents was reasonable under the circumstances and cannot result in liability.

5. A law enforcement officer is privileged to engage in certain conduct which could normally be considered tortuous because the officer "has acted to further an interest of such social importance that it is entitled to protection, even at the expense of damage to the Plaintiff. The Defendant is allowed freedom of action because his own interest, or those of the public, required it, and because social policy will best be served by permitting it. *Hinojosa v. City of Terrell, Texas,* 834 F.2d 1223, 1231 (5th Cir. 1988) (quoting W. Keeton, Prosser and Keeton on Torts, 16 (5th edition 1984)). As stated in *Hinojosa*, a police officer in Texas is also privileged even to use force when necessary in the performance of his duties as an officer. *Id.*, citing the Texas Penal Code Annotated, §§ 9.21-9.22, 9.51, 9.52. Further, an officer in the state of Texas has an affirmative duty to execute all lawful process issued to him by any Magistrate or Court. Texas Code of Criminal Procedure, Annotated, Article 2.13.

B. The Events of April 19, 1993

1. It is the law of the case that the United States cannot be held liable for any claims based upon the decision to use tear gas in the April 19, 1993 attempt to end the stand-off because these claims are barred by the discretionary function exception.

2. Likewise, the decision to use tanks to insert the tear gas is protected by the discretionary function exception. The FBI had discretion as to the type of vehicles and equipment to use in attempting to achieve the goals of the operation which were grounded in law enforcement policy. Given that the discretion to use tear gas is protected, the decision as to the type of vehicles and equipment to use in insertion is necessarily protected as well. *See United States v, Faneca,* 332 F.2d 872, 874-75 (5th Cir. 1964), *cert. denied*, 380 U.S. 971 (1965) (barring claims based on the decision to use tear gas, the *"modus operandi* and the time to put it into action").

3. Therefore, Plaintiffs' claim alleging that the FBI was negligent in proceeding with the tear gas operation in light of the information available regarding the condition of the building, the habits of the Davidians, and the weather is also barred by the discretionary nature of the conduct at issue. The exception covers negligence and abuse of discretion, as well as the failure to consider possible alternatives. *Myslakowski v. United States*, 806 F.2d 94, 97-98 (6th Cir. 1986), *cert, denied*, 480 U.S. 948 (1987)("Indeed, it is, in part, to provide immunity against

liability for the consequences of negligent failure to consider the relevant, even critical matters in discretionary decision-making that [§ 2680(a)] exists.") Thus, even assuming that the decision to proceed with the operation failed to consider the possibility that the Davidians might start a fire–and thus "could be shown to have been made without consideration of important, relevant factors, or was a decision negligently reached," *id.*–the discretionary function exception bars the claim. *See Red Lake Band of Chippewa Indians v. United States,* 800 F.2d 1187 (D.C. Cir.1987) (barring claims based on failure to assess information received and to have alternative plan in place).

4. Similarly, Plaintiffs' claim that the use of military tanks to insert tear gas caused the Davidians to refuse to surrender and to set the building on fire, killing their children and themselves, is barred because this claim is "based upon" and arises out of conduct that is encompassed by the discretionary function exception. *See* 28 U.S.C. § 2680(a) (barring any claim "based upon" the exercise or performance of a discretionary function); *Fisher Bros. Sales, Inc. v. United States,* 46 F.3d 279 (3rd Cir.) (en banc), *cert. denied, Balmaceda, Inc. v. United States,* 116 S.Ct. 49 (1995) (barring claim deemed "based upon" discretionary decision to suspend importation of fruit, notwithstanding plaintiffs' contention that claim is predicated on negligent chemical analysis underlying the decision).

5. Further, the Court finds as a matter of law that the use of tear gas, an

accepted law enforcement practice, was reasonable under the circumstances, given the refusal of the Davidians to comply with lawful orders to surrender. Texas has accorded privileges to its law enforcement officers in the performance of their duties as officers. *Hinojosa v. City of Terrell, Texas,* 834 F.2d 1223, 1231 (5th Cir. 1988), *cert. denied*, 493 U.S. 822 (1989) (privilege protects actor from finding of tortuous conduct). Under the FTCA, the United States may invoke privileges available to state law enforcement officials. *Id. See also, Louie v. United States,* 776 F.2d 819, 824-25 (9th Cir. 1985). The use of tanks to insert tear gas to end the 51-day stand-off between federal officers and armed resisters was privileged under Texas law which allows officers to use that force necessary to make or assist in making an arrest or search. *See* Texas Penal Code § 9.51.

6. Moreover, even if the United States was negligent in causing damage to the building prior to the start of the fire, such negligence was not the proximate cause of the Plaintiffs' injuries. The intervening criminal acts of certain Davidians in starting the fire was a superceding cause that was different in kind from that which would otherwise have resulted from such negligence. It therefore broke any purported causal connection between the damage to the building and the Plaintiffs' injuries. *See Skipper v. United States,* 1 F.3d 349, 353 (5th Cir. 1993) (murder committed by intoxicated boyfriend was superceding cause which extinguished any liability on the part of club that served alcohol to him because premeditated murder was not "of

such a general character as might reasonably have been anticipated" by the club); *Phan Son Van v. Pena*, 990 S.W.2d 751 (Tex. 1999) (gang members' criminal conduct and harm inflicted was extraordinary in nature and not of the type generally contemplated by unlawfully furnishing alcoholic beverages to minors and thus was superceding cause of injuries and death).

7. Because the fire was started by certain Davidians, the United States owed no duty to protect the remaining Davidians from the fire and no special relationship existed between the Plaintiffs and the United States which would invoke such a duty. *See Crider v. United States*, 885 F.2d 294, 299 (5th Cir. 1989), *cert. denied*, 495 U.S. 956 (1990) ("it presses the potential liability of law enforcement officers-or of any group-to the extreme to suggest that just because having a contact with a potentially dangerous actor they become responsible for his conduct"). Despite this, a number of FBI agents risked their lives to assist Davidians from the burning Compound and to attempt to save the children.

8. Because the fire was started by certain Davidians, the United States owed no duty to rescue the remaining Davidians from a peril it did not cause. *See Ohler v. Trinity Portland Cement Co.*, 181 S.W.2d 120, 127 (Tex. Civ. App.-Galveston 1944).

9. The FBI's decision not to allow the fire trucks upon the property was reasonable. The on-scene commander would not allow the fire trucks to approach the Compound given the risk of injury or death posed to firefighters by the gunshots

coming from the Compound. His decision not to allow the fire trucks to approach the Compound until it was safe for them to do so was reasonable under the circumstances and therefore cannot result in liability.

10. Plaintiffs' related claim based on the failure to have specialized equipment that may have enabled firefighters to approach the compound sooner despite the gunfire is barred by the discretionary function exception. The decisions as to the type of equipment to be utilized fall within the exception because they are "susceptible to policy analysis." *United States v. Gibbered,* 499 U.S. 315, 325 (1991). *See Brown v. United States*, 790 F.2d 199, 203 (1st Cir. 1986), *cert. denied*, 479 U.S. 1058 (1987) (barring claim that death of fisherman was caused by failure to obtain more or better equipment because "[all of these are matters which Congress reserved, both to itself in respect to appropriations, and to the agencies' conduct by the discretionary function exception").

11. Any conclusions of law which should more appropriately be a finding of fact is deemed so.

SIGNED this 20th day of September, 2000.

Walter S. Smith, Jr.

WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE

FILED
SEP 20 2000
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

ISABEL G. ANDRADE, ET AL., Plaintiffs,	§	
v.	§	Civil No. W-96-CA-139 (Consolidated)
UNITED STATES OF AMERICA, *et al.*, Defendants.	§	

JUDGMENT

In accordance with the findings of fact and conclusions of law entered in this case on this date, the Court enters judgment as follows:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs take nothing against any Defendant in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs are to be borne by the party incurring same.

SIGNED this 20th day of September, 2000.

Walter S. Smith, Jr.

WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE

HR 1 - Richard M. Rogers
Assistant Special Agent in Charge, Hostage Rescue Team
HR 2 - Stephen P. McGavin
Supervisory Special Agent, Hostage Rescue Team

7:48:55 a.m. (4/19/93)

HR 2: HR 2 to HR 1

HR 1: Go ahead, it's HR 1

HR 2: [unintelligible] supplying Charlie 1 [unintelligible] with relative safety utilizing the vehicle for cover and attempt to get [unintelligible] penetrate the construction project

HR 1: You're talking about the block over top the construction?

HR 2: Say again, HR 1

HR 1: Are you saying he can penetrate the block covering over the construction on the green side?

HR 2: Ten-four. He thinks he can get into position with relative safety utilizing the track for cover and attempt to penetrate it with military rounds

HR 1: Roger. Of course, if there's water underneath that's just going to extinguish them but you can try it

HR 2: Ten-four. Copy. He can try it?

HR 1: Yeah, that's affirmative



CHARLIE 1 - Bradley Vehicle #3, Green (left) Side

HR 1 - Richard M. Rogers
Assistant Special Agent in Charge, Hostage Rescue Team

ECHO 1 - Bradley Vehicle #4, Black (back) Side

8:08 a.m. (4/19/93)

CHARLIE 1: Charlie TOC to HR 1

[Pause]

CHARLIE 1: Yeah, the military gas did not penetrate that, uh, bunker where the bus was. Copy.

[Pause]

CHARLIE 1: It bounced off.

[Pause]

CHARLIE 1: That's a possibility. If [unintelligible] CEVs to push this fence back here, we can get in there and get a good angle.

[Pause]

CHARLIE 1: I don't think so but if you took it slow.

[Pause]

CHARLIE 1: The walls to this thing are, uh, concrete poured.

[Pause]

CHARLIE 1: Yeah, the walls to the, uh, around the bus are poured concrete.

ECHO 1: Echo 1 to Charlie 1

CHARLIE 1: Go ahead Echo 1

ECHO 1: Yeah, if you come to the, uh, green/ black side of that structure, I think there's an opening there that you may be able to shoot through - a doorway.

CHARLIE 1: Is it an underground bus?

ECHO 1: Uh, it's just the green side of the, uh, big water tower.

CHARLIE 1: Ten-nine, HR 1

ECHO 1: If you come just to the green side of the big, tall water tower and look toward the white side from there, you should be able to see a --

CHARLIE 1: Ten-four

ECHO 1: -- a doorway in the unconstructed part.

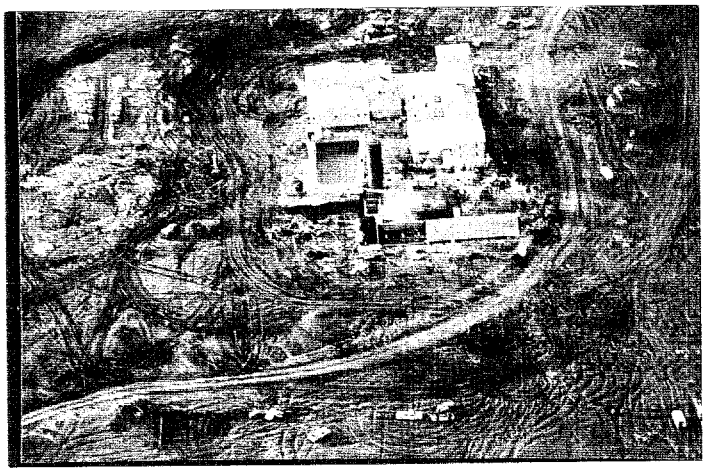

EXHIBIT
15

INVESTIGATIVE REPORT #2

BRANCH DAVIDIAN EVIDENCE

JANUARY 2000

COMMISSION
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TEXAS RANGERS
BRUCE M. CASTEEL, CHIEF
G.E. POWELL, ASSISTANT CHIEF
RANGER SERGEANT JOEY D. GORDON

EXHIBIT
16
FBI/CID-Bayonne, N. J.

TEXAS RANGERS

DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM

DATE: 2/16/00

DIVISION: Ranger

TO: Chief Bruce Casteel, Senior Captain, Texas Rangers

FROM: Ranger Sergeant Joey D. Gordon

SUBJECT: Branch Davidian Report # 2

The investigation of evidence held by the Texas Department of Public Safety (DPS) in File Number RF093021 (The Branch Davidian Investigation) has continued. The parameters set for the original scope of this investigation were to identify certain evidence that was of question and report to you. To further that objective, I have continued to locate evidence, which I then inspected and evaluated to make a proper identification. There have been various limitations on my investigation of the evidence, and not all items held by DPS have been inspected. This report will summarize key events regarding the disposition of the evidence and will report to you my findings of the specific evidence I have evaluated.

My first report to you was placed on the Internet and it is my understanding that this report will also be placed on the Internet. So that this report will more directly reflect insight into my observations, I have placed many photographs as Attachments to show aspects of significant interest and detail. This will more fully facilitate others being able to examine the evidence for reference and inspection.

The main bulk of evidence held by DPS in Austin was contained in a locked storage room. Between 09-20-99 and 09-22-99, an inventory of this evidence was made and was logged in by Bill Putnicki, the Clerk for the United States District Court for the Western District of Texas. Beside myself, other Texas Rangers who worked on this inventory were:

1. Ranger Lieutenant Jim Miller, who was the original evidence officer for DPS of the Branch Davidian investigation.
2. Ranger Lieutenant Ray Coffman, who was a team leader during the investigation in 1993 at Waco and was, among many other things, in charge of the search of the bunker.
3. Ranger Sergeant George Turner who was a team leader in 1993 at Waco and was the collector of many key pieces of evidence.
4. Ranger Captain Charlie Brune, Headquarters.
5. Ranger Chief Bruce Casteel, Senior Captain.

Lieutenant Jim Miller has submitted a memorandum to you which outlines events involving this evidence and access to the evidence between August 1998 through June 1999. This memorandum is Attachment A.

During the inventory, all explosives, which included ammunition, and functioning weapons, were separated and placed in separate boxes for identification and special handling by the Court Clerk.

This evidence was turned over to the U.S. Marshals and then taken to Waco on 09-23-99 for the Court and delivered to U.S. Federal District Judge Walter Smith.

On 10-04-99, Assistant Director Thomas Davis directed that anything DPS personnel had in their custody related to the Branch Davidian investigation was to be turned in to the Court. No one was authorized to retain any document, record, or tangible item, including reports, copies of reports, diagrams, sketches, field notes, photocopies of records, and photographs. No copies were to be retained. These items were then collected by the Major Division Chiefs, inventoried by Captain Brune and turned over to the Court on 10-14-99. I was unable to inspect all of these items before they were transferred to the Court. I was allowed to retain my notes and other items in my possession until this report was complete. These items were then turned over to the U.S. District Court Clerk. A copy of this order is Attachment B.

An item of evidence that needs special mention is the original negatives of photographs and field notes taken by DPS Forensic Photographers. All notes and film were turned over to the Federal Bureau of Investigation (FBI) by DPS in 1993 as ordered by the U.S. Attorney's Office. An incomplete set of prints were given back to the DPS and the field notes were not returned. After this investigation began, the DPS Photo Lab received the negatives and field notes they had taken in Waco. Two memorandums, which report this receipt and the report that they are still missing one (1) roll of film, are Attachment C. I had made arrangements with Federal Judge Walter Smith to provide him with a "contact sheet" of each negative which was sufficient; however, since the above mentioned directive by Director Davis, all original negatives, prints, and field notes were transferred to the Court.

In my first report I identified Q1237 as the expended shell casing from an XM651E1 CS gas cartridge. Attachment I of that report was a photograph of what appears to be a projectile of the same characteristics as an XM651E1 or projectiles of the M651 family. When DPS Forensic Photographer Kent Kinkade received his original negatives and field notes, he advised that he took the photograph as the fourth (4th) picture in Roll #6 on 04-30-93. In his notes, he located the item at 200 yards northwest of the tower and described it as a 40-mm canister, brass/gray with red band. Kinkade advised me that the tall round metal tower at Mt. Carmel Center was what he estimated the distance from, and believed that one of the Davidian buses was near the location. This item was not found in Austin during the inventory of evidence held by DPS.

An inspection of the evidence held in Waco was conducted on 11-17-99 and 11-18-99. During this inspection the projectile in Attachment I of my first report was not found. I will give more details of that inspection later in this report.

The DPS Laboratory also conducted further documentary tests on Q 1237. These reports, photographs, and Q 1237 were turned over to the custody of the Clerk for the U.S. District Court. Photographs were taken with filters and lenses which show very close-up details of the casing and clearly show the lot number as NCI 3-38-1. Q 1237 was also imaged into the Drug Fire System as DF #526.

Also, in reference to the use of tear gas by the FBI on 04-19-93, Ranger Captain Earl R. Pearson has submitted a memorandum to you on 09-03-99. Captain Pearson was the Ranger Lieutenant in Waco in 1993 and his memorandum is Attachment D.

The items, which were separated during the inventory in Austin and examined by me, are detailed in the following paragraphs. Where applicable, items are identified by their Original Exhibit Number (EXHNUM), the Court Exhibit Number, and the Q or K number. I also reported the Court Clerk's inventory number and the box number that each item was placed in. The paragraphs also contain a description, related information, and observations I made about each item. In some cases, I gave information from inventory logs and FBI Laboratory reports. The logs and laboratory reports, that I had access to, were incomplete and in many instances conflicted with each other. I have explained some of the conflicts that I observed, but there were too many to document. To make a final evaluation of how each item was analyzed and logged, the most recent and complete laboratory reports and logs are needed.

I have reported the sector and grid location of each piece of evidence discussed in this report where applicable. To reference any piece of evidence to a specific location at the crime scene, these coordinates must be known and then referenced to a map with sector and grids shown. In my first report to you, in Attachment A, I included a map showing the sectors. I have been unable to find a map which details the grids for the sectors. I have talked with several of the Texas Rangers assigned over the sectors, as team leaders, and was advised that each Ranger so assigned made his own grid pattern for that sector which best suited that area. There was no uniform format for the grid patterns in the sectors. There were some similarities in grid patterns; however, reporting them here would only complicate the issue. Since the exact location is of importance, the specific grid for that sector must be referenced. I have been advised that a detail of the grid system used by each team leader would be reported in his reports or that of his team recorder.

EXHNUM 000675 is a brown paper bag marked 675 containing two (2) parachutes with a chain and burned/expended disc, one (1) parachute flare M583A1 capsule body, and one (1) nose cap for a white star M583A1 flare. There is no Court Number, or K or Q number. These items were assigned number 01794 by the Court Clerk and placed in Box 209. The Court Clerk mislabeled these items as "PARACHUTE FLARES (2 EXPLODED) (1 UNEXPLODED)". Both of these flares are expended. Photograph 1 in Attachment E depicts these items. The attached yellow tag reveals that they were recovered in Sector F, Grid FIC. These items do not appear to have been analyzed by the FBI Laboratory. In my first report on page 6, 3^{d} paragraph, I discussed the items of evidence that were inspected and contained in a conex box in Waco. These two (2) parachutes and capsule match the M583A1 capsule found in the Waco evidence on 09-03-99. This was found under C-596: "Fired Tear Gas Shell" found in Sector F Grid C6A. Photograph 2 in Attachment E depicts C-596.

The fired shell casings recovered from the under cover houses were found in a small brown box which was marked "WACMUM Q 329 – Q 362 – Q 364 – Q372, Q 377, Q 378." Inside the box were eight (8) clear plastic bags containing fired shell casings, a bag with bullet fragments marked Q 372, a burned and broken set of handcuffs marked Q 377, and a bag of five (5) shotgun wads marked Q 378.

The Court Clerk assigned numbers to Q 372 as 01802, Q 377 as 01804, and Q 378 as 01803. These items were then placed in Box 214.

The other eight (8) bags containing the shell casings are described as follows:

A. Clear plastic bag containing fourteen (14) .223 REM cases marked as EXHIBIT UCA 4D. They are also Q 329 through Q 342. The yellow label attached shows this to be EXHNUM

000298 and UBA – 4D (probably a typo). There is a torn piece of paper with a hand-written note: "Empty .223 casings found in the long hall area." Each of these casings is individually marked inside a blackened area on the neck of each case. Photograph 1 in Attachment F depicts these items. They were assigned number 01770 by the Court Clerk and placed in Box 214.

B. Clear plastic bag containing ten (10) .223 REM cases, marked as EXHIBIT UCA 4A. They are also Q 343 through Q 352. The yellow label attached shows this to be EXHNUM 000299. There is a torn piece of paper with a handwritten note: "Empty .223 casings found in the living room." These items were assigned number 01797 by the Court Clerk and placed in Box 214. Photograph 2 in Attachment F depicts these items.

Note: The FBI Laboratory report dated 12-13-93 reports on page 15 that "Specimens Q 329 through Q 352 are twenty-four (24) .223 caliber cartridge cases of Israeli manufacture that bear firing pin impressions." I inspected the headstamp, which does indicate these cases were made in 1990 by the Israeli Military Industries (IMI). The TZZ is one of their headstamps.

C. Clear plastic bag containing nine (9) .308 WIN casings made by F.C., which is Federal Cartridge Company. The bag is marked as UCA 4B and contains Q 353 through Q 361. The yellow label attached shows these to be EXHNUM 000300. There is a torn piece of paper with a handwritten note: "Empty .308 caliber cartridges found in bedroom facing compound on 03-26-93." These items were assigned number 01768 by the Court Clerk and placed in Box 214. Photograph 3 in Attachment F depicts these items. Each of these shell casings has been individually marked in a blackened area just below the shoulder of the case.

D. Clear plastic bag containing three (3) .308 WIN casings made by FC, marked UCA 4C. These are Q 362 through Q 364. The yellow label attached shows these to be EXHNUM 000301. There is a torn piece of paper with a handwritten note: "Empty .308 casings found in the living room area." On the other side of this paper it reads: "SA Jerome A. Barker FBI." These were assigned number 01769 by the Court Clerk and placed in Box 214. Photograph 4 in Attachment F depicts these items. Each of these casings has been individually marked in a blackened area on the neck of the casing.

Note: Photographs 5, 6, and 7 of Attachment F show the relationship of the three (3) handwritten notes found in the plastic bags described in subparagraphs A, B, and D. These are torn from the same piece of paper and have consistent handwriting. The note on the back shows FBI S/A Jerome A. Barker and is most likely the agent turning these items over to Ranger Sergeant Calvin Cox. The note described in subparagraph C does not match this page or handwriting. Report RF093021-V.12 by Ranger Sergeant Ronny Griffith reports the search of the undercover houses. This report, including all original notes, diagrams, and photos was turned over to the U.S. District Court. Sergeant Griffith lists Sergeant Cox and Ranger Sergeant T.E. Almond (retired) as in the chain-of-custody of the shell casings. I contacted Sergeant Cox, Sergeant Almond, and Sergeant Griffith. Sergeant Cox advised that a federal agent had given him the bags of shell casings at Mt. Carmel Center during the early stages of the investigation after the fire. The agent advised that the shell casings were recovered by the FBI as they took control of the undercover house from the Federal Bureau of Alcohol, Tobacco, and Firearms (A.T.F.). It was believed these shell casings were fired by A.T.F., the day of their initial raid, and left at the undercover house. Sergeant Cox had then turned the casings over to Sergeant Griffith and Sergeant Almond. During the search of the undercover houses, the three (3) .45 ACP casings, the 22-250 REM case and one (1) .308

WIN FC casing were found. The shell casing of question is this .308 WIN. Sergeant Almond placed it into the bag containing eight (8) other .308 WIN casings which were then assigned numbers Q 353 through Q 361. On page 16 in the FBI Laboratory report on 12-13-93, it reports examination results on these shell casings. It states that:

> "Specimens Q353 through Q364 are twelve .308 Winchester caliber cartridge cases of Federal manufacture that bear firing pin impressions."
>
> "It was determined that Q 353 through Q 356, Q 358, Q 359, and Q 361 were all fired in the same firearm."
>
> "It was determined that Q 357 and Q360 were fired in the same firearm."
>
> "It was determined that Q 362 through Q 364 were fired in the same firearm."

Evidence logs show that A.T.F. had submitted test "cartridges and bullets" from three (3) Remington Model 40-X rifles in .308 to the FBI Laboratory. On 04-01-93, EXHNUM 00075 was submitted as test samples from Remington 40-X Serial number (S/N) 058854B and is also known as K9. K9 was assigned number 00542 by the Court Clerk and placed in Box 74. On 04-01-93, EXHNUM 00143 was submitted as tests from Remington 40-X S/N 058895B and is also known as K 77. On 04-15-93, EXHNUM 00169 was submitted as test samples from Remington 40-X S/N 058852B and is also known as K102. K 77 and K 102 were assigned number 0541 by the Court Clerk and placed in Box 74. In the reports I examined, I did not find any comparison results of K9, K77, and K102 with Q 353 through Q 364.

E. Clear plastic bag containing one (1) .45 ACP casing and marked VCC-2. This is Q 365 and EXHNUM 000302. It appears to have been exposed to elements for an extended period of time and has mud in it. This casing is marked TZZ 85 which indicates it is Israeli made by IMI. Photograph 8 in Attachment F depicts this item. It was assigned number 01798 by the Court Clerk and placed in Box 214.

F. Clear plastic bag containing one (1) .45 ACP casing and marked UCC-3. This is Q 366 and EXHNUM 000303. It is marked CBC, which indicates it was made by Brazil/Companhia. Photograph 9 in Attachment F depicts this item, which was assigned number 01800 by the Court Clerk and placed in Box 214.

G. Clear plastic bag containing one (1) .45 ACP casing and marked UCC-1. The casing is of Remington Peters and is Q 367 and EXHNUM 000304. Photograph 10 of Attachment F depicts this item which was assigned number 01799 by the Court Clerk and placed in Box 214.

NOTE: Q 365, Q 366, and Q 367 which are described in the above subparagraph E, F, and G were tested by the FBI Laboratory, and in their report dated 12-13-93, on Page 16 it reports that all were fired in the same firearm. These were recovered between undercover houses A and B. They all appear to be old.

H. Clear plastic bag containing one (1) 22-250 REM casing made by Remington-Peters. The bag is marked UCC-4. It is Q 368 and EXHNUM 000305. Photographs 11 and 12 in Attachment F depict this item, which was assigned number 01801 by the Court Clerk and placed in Box 214. Q 368 was found in the driveway of undercover house B and has dents and marks as if it had been run over by a vehicle.

The box containing the items described in sub-paragraphs A through H also showed that it was to contain Q 369, Q 370, and Q 371. These are all described as bullet/projectiles. None were in this box. A search of the inventories revealed that:

A. Q 369 is EXHNUM 000295 and Court Number 332. It was assigned number 000369 by the Court Clerk and placed in Box 048.

B. Q 370 is EXHNUM 000296 and Court Number 333. It was assigned number 000717 by the Court Clerk and placed in Box 65.

C. Q 371 in EXHNUM and Court Number 331. It was assigned number 00700 by the Court Clerk and placed in Box 65.

A search for all items reported to be silencers or suppressors was made to determine if any were in reality "flash bangs" that had been misidentified. Also, any "flash bangs" found would be inspected. All "flash bangs" and silencer/suppressors or items suspected of being silencer/suppressors were separated, inspected and inventoried for future reference.

There were three (3) silencers which were attached to weapons. All three (3) were modified extensively and I did not attempt to make certain determination about these weapons because it was not relevant to the scope of this investigation. For example, I did not open these weapons and function the fire control system to determine if the weapons had been made full-automatic or not. This would possibly destroy parts and evidence which may be relevant in a future investigation. The silencer being properly identified was the relevant factor to this inspection. I did, however, make observations of these weapons and it is so noted in the details describing each weapon. These weapons with silencers are Photograph 13 in Attachment F and are described as follows:

A. EXHNUM 001516 is an Olympic Arms, SGW, Model CAR-AR, S/N T9164, "assault" type carbine. This weapon has been modified to a larger caliber (9mm), the barrel has a suppressor, and the gas system has been removed. This weapon has a scope and no front sight. It has been assigned number K 209, C 1516, and Court Number 538. Photograph 14 of Attachment F depicts this weapon which was found in Sector M Grid 5B62. This weapon is normally a semi-automatic rifle; however, it has been extensively modified and burned and I did not make a determination if this weapon has been converted to full-automatic. The weapon's safety was set on the "fire" position. K 209 was assigned number 01773 by the Court Clerk and placed in Box 207.

B. EXHNUM 001526 is an Olympic Arms, SGW, Model CAR-AR, S/N T8542, "assault" type carbine. This weapon has been modified to a larger caliber (.45), and the barrel has a suppressor. It has been assigned number K199, C1526, and Court Number 542. Photograph 15 of Attachment F depicts this weapon which was located in Sector M, Grid 5B66. This weapon is normally a semi-automatic rifle; however, it has been extensively modified and burned and I did not make a determination if this weapon has been converted to full-automatic. It is noteworthy that on K 199, the safety was in the rear position, which is a full-automatic position to the AR-15/M-16 rifle family system. The suppressor on K 199 is welded to the upper receiver and the gas system could not be observed. K 199 is assigned number 01772 by the Court Clerk and placed in Box 207.

C. EXHNUM 001541 is an Olympic Arms, SGW, Model CAR-AR, S/N T8754, "assault" type carbine. This weapon has been modified to a larger caliber (9 mm), the barrel has a suppressor and is threaded, the magazine well has been modified to take the shorter cartridge, and the gas system has been removed. This weapon has a scope and no front sight on the barrel. It has been assigned numbers K 196, C 1541, and Court Number 543. Photograph 16 of Attachment F depicts this weapon which was found in Sector M, Grid 5B67. Normally this is a semi-automatic rifle; however, it has been extensively modified and burned, and I did not make a determination if this weapon has been converted to full-automatic. The weapon's safety was set on the "fire" position. K 196 was assigned number 01774 by the Court Clerk and placed in Box 207.

One silencer was found on a firearm barrel and was thus easily identified as a silencer and not a "flash bang". EXHNUM 001212 is a silencer on an M-16 barrel that has been modified to 9 mm. It was assigned numbers K 142, C 1212, and Court Number 473. It was found in Sector M, Grid 5B11 and was not inspected by me. K 142 was assigned number 00041 by the Court Clerk and placed in Box 10.

The following items were found to be silencers/suppressors or material believed to be used to make a silencer/suppressor and were properly identified as such. These are as follows:

A. EXHNUM 00982 is two pieces of metal pipe contained in a sealed, clear plastic bag with another plastic bag. It has been assigned number K 407, K 407A, C982, and Court Number 843. Photograph 17 of Attachment F depicts these items which were found in Sector I, Grid B1. These items were initially submitted as "possible silencers" and were identified by the FBI Laboratory as "silencer tube". K 407 and K 407A were assigned number 01789 by the Court Clerk and placed in Box 209.

B. EXHNUM 001091 is a metal tube which is modified in a clear plastic bag inside a white cardboard box. It has been assigned number K 392, C 1091, and Court Number 844. Photograph 18 in Attachment F depicts K 392 which was found in Sector 1, Grid B1. The FBI Laboratory has identified K 392 as a "silencer". K 392 was assigned number 01785 by the Court Clerk and placed in Box 209.

C. EXHNUM 001099 is two (2) metal tubes which have been modified to be silencers. They are in a clear plastic bag inside a white cardboard box. It has been assigned number K 408 and K 408A, and Court Number 934. Photo 19 of Attachment F depicts these items which were found in Sector N Grid 3-25. The FBI Laboratory identified both as "Silencer Tube." K 408 and K 408A were assigned number 01784 by the Court Clerk and placed in Box 209.

D. EXHNUM 001164 contains two (2) metal tubes in a plastic bag inside a white cardboard box. The box is marked "2 silencers" with other markings. They have been assigned K 448 and K 448A with Court Number 841. Photograph 20 in Attachment F depicts this item. The FBI Laboratory describes K 448 and K 448A as silencer tubes. They were found in Sector I Grid B1. K 448 and K 448A were assigned number 01791 by the Court Clerk and placed in Box 209.

E. EXHNUM 001242 is a metal tube in a closed clear plastic bag. It has been assigned number K 429, C 1242, and Court Number 842. Photograph 21 in Attachment F depicts this item which was found in Sector I Grid B01. The FBI Laboratory identified K 429 as a "silencer tube." K 429 was assigned number 01787 by the Court Clerk and placed in Box 209.

F. EXHNUM 001348 contains six (6) burned silencers each in a plastic bag with all in one (1) white box. K 415 is Court Number 215, K 415A is Court Number 216, K 415B is Court Number 217, K 415C is Court Number 218, K 415D is Court Number 219, and K 415E is Court Number 220. Photograph 22 of Attachment F depicts all six (6) items and all were found in Sector O Grid D4. They are all identified as silencers and it is noted that K 415D is similar, in size and shape, to a "flash bang", but has wire inside as a silencer. All six (6) items in EXHNUM 001348 were assigned number 01790 by the Court Clerk and placed in Box 209. It is also noted that K 415A through K415C are also listed under EXHNUM 001122 and Court Number 930. These items are described as component firearms and were assigned number 00358 by the Court Clerk and placed in Box 047.

G. EXHNUM 001387 is a brown box in plastic containing numerous pieces of metal pie of various lengths and screen. It also has been assigned Q 382, C 1387 and Court Number 221. Photograph 23 in Attachment F depicts these items; Q 382 was found in Sector O, Grid D-5 and was reported as "suppressor comp." The FBI Laboratory identified Q 382 as "Box containing assorted pieces of metal tubing and metal screen." Q 382 was assigned item number 01776 by the Court Clerk and placed in Box 209. It is labeled as "material for silencer."

The following items I examined and believe to be "flash bangs." Some are in very poor condition and others are in fairly good shape. All are expended (used) and appear to be "DEF TEC 25" distraction devices commonly known as "flash bangs." Some of the following items were properly identified by the FBI Laboratory, however, some were misidentified. The following is a detail description of each:

A. Q 99 is an expended "flash bang" that is in fair condition. It is marked on the body as "No. 25 Distraction Devise" and was inside two (2) clear plastic bags and two (2) manila envelopes. Q 99 was assigned number 01782 by the Court Clerk and placed in Box 209. Other numbers and location found for Q 99 were not received. Photograph 24 in Attachment F depicts this item. There are various references to Q 99 in the FBI Laboratory reports

B. EXHNUM 001037 is a very burned "flash bang" in a clear plastic bag. It has also been assigned K 419, C 1037, and Court Number 952. Photograph 25 in Attachment F depicts this item. K 419 was found in Sector N Grid 4 and was reported as a "silencer". The FBI Laboratory's description of K 419 is a " silencer." On page 60 of an FBI Laboratory report, it lists K 419 under the heading " Sound Suppressors / Silencers:" as " devices found that are consistent in design and construction with sound suppressors". The description for Court Number 952 is " silencer and set of assorted knives and related accessories". K 419 was assigned number O1780 by the Court Clerk and placed in Box 209. It is labeled as "Burned Flash Bank (*sp*)". It should be noted that K 419 is a burned "flash bang" and has been previously misidentified as a "silencer". Also, the box for K 419 was assigned number 01786 by the Court Clerk and is also in Box 209.

C. EXHNUM 001383 is an expended "flash bang" in fair shape without a fuse and is contained in two clear plastic bags. The larger bag has "suppressor" written on it along with other markings. It has been assigned numbers K 432A, C 1383, and Court Number 212. Photograph 26 in Attachment F depicts this item which was found in Sector O, Grid C 1. The initial description is a "suppressor" and the FBI Laboratory's description is a "silencer tube". The court description for 212 is "silencer tube." It was assigned number 01781 by the Court Clerk and placed in Box 209. I believe this is a clearly misidentified "flash bang"; however, there is some confusion in the FBI Laboratory reports on K 432, K432A, and K432B. Also

found were two (2) rifle barrels marked K 432 listed as EXHNUM 001382 and 001379. These barrels were assigned numbers 00290 and 00292 by the Court Clerk and placed in Box 042. Note also that I found an item numbered K 432A described as burned papers, which the Court Clerk placed in Box 115. I did not examine these items.

D. EXHNUM 001525 is a burned and expended "flash bang" with two (2) clear plastic bags. The small bag is labeled with the FBI Laboratory number, K number and "Silencer tube". It has been assigned number K 465, C 1526, and Court Number 845. Photograph 27 in Attachment F depicts this item found in Sector I, Grid B1. Also included in EXHNUM 001525 was K 465A, which was found at the same location and time and given the same numbers (C 1526, and Court Number 845). Both K 465 and K 465A were initially described as "gun parts" in "various calibers and parts". K 465 was identified by the FBI Laboratory as a "silencer tube" and K 465A as "assorted gun parts". Court Number 845 is described as "silencer tube and assorted gun parts." K 465A was assigned number 01625 by the Court Clerk and placed in Box 175. It is described as "gun parts – various calibers and parts" and was not inspected by myself. K 465 was assigned number 01778 by the Court Clerk and placed in Box 209 and labeled "Burned Flash Bank (*sp*)". My examination of K 465 shows it to be a "flash bang" and the log entries indicate that the FBI Laboratory misidentified it as a "silencer tube".

E. EXHNUM 001742 is a burned and expended "flash bang" with spoon handle and ring contained in three (3) clear plastic bags. One bag is marked "smoke grenade" and has the FBI Laboratory number on it. It has also been assigned Q 318, C 1742, and no Court Number was found. Photograph 28 in Attachment F depicts this item. Q 318 was found in Sector V, Grid C 4 and was reported to be a "smoke granade (*sp*)". The FBI Laboratory's description is a "smoke grenade". Q 318 was assigned number 01777 by the Court Clerk and placed in Box 209. My examination of Q 318 showed holes in the body of Q 318 and the weight to be consistent with a "flash bang"; however; it has been properly marked in Box 209 for any future expert examination as needed. Also, related to Q 318 is Q 319. Q 319 is EXHNUM 001738 and is described as "bag containing miscellaneous granade (*sp*) components" found in Sector V, Grid B15. Q 319 has also been assigned number C 1738 and Court Number 700. Q 319 was assigned number 00287 by the Court Clerk and placed into Box 042. It is described as "unknown". Since Q 318 and Q 319 appear on some of the same packaging, it is possible that Court Number 700 was to contain both Q 318 and Q 319 and they were separated. They are now identified for reference.

F. EXHNUM 001892 is a burned and expended "flash bang" contained in two (2) plastic bags. The initial larger plastic bag has "1 silencer" written on it. And the second smaller plastic bag contains the FBI Laboratory number and "Total: 1 Flash Hand Grenade Body" written on it. It has also been assigned Q 323, C 1892 and no Court Number. Photograph 29 in Attachment F depicts this item. Q 323 was located in Sector J, Grid B 1 and was initially described as both a suspected silencer and "Expanded (*sp*) Flash Hand Granade (*sp*) Body". The FBI Laboratory description is a "Grenade Body". Q 323 was assigned number 01783 by the Court Clerk and placed in Box 209 and is described as a "Burned Flash Bank (*sp*)".

Note that on page 48 of the FBI Laboratory report dated 12-06-93, it reports that: "Specimens Q323 (C 1892) and Q318 (C1742) have been subjected to severe heat, however they appear to be identical to Q99 (B60) which is an explosive distraction device manufactured by DEF- TEC Corporation, Rock Creek, Ohio."

There are numerous conflicts in the numbers used to identify the following items. EXHNUM 000768, 002247, and 002248 are all related to conflicts initially identified as silencers. These three (3) items are identified as Q 267, Q 268, and Q 269. A plastic bag contained two (2) long metal tubes, were marked as Court Number 225. The two-(2) metal tubes were shown as Q 268 and Q 267 found in Sector M, no grid. These tubes are identified by the FBI Laboratory as "Piece of metal tube". They were assigned number 01775 by the Court Clerk and placed in Box 207. Photograph 30, Attachment F depicts these two (2) tubes. A brown paper bag with the markings "possible silencer", contained a plastic bag and an expended "flash bang". The plastic bag was marked "Flash Bang" and contained a FBI Laboratory tag. The "flash bang" is marked as Court Number 726 and the paper bag contains numerous markings and Q 267. Q 267 should be EXHNUM 000768 and been found in Sector CD, Grid A 3. The FBI Laboratory log shows this item to be a "Piece of metal tubing", and assigns it Q 269. I examined this item and it is a "flash bang" which is rusted but is not burned up. The pink tag with this item shows it to be found in Sector C-FD, Grid A 3. This item is assigned number 01779 by the Court Clerk and placed in Box 209. Photograph 31 of Attachment F depicts this item.

Evidence regarding the death of Michael Schroeder was also located. It is noted that the Texas Ranger reports that deal with this shooting will be located under File RF093022 (Attempted Capital Murder – Wayne Appelt W/M 47 on 02-28-93). The following is a detail of this evidence.

The blue "watch cap" which was worn by Michael Schroder was located in a large brown paper bag. This bag contained:

A. Small manila envelope containing evidence Q 92, Q 93, Q 94, and Q 95. This was assigned number 01759 by the Court Clerk.

B. Small brown paper bag containing eight (8) smaller envelopes marked personal property of Schroder. These were assigned number 01760 through 01767 by the Court Clerk.

C. Clear plastic bag containing a knit brown cloth marked with Court Number 1109A. This was assigned number 01755 by the Court Clerk.

D. Two (2) small brown paper bags, one (1) bag containing Schroder's gloves. This was assigned number 01756 by the Court Clerk.

E. Small brown paper bag which contained the blue "watch cap". This was assigned number 01756 by the Court Clerk.

All of these items were placed in Box 214. Photograph 32 in Attachment F depicts these items.

The paper bag containing the "watch cap" is open on the top. Photographs 33, 34, and 35 in Attachment F depict this item. I did not remove the cap from the bag, since any handling of this item may cause trace evidence to be lost. It was returned to the large bag and placed in Box 214.

Photographs which depict details of Schroeder were also located within the report RF093022. These photographs are not attached to this report, but were given to the Court Clerk within the RF093022 report folder.

EXHNUM 000676 is three (3) objects believed to be bullets. One (1) is a .223 55 gr. FMJ bullet with a cannular (appearance of an M 193), two (2) are plastic and appear to be .30 and .38. They were assigned number Q 770 and found in Sector F, Grid F I D. Photograph 36 in Attachment F depicts these items. They

were unusual and I inspected them and they were assigned number 01792 by the Court Clerk and placed in Box 209.

A clear plastic bag marked F/Q425 was found which contained thirteen (13) parts of twelve (12) Ferret projectiles and eight (8) pieces of metal. One (1) of the pieces of metal is melted and is of a lite alloy or aluminum. There is a small threaded metal ring contained in the molten mass. Photographs 37 through 42 depict these objects. The molted mass has similar characteristics of what you would expect to find in a melted projectile like Q 379 or Q 380 (black projectiles identified in my first report). I made a close examination of this item and believe it is a melted door peephole commonly found on household doors. This bag and all contents were assigned number 01793 by the Court Clerk and placed in Box 209. Note that a Q 425 which is cooked off casings was also found and was assigned number 01076 by the Court Clerk and placed in Box 124. These items have nothing to do with the examination of the above items.

During the inventory, it should be noted that I observed numerous examples of mismarked evidence where shell casings that were "cooked off" had been labeled as "fired" shells. Many of the casings that "cooked off" (meaning the powder inside or the primer of the cartridge ignited from external heat, then expended it's energy into the atmosphere) did not rupture the casing body and only expelled the projectile or the primer through the flash hole. This left the casing appear to be fired if the projectile was gone, or a loaded cartridge if only the primer was gone. I did not attempt to inspect all cartridges thus identified, due to the volume of cartridges recovered at the Mount Carmel Center. This would have been impractical in this investigation. It is noted here so that any future analysis of the "cooked off" and/or "fired" casings in relation to the location that they were found, will have to consider that each casing in question must be individually checked to determine its state.

All photographs and video tapes which were in the evidence stored in Austin were boxed and turned over to the U.S. District Court.

Some photographs have been used as reference to accurately depict areas as they were during the investigation. Since these photographs have been used numerous times during this investigation, special mention is warranted.

Photographs of the bunker area are in Attachment G. These are of significance due to questions about how a hole in the roof was made. On page 47 of the FBI Laboratory report dated 12-06-99, it reports their findings. In Attachment G, Photograph 1 depicts the outside of the bunker, Photographs 2, 3, 4, and 5 depict the hole from the top after wire cable clamps were placed on the rebar. Photographs 6, 7, 8, and 9 depict the ceiling of the bunker in various stages of decay. Photographs 10, 11, and 12 depict the inside of the bunker and cement from the ceiling that had fallen after the fire was put out. Photographs 13, 14, and 15 are additional scenes of inside the bunker. Ranger Lieutenant Ray Coffman advised that the concrete ceiling of the bunker continued to sag and fall as the recovery of evidence was being made from the bunker, until it was no longer safe to go inside.

Another area of question that has arisen during this investigation is the roof on the underground room at the north end of the Mount Carmel Center. Questions about its relationship to the ground and make of material have arisen. Photograph 16 of Attachment G depicts this roof.

A metal door was inventoried in the evidence held in Austin and was turned over to the U. S. District Court. The door was assigned number 00002 by the Court Clerk and was not boxed. It will be stored in a special area by the Court due to it's size. I observed the door to be of thin metal with punctures, which appear to be bullet holes. The holes appear to be from both directions and I made no detail analysis of this door other

than general observations. On page 23 of the FBI Laboratory report on 12-06-93, it reports the examination of this door.

The examination of Q 379 and Q 380 (the two (2) black projectiles identified in my first report) has continued. As I reported to you, samples of trace evidence were taken from both Q 379 and Q 380 from the nose cavity and base area. I have coordinated the examination of these items with Ron Urbanovsky, the Director of the DPS Laboratory. I reported to you, in my first report, that documentary film maker Mike McNulty has reported findings of trace material from Q 379 and Q 380 which were inconsistent with what should be found in a NICO "sound and flash" device. These results were based on his preliminary tests and not conclusive. Director Urbanovsky and myself have had contact with some of the scientists conducting tests for McNulty for reference. The DPS Laboratory does not have the equipment that is required to conduct the extensive tests of trace elements from Q 379 and Q 380 to conclusively identify the elements present. Without the elements properly identified, it would be improper to make any analysis or conclusion. Since this investigation began, there is now a federal investigative team that will have proper resources to further analyze Q 379 and Q 380. As per your instruction, Q 379 and Q 380 with all related samples and gathered information was turned over to the U.S. District Court.

McNulty has questioned the identification of Q 379 and Q 380 from my first report. He also believes that scratch marks and other evidence on Q 379 and Q 380 indicate the projectiles had penetrated a barrier, (i.e., the walls of Mount Carmel). It is only proper that McNulty present his own findings and theories; however, I had additional tests and information collected from Q 379 and Q 380 for future documentation and evaluation.

X-rays of Q 379 and Q 380 were taken with a Faxitron soft x-ray at DPS Labs and with a Universal Uni Matric 325 Continental MC 150 at the Travis County Medical Examiners Office. Attachment H is copies of these x-rays. They appear to be extremely similar to the diagrams and information given to me by NICO Pyrotechnic which I reported to you in my first report in Attachment M.

It is further noted that the x-rays of Q 379 and Q 380 confirmed that the area behind the ojive of the plastic nose was not supported by any material. It remains to be impractical that Q 379 or Q 380 have struck or penetrated any significant barrier.

Extra close-up photographs of Q 379 and Q 380 were also taken and included in the DPS Laboratory report. I have included some of these photographs in Attachment I. There are more photographs in the folders which also contain the DPS Laboratory reports. All of these folders were turned over to the Court Clerk.

Photographs 1 and 2 in Attachment I show a close-up of the scratch marks on Q 379 and the land marks. The land marks indicate that the projectile was given a "right hand" spin or twist. The scratch marks show to be from various angles (i.e., left to right/right to left/straight). The scratch marks which mark left to right as they move from top to bottom are inconsistent with marks which should prove the penetration of a barrier by a projectile with a "right hand" spin. This however, does not prove the opposite. It has been my observation and corroborated by Director Urbanovsky, that a fired projectile is subjected to so many variables that can cause scratches, that an interpretation of those marks alone would be inaccurate.

If Q 379 or Q 380 were to have penetrated the side of a building, it is probable that material from the wall would be contained in sharp or raised areas of the projectile. Samples of material were not collected from the sides of Q 379 or Q 380; however, both projectiles are in the custody of the U.S. District Court and available for further analysis and evaluation by the proper investigators.

"Q 379 and Q 380 were intercompared to determine if they had been fired from the same source. Each exhibited striated areas that could be used in a comparison. Some similarities were observed but these were not judged sufficient to establish a common orienting spot. Differences in patterns could indicate different sources."

These projectiles were also entered into the DRUGFIRE system with Q 379 as DF #525 and Q 380 as DF #524.

The projectile worksheets of these tests which include close-up photographs of each land and groove are included in the above folders turned over to the Court Clerk.

As I reported to you earlier in this report, an inspection of the evidence held in Waco was conducted on 11-17-99 and 11-18-99. This inspection was of twelve (12) conex boxes containing evidence and some non-contained pieces of melted machinery. These conex boxes were moved to a secure work area by the storage personnel. The storage director advised that this was all the items stored with them from this case. This information was re-checked with the director; however, the Rangers no longer have the original evidence log to check the number of storage boxes. The same Texas Rangers who assisted in the inventory of evidence in Austin were also those who inspected this evidence, with the addition of Ranger Lieutenant Clete Buckaloo. Also assisting from D.P.S., was photographer, Kent Kinkade.

Also assisting in the inspection were U.S. Postal Inspectors with Inspector Cordell Swindell. There were also a limited number of representatives from two (2) different U.S. Congressional Committees.

A liquid petroleum tank was located that is EXHNUM 0001800. Ranger Sergeant Johnny Waldrip (retired) recovered this tank from Sector L Grid 7 on 04-28-99. This tank has a portion of the head gone and is subject to controversy. Photographs 1 and 2 of ATTACHMENT J depict this tank at the crime scene, photographs 3 and 4 depict the tank in storage in Waco, and photographs 5, 6, and 7 depict a close-up of the torn edge on the tank. This tank, along with other tanks, remains in the conex box in which it was found and is in the custody of the Court Clerk.

During this inspection, no M651 projectiles were found, nor any other pyrotechnic projectiles. Also not found was any material from the bunker area suitable for trace element testing, or the metal water tank that was to be checked for bullet holes. A part of a pyrotechnic cartridge was inspected and removed. The capsule for a parachute flare which is C-596, was discussed earlier in this report and is photograph 2 in Attachment E. C-596 was turned over to the Court Clerk and placed in container 236.

A Smith and Wesson Model 940 9mm revolver S/N BKR6112 was found in bucket 1475 inside conex Box 38. Photograph 1 of Attachment K depicts this item. It is a burned 5-shot snubnose revolver and was turned over to the Court Clerk and placed in container 236.

Some of the conex boxes contained separated pieces of evidence individually marked and some were unmarked. A large portion of this evidence was in plastic buckets, and everything inside the bucket was marked together as one exhibit. Each bucket was individually emptied, inspected, and returned to the original bucket. Cross contamination between buckets was not an issue due to the method that the evidence was collected and originally placed into the buckets.

As the inspection of evidence was made, I examined a number of items and due to various reasons, several items were removed, and not returned to their original container. These items were inventoried,

photographed, and turned over to the Court Clerk. They were all placed into container 236 by the Court Clerk. These items are as follows:

A. A metal wire removed from bucket 1536 found in conex Box 38. Photograph 2 of Attachment K depicts this item.

B. A metal tube removed from bucket 2163 found in conex Box 38. Photograph 3 of Attachment K depicts this item.

C. An electronic part removed from bucket 2121 found in conex 38. Photograph 4 of Attachment K depicts this item.

D. A metal cylinder with screen removed from bucket 2125 found in conex Box 38. Photograph 5 of Attachment K depicts this item.

E. A small metal device with two (2) cylinders removed from bucket 1664 found in conex Box 4. Photograph 6 of Attachment K depicts this item.

F. A small electronic part removed from bucket 2139 found in conex Box 45. Photograph 7 of Attachment K depicts this item.

G. Possible battery removed from bucket 1652 found in conex Box 4. Photograph 8 of Attachment K depicts this item.

H. Electronic part removed from bucket 2126 found in conex Box 38. Photograph 9 of Attachment K depicts this item.

I. Metal sleeve removed from bucket 1871 found in conex Box 4. Photograph 10 of Attachment K depicts this item.

J. Electronic part removed from bucket 1995 found in conex Box 3555. Photograph 11 of Attachment K depicts this item.

K. Electronic part removed from bucket 1303 found in conex Box 38. Photograph 12 of Attachment K depicts this item.

L. Electronic part removed from bucket 2100 found in conex Box 34. Photograph 13 of Attachment K depicts this item.

M. Six melted metal chunks removed from bucket 1908 found in conex Box 38. Photograph 14 of Attachment K depicts this item.

N. Small round disk removed from bucket 2005 found in conex Box 3555. Photograph 15 of Attachment K depicts this item.

O. Melted blue plastic with electronic part removed from bucket 2162 in conex Box 38. Photograph 16 of Attachment K depicts this item.

In the above items, the electronic parts were not microchips and are unlikely to be part of any high tech listening or detonation devise. They are identified for any further reference. The item discussed in detail M above is an example of melted metal, which was commonly found in the buckets of evidence. The item discussed in detail N of above is unknown. This item may need to be tested to determine its chemical composition.

Following the above inspection, the U.S. Postal Inspectors under Inspector Swindell conducted an inventory of the evidence held in Waco. Cooperation exists between the Texas Rangers and this investigative effort, which will continue.

All evidence held by DPS in Austin has been transferred to the Court Clerk for the U.S. District Court for the Western District of Texas, along with items possessed by other DPS employees. At the conclusion of the inspection of evidence in Waco, Ranger Lieutenant Miller relinquished the keys to the locks on the conex Boxes to the Court Clerk through Inspector Swindell. Following the submission of this report I turned all notes, photographs, logs, inventories, Q1237, Q379, Q380, and other items in my possession over to the Court Clerk, leaving only this report and my first report to you as records held by DPS.

LAST EDIT CM – 1/20/00 @ 2 pm

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ATTACHMENT A

Copy of Memorandum of 09-08-99 from
Ranger Lieutenant Jim Miller

DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM

DATE: 09-08-99

DIVISION: Rangers

TO: Bruce Casteel, Chief, Texas Rangers

FROM: James L. Miller, Lieutenant, Texas Rangers, Company "A"

SUBJECT: Branch Davidian evidence – RFO93021

This memo is to document events involving Branch Davidian evidence for the time period of August, 1998 through June, 1999.

On 08-17-98, I received faxed information and photographs from Captain Charles Brune regarding Davidian evidence. The faxed information I received were as follows:

(1) A 2 ¼" x 4" label marked "Texas Department of Public Safety / Mt. Carmel Command Post / Daily Entry Report / Printed Date: 05-17-93; Time: 09:09:47".
(2) Two (2) sheets of paper detailing evidence seized during the Mt. Carmel Crime scene search. Contained information regarding C472, C473, C474, C475, C476, C1086, C1087, C1088, C1089, C1090, C1091, C1092, and C1093.
(3) A letter from MGA Films / Producer Michael McNulty to Bill Johnston dated 06-04-98.
(4) Photograph of Q1237.
(5) Photograph of unknown object.
(6) Photograph of Q380.
(7) Photograph of Q380.
(8) Photograph of Q379.
(9) Photograph of Q379.
(10) Photograph of Q380.
(11) Photograph of Q379.
(12) Photograph of Q379.
(13) Photograph of Q379.

On 08-21-98, I traveled to Austin and met with Texas Rangers Lt. Ray Coffman and Sgt. George Turner, AUSA Bill Johnston, and Mike McNulty. I believe McNulty was accompanied by another individual or two – cameramen. I obtained the key (from Captain Charles Brune) to the storage area where the Branch Davidian court exhibits and other evidence were located at the DPS Headquarters complex in Austin. Coffman, Turner, and myself escorted Bill Johnston, Mike McNulty, and the companions of McNulty to the location of the Davidian evidence. The following evidence was located for viewing by McNulty – Q379 (C610); Q380 (C681). The individuals with McNulty videotaped and took photographs of those evidentiary items. These two evidentiary items were located in

evidence marked "Trash evidence". While in the room containing the court exhibits, McNulty looked at several videocassettes. He recorded information from those cassette tapes with the approval of Bill Johnston. After McNulty completed viewing the above evidence, the evidence room was locked and I returned the key to Captain Brune.

On 10-23-98, I received a fax from Mike McNulty containing information on Exhibits C474, C1092, and C160.

On 10-26-98, I received a fax from Mike McNulty containing a hand written letter from Mike McNulty and a list of twenty-eight (28) videos he wished copied to Beta SP and furnished to him.

On 11-02-98, I received a fax from AUSA Bill Johnston containing a letter directed to me by Bill Johnston dated 11-02-98. Johnston's letter requested I facilitate the copying of videotapes McNulty had requested, and provide McNulty a reasonable opportunity to have access and examine the following pieces of evidence – C681 (Q380), C610 (Q379), C1092, C160, and C474. I faxed a copy of Bill Johnston's letter to Senior Captain Bruce Casteel.

On 11-04-98, I traveled to Austin and obtained the key to the Davidian evidence storage room. I obtained the key from Captain Brune's office. Lt. Coffman and myself met with Mike McNulty and two (2) other individuals accompanying McNulty. I completely identified McNulty and his two (2) companions at that time as follows:

Michael John McNulty
White male; [redacted]
Colorado DL# [redacted]
2619 Brownstone Ct.
Fort Collins, Colorado 80525

John Joseph Frost
White male; [redacted]
Virginia DL# [redacted]
250 South Reynolds Street #1001
Alexandria, Virginia 22304

James Elliott Frazier
White male; DOB: [redacted]
Colorado DL# [redacted]
1200 Carousel Drive #123
Windsor, Colorado 80550

Once Coffman, McNulty, Frost, Frazier and I entered the Davidian evidence room (4:10 p.m.), I retrieved Q379 and Q380. McNulty and Frost examined those items. Frazier photographed and videotaped the two (2) exhibits. Frost collected residue samples from Exhibit Q379 and Q380. After Frost examined Q379 and Q380, he stated the two items were Flash Bangs – not Tear Gas Projectiles. I did not locate Exhibit #'s C160, C474, and

C1092. All individuals left the evidence room at 5:50 p.m., and I locked and secured the doors to that area.

Prior to the above examination of Q379 and Q380, I obtained the twenty-eight (28) videotapes from the evidence room and submitted those tapes to DPS Audio/Video Section employee Debbie Young for copying to Beta SP for Michael McNulty. McNulty had previously been in contact with Young and furnished her the videotapes to copy those tapes onto. The following videotapes were released to Debbie Young for copying (3:51 p.m.):

Date filmed	Length	Filmed by	Content note
04-21-93	32 min.	Ray	DPS helo
04-19-93	1 hr. 35 min	Gene Henderson	Compound
04-19-93	32 min.	Dean	Bunker pumping
04-19-93	37 min.	Dean	Helo
04-19-93	42 min.	Ray Dunaway	Fire suppression
05-04-93	32 min.	Dean	Bunker – underground
04-21-93	42 min.	Gene	Aerials, Waco 360 degrees
04-23-93	1 hr. 9 min.	Gene	Motorcycle shed
04-30-93	27 min.	Dean Wasson	Barricade
04-27-93	40 min.	Dean Wasson	School Bus
04-29-93	24 min.	Gene	Bunker sifting
04-23-93	32 min.	Ray Dunaway	Vehicles
04-23-93	91 min.	Dean Wasson	Barricade
04-25-93	10.5 min.	Dean Wasson	Sifting
05-04-93	unknown	Gene	"Gene part I"
04-25-93	32 min.	Ray	Weapons
03-19-93	30 min.	Texas DPS	"Tape #1"
06-22-95	39 min.	Gene	Guns, evidence box
05-04-93	Unknown	Gene	"Part II", Underground bunker
04-22-93	41 min.	Gene	"Crime scene"
04-22-93	50 min.	Ray	"Crime scene"
04-22-93	8 min.	Dean	Body Bags
04-26-93	14.5 min.	Gene H.	Unknown
04-22-93	35 min.	Gene	Undercover house
04-25-93	37 min.	Gene	Sifting
04-27-93	17 min.	Ray	Weapons
04-29-93	23 min.	Dean	Tool Shed
05-04-93	Unknown	Unknown	Peter Gent body

On 11-05-98, McNulty telephoned me at the Houston Ranger Office stating he had searched the evidence stored in Waco in an attempt to locate Exhibit #'s C160, C474, and C1092. He stated in Conex Box #2, he found an empty box with the evidence tag for C474, but there was no evidence inside the box. He stated he did not locate Exhibit #'s C160 or C1092. During this conversation, McNulty stated ATF S/A Jim Rose was present with him when he searched the Conex boxes in Waco.

On 11-06-98, I traveled to Austin, obtained the key to the Davidian evidence room from Captain Brune's office, and conducted another search for Exhibit #'s C160, C474, and C1092. I did not locate C160 or C1092. I located C474 in "Trash Evidence" box #LL. I departed the evidence room at that time and secured (locked) the doors. I then returned the key to Captain Brune's office. I then telephoned McNulty on his cellular phone (970-567-0340) and advised him of the results of the above search. He advised me he would contact Captain Brune and make arrangements to examine C474.

On 11-17-98, I traveled to Austin picking up the above mentioned twenty-eight (28) videotapes from Debbie Young. I obtained the key to the Davidian evidence storage room from Captain Brune's office and I secured those tapes in the storage room. I locked and secured the room before departing. At this time I placed the key to the evidence storage room back into Captain Brune's office.

On 06-09-99, I received a telephone call at my office in Houston from Denise Swain. Swain stated she was a Legal Assistant employed by the U.S. Attorney's Office in San Antonio. She stated her supervisor was Assistant U.S. Attorney John Paniszczyn. Swain was inquiring about Mike McNulty having been given access to Branch Davidian evidence. I informed Swain that I was present on two (2) occasions in Austin when McNulty was given access to the evidence. I advised her AUSA Bill Johnston approved for McNulty to view the evidence, and Johnston was present when McNulty first viewed the evidence on 08-17-98. I advised Swain that Johnston furnished me written authorization to allow McNulty access to the evidence in Austin – this occurring on 11-04-98. Swain requested I fax her copies of all information pertaining to McNulty having access to the Branch Davidian evidence. The following information was faxed to Swain (210-384-7312) on 06-09-99:

Letter from Michael McNulty to Bill Johnston dated 06-04-98.
Letter from Bill Johnston to Jim Miller dated 11-02-98.
List of twenty-eight (28) videotapes requested to be copied and furnished to McNulty – faxed to me by McNulty on 10-26-98.
Copy of information faxed to me by Captain Brune on 08-17-98 (previously discussed in this memo).

Copies of information discussed in this memo are in my possession.

ATTACHMENT B

Copy of Memorandum of 10-04-99 from
Texas Department of Public Safety
Assistant Director Thomas Davis

TEXAS DEPARTMENT OF PUBLIC SAFETY
5805 N. LAMAR BLVD. - BOX 4087 - AUSTIN, TEXAS 78773-0001
512 / 424-2000

DUDLEY M. THOMAS
DIRECTOR

THOMAS A. DAVIS, JR.
ASST. DIRECTOR

COMMISSION
JAMES B. FRANCIS, JR.
CHAIRMAN
ROBERT B. HOLT
M. COLLEEN MCHUGH
COMMISSIONERS

TO: ALL DIVISIONS

FROM: Thomas A. Davis, Jr., Asst. Director

DATE: October 4, 1999

SUBJECT: Branch Davidian Evidence

In order to ensure full compliance with a Court Order entered by Judge Walter Smith, no one in the Department is authorized to retain any documents, records, or tangible things relating to the Branch Davidian case. Anything that you or your personnel have in your custody needs to be submitted to the Court. This includes reports, copies of reports, diagrams, sketches, field notes, photocopies of records, photographs, and any other tangible things. There are no exceptions. No copies of anything are to be retained. Computer files should be removed from your computer and transferred to diskette and forwarded.

Division Chiefs are to poll their employees as appropriate to ensure that all property is transferred to Chief Casteel no later than October 8, 1999 at noon. The Rangers will then make sure that the property is delivered to the Court.

If you wish to have the particular record, document, or other thing returned to your office at the conclusion of all proceedings, please label the item clearly. If you find any property after October 8, 1999, you should immediately submit the property to Chief Casteel to be forwarded to the Court.

Questions regarding this memo should be directed to the Headquarters Ranger Office.

ATTACHMENT C

Copy of Memorandums of 10-05-99 and 10-06-99 from Texas Department of Public Safety Photography Laboratory

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD. - BOX 4087 - AUSTIN, TEXAS 78773-0001

DUDLEY M. THOMAS
DIRECTOR

THOMAS A. DAVIS, JR.
ASST. DIRECTOR

CRIME LABORATORY SERVICE
P.O. BOX 4143
AUSTIN, TEXAS 78765-4143
512/424-2105

COMMISSION
JAMES B. FRANCIS, JR
CHAIRMAN
ROBERT B. HOLT
M. COLLEEN McHUGH
COMMISSIONERS

October 5, 1999

Reference: Photography on Branch Davidian Scene

After reviewing the prints sent by the FBI in September 1999, we were able to identify the rolls that we each shot.

Missey Micheletti shot approximately 8 rolls, and all rolls are present.
Kent Kinkade shot approximately 10 rolls and all rolls are present.
Mike Holle shot the remaining rolls and will include a separate letter regarding his rolls.

Sincerely,

M Micheletti
Missey Micheletti
Forensic Photo. Supvr.

Kent Kinkade
Forensic Photographer IV

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD. - BOX 4087 - AUSTIN, TEXAS 78773-0001

CRIME LABORATORY SERVICE
P.O. BOX 4143
AUSTIN, TEXAS 78765-4143
512/424-2105

October 6, 1999

Reference: Photography on Branch Davidian Scene

After reviewing the prints and negatives sent by the FBI in September 1999, I was able to identify the rolls of film I shot at the crime scene. The rolls and their corresponding log sheets were numbered rolls 1 through 12. There is a discrepancy in that roll number 10, and its corresponding log sheet, were not included in the items received by this department. To the best of my recollection, the negatives would have been of items found inside the concrete bunker, ie. bodies, guns, and hand grenades.

Sincerely,

Michael Holle

Michael Holle
Crime Scene Photographer IV

ATTACHMENT D

Copy of Memorandum of 09-03-99 from
Texas Ranger Captain Earl Pearson,
Company "A"

DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMO

DATE: 9/3/99
DIVISION: Ranger

TO: Bruce Casteel, Chief, Texas Rangers

FROM: Earl R. Pearson, Captain, Texas Rangers, Company "A"

SUBJECT: Information regarding Branch Davidian Investigation

On Monday, August 31, 1999, you and I discussed a situation that occurred on April 19, 1993 involving the FBI.

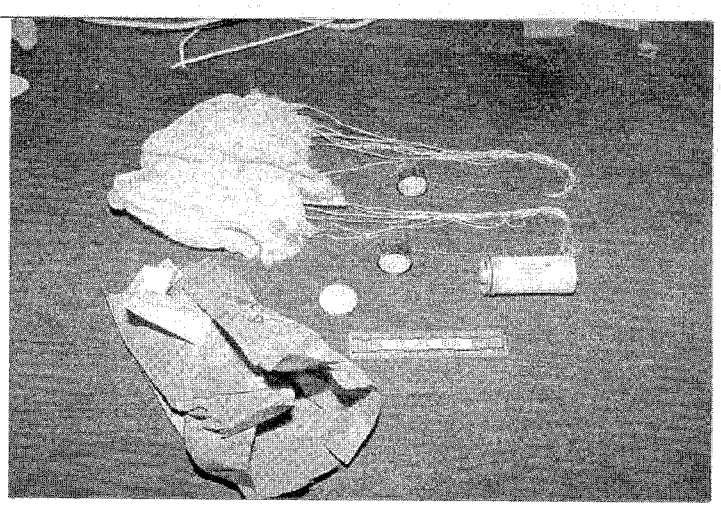
On April 19, 1993, around mid-morning, Captain David Byrnes approached me, at or near the DPS Command Post near Mount Carmel, and asked if there was tear gas available at the Company "F" office in Waco. I indicated tear gas was available at the Waco office. Captain Brynes stated the FBI was running out of tear gas and he had been requested to assist the FBI in locating tear gas. Captain Byrnes instructed Lieutenant Robert Madeira and I to travel to the Company "F" office and retrieve the tear gas. Lieutenant Madeira and I traveled to the Company "F" office and discussed the need for tear gas with Captain Bobby Prince. Captain Prince assisted us in obtaining the tear gas.

Lieutenant Madeira and I returned to the DPS Command Post and met with Captain Byrnes. It was learned the tear gas we had obtained was pyrotechnic and the FBI refused to use it. Some time after the fire, the tear gas was returned to the Company "F" office.

ATTACHMENT E

Copy of Photographs of M583A1 Flare

ATTACHMENT E



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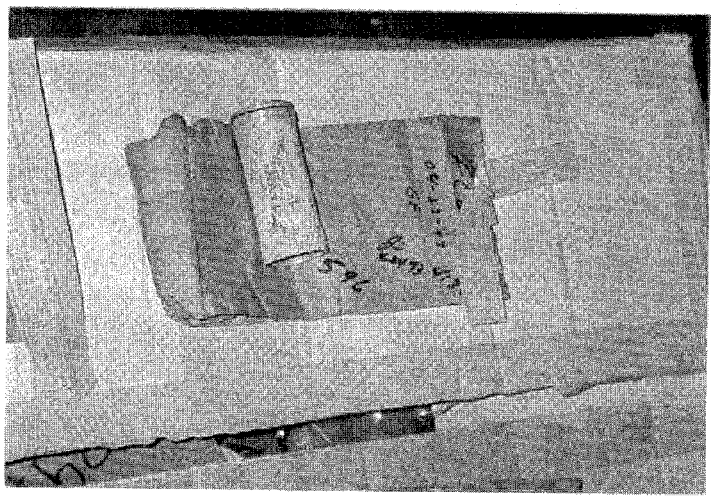
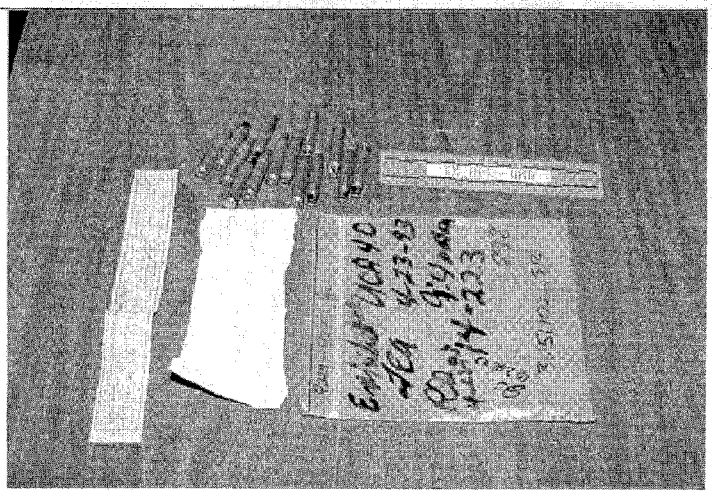


PHOTOGRAPH 2

ATTACHMENT F

Copy of Photographs of Inventoried Evidence

ATTACHMENT F



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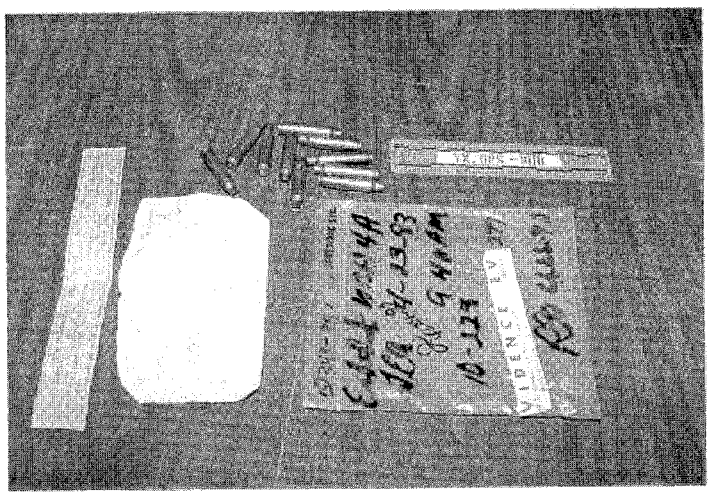
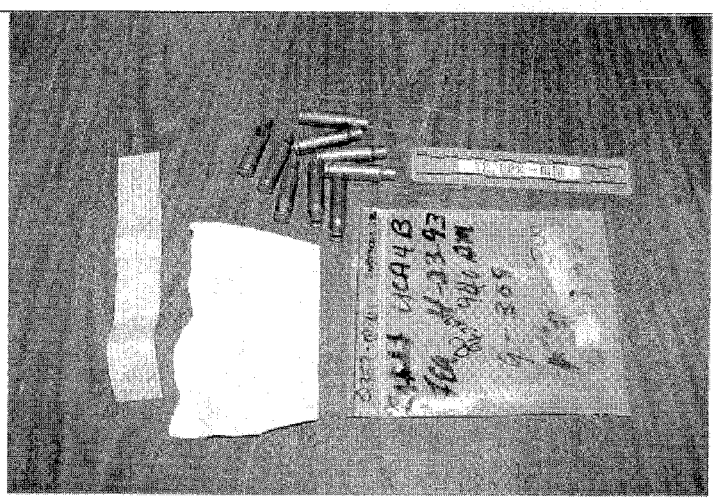


PHOTOGRAPH 2

ATTACHMENT F



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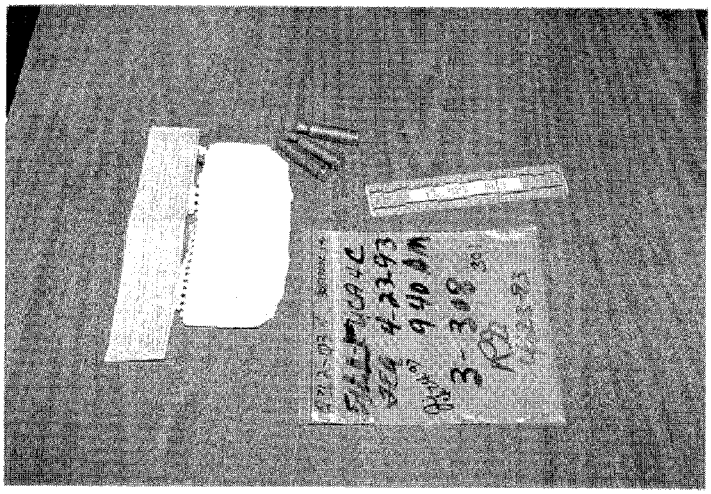

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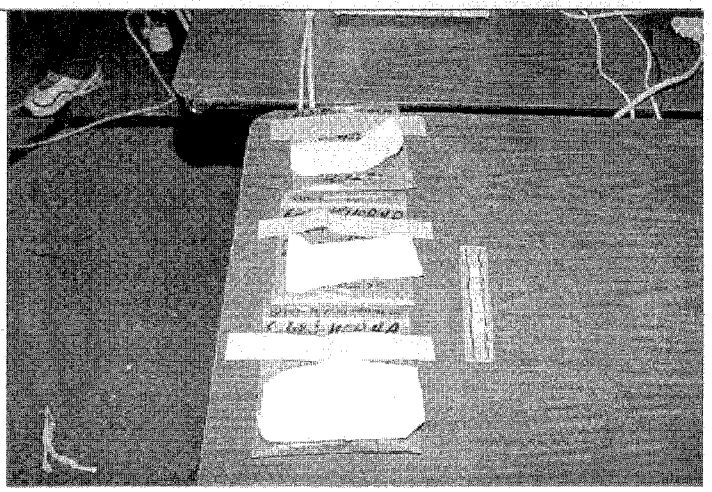

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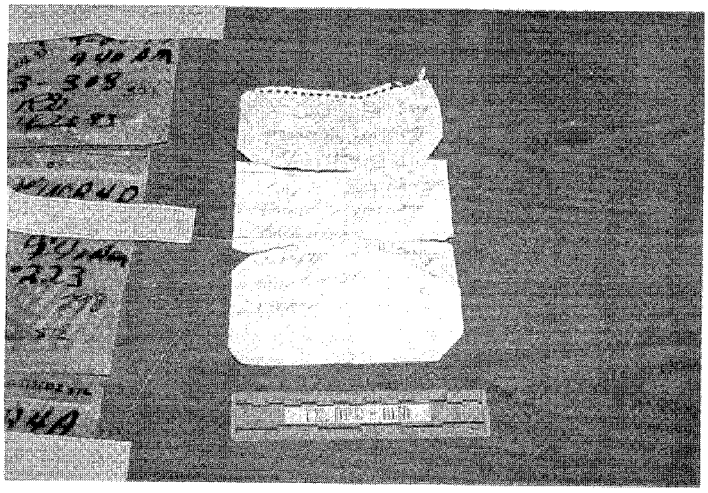

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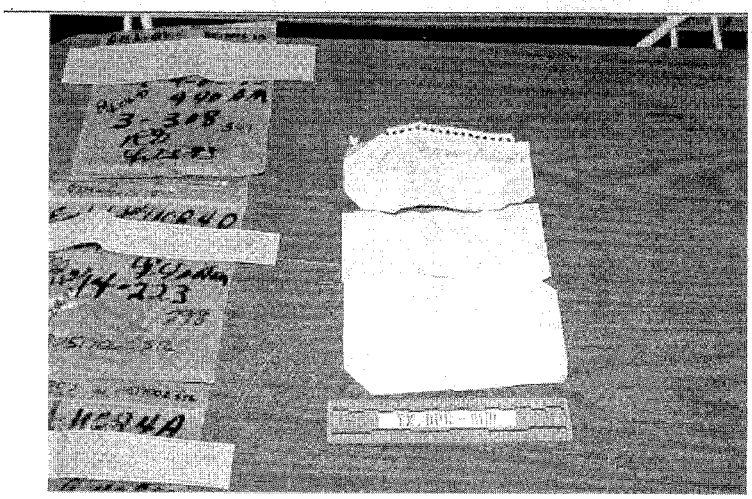

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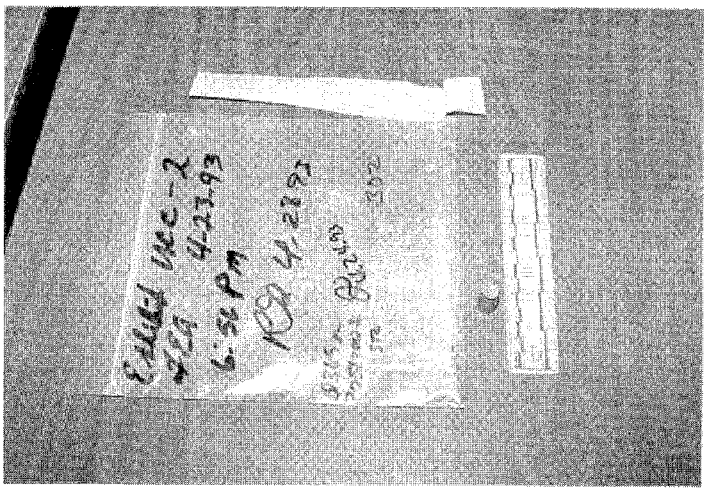

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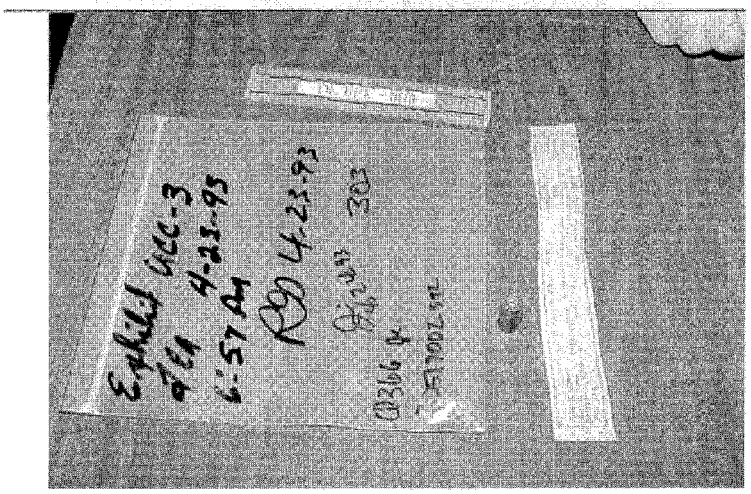

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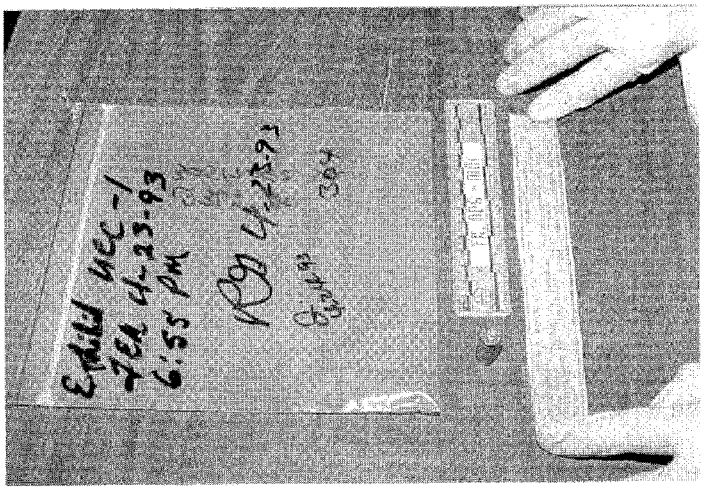

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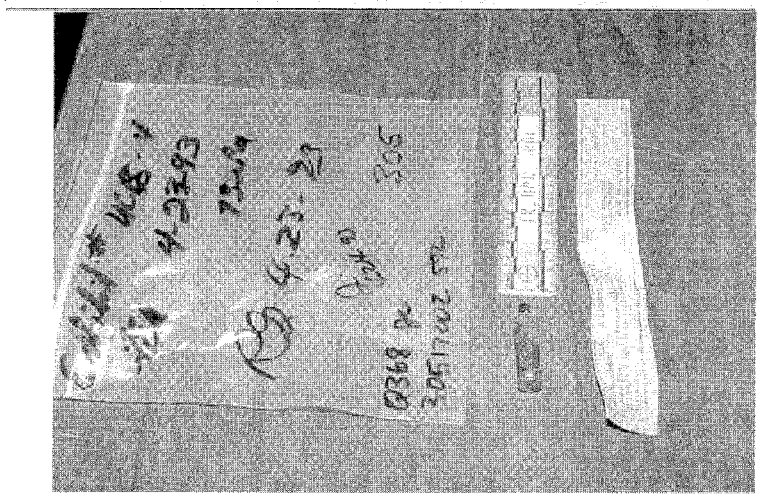

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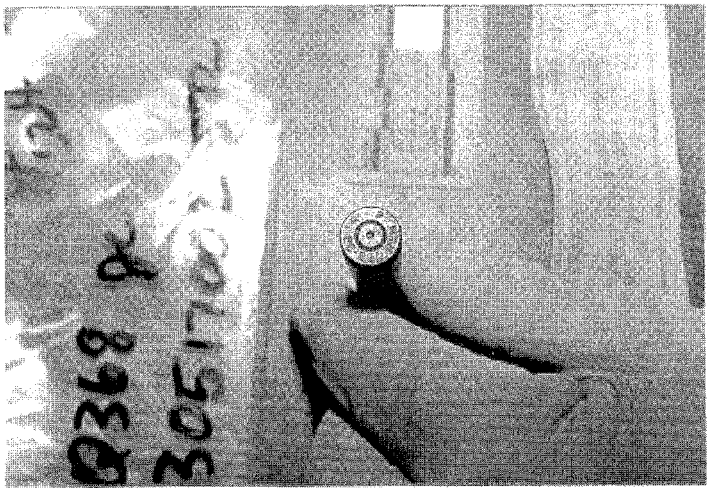

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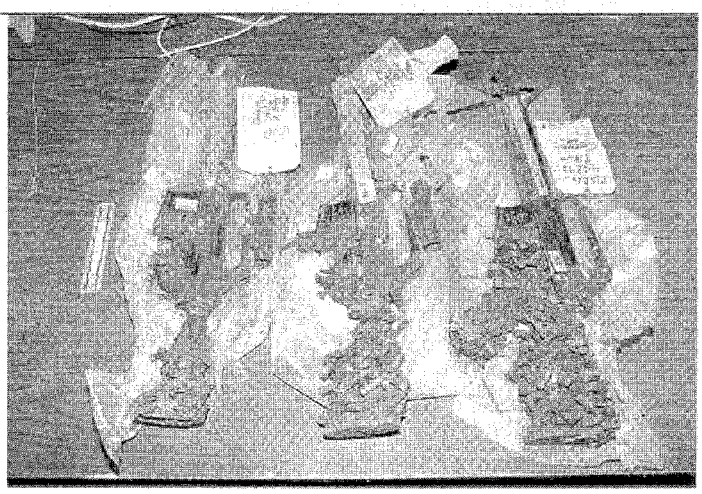

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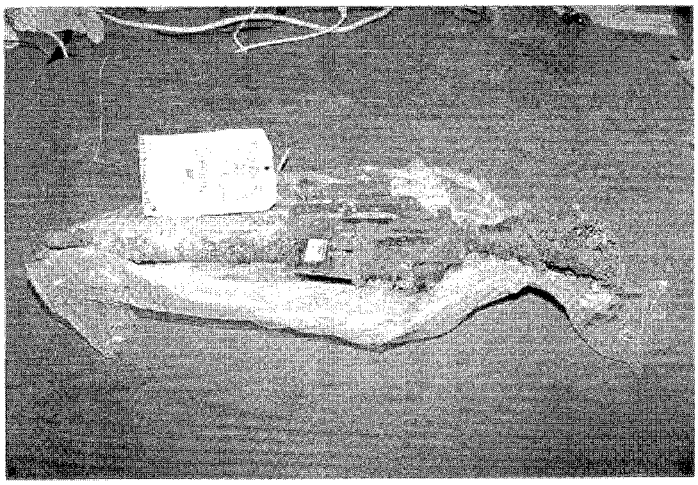

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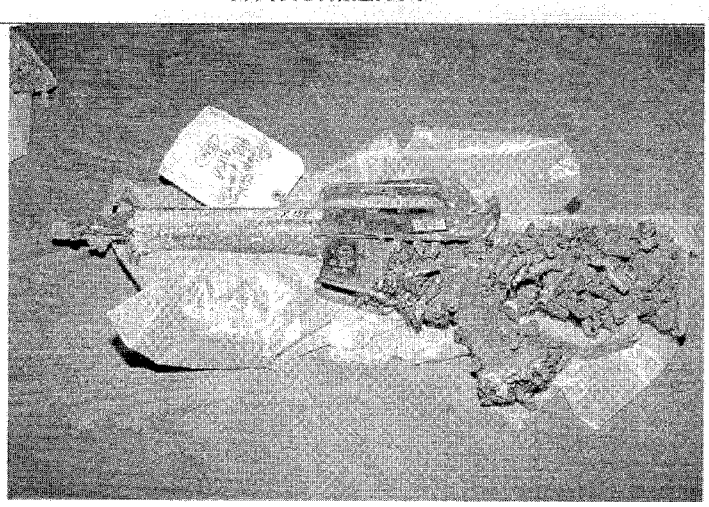

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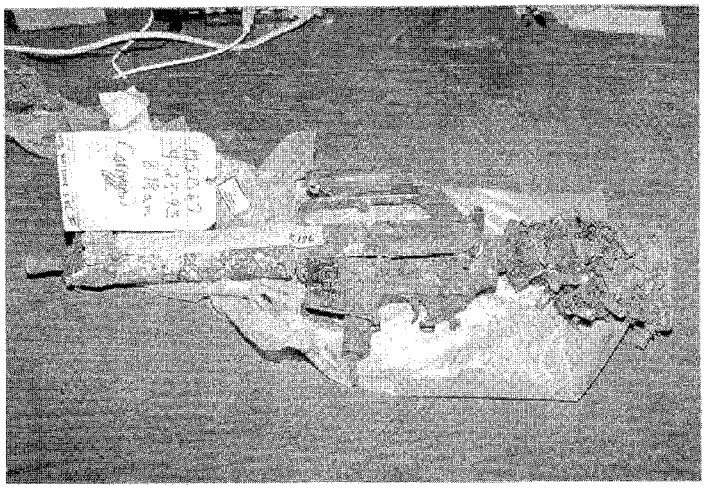

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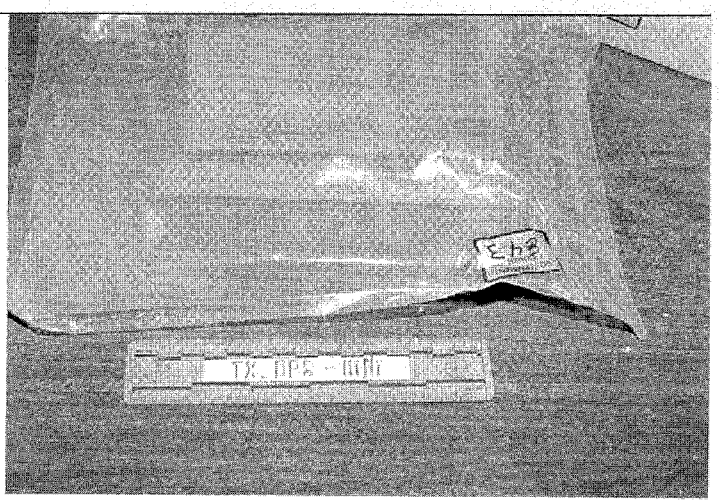

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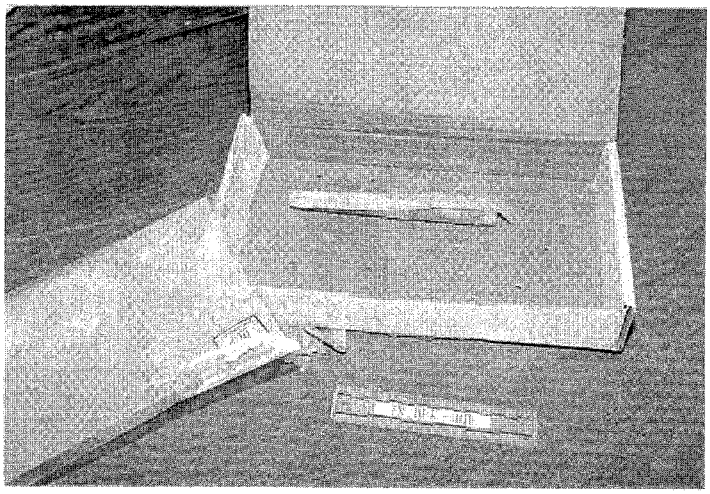

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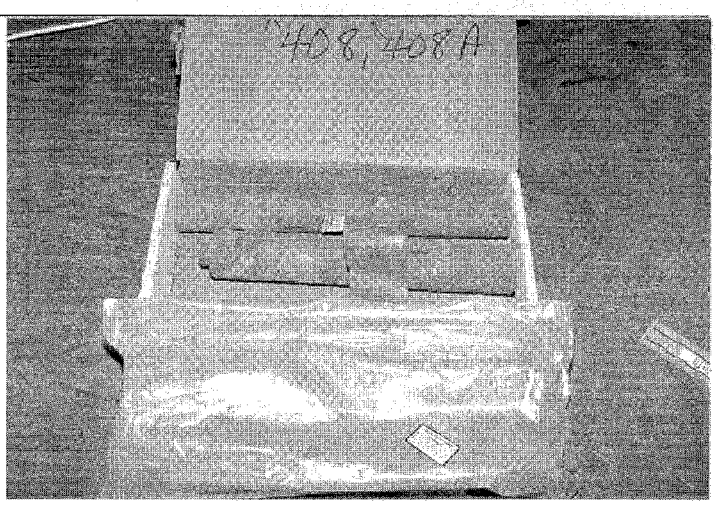

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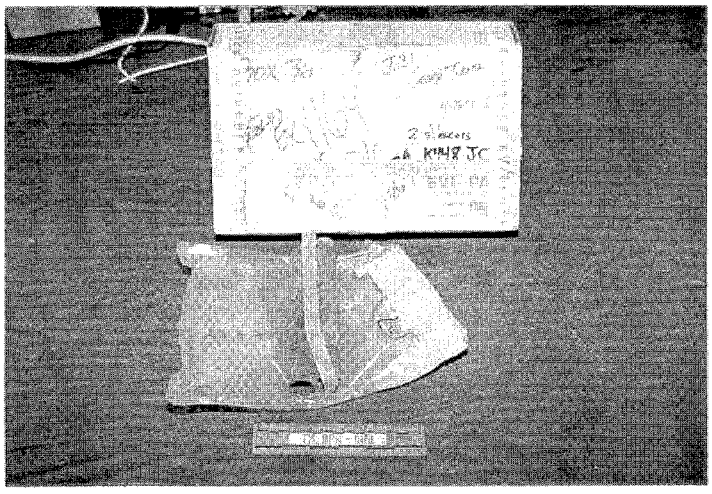
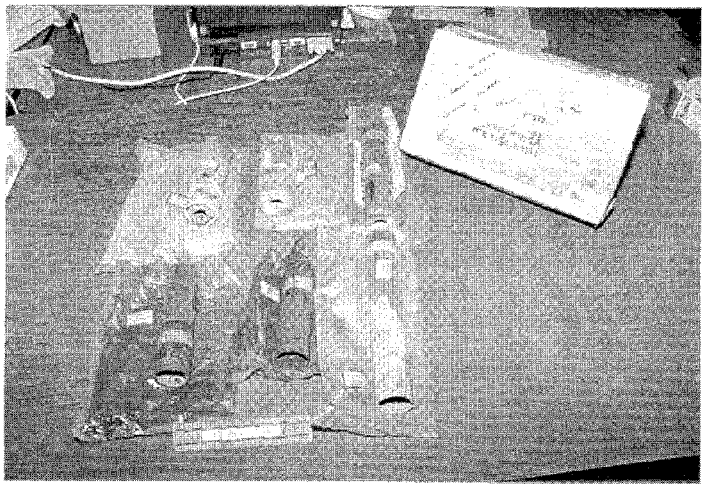


PHOTOGRAPH 20

ATTACHMENT F



PHOTOGRAPH 21



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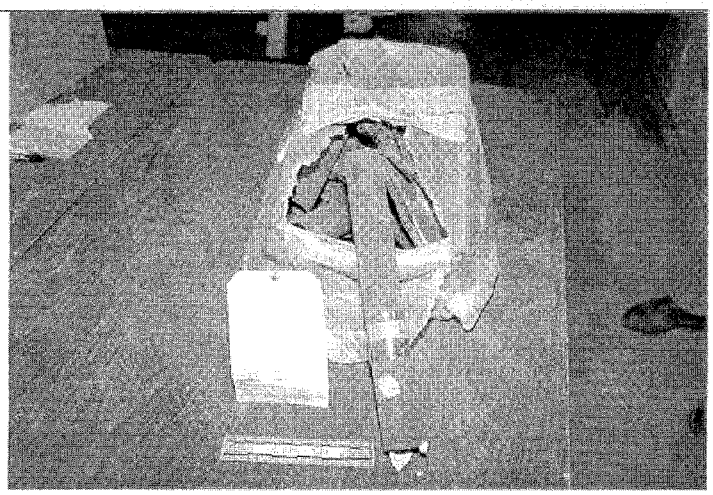

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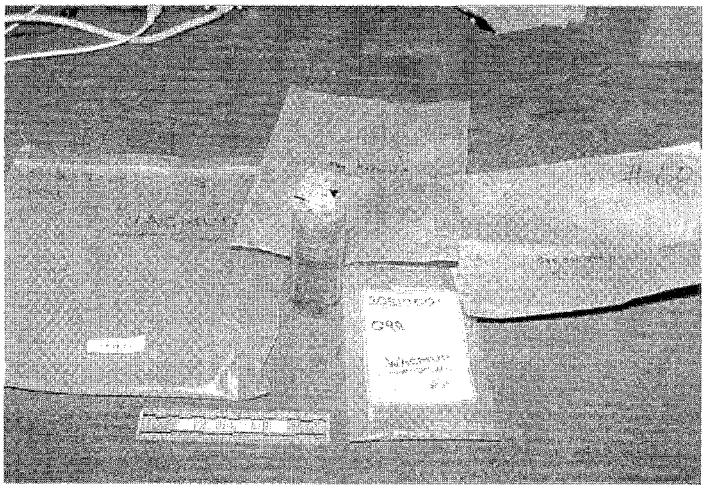

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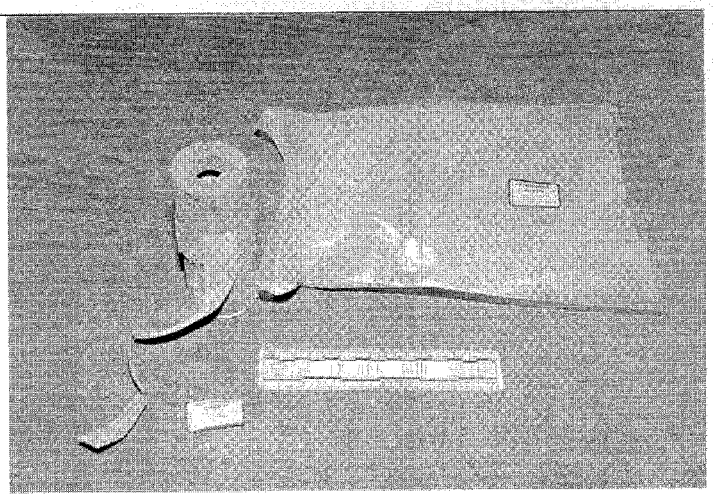

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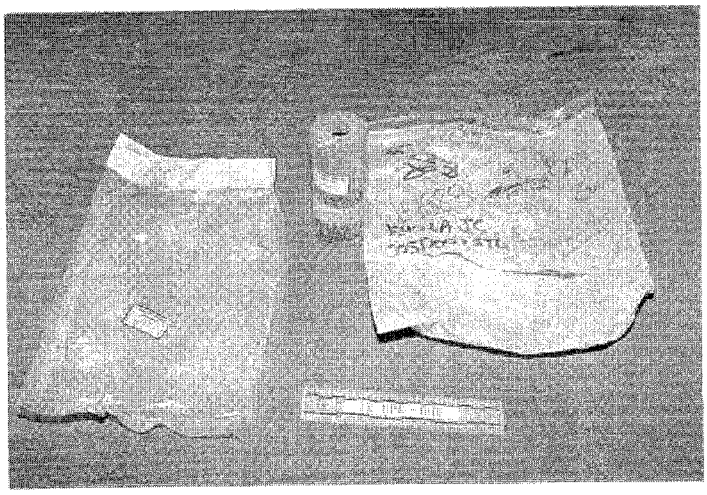

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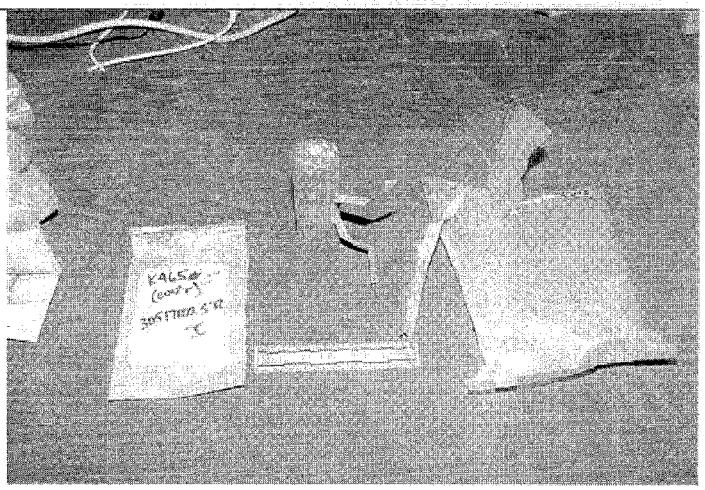

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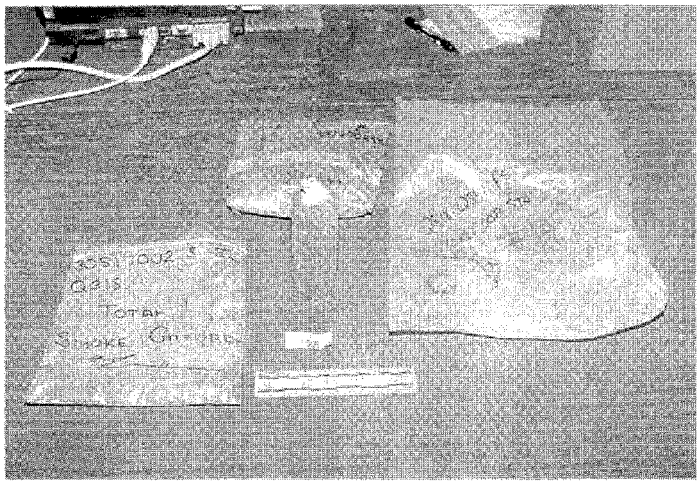

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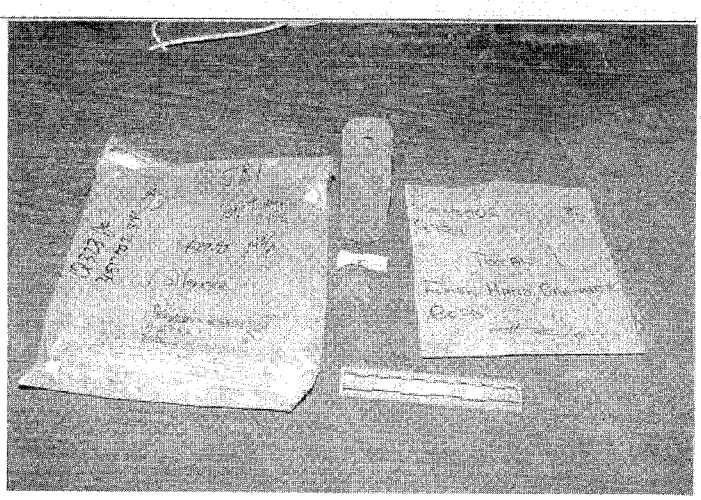

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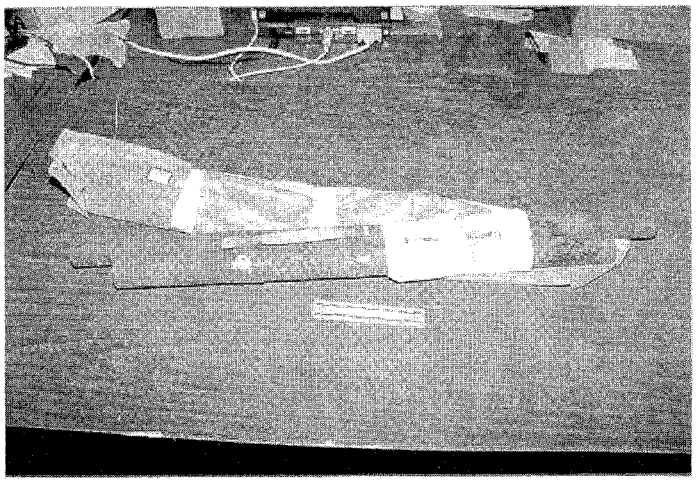

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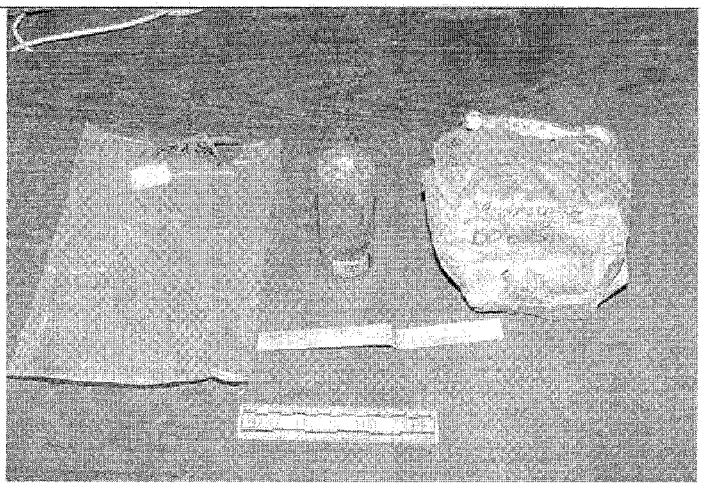
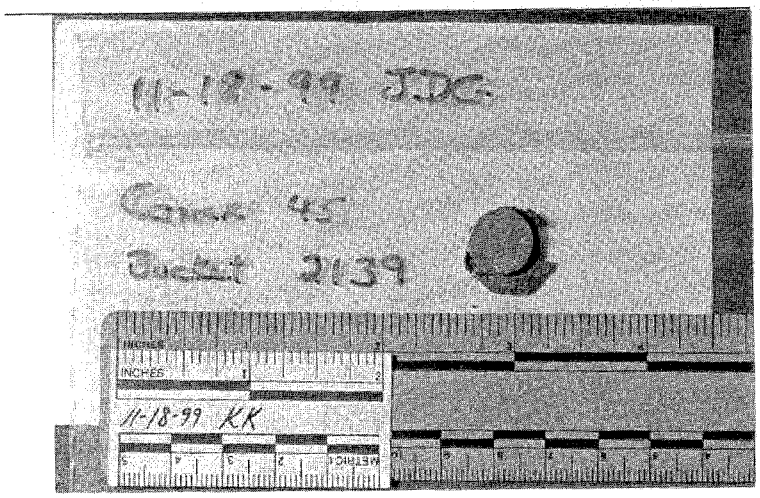


PHOTOGRAPH 31



PHOTOGRAPH 32

ATTACHMENT K



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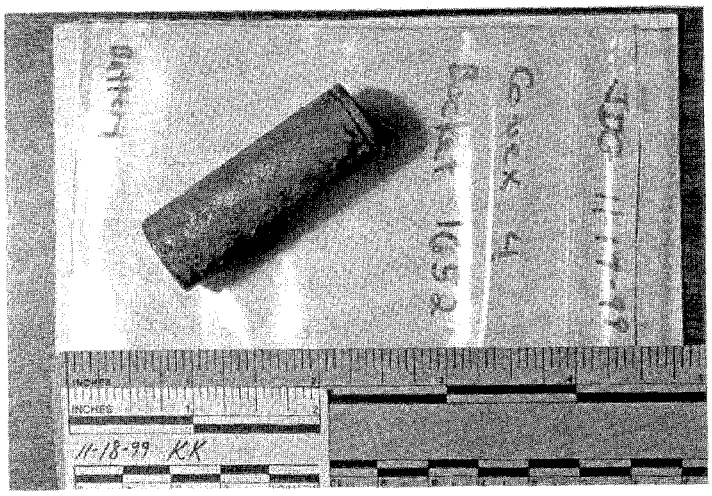

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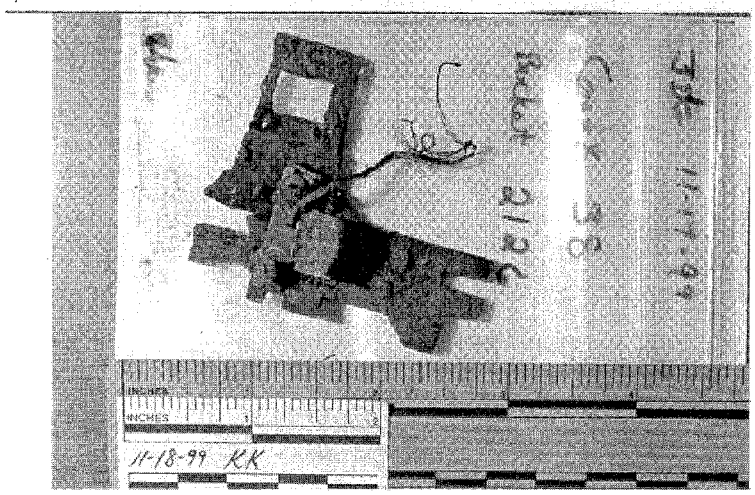

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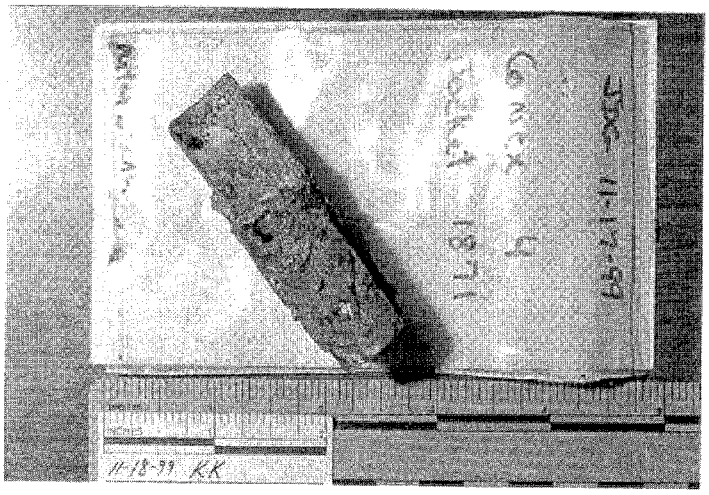

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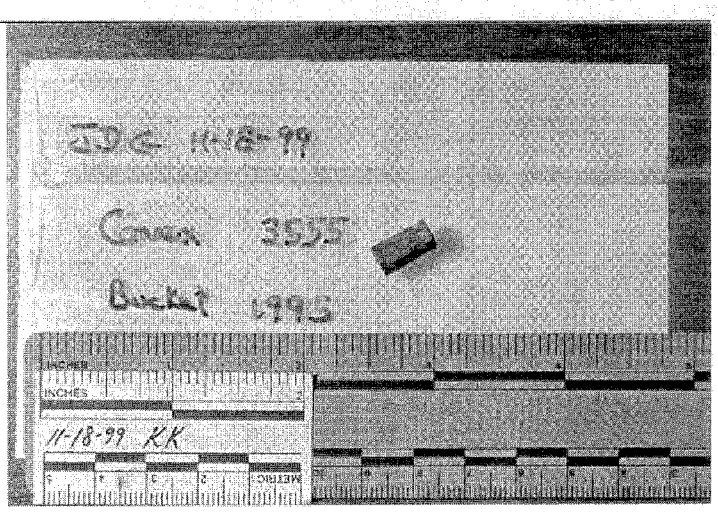

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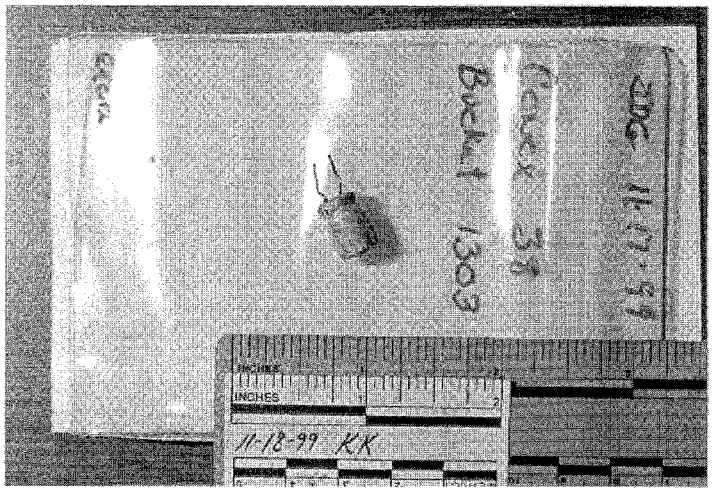

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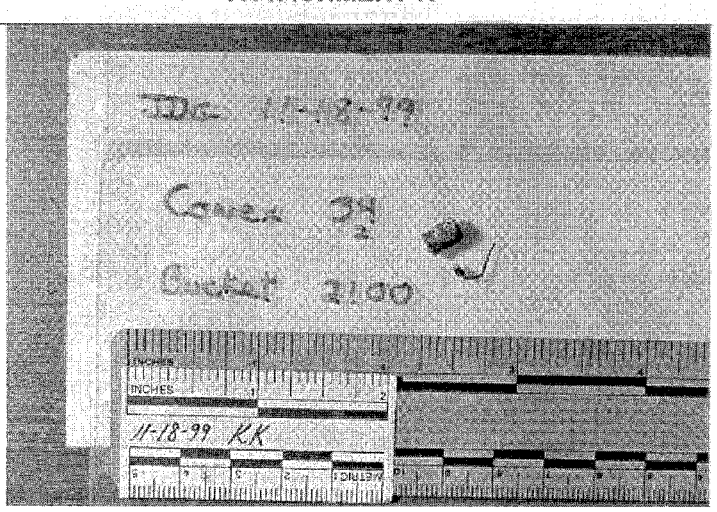

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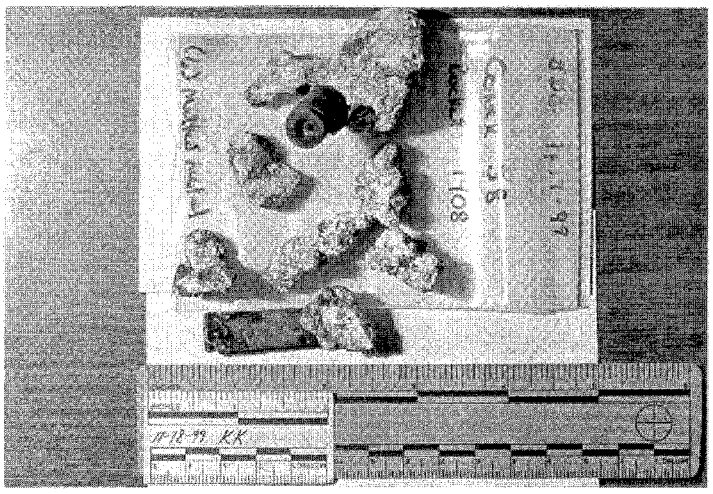
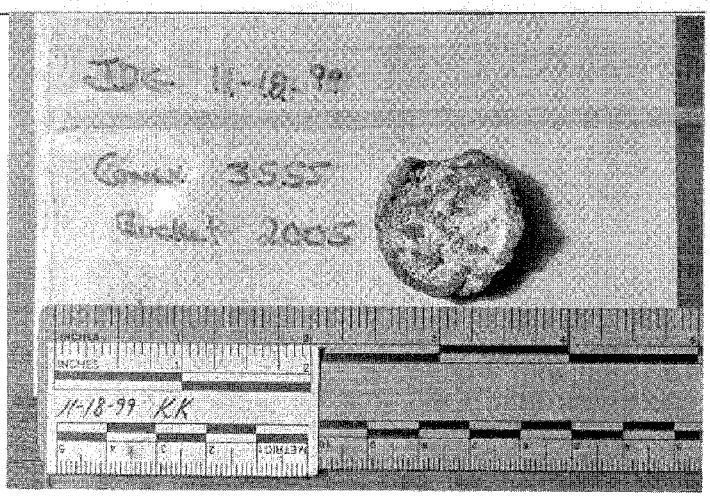


PHOTOGRAPH 14

ATTACHMENT K



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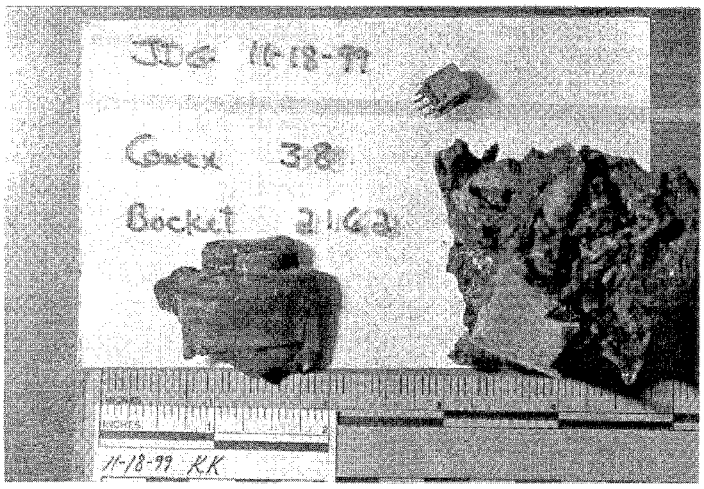
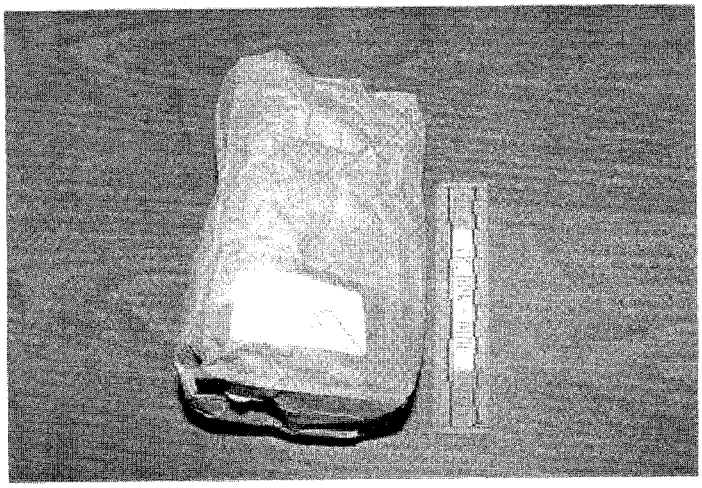


PHOTOGRAPH 16

ATTACHMENT F

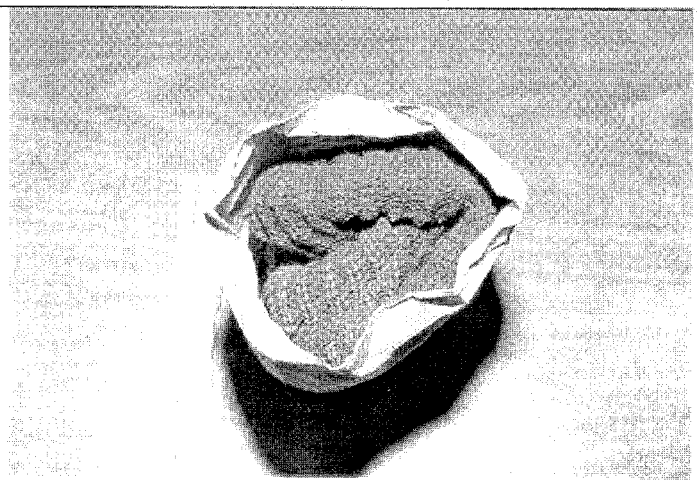


PHOTOGRAPH 33

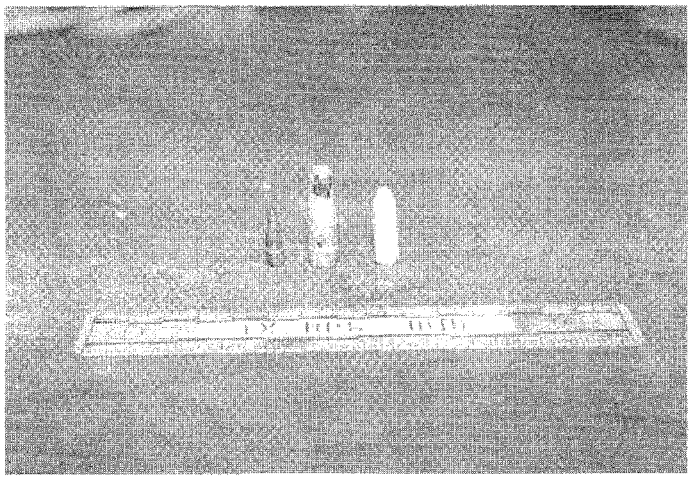


PHOTOGRAPH 34

ATTACHMENT F

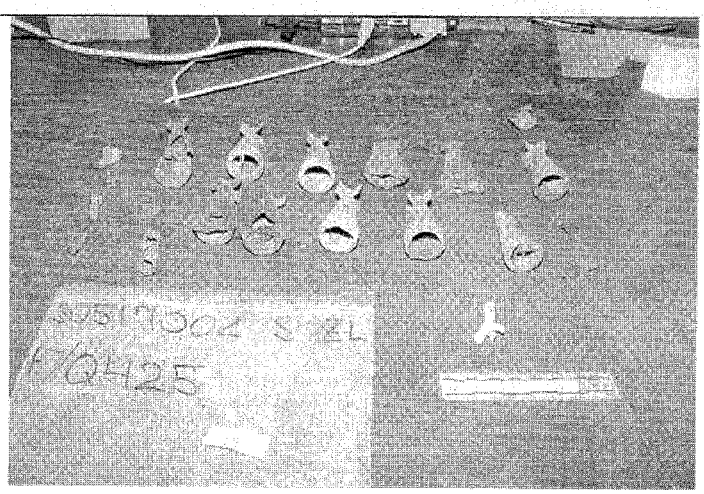


PHOTOGRAPH 35



PHOTOGRAPH 36

ATTACHMENT F



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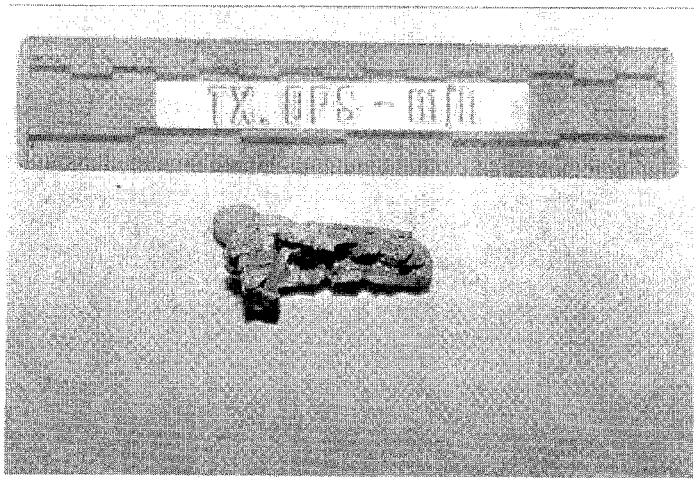

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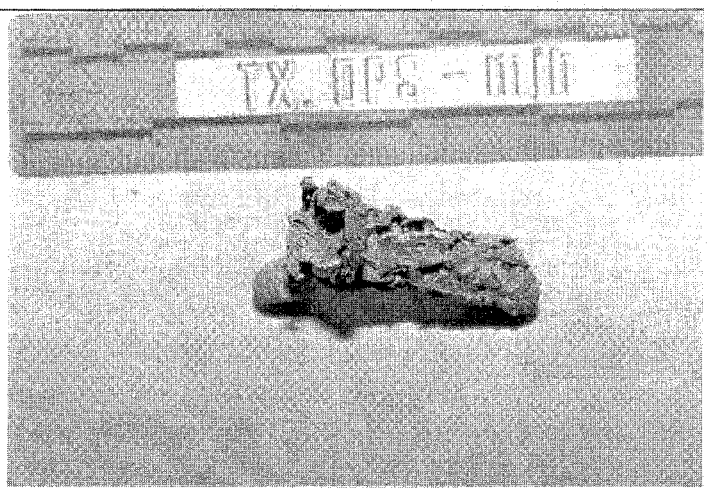
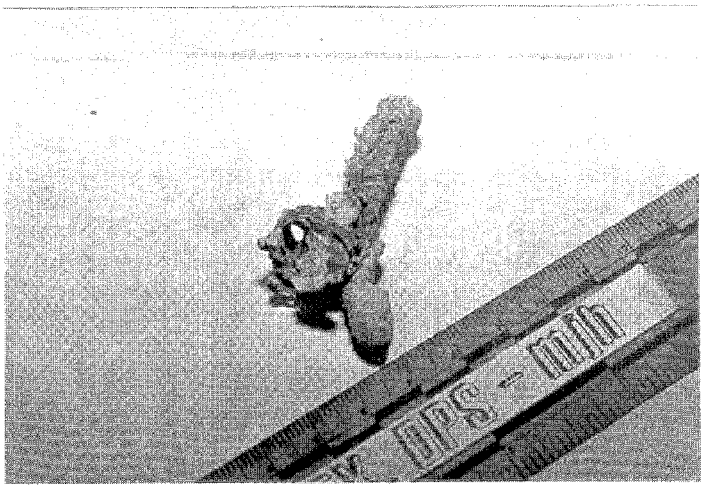
ATTACHMENT F

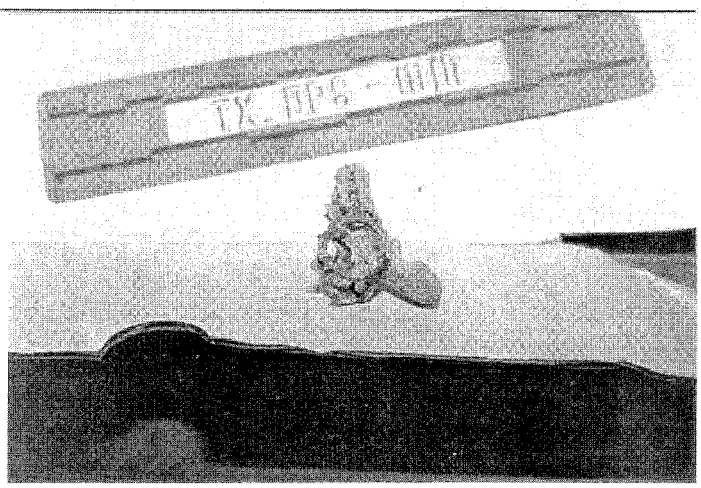


PHOTOGRAPH 39

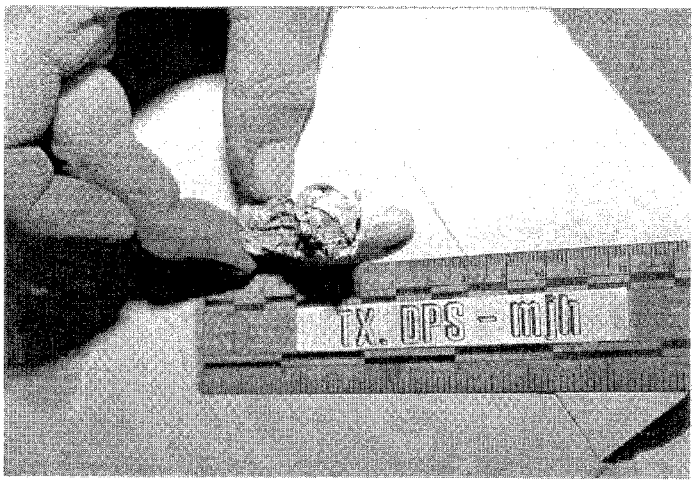


PHOTOGRAPH 40

ATTACHMENT F



PHOTOGRAPH 41

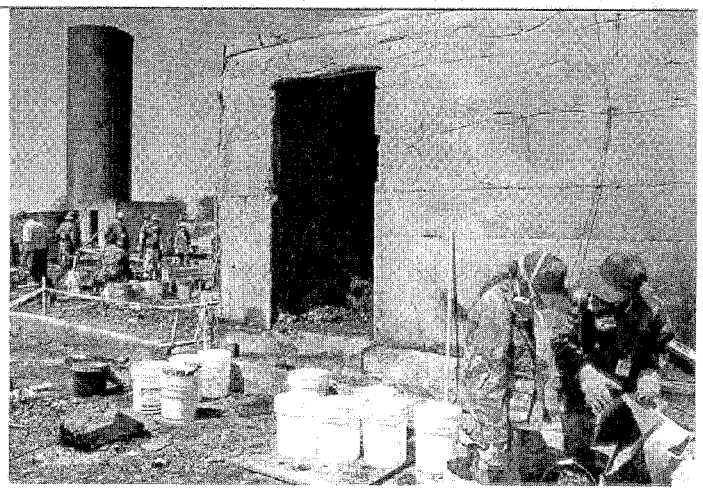


PHOTOGRAPH 42

ATTACHMENT G

Copy of Photographs of Crime Scene

ATTACHMENT G

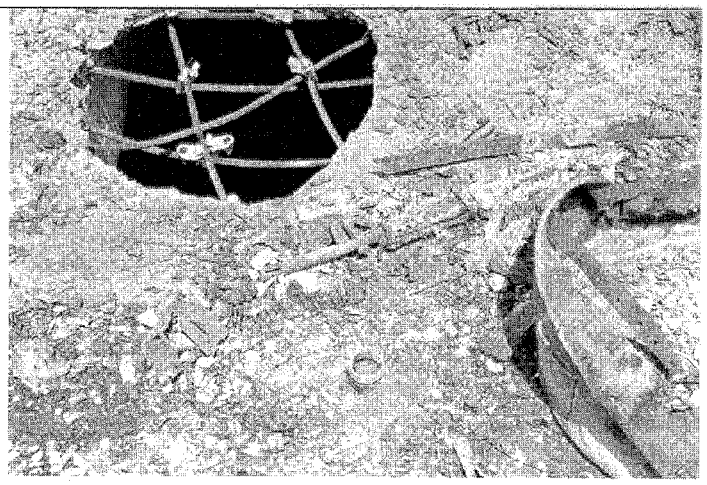


PHOTOGRAPH 1

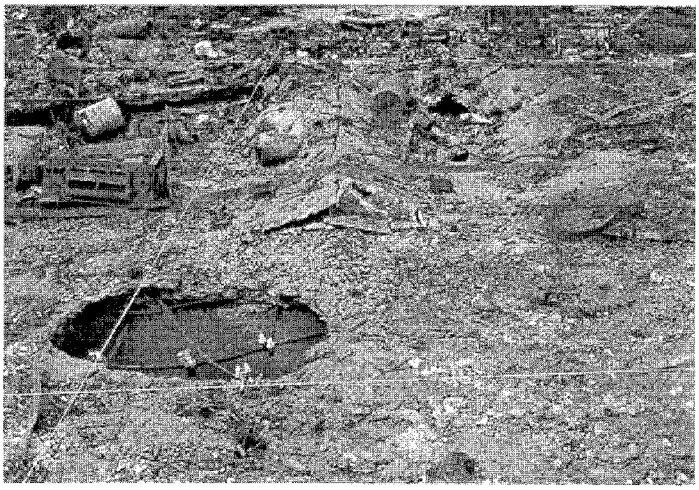


PHOTOGRAPH 2

ATTACHMENT G

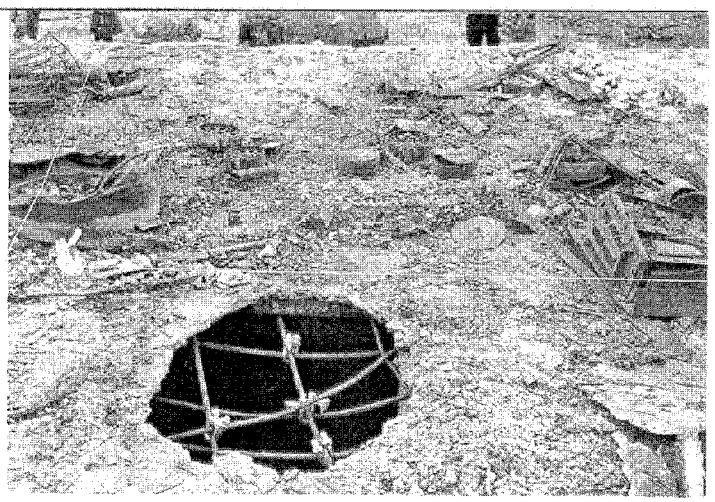


PHOTOGRAPH 3

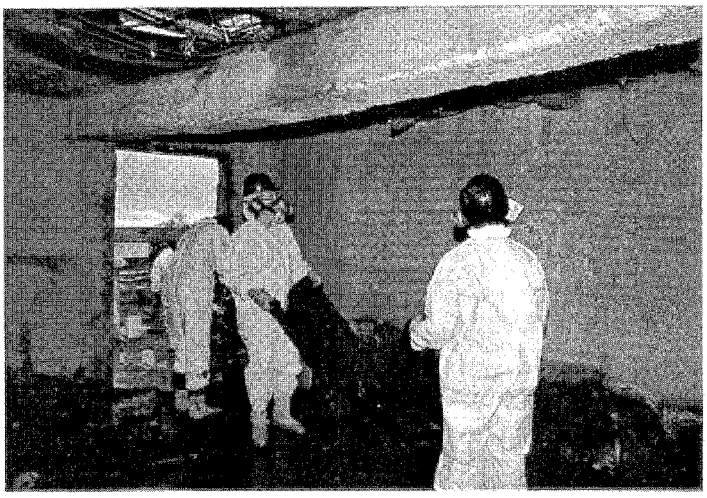


PHOTOGRAPH 4

ATTACHMENT G

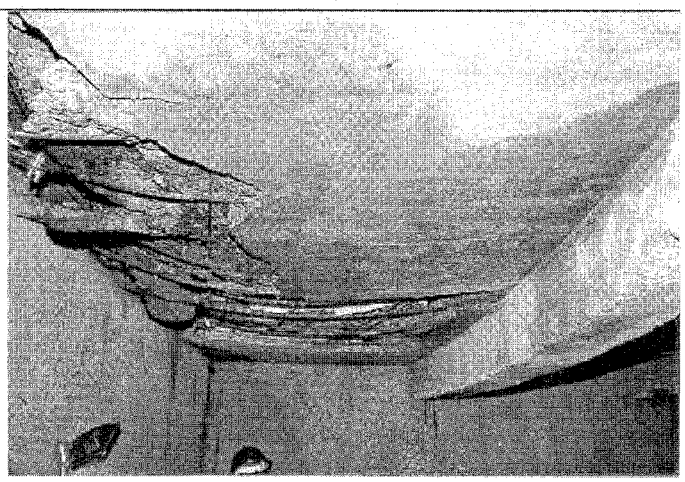


PHOTOGRAPH 5

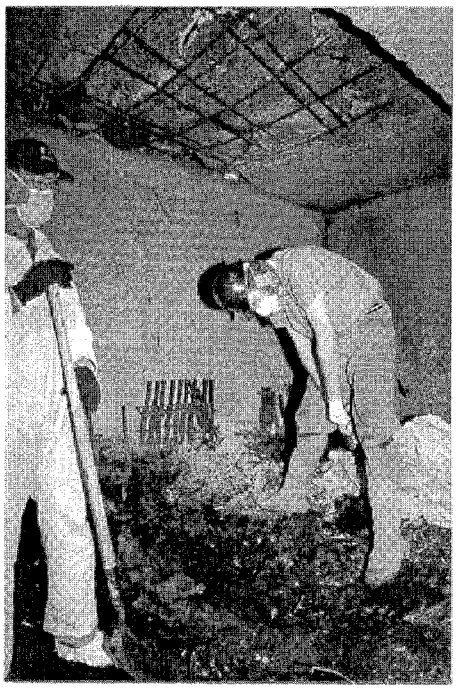


PHOTOGRAPH 6

ATTACHMENT G

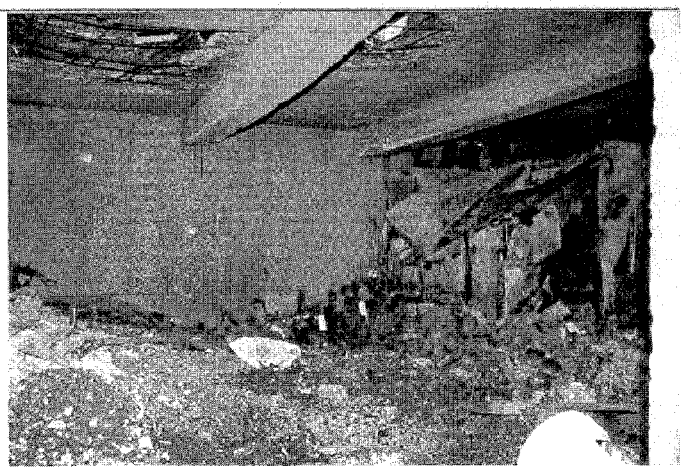


PHOTOGRAPH 7

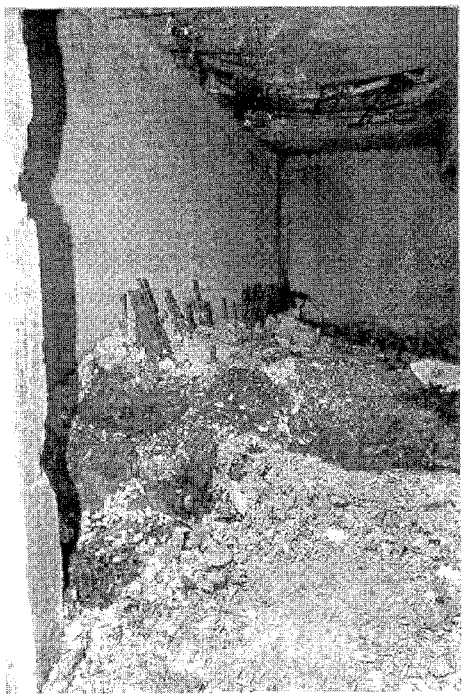


PHOTOGRAPH 8

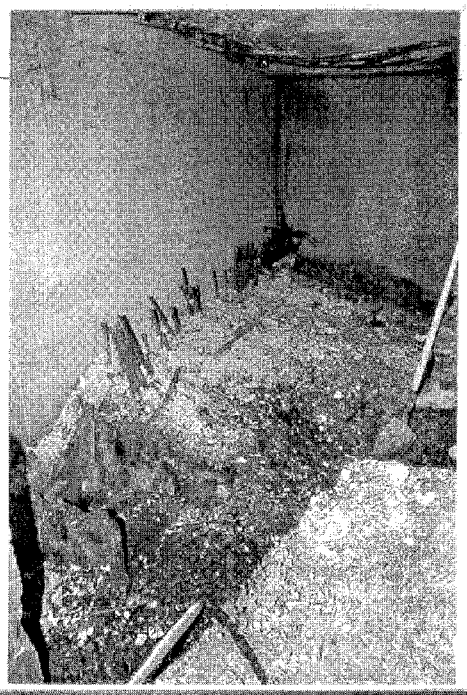
ATTACHMENT G



PHOTOGRAPH 9



PHOTOGRAPH 10

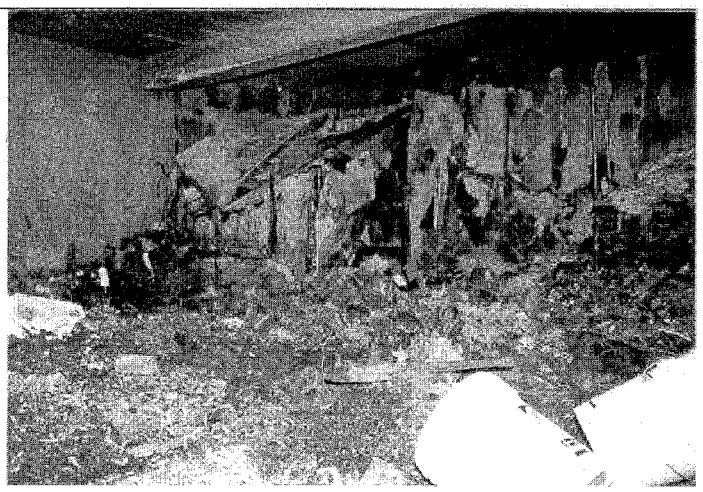


PHOTOGRAPH 11



PHOTOGRAPH 12

ATTACHMENT G

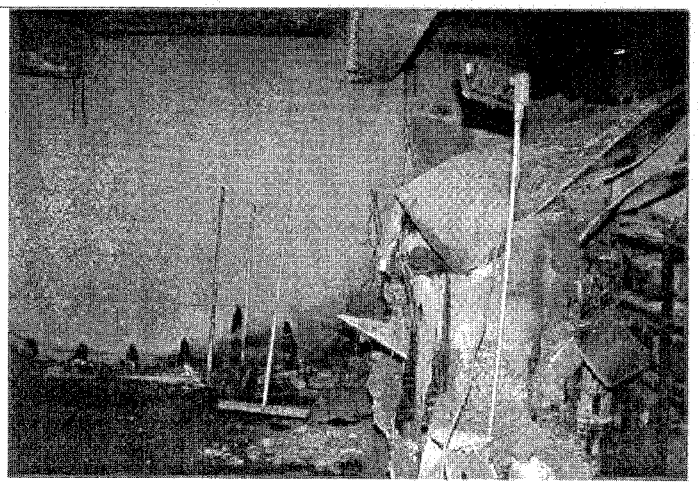


PHOTOGRAPH 13

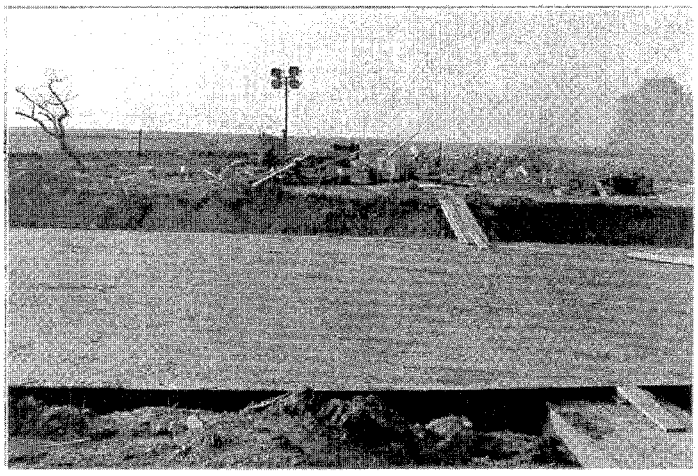


PHOTOGRAPH 14

ATTACHMENT G



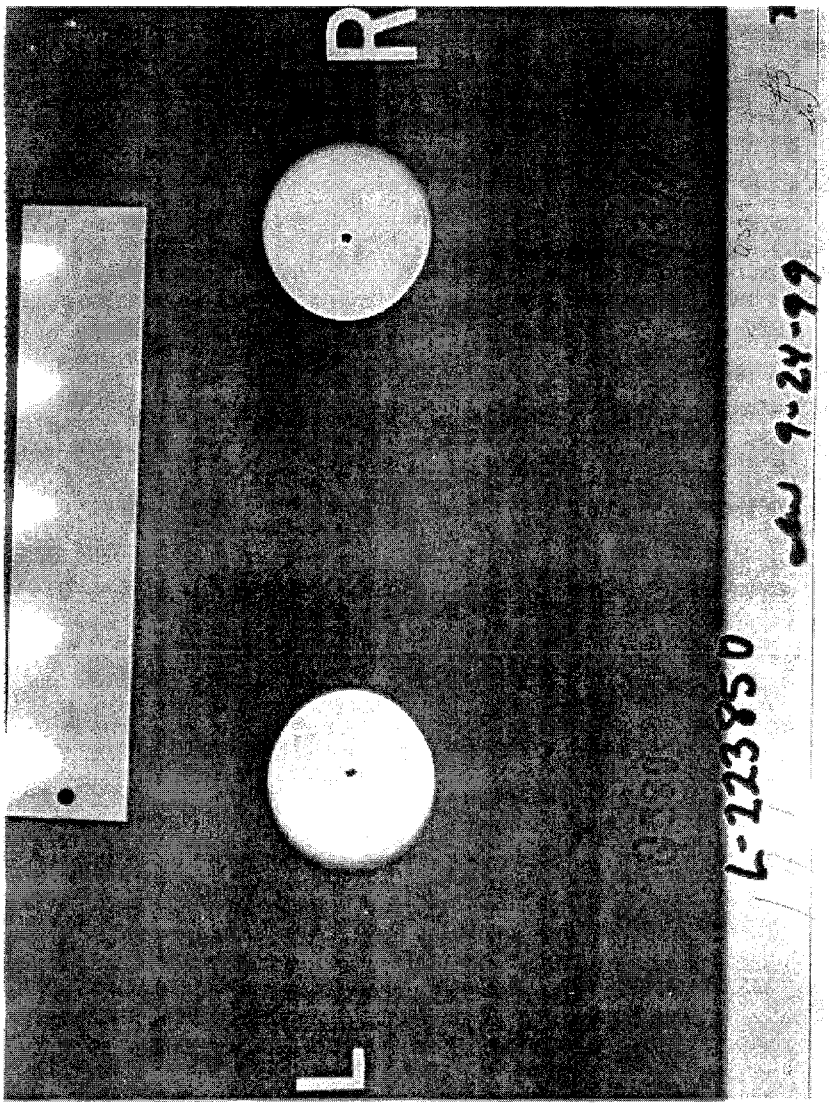
PHOTOGRAPH 15

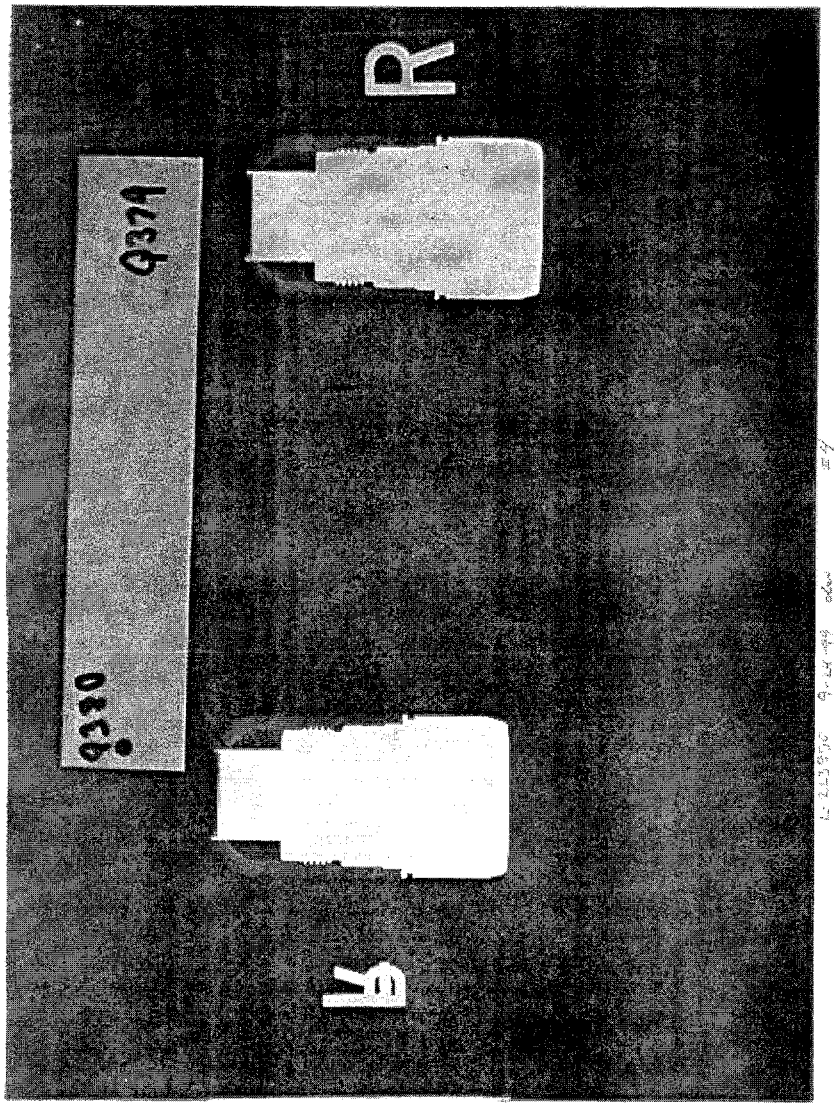


PHOTOGRAPH 16

Attachment H

Copy of X-Rays of Q 379 and Q 380


R
L
L-223850
9-24-99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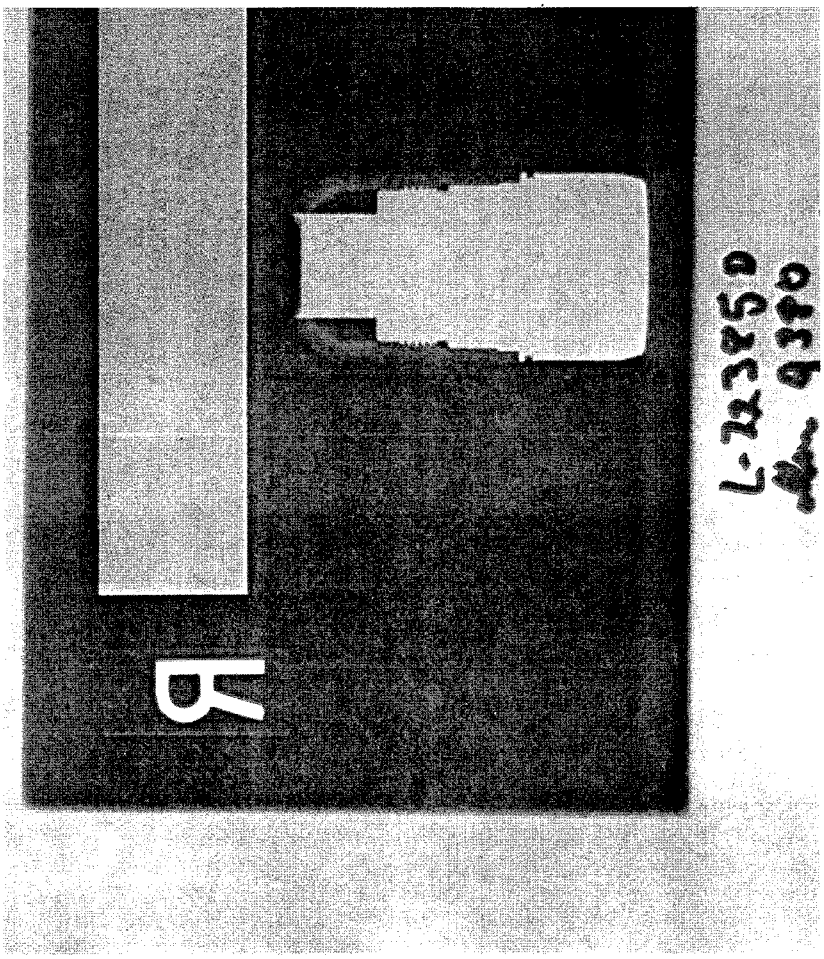
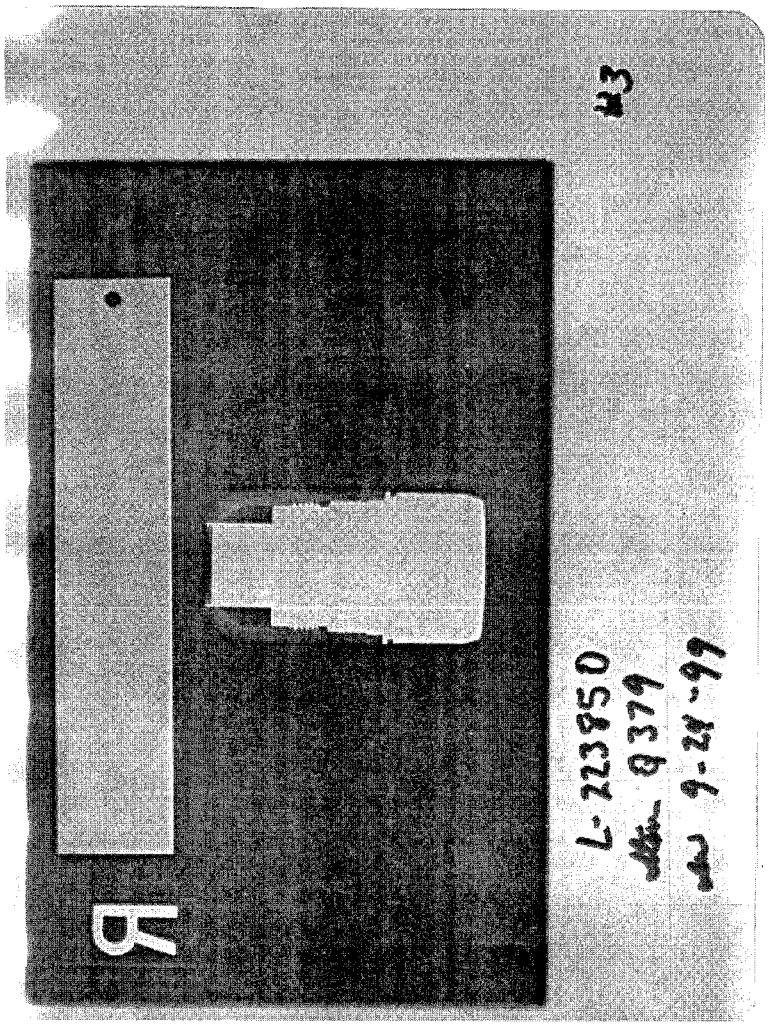
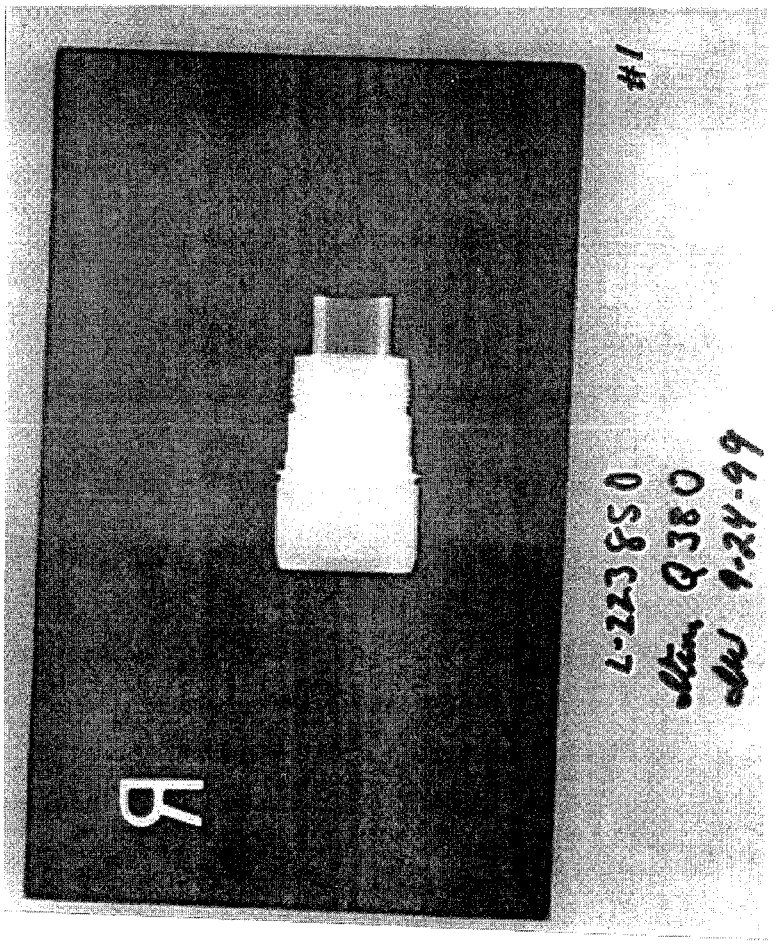
Q379
Q380

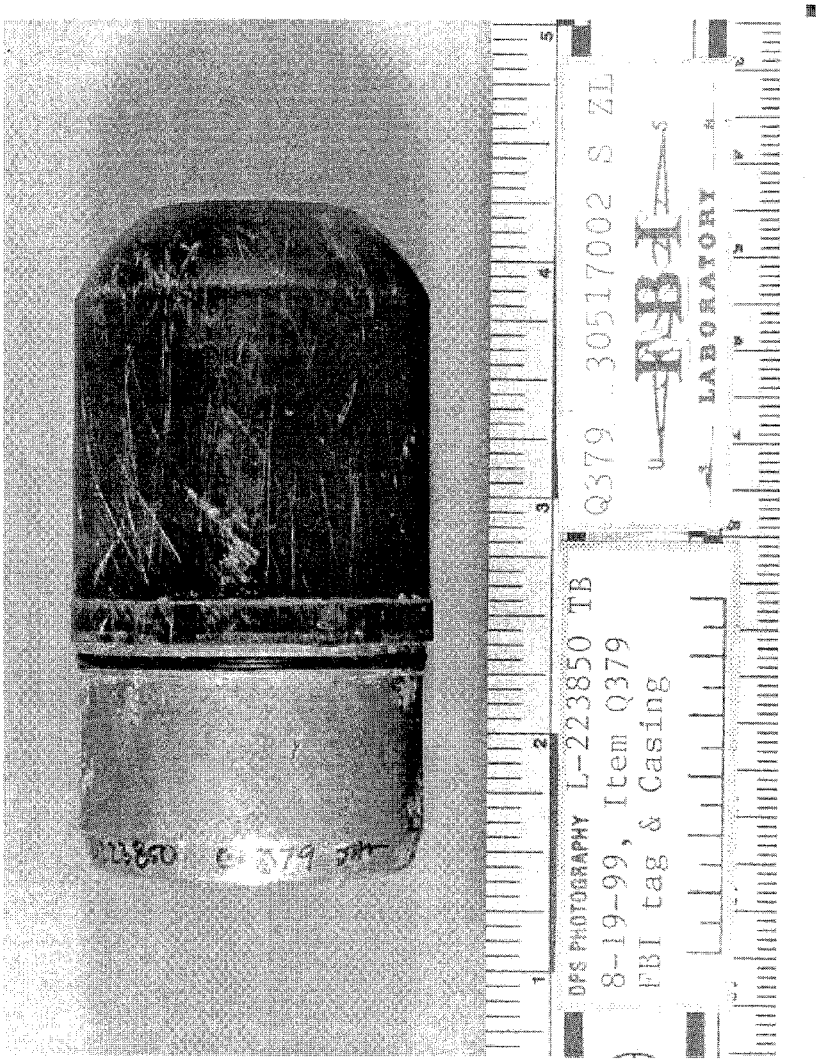


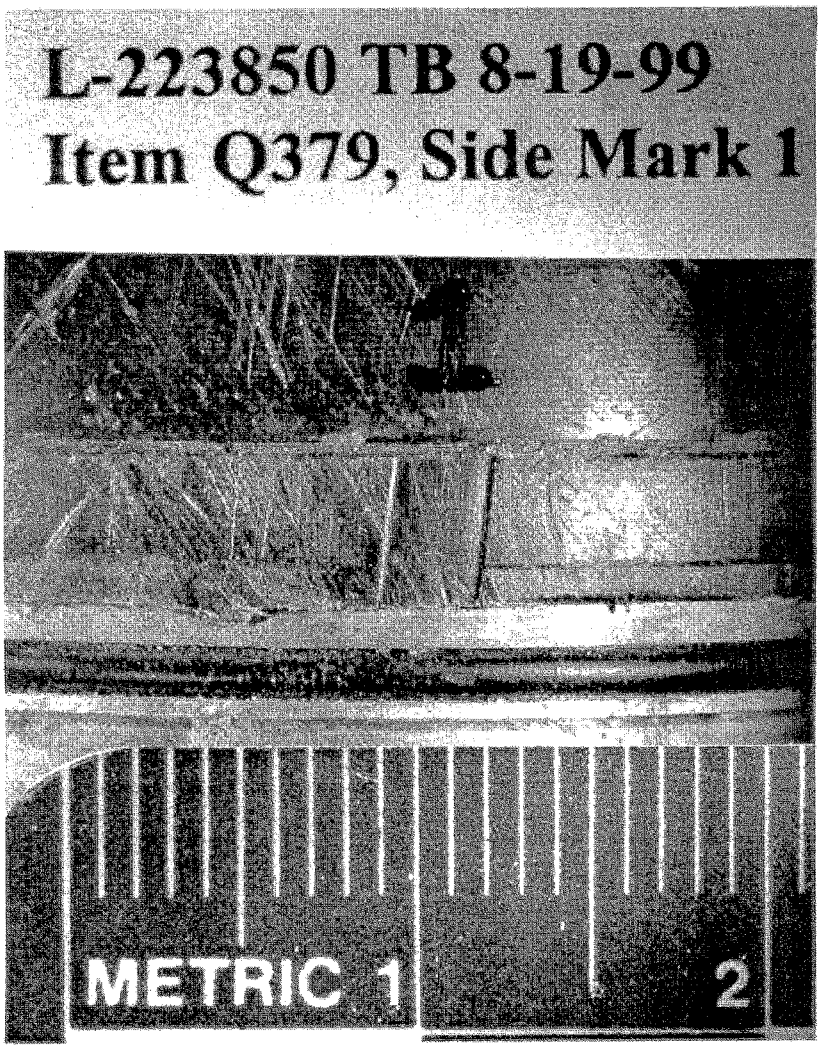

R
L-223850
9379
9-24-99


#1
L-223850
Q380
9-24-99

ATTACHMENT I

Copy of Photographs of Q 379

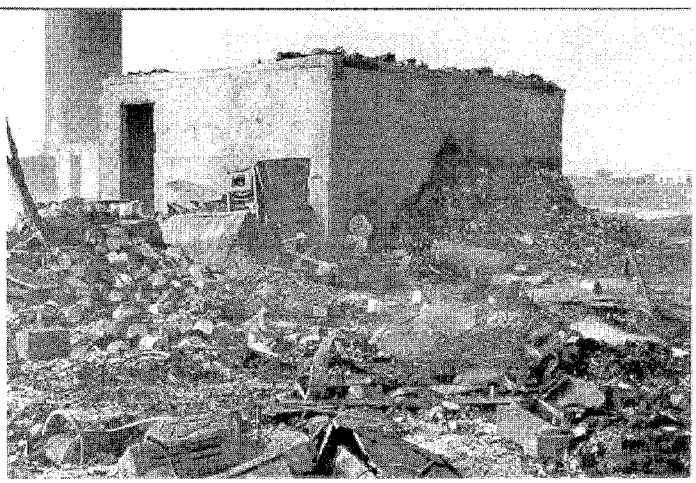

DFS PHOTOGRAPHY L-223850 TB
8-19-99, Item Q379
FBI tag & Casing
Q379 30517002 S ZL
FBI
LABORATORY


L-223850 TB 8-19-99
Item Q379, Side Mark 1
METRIC 1
2

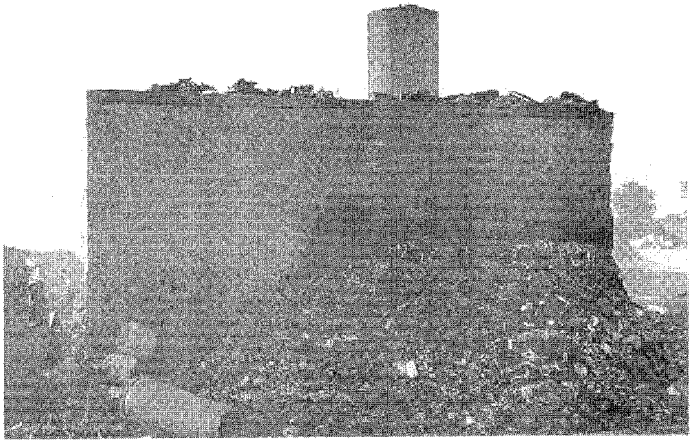
ATTACHMENT J

Copy of Photographs of Liquid Petroleum Tank

ATTACHMENT J

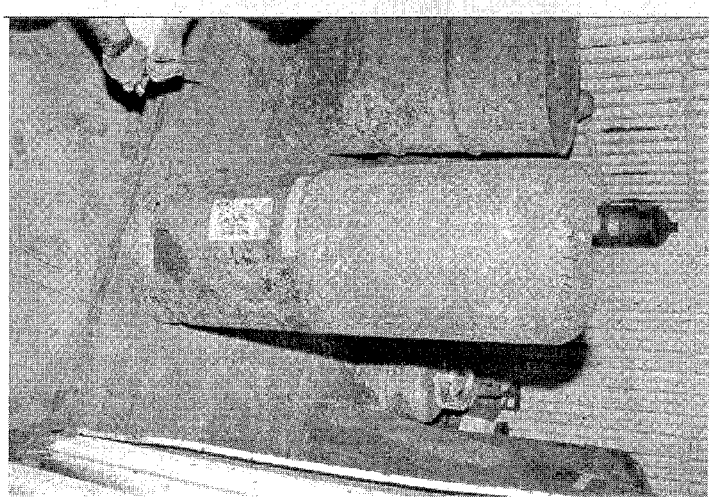


PHOTOGRAPH 1

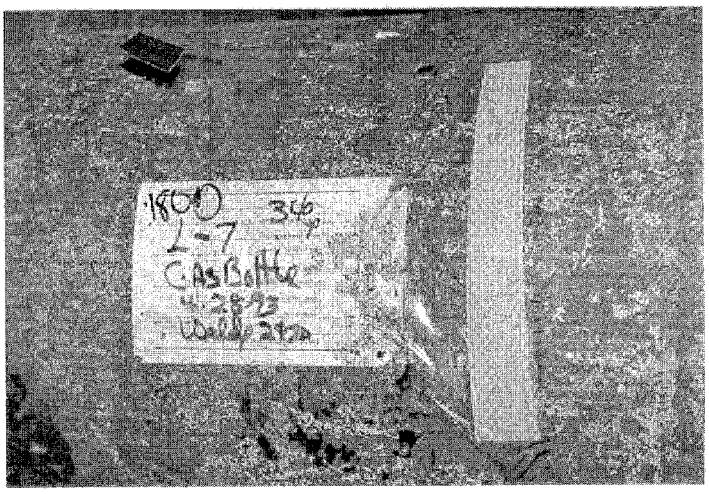


PHOTOGRAPH 2

ATTACHMENT J

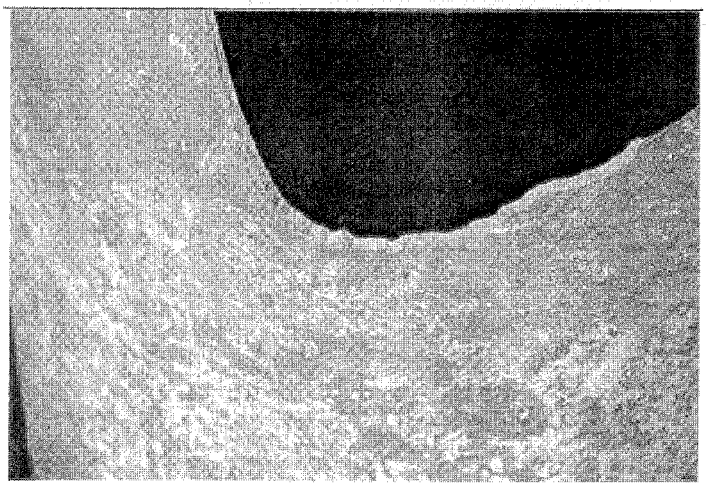


PHOTOGRAPH 3

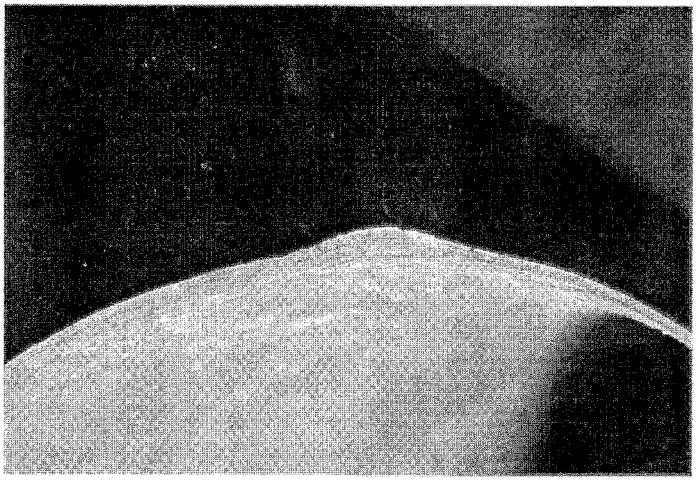


PHOTOGRAPH 4

ATTACHMENT J



PHOTOGRAPH 5



PHOTOGRAPH 6

ATTACHMENT J



PHOTOGRAPH 7

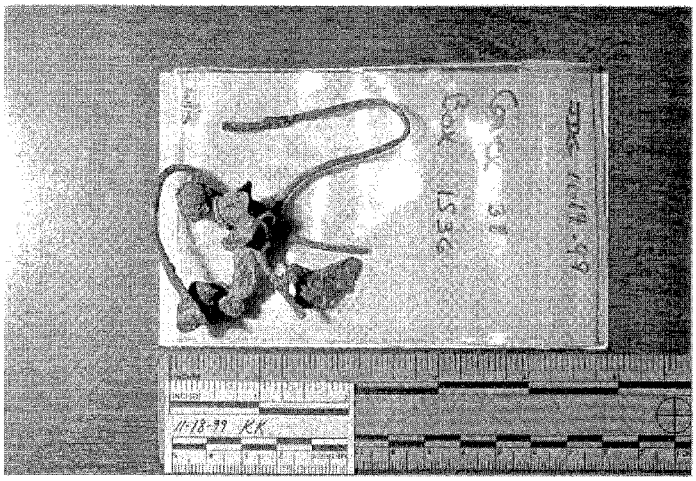
ATTACHMENT K

Copy of Photographs of Waco Inspection

ATTACHMENT K

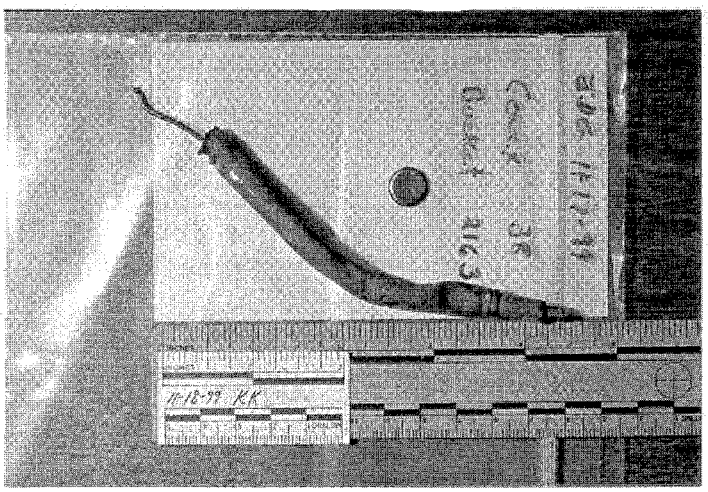


PHOTOGRAPH 1

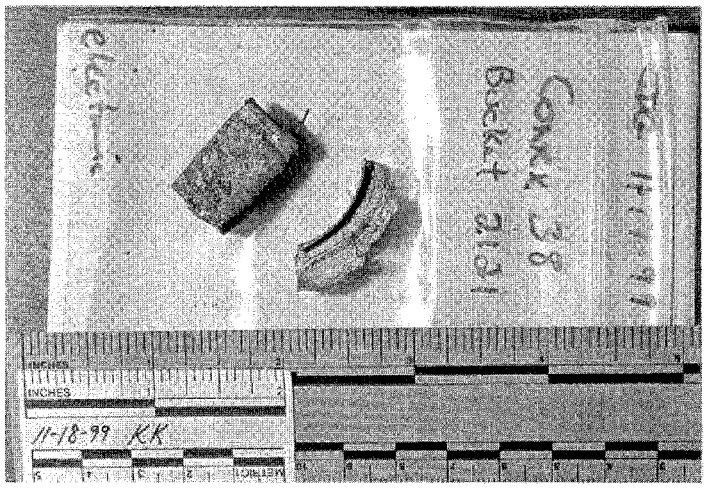


PHOTOGRAPH 2

ATTACHMENT K



PHOTOGRAPH 3

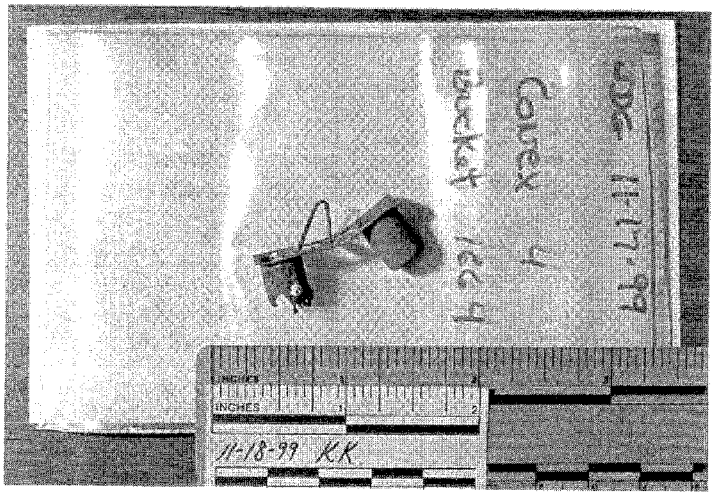


PHOTOGRAPH 4

ATTACHMENT K



PHOTOGRAPH 5



PHOTOGRAPH 6

FD-302 (Rev. 3-10-42)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/3/93

Special Agent (SA) CHARLES M. RILEY, Sacramento Division, telephone number 916-481-9110 was telephonically contacted and advised of the identity of the interviewing agent. SA RILEY was advised that he was being interviewed in regards to the WACMUR investigation and thereafter, provided the following information.

SA RILEY entered on duty on 11/27/83 and was assigned to the Hostage Rescue Team (HRT) from November of 1988 to January of 1991. SA RILEY related he was assigned to the operation in Waco, Texas for the period of 3/6/93 to 4/20/93. SA RILEY stated that his assignment in support of WACMUR centered around three areas. He was initially assigned to the Sniper Tactical Operations Center for a period of approximately two to three weeks. SA RILEY advised he was then assigned to sniper position #2 behind the Branch Davidian Compound for approximately one week, then to the Forward Command Post Trailer for another week. For the next one to one and one half weeks, SA RILEY was primarily assigned to sniper position #2, although on occasion worked in sniper position #3.

SA RILEY related he observed various activities in the Branch Davidian Compound, and to the best of his knowledge almost everything was appropriately reported and recorded in the sniper logs. SA RILEY related he viewed various individuals in the windows and saw the sporadic activity of these individuals as they looked out the windows or obtained rainwater from the roof. SA RILEY advised he was able to identify various individuals in the windows, specifically on the back side of the house. On three occasions, SA RILEY related he saw DAVID KORESH on top of the tower and felt he had a clear shot of him. The day before the fire SA RILEY related he noticed activity in the windows on the right side of the building and observed a sign in the window on the right side which alluded to a Bible passage.

SA RILEY advised he is aware of the rules of engagement concerning hostile targets. SA RILEY related he heard

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Investigation on 6/2/93 at Washington, D.C. File # ~~66-HQ-19157-45~~

by SSA Gail M. Seavey GMS:gms Date dictated ~~6/3/93~~

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WWC409-2596
CNG095-259

EXHIBIT 17

discussions concerning the water pump and water containers while in the Forward Command Post and may have, himself, discussed the capabilities and how to go about such actions.

On 4/19/93, SA RILEY related he began the day at approximately 5:45 a.m., assigned to sniper position #3, located approximately 180 yards off of the right corner of the Compound. SA RILEY advised he was responsible for providing observation, intelligence support, and protection for HRT operations on that side. SA RILEY related that initially he was watching and listening to radio communications when he heard that a phone had been thrown out a window. He later observed an individual come outside on two occasions with a phone line in his hands, showing the line was broken.

During the morning, SA RILEY related he observed the Combat Engineering Vehicles (CEVs) move into position and eject liquid gas to the front of the compound. SA RILEY related he heard shots fired from sniper position #1. Several other CEVs came forward and ejected the liquid gas through the windows. SA RILEY related that he could hear the Bradley vehicles moving forward and backing away, but was unable to see them. At that point, SA RILEY related it was expected that individuals would come out of the building but when no movement occurred, he heard the tanks come back and again inject gas into the building. SA RILEY related he recalls seeing the front door knocked out at one point and could see into the stairway, but no movement was observed. During the entire morning, SA RILEY stated there were rounds sporadically shot out of the building at the tanks. However, SA RILEY recalled that just prior to the fire, the gunshots became somewhat rhythmic.

SA RILEY stated that at 12:03 P.M., a radio communication reported smoke coming from the back side of the compound. SA RILEY related he was able to see the smoke and then observed fire on the red side of the building, although it appeared to be going against the direction of the wind. As the fire was moving to the other side of the building, SA RILEY heard gunshots from the direction of the building. SA RILEY observed four or five individuals walk out of the right side of the building, then observed an unidentified male on the roof above the front door. This unidentified male initially laid on his back, sat up, reached into his left pocket and slid a gun magazine down the roof. He then reached into his right pocket,

took an unknown item out, and let that slid down the roof. He then laid back down and again, sat up and smiled. Individuals in the Bradley vehicles went to assist the male, but he initially waved off help, eventually jumping off the roof, and ultimately restrained after failing to follow directions.

On the far left side of the building, an unidentified female was observed on the second floor. SA RILEY related the woman stood there for a moment, then jumped to the ground with her back on fire. She was assisted by individuals in the track vehicles who put the fire out. During this time, gunshots continued to come from the building. Another unidentified female was observed coming out of the front of the building, looking around, and although track vehicles came by to help her, she fought individuals off and returned inside the building.

Between approximately 12:45 p.m. and 1:00 p.m., SA RILEY related he came outside of the sniper position. While standing there, he noticed individuals to his left draw their guns and observed the male who had previously held the phone line in his hands. He had apparently come from a concrete structure at the base of the silo. He was asked about the children and stated that he had last seen them on the second floor of the building.

The balance of the day was spent securing and observing the area. SA RILEY advised when walking around the compound he observed a Coleman fuel can at the back structure of the compound, and also observed a scorched Coleman can.

PRELIMINARY ANALYSIS OF THE WACO FLIR VIDEO TAPES

The following pages contain preliminary analyses on the information contained on the WACO FLIR video tapes, related to the day of the fire of the Davidian complex at WACO. The analyst is Edward F. Allard of 7830 Greeley Blvd, Springfield, VA. The date of this submission is 30Aug 99. I submit that everything in these pages is true to the best of my knowledge and ability as an analyst.

DETECTION OF THERMAL RADIATION BY FLIRS

Forward Looking Infra Red (FLIR) devices only detect differences in radiation from side-by-side ground elements. They do not measure temperature. Consequently, it is important to analyze WACO scenes from the viewpoint of differences in radiation from WACO bodies, compared to their backgrounds. Every body in the universe emits radiation due to the absolute temperature of its surface and the chemical nature of its surface. The radiation is called self-emission. The equation for calculating the radiation from a surface is given by

$$W(T,\lambda) = \varepsilon(T,\lambda)\sigma T^4$$

where – $W(T,\lambda)$ is here called the surface's radiance
$\varepsilon(T,\lambda)$ is called the emissivity of the surface
T is the absolute temperature of the surface
σ is a constant

The difference in self-emission radiation between two ground elements is given by

$$\Delta W = \frac{\partial W(T,\lambda)}{\partial T}\Delta T + \frac{\partial W(T,\lambda)}{\partial \varepsilon}\Delta\varepsilon$$

This means that a radiation difference between two side-by-side ground elements can be caused by a difference in temperature between the two elements or a difference in emissivity between the two. Two elements that have the exact temperature will have a difference in radiation if their emissivities are different.

Since the effect on solar radiation is the issue, emissivity is written

$$\varepsilon(T,\lambda) = 1 - r(T,\lambda)$$

where $r(T,\lambda)$ is the reflectance of the surface.

All natural background elements in the 8 – 14 μ (micrometer or micron) spectral region have an emissivity close to 0.94. Even military paints have emissivities close to 0.94. There is no color in the 8 – 14 μ spectral region. This means that the reflectances of natural backgrounds are around 6%.

EXHIBIT 18

Experimental data show that the emissivities of bodies near 300 degrees K (a reference background temperature where solar and background data are available) do not vary much from 8 to 14 μ and do not vary much as a function of normal temperature changes. ε can be considered a constant for a particular surface at 300 degrees K in the spectral passband from 8 to 14 μ. Each surface has a slightly different emissivity. The calculation of self-emission ΔW for one ground background element at 300 degrees K and with an emissivity of 0.94 and solar reflections from a side-by-side element with an emissivity of 0.90 is the task at hand. Solar radiation data from a technical book (Laser Systems and Techniques) are provided.

All elements on the ground are illuminated by the sun. It must be assumed that the solar reflecting area has a man-made surface with a relatively high reflectance, if this is the source of thermal flashes observed on the FLIR's display. We assume that the surface is a piece of aluminum. If the reflectance of the aluminum were high (80%) then, the aluminum would look black on the FLIR's display, indicating less self-emission than its background. It will be shown that a highly reflecting (80%) aluminum surface could not be the source of the flashes on the FLIR's display. Additionally, a low reflecting surface could not be the source either.

To obtain total radiation, ΔW must be integrated over the spectral passband from 8 μ to 11.5 μ for a standard FLIR. If the WACO FLIR actually was a 2nd Generation FLIR, the integration range must be from 7.5 μ to 10 μ. The total self-radiation difference between two surfaces

$$\Delta W = \int_{8}^{11.5} dW$$

must be compared with reflected solar radiation data in the 8μ to 11.5 μ spectral region.

Since the WACO FLIR would detect both a solar reflecting surface and a background surface, the system parameters of the FLIR need not be considered in this analysis. A radiation analysis is sufficient. In fact, only the second term on the right side of ΔW is necessary to prove that solar reflections could not be the source of thermal flashes observed on the display of the WACO FLIR. The second term

$$\Delta W = \int_{8}^{11.5} \frac{\partial W}{\partial \varepsilon} \Delta\varepsilon \, d\lambda = -(0.04)^2 [1.725 - 0.513] \times 10^{-2} = -1.94 \times 10^{-5} \quad watts / cm^2 / ster$$

has been evaluated using radiation tables and assuming a low reflectivity difference of 4%. This is self-radiation.

From the solar radiation data and a numerical integration of the data over the 8μ to 11.5 μ spectral region, the radiation reflected from the reflecting surface is given by

$$\Delta W = \int_{8}^{11.5} data \, d\lambda = 0.334 \times 10^{-5} \quad watts / cm^2 / ster$$

CONCLUSIONS

It has been shown that a reflecting surface of 10% reflectance compared to a background reflectance of 6% requires 1.94 watts/cm^2/ster of self-radiation to bring the reflecting surface up to 300 degrees K, the assumed background temperature. But, solar reflected radiation can only supply

0.334 watts/cm^2/ster.

So the reflecting surface will always look cooler than its background. This is consistent with the images observed on the WACO FLIR's display. This is equivalent to stating that any solar reflection effects could not be detected by the WACO FLIR. If we assume that the reflecting surface has a much higher reflectance, then the surface would be even cooler and would require even more solar reflections to bring the temperature up to 300° K. Note that solar reflections must be intense enough to bring the reflecting surface up to 300 degrees K plus intense enough to bring it to a much higher radiation level than the background, which is impossible.

COMMENTS

1. This conclusion is true for any FLIR operating in the 8 μ to 11.5μ spectral passband, or the 7.5 to 10.0μ passband.

2. An analysis of the $\frac{\partial W}{\partial T}\Delta T$ term by itself also shows the impossibility of raising the surface temperature of a reflecting surface above the background temperature by solar reflections. It is not necessary to present the results here.

DETECTION AND RECOGNITION OF MEN

The FLIR tapes show men walking around the WACO area after the fire. The men can be seen clearly on the roof of a low height building. The radiation difference between the men and the roof shows that the men are darker (cooler) than the roof. After the men jumped off the roof onto the ground, they disappeared into the background. This means that the men were very near the same temperature of the background. The FLIR was not able to detect the men even though they certainly were there. In other cases, men emerged from air conditioned vehicles and could be seen dark against the background. As the men walked, they slowly heated up to the background temperature and disappeared. In one particular case of serious interest, men dropped down through an tank's bottom escape hatch and could be seen clearly as dark objects after the tank uncovered them. At this range the FLIR was not able to recognize man-sized targets, but clearly was able to detect the much cooler men.

THERMAL SIGNATURES OF WACO GUNFIRE

A thermal signature is source of thermal radiation characterized by the intensity of the radiation over a limited area, its shape and time duration. In the case of the WACO gunfire, the radiation was recorded by a FLIR in the 8μ - 11.5μ micron (micrometer) spectral region or in the 7.5 to10.0μ spectral region. The source of the radiation was hot gases and hot particles leaving the barrel of a gun. The greater the amount of fast burning power in a weapon's barrel, the longer the burn time of the burst from the barrel on the display of the FLIR. Additionally, the escaping gases are directed away from the muzzle as expected. It was possible to measure the approximate burn time by observing the FLIR videotape frame-by frame and counting frames. Also, it was possible to observe the growth of the signature and its direction by analyzing the FLIR video, frame-by-frame. In most cases, the angle of FLIR's position in the sky and the direction of a signature's growth on the ground, permitted this analyst to conclude that the gunfire was directed towards the WACO buildings.

There were 4 distinct gunfire signatures on the WACO tape distinguished by their duration shape and their area on the FLIR's display.

1. Rapid, Cyclical Thermal Bursts

There were many instances when cyclical bursts of gunfire were observed. In general, the bursts were "on" for 3/60 sec, "off" for 3/60 sec, "on" for 3/60 sec, etc. The growth of the signatures indicated that the growth was directed toward WACO buildings. The signatures indicate the source of the radiation were automatic weapons.

2. Short "Puff" Type Signatures

Close to the time of the fire, two separate signatures in the courtyard area were observed and analyzed. The signatures grew as a sphere or "puff" of thermal radiation. They lasted about 1/2 second and covered a wider area then the automatic gunfire. These signatures infer a larger weapon than the automatic weapon. They also infer that the weapons were a man portable because no ground heating was observed at the gun position after the signature extinguished. If the burst came from the ground, the ground would have become hot and it was not hot.

3. Long "Puff Signature

As a CEV approached the rear of the WACO complex, a long thermal "puff" was observed on the deck of the vehicle. It lasted about one second and covered a relatively large area on the FLIR's display. It was a long burning burst, which by inference was a large weapon.

4. Double Burst

A large area, long time, double burst was observed at the corner of a damaged building close to the time of the complex fire. There was no evidence that the buildings were on fire. The first burst of the double burst grew in the direction of the buildings. The direction was either toward the inside of the damaged building or toward the clear view of the dining room. As the first burst died out, (about one second), a second burst appeared, and grew in a direction opposite to the direction of the buildings. The second burst lasted about 1 second. Both bursts covered a relatively large area on the FLIR's display. At the end of the event, no hot areas were observed on the ground, so the device was fired off the ground.

MILITARY OPERATIONS

There were several military operations observed on the FLIR video. Three demand close analysis.

1. Tank - Infantry Attack on a Building

A tank (CEV) was used to smash into a building before the complex fire. As the tank approached the building, two appeared on the video tape behind the tank. They rolled over and began shooting into the building with automatic gunfire. (The airborne FLIR recorded only part of the operation). A short time later, the tank backed out of the building. Standing behind the tank were 3 men. The tank appeared to roll over the men, as they disappeared under the tank. It stopped for a few seconds, turned, and left the scene. No men were observed after the tank left the scene. The men had to enter and leave the tank through its bottom escape hatch.

2. Tank - Infantry - Launcher Attack

After the gym was leveled and the building to the left of it had its back wall torn down, exposing the interior, a tank appeared on the scene. There was no FLIR indication that a building fire had begun. After arriving, a gun position was observed at a safe position that used the tank as a shield from possible Davidian gunfire from the dining room area. The gun position had a clear field-of-fire down the side of the standing building. A short time later, the double burst thermal signature appeared at the corner of the building in the vicinity of the tank and gun position. It had to be a launcher, man portable weapon of some kind, because there was no ground hearing at the launcher position after the signature extinguished. A short time later, automatic gunfire appeared at the gun position. A short time later, the tank moved out of the area and no gun position could be seen. Clearly, this was a coordinated tank – infantry operation.

3. Machine Gun Attack on the Burning Dining Room Area

While the WACO complex was on fire and approaching the dining room area, automatic gunfire from more than one position was observed in the area surrounding the dining room/"bunker" area. Two or three gunners directed automatic gunfire toward the burning building. As the building became more engulfed in flames, the gunners moved away

from the building but continued firing at the building. There were sporadic bursts of automatic gunfire during a short time interval, which could be classified as continuous gunfire.

Edward F. Allard
30 Aug 99

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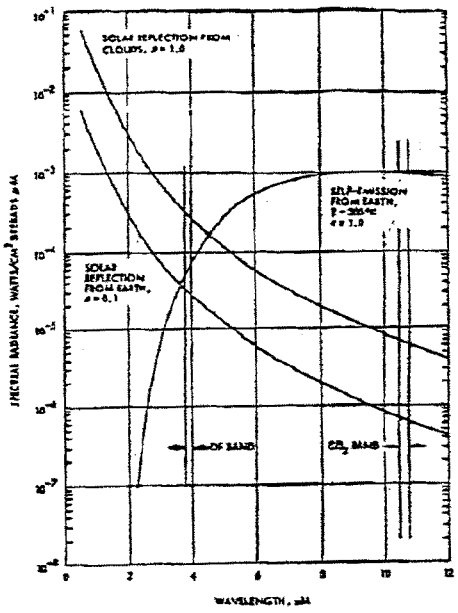

Figure 5-5/Background Spectral Radiance


EXHIBIT
19

CONTINUATION

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FILE TITLE	FILE NO. TYPE	PROGRAM CODE
1 *	RF093021-U.12	
2 *	ACTIVE__X____INACTIVE_____CLOSED_____RESTRICT_____	
3 *		
4 *	BY: SGT. RONNY GRIFFITH	

TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIMINAL LAW ENFORCEMENT DIVISION

REPORT OF INVESTIGATION Date: 05-19-93

FILE TITLE	
1 Capital Murder FC 0010 2 Molennan County, 155 3 STEVE WILLIS, WM, age 32 4 02-28-93	THIS REPORT IS THE PROPERTY OF TEXAS DPS-CLE DIVISION. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE AGENCY TO WHICH LOANED.

ACTIVE: X INACTIVE: CLOSED:		FILE NR	TYPE PROGRAM
RESTRICTED:		RF093021-U.12	I Criminal
STATIONED: Longview, Texas			
SUBMITTING INVESTIGATOR		DISSEMINATION	CK RELATED FILES
INV-ID-NR: 3100 BY: SGT. RONNY GRIFFITH		D1	F1
SUP-ID-NR: BY: DATE:		D2	F2
CPT-ID-NR: BY: DATE:		D3	F3
SEC-ID-NR: DATE: TIME:		D4	F4
		D5	F5

RPT-RE: Initiated - Investigation Report

SYNOPSIS:

On 8-28-93, the ATF forward observers, stationed in the undercover houses, across from Mt.Carmel, were fired upon by the Branch Davidians. On 4-21-93, writer, Ranger POLING, and Ranger ALMOND were assigned the task of processing the two undercover houses for evidence. Officers processed the houses and took custody of all evidence found. Evidence was released to Evidence Officer Jim MILLER.

DETAILS:

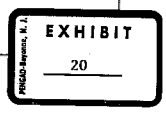
1. The two undercover houses are owned by Gayle PERRY. The PERRY houses are located on the Double EE Ranch Road approximately 1/2 mile northwest of FR 2491. The houses are directly across from the Mt. Carmel Center and face the northeast. Undercover House "A" is the small tan house with red shutters located directly across from the southwest entrance to Mt. Carmel Center. Undercover House "B" is the large tan house located northwest of undercover House "A" and more directly in front of the Mt. Carmel Center house.

2. The distance from the concrete foundation of the Mt. Carmel Center to undercover House "A" and "B" was measured. The distances are as follows:

   A. Undercover House "A"

      1. Left shutter of living room window, 972.31 feet
      2. Right shutter of southeast front bedroom's south window, 977.35 feet

   B. Undercover House "B"
      1. Left side of garage door, 967.90 feet



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BY: SGT. RONNY GRIFFITH

3. Additional measurements were made and are as follows:

A. Distance between undercover Houses "A" and "B", 79 feet, 2 1/2 inches
B. Free-hand drawings of bullet hole, shutter, measurement of Undercover House "A" and garage door of Undercover House "B" are attached to this report. The drawing number 13.

4. On 04-22-93, at 2:00 P.M., the initial crime scene search was made of Undercover House "A" (UCA) and "B" (UCB). The following named officers made the primary search:

A. Ranger ALMOND - locating and photographing the evidence, measurements relating to the evidence

B. Ranger POLING - locating and documentation of the evidence

C. F.B.I. Agent WILLIAMSON - determined the angles and trajectory of the bullet holds in the houses

D. F.B.I. Agent THOMAS - photographing the evidence

E. D.P.S. Tech HENDERSON - photographing, videoing the evidence

F. Writer - locating, custody and releasing evidence to Evidence Officer

5. In the primary search of Undercover House "A", the following described evidence was found:

A. A bullet hole in the living room window shutter (left). The bullet passed through the outside wall and embedded itself in the leg of the dining table located half way in the dining room-living room area.

B. Two bullet holes in the southeast front bedroom wall (under the south window) and through window shutter (right). The bullet passed through the outside wall, on through a headboard of a bed

C. One .308 cal. FC shell casing in the southeast front bedroom floor partially under a closet door.

6. The bullet holes, the paths of the bullet holes, and the shell casing were photographed at that time by D.P.S. Gene HENDERSON.

7. The trajectory of the bullet was analyzed by F.B.I. WILLIAMSON.

8. In the primary search of Undercover House "B", the following described evidence was found:

A. One bullet hole in the left side of the garage door. The bullet passed through the garage door and struck a paint canister (hand held). The bullet passed through the paint canister and struck the back of the metal shelf the canister was on. No photograph was made at this time. The trajectory of the bullet hole was analyzed at that time by F.B.I. Agent WILLIAMSON.

9. In the primary search of the yards of the two undercover houses, the following described evidence was found:

A. Three (3) shell casings laying near the sidewalk running between the two houses

B. One (1) shell casing laying in the concrete driveway of House "B"

10. No photographs were made at this time.

11. The primary crime scene search was terminated at 6:00 P.M.

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12. On 04-23-93, at 9:30 A.M., the crime scene search of the two undercover houses continued. The evidence located on 04-22-93 in House "A" was rephotographed by FBI Agent Richard THOMAS. The evidence was then taken into custody by writer. Two additional bullets were found in the southeast bedroom floor. One bullet was found when a closet door was moved. The other bullet was found when the sand in the bedroom was sifted. The two bullets were photographed and taken into custody by writer.

NOTE: From 03-02-93 to 04-19-93, undercover House "A" was used by FBI Hostage Rescue Team members to secure the perimeter of the Mt. Carmel Center. During the occupation of the house, HRT member Jerome ANDERS took custody of eleven (11) .308 cal. shell casings and twenty-four (24) .223 cal. shell casings. On 04-20-93, ANDERS released the shell casings to Ranger COX who in turn released them to Ranger ALMOND. ANDERS stated the shell casings were located in both the living room and southeast bedroom.

13. On 04-23-93, the crime scene search of Undercover House "B" continued. The evidence located on 04-22-93 was photographed by F.B.I. Agent Richard THOMAS. The evidence was taken into custody by the writer. One additional bullet fragment was found when all of the tools were removed off of the shelf stand where the paint canister was setting. The fragment and bullet indention were photographed. The fragment was taken into custody by this writer.

14. On 04-23-93, the yard search continued. The evidence located on 04-22-93 was rephotographed by F.B.I. Agent Richard THOMAS. The evidence was taken into custody by writer.

15. Crime scene search terminated at 7:00 P.M.

16. On 0-23-93, writer went to Evidence Officer Jim MILLER and released the evidence to him. A copy of the receipt is attached to this report.

CUSTODY OF EVIDENCE:

Exhibit UCA-1B, undercover house "A", 1 bullet projectile, in dining table leg, dining room/living room, in leg up from floor 22 3/4".
Almond/Griffith 4-23-93 at 3:05 p.m.

Exhibit UCA-4A undercover house "A", ten (10) 223 cal. IMI. shell casing, living room, bedroom, Cox, Almond, Griffith. 4-20-93 at 9:40 a.m.

Exhibit UCA-4B undercover house "A", nine (9) 308 cal. FC shell casing, (8 shell casing from Cox - 1 shell casing from bedroom, #1 in floor, photograph #4 on 4-23-93. #4 50 1/4" from East bedroom wall, 89 1/4" from North bedroom wall. Cox, Almond, Griffith. 4-20-93 at 9:40 a.m.

Exhibit UCA-4C undercover house "A", three (3) 308 cal. FC shell casings, living room, bedroom. Cox, Almond, Griffith. 4-20-93, 4-23-93 at 9:40 a.m.

Exhibit UCA-4D Undercover house "A", fourteen (14) 223 cal. IMI shell casings, living room, bedroom. Cox, Almond, Griffith.
4-20-93/4-23-93 at 9:40 a.m.

Exhibit UCA-5 Undercover house "A", one (1) bullet projectile, floor of bedroom #1, 44 3/4" from East wall, 108" from North wall, Almond, Griffith. 4-23-93, 3:20 p.m.

Exhibit UCA-6 Undercover house "A", one (1) bullet projectile, bedroom #1 sweepings of floor. Almond, Griffith. 4-23-93, 4:25 p.m.

Exhibit UCB Undercover house "B", one (1) spray can (paint), in garage on fourth shelf of stand, 155 3/4" from hole for garage door Almond, Griffith. 4-23-93, 5:43 p.m.

Exhibit UCB-1E Undercover house "B", one (1) bullet fragment, in garage on third shelf, 156 1/4" from hole in garage door. Almond, Griffith, 4-23-93. 6:15 p.m.

Exhibit UCC-1 Undercover house yard, one (1) 45 cal. shell casing, in the yard between UCA and UCB, 31'9" from NE corner of UCB 51'11" from SE corner of UCB. Almond, Griffith. 4-23-93 6:55 p.m.

Exhibit UCC-2 Undercover house yard, one (1) 45 cal. shell casing, in the yard between UCA and UCB, 22' 10 1/2" from NE corner of UCA 65' 8 3/8" from SE corner of UCB. Almond, Griffith 4-23-93, 6:56 p.m.

Exhibit UCC-3 Undercover house yard, one (1) 45 cal shell casing, in the yard between UCA & UCB, 22] 1/2" from NE corner of UCA, 65' 8 3/8" from SE corner of UCB, Almond, Griffith, 4-23-93, 6:57 p.m.

Exhibit UCC-4 Undercover house yard, one (1) 22-250 shell casing, in the driveway of UCB, 18'9" from NE corner UCB, 22' 7 1/4" from NE corner of UCB, Almond, Griffith. 4-23-93, 7:32 p.m.

The above exhibits in custody of case agent, Sgt. Jim MILLER.

Exhibit UCA-1 Photographs of undercover house "A", bullet hole entry, living room window shutter (left), 29 5/8" from porch,

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BY: SGT. RONNY GRIFFITH

24" from inside door facing. R. Thomas/G. Henderson. 4-23-93

Exhibit UCA-1A Photographs of undercover house "A", bullet hole exit, in wood paneling right side living room window, 26 1/2" from living room floor to bullet hole, 22 3/4" to inside door facing. R. Thomas/G. Henderson. 4-23-93

Exhibit UCA-1B1 Photograph of undercover house "A", bullet hole entry, in dining table leg, in leg up from floor 22 3/4", R. Thomas Gene Henderson. 4-23-93

Exhibit UCA-2 Photograph of undercover house "A", bullet hole entry, South East bedroom outside wall, 5th board up from foundation under window shutter, right side. 45" up from ground, 148 1/2" SE corner of bedroom. R. Thomas/Gene Henderson 4-23-93

Exhibit UCA-2A Photograph of undercover house "A", bullet hole exit, South East bedroom inside-outer wall, left of window. 20 1/2" up from floor, 141" from South End corner. R. Thomas/ Gene Henderson. 4-23-93

Exhibit UCA-3 Photograph of undercover house "A", bullet hole entry, East bedroom window shutter (right), 49" up from the ground 141 1/8" from SE corner, R. Thomas/Gene Henderson, 4-23-93.

Exhibit UCA-3A Photograph of undercover house "A", bullet hole exit, South East bedroom inside outer wall, left of window, 25" from floor, 133" from SE corner. R. Thomas/Gene Henderson, 4-23-93.

Exhibit UCA-3B Photographs of undercover house "A", bullet hole entry/exit, headboard of bed, sitting near bedroom window, headboard had been moved to another location in the room. R. Thomas/Gene Henderson 4-23-93.

Exhibit UCA-4 Photographs of undercover house "A", 308 FC shell casing, in bedroom floor partially under a door, 50 1/4" West of the East wall, 89" South of the North wall, R. Thomas/Gene Henderson. 4-23-93

Exhibit UCB-1A Photograph of undercover house "B", bullet hole entry, garage door left side-outside. R. Thomas 4-23-93

Exhibit UCB-1B Photograph of undercover house "B", bullet hole exit-inside garage door inside. R. Thomas. 4-23-93

Exhibit UCB-1C Photograph of undercover house "B", bullet hole in paint can 3rd shelf of metal shelf. 155 3/4" from hole in garage door R. Thomas. 4-23-93.

Exhibit UCB-1D Photograph of undercover house "B", bullet indention in metal shelf. Back of 3rd shelf. 160 1/4" from garage door. R. Thomas. 4-23-93

The above exhibits in custody of case agent, Sgt. Jim MILLER.

PHYSICAL DESCRIPTION:

None.

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3. T.W. Poling-Texas Ranger
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ACTIVE X INACTIVE CLOSED RESTRICT

BY: SGT. RONNY GRIFFITH

Hurst, TX 76053
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Abilene, TX
915-692-6331

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ISABEL G. ANDRADE, *et al.*	§	CIVIL ACTION NO. W-96-CA-139
	§	JUDGE WALTER S. SMITH
Plaintiffs,	§	
	§	and consolidated actions:
V.	§	*Holub v. Reno* W-96-CA-140
	§	*Ferguson v. Reno* W-96-CA-141
PHILLIP J. CHOJNACKI, *et al.*	§	*Brown v. U.S.* W-96-CA-142
	§	*Riddle v. Reno* W-96-CA-143
Defendants.	§	*Gyarfas v. U.S.* W-96-CA-144
	§	*Martin v. U.S.* W-96-CA-145
	§	*Holub v. U.S.* W-96-CA-146
	§	*Brown v. U.S.* W-96-CA-147
	§	*Sylvia v. U.S.* W-96-CA-373

ANDRADE PLAINTIFFS' MOTION TO DISMISS CLAIMS WITH PREJUDICE AGAINST LON HORIUCHI

At the Court's status conference on October 15, 1999, counsel for the *Andrade* Plaintiffs advised the Court that they would report to the Court concerning their claims against individual Defendant Lon Horiuchi and, absent discovery of sufficient credible evidence to warrant continued prosecution of these claims, take appropriate action based on that additional investigation. The *Andrade* Plaintiffs have now completed that investigation and, based thereon, move this Court to dismiss with prejudice their claims against individual Defendant Horiuchi.

1. Since the October status conference, Plaintiffs have monitored the examination of shell casings found at Sierra One, the sniper team location where Horiuchi was in charge on April 19, 1993. These shell casings, some of which were found by Texas Rangers *after* April 19, 1993, have now been compared with test firings by the FBI crime laboratory from ATF weapons utilized on February 28, 1993, from that same location.



well as test firings from HRT sniper rifles utilized by Horiuchi and his team on April 19, 1993.

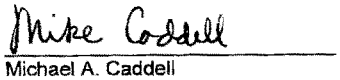
2. The *Andrade* Plaintiffs' expert, Gaylan Warren, attended the test firing of the FBI weapons on February 25, 2000, and has compared the results of the ATF weapon test firings with the images of the shell casings found at Sierra One. He has also reviewed the expert report filed by Horiuchi's forensic expert, Ronnie Freels, a lab supervisor with the Kentucky State Police Forensic Laboratory.

3. Based on his review, Warren concurs with the opinions expressed by Freels that the shell casings found at Sierra One following April 19, 1993, appear to have been fired from the ATF weapons on February 28, 1993. The only other possible explanation is that the FBI crime laboratory in 1993 substituted photographs of firings from HRT sniper rifles for photographs of firings from the ATF weapons present at Sierra One on February 28, 1993, and there is no evidence to support that theory.

4. Based on the foregoing, the *Andrade* Plaintiffs believe it is appropriate to dismiss all claims against individual Defendant Lon Horiuchi with prejudice. While the presence of shell casings at Sierra One after April 19, 1993, may evidence sloppy evidence gathering by the FBI, that is not actionable.

Therefore, the *Andrade* Plaintiffs ask the Court to enter the attached proposed order dismissing all claims asserted by them herein against individual Defendant Lon Horiuchi with prejudice.

Respectfully submitted,



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Attorney-in-Charge For Plaintiffs in *Andrade, Ferguson, Gyarfas, Martin, Riddle,* and *Sylvia* and Lead Counsel for the *Holub* cases

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CERTIFICATE OF SERVICE

I certify that on March 13, 2000, I have served a true copy of the foregoing to the following by fax and first class mail.

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Mike Caddell
Michael A. Caddell

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/25/96

On November 19, 1996, Supervisory Special Agent (SSA) Charles M. Riley received a telephone call from Lyn Brown, an attorney in the Federal Bureau of Investigation, Office of the General Counsel, who inquired about statements in an FD-302 authored by SSA Gail M. Seavey. The FD-302 was a report of a telephonic interview with Special Agent (SA) Charles M. Riley. The interview occurred on June 2, 1993. SSA Riley remembers the interview, but did not see the FD-302 of the interview until it was facsimiled to him on November 19, 1996.

During the phone call from Lyn Brown to SSA Riley on November 19, 1996, Brown specifically asked about SSA Riley "hearing shots fired from sniper position #1." SSA Riley immediately stated he never heard any shots fired from any sniper position, never reported having heard shots from any sniper position and was not aware of any shots fired by the Federal Bureau of Investigation (FBI) (or indication of shots fired by the FBI) at the standoff. Brown then stated the FD-302 reflected SA Riley heard shots from sniper position #1 at which time SSA Riley stated the FD-302 of the telephonic interview was inaccurate and that SSA Riley's initials would not be on the FD-302 as acknowledgment of the FD-302's accuracy. SSA Riley then asked Brown to send or facsimile the FD-302 to him to check it for accuracy. The rest of this FD-302 is to clarify initial inaccuracies on the FD-302 of SSA Gail M. Seavey's telephonic interview of SSA Riley.

Page one of the June 2, 1993 interview/FD-302 is substantially accurate. The following two changes made the statement more accurate. In the third paragraph, fourth line from the bottom, the word "shot" should read "view." In the third paragraph, last sentence, the words "as viewed from the front" (referring to the front side) inserted after the word "building" would make the statement clearer.

The FD-302 from the fourth paragraph on is rewritten as follows by SSA Riley for greater clarity and accuracy.

SA Riley advised he was aware of the rules of engagement concerning adversarial acts. SA Riley heard discussions concerning the water pump and water containers while

Investigation on 11/19/96 at Sacramento, California (telephonically)

File # 197-SA-40563 Date dictated 11/19/96 WWC462-0389

by SSA Charles M. Riley:mk FBI-OSC 00000004

FBI

WWC462-0389
CNG291-0389

EXHIBIT 22

FD-302a (Rev. 10-6-95)

in the Forward Command Post. SA Riley also discussed the nature of the water tanks and potential actions relative to water tanks.

On April 19, 1996, SA Riley was placed into sniper/observer position #3, which was located approximately 180 yards off the front right corner, at approximately 5:45 A.M. There were three SAs in sniper/observer position #3. SA Riley, and sniper/observer position #3, was responsible for providing observation, reporting intelligence and providing protection for HRT operations on the right and front sides of the building. SA Riley was initially watching the compound and listening to radio communications when he heard a phone had been thrown from the building. SA Riley later observed an individual come outside the building on two occasions with a phone line in his hand showing the line was broken.

During the morning, SA Riley observed the Combat Engineering Vehicles (CEVs) move into position and propel liquid (CS) into the front of the compound. As soon as the vehicles began placing liquid into the compound, SA Riley heard shots from the compound and heard reports of the shots from sniper/observer position #1. Other CEVs also approached the building and ejected liquid into the building. SA Riley could also hear and sometimes see the Bradley vehicles around the compound. As soon as the liquid (CS) was placed into the building, SA Riley expected persons inside the compound to leave the building. No one did at that time. SA Riley remembers seeing the front door knocked out at one point and could then see the stairway after that time. No one was observed moving on the stairs, but people could be seen moving inside the building and they were not wearing gas masks. At least two persons were carrying gas masks. Gunshots continued to be fired from the building and at the tanks. Just prior to the fire consuming most of the building, the gunshots from the building changed to rhythmic, that is they sounded like the slow and continuous firing of a weapon.

SA Riley stated that a few minutes after noon, he heard a radio report of smoke coming from the back of the building. He could not see it at first, but then observed the smoke from the rear of the compound. At approximately that time, SA Riley observed two men moving across the right side of the building with a motion which appeared they were pouring something.

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Continuation of FD-302 of SSA Charles M. Riley, On 11/19/96, Page 3

Shortly thereafter, SA Riley heard someone from sniper/observer position #1 call on the radio that they observed someone starting a fire by the piano. A very short time thereafter, SA Riley observed flames crossing the right side of the building and growing against the wind.

As the fire was consuming the building and ultimately moving across the building, shots were still being fired from the building. SA Riley observed four or five individuals walk out of the right side of the building. SA Riley then observed an unidentified male on the roof above the front door area. The unidentified male initially lay on his back, then sat up, then reached into the cargo pocket and removed a gun magazine (appeared to be an M16 magazine) which he let slide down the roof. The male on the roof then pulled a similar looking item from his other cargo pocket and let it slide down the roof. The male then laid back down again and later sat up and smiled. HRT personnel in Bradley vehicles went to assist the male but the male on the roof waved the vehicle away. The male from the roof ultimately jumped off the roof, did not follow instructions being given to him and was ultimately restrained.

On the far left side of the front of the building, an unidentified female was observed on the second floor of the burning building. She ultimately left the burning building with her clothes on fire. HRT personnel in a tracked vehicle drove to a position near her and left the vehicle to put the fire out. Gunshots were still coming from the building. Another unidentified female came out of the front of the building; looked around, and attempted to reenter the burning building. An HRT member left a tracked vehicle and grabbed the woman just as she was reentering the burning building. The woman struggled with the HRT member but he was able to take her to the tracked vehicle.

At approximately 12:45 P.M., SA Riley and the other two sniper/observers at position #3 came out of the sandbagged position. They shortly thereafter approached the burning remains of the building. While standing by the building, SA Riley observed HRT personnel to his left draw their weapons at which time the male who had previously held the phone line at the compound walked from the area of the concrete structure at the base of the silo. The male was immediately asked if there were

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Continuation of FD-302 of SSA Charles M. Riley, On 11/19/96, Page 4

any children with him and the last place where he had seen the children. The male said he last saw the children on the second floor of the building.

Prior to leaving the area of the building SA Riley walked around the remains of the structure. On the same end of the building where SA Riley had previously observed the males appearing to pour something, SA Riley observed a Coleman fuel can near the back of the structure and a scorched Coleman fuel can in the burning remains.

The Dallas Morning News

Wednesday, October 27, 1999

Government rejects attorney's effort to test if agents used guns at Waco

By Lee Hancock
Staff Writer of The Dallas Morning News

Government lawyers have rejected a Texas attorney's challenge to join a scientific field test that he has said would prove that federal agents fired at the Branch Davidian compound near Waco just before it burned in 1993.

The federal lawyers sent a caustic letter Monday declining to participate in tests designed to show how airborne infrared cameras similar to those used by the FBI during the siege might have recorded the thermal signatures of gunfire.

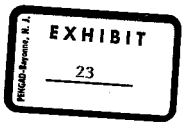
"You and your experts are free to conduct whatever test you desire," Justice Department lawyer Marie Hagen wrote. "Although it does appear . . . that several of your assumptions about the facts, the scientists and the experts are in error and may render useless any conclusions reached, it is your choice to proceed."

Michael Caddell, a Houston lawyer representing Branch Davidians in a wrongful-death case against the federal government, said the refusal is more evidence that the government's lawyers are treating his and other efforts to determine what happened near Waco "as some sort of game."

He said the decision was particularly disturbing because outside investigators who recently began reexamining the 1993 incident have expressed interest in such a test, including House and Senate committees and the office of independent counsel John Danforth.

"Your refusal to participate in efforts to arrive at the truth of what happened . . . will clearly be interpreted by many as an admission of liability and a continuance of the government's stonewalling," Mr. Caddell wrote in response to the Justice Department.

The government has long denied that FBI agents fired at the Branch Davidian compound during the 51-day standoff. Officials have dismissed as baseless the allegations of federal gunfire on April 19. Such charges have become a cornerstone of the Branch Davidians' pending lawsuit, set for trial next May in a Waco federal court.
Please see LAWYERS on 28A.



Lawyers reject Davidian scientific tests

Continued from Page .

Leader David Koresh and more than 80 followers died in a fire that erupted on April 19, about six hours after FBI tanks began bashing the compound and spraying in tear gas. An FBI airplane circling the compound used an infrared video camera to capture the outbreak of the fire and the hours that preceded it.

In the hour before the blaze, the camera recorded repeated bursts of white flashes that appeared to come from outside the compound near government tanks and from the windows of the Branch Davidian compound.

Two experts hired by Mr. Caddell's law firm concluded that the flashes were gunfire. An infrared expert retained by House investigators reached a similar conclusion after preliminary analysis of the FBI recording.

Experts retained by the government have said they can prove that the camera was too far away to record brief bursts of heat that would have come from gunfire. They say the flashes on the tape also last too long to be gunshots.

FBI officials have refused to reveal any technical information about their camera to the media or even to Mr. Caddell's experts, citing law-enforcement secrecy issues. Experts have said that information is crucial to any accurate scientific assessment of the infrared videos.

But Mr. Caddell has said he is confident enough in his experts' conclusions that he is willing to finance a full field test, using an airborne infrared camera to record test firing from guns similar to those carried by federal agents and Branch Davidians.

In her letter Monday, Ms. Hagen took a swipe at Mr. Caddell's decision to make public his invitation for the government to participate.

"We believe that the issues should be tried [in federal district court] rather than in the press," she wrote. "We agree that this matter is of national importance and are confident that the truth will be shown at the trial."

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 20, 1993

REMARKS BY THE PRESIDENT
IN QUESTION AND ANSWER SESSION WITH THE PRESS

The Rose Garden

1:36 P.M. EDT

THE PRESIDENT: On February the 28th, four federal agents were killed in the line of duty trying to enforce the law against the Branch Davidian compound, which had illegally stockpiled weaponry and ammunition, and placed innocent children at risk. Because the BATF operation had failed to meet its objective, a 51-day standoff ensued.

The Federal Bureau of Investigation then made every reasonable effort to bring this perilous situation to an end without bloodshed and further loss of life. The Bureau's efforts were ultimately unavailing because the individual with whom they were dealing, David Koresh, was dangerous, irrational, and probably insane.

He engaged in numerous activities which violated both federal law and common standards of decency. He was, moreover, responsible for the deaths and injuries which occurred during the action against the compound in February. Given his inclination towards violence and in an effort to protect his young hostages, no provocative actions were taken for more than seven weeks by federal agents against the compound.

This weekend I was briefed by Attorney General Reno on an operation prepared by the FBI, designed to increase pressure on Koresh and persuade those in the compound to surrender peacefully. The plan included a decision to withhold the use of ammunition, even in the face of fire, and instead to use tear gas that would not cause permanent harm to health, but would, it was hoped, force the people in the compound to come outside and to surrender.

I was informed of the plan to end the siege. I discussed it with Attorney General Reno. I asked the questions I thought it was appropriate for me to ask. I then told her to do what she thought was right, and I take full responsibility for the implementation of the decision.

Yesterday's action ended in a horrible human tragedy. Mr. Koresh's response to the demands for his surrender by federal agents was to destroy himself and murder the children who were his captives, as well as all the other people who were there who did not survive. He killed those he controlled, and he bears ultimate responsibility for the carnage that ensued.



Now we must review the past with an eye towards the future. I have directed the United Stated Departments of Justice and Treasury to undertake a vigorous and thorough investigation to

uncover what happened and why, and whether anything could have been done differently. I have told the departments to involve independent professional law enforcement officials in the investigation. I expect to receive analysis and answers in whatever time is required to complete the review. Finally, I have directed the departments to cooperate fully with all congressional inquiries so that we can continue to be fully accountable to the American people.

I want to express my appreciation to the Attorney General, to the Justice Department, and to the federal agents on the front lines who did the best job they could under deeply difficult circumstances.

Again, I want to say as I did yesterday, I am very sorry for the loss of life which occurred at the beginning and at the end of this tragedy in Waco. I hope very much that others who will be tempted to join cults and to become involved with people like David Koresh will be deterred by the horrible scenes they have seen over the last seven weeks. And I hope very much that the difficult situations which federal agents confronted there and which they will be doubtless required to confront in other contexts in the future will be somewhat better handled and better understood because of what has been learned now.

Q Mr. President, can you, first of all, tell us why, after 51 days, you decided --

Q Mr. President, can you describe for us what it is that Janet Reno outlined to you in your 15-minute phone conversation with --

THE PRESIDENT: I can't hear you both. If one will go first and then the other.

Q Sorry. Can you describe what Janet Reno --

Q Mr. President --

THE PRESIDENT: I'll answer both your questions, but I can't do it at once.

Q Can you describe what she told you on Sunday about the nature of the operation and how much detail you knew about it?

THE PRESIDENT: Yes. I was told by the Attorney General that the FBI strongly felt that the time had come to take another step in trying to dislodge the people in the compound. And she described generally what the operation would be -- that they wanted to go in and use tear gas which had been tested not to cause permanent damage to adults or to children, but which would make it very difficult for people to stay inside the building. And it was hoped that the tear gas would permit them to come outside.

I was further told that under no circumstances would our people fire any shots at them even if fired upon. They were going to shoot the tear gas from armored vehicles which would protect them and there would be no exchange of fire. In fact, as you know, an awful lot of shots were fired by the cult members at the federal officials. There were no shots coming back from the government side.

I asked a number of questions. The first question I asked is, why now? We have waited seven weeks; why now? The reasons I was given were the following:

Number one, that there was a limit to how long the federal authorities could maintain with their limited resources the quality and intensity of coverage by experts there. They might be needed in other parts of the country.

Number two, that the people who had reviewed this had never seen a case quite like this one before, and they were convinced that no progress had been made recently and no progress was going to be made through the normal means of getting Koresh and the other cult members to come out.

Number three, that the danger of their doing something to themselves or to others was likely to increase, not decrease, with the passage of time.

And number four, that they had reason to believe that the children who were still inside the compound were being abused significantly, as well as being forced to live in unsanitary and unsafe conditions.

So for those reasons, they wanted to move at that time. The second question I asked the Attorney General is whether they had given consideration to all of the things that could go wrong and evaluated them against what might happen that was good. She said that the FBI personnel on the scene and those working with them were convinced that the chances of bad things happening would only increase with the passage of time.

The third question I asked was, has the military been consulted? As soon as the initial tragedy came to light in Waco, that's the first thing I asked to be done, because it was obvious that this was not a typical law enforcement situation. Military people were then brought in, helped to analyze the situation and some of the problems that were presented by it. And so I asked if the military had been consulted. The Attorney General said that they had, and that they were in basic agreement that there was only one minor tactical difference of opinion between the FBI and the military -- something that both sides thought was not of overwhelming significance. —?

Having asked those questions and gotten those answers, I said that if she thought it was the right thing to do, that she should proceed and that I would support it. And I stand by that today.

Q Mr. President --

THE PRESIDENT: Wait. Go ahead.

Q Can you address the widespread perception -- reported widely, television, radio and newspapers -- that you were trying somehow to distance yourself from this disaster?

THE PRESIDENT: No, I'm bewildered by it. The only reason I made no public statement yesterday -- let me say -- the only reason I made no public statement yesterday is that I had nothing to add to what was being said and I literally did not know until rather late in the day whether anybody was still alive other than those who had been actually seen and taken to the hospital or taken into custody. It was purely and simply a question of waiting for events to unfold.

There was -- I have -- I can't account for why people speculated one way or the other, but I talked to the Attorney General

on the day before the action took place. I talked to her yesterday. I called her again late last night after she appeared on the Larry King Show, and I talked to her again this morning. A President -- it is not possible for a President to distance himself from things that happen when the federal government is in control.

I will say this, however. I was, frankly, surprised would be a mild word, to say that anyone that would suggest that the Attorney General should resign because some religious fanatics murdered themselves. (Applause.)

I regret what happened, but it is not possible in this life to control the behavior of others in every circumstance. These people killed four federal officials in the line of duty. They were heavily armed. They fired on federal officials yesterday repeatedly, and they were never fired back on. We did everything we could to avoid the loss of life. They made the decision to immolate themselves. And I regret it terribly, and I feel awful about the children.

But in the end, the last comment I had from Janet Reno, is when -- and I talked to her on Sunday -- I said, now, I want you to tell me once more why you believe -- not why they believe -- why you believe we should move now rather than wait some more. And she said, it's because of the children. They have evidence that those children are still being abused and that they're in increasingly unsafe conditions, and that they don't think it will get any easier with time -- with the passage of time. I have to take their word for that. So that is where I think things stand.

Q Can we assume then that you don't think this was mishandled in view of the outcome, that you didn't run out of patience? And if you had it to do over again, would you really decide that way?

THE PRESIDENT: No -- well, I think what you can assume is just exactly what I announced today. This is a -- the FBI has done a lot of things right for this country over a long period of time. This is the same FBI that found the people that bombed the World Trade Center in lickety-split, record time. We want an inquiry to analyze the steps along the way. Is there something else we should have known? Is there some other question they should have asked? Is there some other question I should have asked? Can I say for sure that no one -- that we could have done nothing else to make the outcome come different? I don't know that. That's why I want the inquiry and that's why I would like to make sure that we have some independent law enforcement people, not political people, but totally non-political, outside experts who can bring to bear the best evidence we have.

There is, unfortunately, a rise in this sort of fanaticism all across the world. And we may have to confront it again. And I want to know whether there is anything we can do, particularly when there are children involved. But I do think it is important to recognize that the wrong-doers in this case were the people who killed others and then killed themselves.

Q Mr. President, were there any other options presented to you for resolving this situation at any point from February 28th until yesterday?

THE PRESIDENT: Well, yes, I got regular reports all along the way. There were lots of other options pursued. If you go back -- you all covered it very well. The FBI -- you did a very good

job of it. I mean, the FBI and the other authorities there pursued any number of other options all along the way, and a lot of them early on seemed to be working. Some of the children got out, some of the other people left. There was a -- at one point, there seemed to be some lines of communication opening up between Koresh and the authorities. And then he would say things and not do them and things just began to spin downward.

Whether there were other -- in terms of what happened yesterday, the conversation I had with the Attorney General did not involve other options except whether we should take more time with the present strategy we were pursuing -- because they said they wanted to do this, because they thought this was the best way to get people out of the compound quickly before they could kill themselves. That's what they thought.

Q Did the government know that the children did not have gas masks?

Q congressional hearings once the situation -- are you in agreement with that?

THE PRESIDENT: That's up to the Congress. They can do whatever they want. But I think it's very important that the Treasury and Justice Departments launch this investigation and bring in some outside experts. And as I said in my statement, if any congressional committees want to look into it, we will fully cooperate. There is nothing to hide here. This was probably the most well-covered operation of its kind in the history of the country.

Go ahead, Sarah.

Q There are two questions I want to ask you. The first is, I think that they knew very well that the children did not have gas masks while the adults did, so the children had no chance because this gas was very -- she said it was not lethal, but it was very dangerous to the children and they could not have survived without gas masks. And on February 28th -- let's go back -- didn't those people have a right to practice their religion?

THE PRESIDENT: They were not just practicing their religion, they were -- the Treasury Department believed that they had violated federal laws, any number of them.

Q What federal laws --

THE PRESIDENT: Let me go back and answer -- I can't answer the question about the gas masks, except to tell you that the whole purpose of using the tear gas was that it had been tested; they were convinced that it wouldn't kill either a child or an adult but it would force anybody that breathed it to run outside. And one of the things that I've heard -- I don't want to get into the details of this because I don't know -- but one of the things that they were speculating about today was that the wind was blowing so fast that the windows might have been opened and some of the gas might have escaped and that may be why it didn't have the desired effect.

They also knew, Sarah, that there was an underground compound -- a bus buried underground where the children could be sent. And they were -- I think they were hoping very much that if the children were not released immediately outside that the humane thing would be done and that the children would be sent someplace where they could be protected.

In terms of the gas masks themselves, I learned yesterday -- I did not ask this fact question before -- that the gas was supposed to stay active in the compound longer than the gas masks themselves were to work. So that it was thought that even if they all had gas masks, that eventually the gas would force them out in a nonviolent, nonshooting circumstance.

MS. MYERS: Last question.

Q Mr. President, why are you still saying that --

Q Could you tell us whether or not you ever asked Janet Reno about the possibility of a mass suicide? And when you learned about the actual fire and explosion what went through your mind during those horrendous moments?

THE PRESIDENT: What I asked Janet Reno is if they had considered all the worse things that could happen. And she said -- and, of course, the whole issue of suicide had been raised in the public -- he had -- that had been debated anyway. And she said that the people who were most knowledgeable about these kinds of issues concluded that there was no greater risk of that now than there would be tomorrow or the next day or the day after that or at anytime in the future. That was the judgment they made. Whether they were right or wrong, of course, we will never know.

What happened when I saw the fire, when I saw the building burning? I was sick. I felt terrible. And my immediate concern was whether the children had gotten out and whether they were escaping or whether they were inside, trying to burn themselves up. That's the first thing I wanted to know.

Thank you.

Q Mr. President, why are you still saying it was a Janet Reno decision? Isn't it, in the end, your decision?

THE PRESIDENT: Well, what I'm saying is that I didn't have a four- or five-hour, detailed briefing from the FBI. I didn't go over every strategic part of it. It is a decision for which I take responsibility. I'm the President of the United States and I signed off on the general decision and giving her the authority to make the last call. When I talked to her on Sunday, some time had elapsed. She might have made a decision to change her mind. I said, if you decide to go forward with this tomorrow, I will support you. And I do support her.

She is not ultimately responsible to the American people; I am. But I think she has conducted her duties in an appropriate fashion and she has dealt with this situation I think as well as she could have.

Thank you. (Applause.)

END1:55 P.M. EDT

Exhibit 25

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Exhibit 26

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Exhibit 27

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Exhibit 28

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U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Jeffrey Axelrad
Director

P.O. Box 888, Benjamin Franklin Station
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Tel.: (202) 616-4400
Fax: (202) 616-5200

JA:PIPyles:mlh
157-74-3487

May 29, 1997

MEMORANDUM

TO: Thomas A. Kelley
Inspector-Deputy General Counsel
Federal Bureau of Investigation

FROM: Jeffrey Axelrad
Director, Torts Branch
FTCA Staff

RE: *Andrade, et al. v. Chojnacki, et al.*,
W.D. Tex. Civil Action No. W-96-CA-139
and consolidated actions

As you know, the plaintiffs in this litigation have alleged that the FBI fired shots into the Branch Davidian compound on April 19, 1993, and, in support of this assertion, have produced the declaration of Edward Allard, Ph.D., who claims that the FLIR videotape depicts these shots. The FTCA trial team has been attempting to determine how to refute this testimony on a scientific/technical basis through testing. If appropriate tests can be designed, they anticipate generation of information that will be useful, at a minimum, for cross-examination of the plaintiffs' expert(s) and potentially will lead to expert testimony on our behalf and demonstrative evidence to negate the plaintiffs' theories.

FILE COPY

Enclosed for your information, is a copy of a memorandum prepared by Marie Louise Hagen, who is lead counsel on the FTCA case, which addresses the issue and outlines the basis for our approach. We plan to meet with members of the Constitutional and Specialized Tort Staff to discuss our strategy further and to coordinate our defense to the maximum extent feasible.

In the interim, we are requesting your continued cooperation and assistance in our efforts to develop the best possible evidence to prove that the plaintiffs' allegations are without factual basis or scientific merit.

cc: Helene Goldberg
Director, Torts Branch
Constitutional and Specialized Tort Litigation Staff
(w/ enclosure)



Exhibit 30

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A. Welcome
B. Purpose of meeting -- to share information we have been developing in connection with allegations that the FBI fired shots on April 19th, 1993.

II. Background [PB]

A. FLIR tape
B. Allard's view (including brief Allard bio)
   1. Zegel and other experts Post found -- not just flakes

III. Our Trial Strategy [MLH]

A. FBI lack of knowledge; unsatisfactory without an expert to counter Allard
B. Five-pronged attack, each separate block to prove beyond any doubt that plaintiffs and Allard are wrong:
   1. "Lay" testimony of agents at scene *to say what in fact happened* -- BDs may offer contradictory testimony (we won't know until depositions are taken)
   2. Expert Analyst *to interpret FBI's video* -- FBI expert like Stan Rodak to say not shots
   3. Theoretical test *to establish what gunshot should look like on FBI's FLIR* -- to scientifically support the testimony of the FBI agents, but uses other equipment
   4. Operational test *to confirm results of theoretical tests using actual FBI equipment* -- create probative and powerful demonstrative evidence
C. Theoretical Test
   1. Parameters -- temporal, wattage, weapons
   2. What would a gunshot look like on FLIR?
   3. Perry's results (general description of facts/results)
D. Operational Test of FBI FLIR
   1. Ginsberg (qualifications, role)
   2. We haven't decided yet -- won't go at least until end of summer
   3. If possible to design a useful test, it would be the most compelling evidence

Notes: Non-confrontational
Leave open-ended
Their Concerns
A. No need to test because of other evidence (no ammunition records)
B. Inconclusive tests undermine AG
   1. just developing the best possible evidence does not mean you don't believe your client
   2. we believe the AG would support our efforts to air out everything
C. Admissibility
D. Concession of Strength of their Claim/Avoiding Summary Judgment/56(f)
E. Why no test for a bomb?
F. Plaintiffs' burden (with Allard they can meet it)
G. Potential benefit not commensurate with risks (they say "only if the proposed tests demonstrate that the FLIR was capable of picking up gunshots, but did not, would the test be of any litigation use") -- actually, evidence that it could not detect shots also would be useful

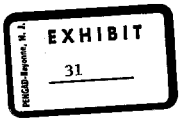

Exhibit 32

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3RD STORY of Level 1 printed in FULL format.

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August 27, 1999, Friday, Late Edition - Final

SECTION: Section A; Page 1; Column 1; National Desk

LENGTH: 1609 words

HEADLINE: Reno Admits Credibility Loss In Waco Case

BYLINE: By STEPHEN LABATON

DATELINE: WASHINGTON, Aug. 26

BODY:
Attorney General Janet Reno said today that her credibility has been damaged by new disclosures of the use of pyrotechnic tear-gas canisters on the final day of the 1993 Government standoff with the Branch Davidian cult near Waco, Tex.

Six years ago, Ms. Reno survived the political fallout of her first major test in office, a fiery debacle at the Branch Davidian compound after which about 80 people, including 25 children, were found dead. Now, nearing the end of the Clinton Administration, she finds herself facing many of the same questions about the same incident.

Ms. Reno and officials at the Justice Department and Federal Bureau of Investigation, in asserting that the Government was not responsible for setting the deadly fire, have long denied that any tear-gas canisters capable of igniting a fire were ever used. But prompted by the disclosure this week of Government inventories listing weapons used in the assault, F.B.I. officials acknowledged on Wednesday that some pyrotechnic canisters were used.

The officials continue to maintain that the fire was set by the cult members. They say the pyrotechnic canisters were used six hours before the fire started and had been aimed at a bunker 100 yards from the main building that later burned. But Ms. Reno said she was troubled by the disclosure.

"I don't think it's very good for my credibility," she said today at her weekly briefing with reporters. "That's the reason I am going to pursue it until I get to the truth."

Ms. Reno said she had issued a policy against using incendiary devices at the cult's compound.

"I did not want those used," she said. "I asked for and received assurances that they were not incendiary."

But, she added, "anybody that says they never make mistakes, they never rely on information that proves to be inaccurate, I'd like to meet them."

While the Attorney General told reporters today that she was "upset" and "very, very frustrated" about the latest disclosures, some former officials



who were involved in the 1993 internal reviews of the Davidian standoff said that they were not surprised by the Justice Department's new difficulties, or that questions linger over the destruction of the compound and the deaths.

After the incident, Ms. Reno and her aides undertook a review that, the former officials said, was perfunctory and uncritical. The review assigned no blame for any mistakes by the Government and inexplicably contradicted major elements of the Attorney General's own account of what had occurred.

Most of the tear gas used in the assault was liquid sprayed from the barrels of tanklike vehicles. The use of at least two pyrotechnic canisters became public in a list of equipment used in the raid that surfaced in a wrongful-death lawsuit filed by survivors of the fire and family members of those who died. The trial is scheduled to open in October.

An F.B.I. official said the list was an internal document prepared shortly after the raid, and officials said today that it might not have surfaced earlier because investigators did not attach significance to an incident that happened hours before the fire elsewhere at the compound.

In interviews today, some officials involved in the first inquiry said the new information did not change their view that the Branch Davidians' leader, David Koresh, and his followers set the fire. These investigators, including an independent arson expert, said they believed that the canisters were fired too far away and too early to have caused the fire.

But some of these officials continued their broad criticisms of the Federal agents' decision to rush a compound where the inhabitants were regarded as potentially unstable.

"Here it is six years later, and the Government's position is undercut by this fact, which when you get through with it may have no impact whatsoever on the central question of who killed these people," said Edwin O. Guthman, a former Justice official in the Kennedy Administration.

Mr. Guthman was one of three outside experts who produced a brutally critical report for the Treasury Department of its role in the botched Feb. 28, 1993, raid on the Davidians' compound that led to the 51-day standoff, describing mendacity and missteps before, during and after the raid. One of the department's agencies, the Bureau of Alcohol, Tobacco and Firearms, led that initial raid.

"This is basic stuff," Mr. Guthman said. "When you do these things, you've got to face up to it, be honest about it, and take the consequences. But whatever the F.B.I. did, they never faced up to it."

Henry S. Ruth Jr., the former Watergate prosecutor and another outside expert in involved in the Treasury review, said the latest damage to the Justice Department's credibility was not surprising.

"People at the time thought the Justice Department evaluation was a whitewash in the sense that it didn't tell the full facts about what was known," Mr. Ruth said. "It clearly was written to vindicate the Attorney General, for some reason, who speaks well for herself."

"I don't think this particular new information by itself bears on the circumstances of the fire," he said. "But what it clearly shows is that the internal investigators didn't use the proper types of investigatory techniques necessary to explore the facts. That is completely unsurprising because the F.B.I. over time has never had the institutional ability to investigate itself."

Ms. Reno said today that 40 F.B.I. agents, led by an F.B.I. inspector, would conduct the new inquiry.

But Mr. Ruth said it would be pointless for those agents to take a new round of affidavits from those who were involved in the incident and have already provided testimony to Congress and in the resulting civil lawsuits.

"Are 40 F.B.I. agents doing interviews really going to restore the attorney general's credibility?" Mr. Ruth said. "If they don't reopen the whole thing now and actually use outside investigators, this will be like the Kennedy assassination for the next 50 years. I live in the West and the Midwest and this issue is keeping the militia groups alive."

Jeffrey Jamar, the F.B.I. special agent in charge at the siege, said today, "The important thing that people have to understand is that we weren't trying to hide anything."

Mr. Jamar said that he did not remember being asked about the incendiary devices and that he thought probably no one considered them important because they were fired hours before the fire.

There was only one dissent from the 1993 Justice review, by Dr. Alan Stone, a professor at the Harvard law and medical schools who was one of the experts retained by the Justice Department. Dr. Stone concluded that the F.B.I. had helped drive cult members to mass suicide and then misled officials in the subsequent review.

Taking a different tack than the Attorney General was the Treasury Secretary at the time, Lloyd Bentsen, who ordered a more vigorous review, prepared under the direction of Mr. Guthman, Mr. Ruth and Willie L. Williams, the former Los Angeles police chief. That ultimately led to a major shakeup at the firearms bureau, including the removal of Stephen E. Higgins as director and the suspension of five other senior and lower-level officials. Because the Treasury report was so thorough and critical, the firearms bureau has been able to put the Branch Davidian incident behind it.

Ms. Reno won widespread praise for stepping forward after the disaster and claiming ultimate responsibility for what had occurred. It was early in the Clinton Administration and the President's advisers had persuaded Mr. Clinton to avoid making a public appearance concerning the matter, an effort to reduce his accountability but, in the end, enhancing Ms. Reno's stature.

But the Justice review was seen by many as a whitewash. The main author of the Justice review, Edward S. G. Dennis Jr., found that no criticism of any Justice Department or F.B.I. officials was appropriate.

"I find there is no place in the evaluation for blame and no place for fault," Mr. Dennis said at the time. He said "mistakes were made" but did not say who made them.

The report concluded that the Davidians had set the fire, based on three things: an arson report analyzing where the blaze began; infrared pictures taken from an airplane when the fire started that showed intense spots of heat erupting in different spots in the compound at almost the same time, and the testimony of some surviving Davidians.

Mr. Dennis said today that the report "was not intended to be a comprehensive, all-encompassing report." It "did not attempt to answer every question that could be raised about" the standoff, he said, but instead focused on the questions of how the F.B.I. negotiated with the Davidians, how the fire began and how the Attorney General made her decisions. He concluded that Ms. Reno was adequately briefed by the F.B.I. about the issues she faced in ordering the tear-gas assault.

"This was not a case of the Attorney General fiddling while Rome burned," Mr. Dennis said, adding that based on what had come out so far, he remained comfortable with the report's conclusions.

Arson investigators involved in the Justice Department's initial review said the new evidence would not alter their conclusions on the fire.

"It was started by the people inside the compound at the time," said Thomas Hitchings, a member of the arson team who is the Chief Deputy Fire Marshal with the Allegheny County, Pa., Bureau of Emergency Services. "The stuff that was used outside the structure itself had no bearing on what happened inside the wooden structure."

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Notes from R. Haight to MT 8-24-93

WACO DETAIL
AFTER ACTION REPORT

FOR OFFICIAL USE ONLY

I. TERMS:

COMMAND POST (CP) - Physical location of FBI operations. Seat of power for OSC. NOTE: To avoid confusion, there is only one CP. Terms such as forward CP, rear CP are avoided. These are known as Tactical Operation Centers (TOC).

CRISIS SITE - The actual location of the tactical operation. That area where tactical teams initiate control via an inner perimeter.

ELSUR - Electronic Surveillance operations. Monitoring of radios (FM, CB etc.), radio telephone, cellular telephone activity.

MISUR - Microphone Surveillance operations. Title III monitoring of radio microphone and hard-wire microphones introduced into the compound via negotiated items (TROJAN HORSES).

NIGHTSTALKER - FBI Aircraft equipped with various night vision, and FLIR optical and camera devices. Used to surveil crisis site to determine heat sources. Located subjects moving outside of compound and directed HRT members to their location.

OSC - On scene commander.

RAPID START - Concept developed by FBI to deploy administrative support unit to any location in support of a major case. Only used in World Trade Center Bombing prior to WACO. Unit deploys and initiates 24 hour operation to get all reports, leads, events, time line sequences, radio logs, reports (3270.2s), interviews, statements etc. into system using WP 5.1, RBASE, and ZYINDEX. Thereafter, local Field Office administrative support personnel are used to staff the unit. Offers immediate access of source documents containing any name, word, key phrase etc. by searching system via ZYINDEX. Provides BHQ and Command staff with quick access to anything written relative to the case.

SIOC - Significant Incident Operations Center. Established to manage FBI critical incidents and major investigations. Equivalent to ATF EOC.

EXHIBIT
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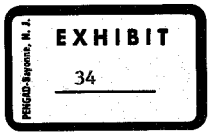

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TACTICAL OPERATION CENTER (TOC) - Used to designate main operating location of particular tactical unit. i.e. HRT TOC, Negotiation TOC, Tech TOC. Forward TOC is used by tactical element for crisis site TOC.

TROJAN HORSES - Radio and hard-wire microphones inserted into crisis site. Usually concealed inside items delivered to occupants via negotiated means.

ZYINDEX - Computer program used in support of all FBI investigations. Allows for key word, key phrase, pre-arranged sort code of all documents in WP 5.1. Used in WACO to locate source documents such as negotiator logs, event logs, statements, leads, FBI reports, ATF reports etc. for Main Justice to support tactical operation.

II. COMMAND STRUCTURE

Waco is geographically located within the FBI San Antonio Field Division. The San Antonio SAC was the designated OSC. Three additional Field Division SACs provided 24 hour command coverage and PIO duties. Although FBI HQ personnel came to WACO on several occasions, they did not interject themselves into the command structure of the tactical operation. All tactical, investigative, and support operations relative to the WACO operation were run by the OSC who reported to a BHQ Associate Director located at the SIOC, FBI HQ.

III. TACTICAL RESPONSE

The FBI CP was located within a large hanger at the Texas State Technical College airport. The HRT TOC, Negotiation TOC, Tech TOC, and Rapid Start were located within the CP area.

The HRT established a Forward TOC near the crisis site. This was physically located in a vehicle configured similar to the ATF mobile Cps. Two monitors provided live video coverage of the crisis site to the Forward TOC. This was utilized by the FBI tactical commanders.

Separate TOCs were also established for the HRT snipers and medical support personnel near the Forward TOC.

The FBI HRT was detailed to handle the inner perimeter of the crisis site. FBI Field SWAT teams maintained a support role in the area immediately surrounding the inner perimeter along with ATF SRTs. Each with their own area of responsibilities.

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HRT members utilized Bradley Fighting Vehicles, tanks and Combat Engineering Vehicles (CEVs), supplied by the Texas National Guard and the U.S. Army, HRT snipers and FBI aircraft to control the inner perimeter. The sniper positions were fortified in the initial stages with boiler plate and sandbags.

FBI Hostage Negotiators from the San Antonio Field Division, Quantico, and other FBI Field Divisions staffed the Negotiation TOC.

FBI Special Agents from the San Antonio Field Division and other Field Divisions in Texas staffed most investigative and support functions in the FBI CP, although, personnel from FBI HQ were also detailed to the operation. An ASAC from San Antonio coordinated all investigative operations for the OSC.

FBI Special Agents from the Quantico area staffed the HRT TOC located at the CP. These special agents were not HRT personnel, instead, the HRT trains local agents to perform the duties necessary to staff the HRT TOC.

IV. CONCEPT OF OPERATIONS

HOSTAGE RESCUE TEAM (HRT)

Upon arrival, HRT personnel began to establish control of the inner perimeter. They received extensive briefing from ATF SRT personnel, significantly, ATF snipers, and began to fortify sniper positions previously used by ATF.

Additionally, HRT began to develop an emergency assault plan to be used if Koresh and his followers began to kill the children or if they initiated a mass suicide option. As is customary, this plan was modified as the siege developed.

Initial plans called for a diversion at one area of the compound and an entry at a different location. The plan involved various diversion concepts. One plan involved the use of explosive breech as a diversion while tactical entry was made by driving one or two Bradleys through the wall near the middle of the compound. HRT would then use diversion devices and gas to disorient the subjects in an effort to separate them from the hostages, with the hopes that the hostages could escape through the hole(s) made by the Bradleys. Another involved the opposite, using HRT operators in Bradleys as the diversion while other HRT members made tactical entry through an explosive breech. NOTE: This plan was relayed verbally to me and I did not see it in written form.

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HRT established a 24 hour rotation of teams who were on for 24 hours and then off for 24 hours. This allowed control of the situation with only one staff change a day instead of two or three.

The HRT then used the Bradleys and tanks to initiate clearing of the compound of vehicles, fences and other obstacles which might provide occupants of the compound cover and concealment.

During the siege, HRT conducted overflights with helicopters and drove the Bradleys randomly around the perimeter. The response to these incursions was determined by the snipers and members in the Bradley to formulate tactical options. The Bradleys then initiated "bumping" of the building and low fly-overs which were always dismissed by the negotiators and press releases as "accidental". This allowed the subjects inside the compound to get used to these noises and patrols so that in the event a tactical operation or emergency assault was initiated they would not be immediately alerted by the noise of Bradleys or helicopters approaching, or a Bradley bumping the building.

The control of the compound continued for the duration of the siege, culminating with the gas motivation plan utilized on April 9th.

HRT snipers equipped with night vision scopes and long range optics for spotting and video surveillance to view the compound were used to maintain surveillance of the compound.

HRT operators in the Bradleys utilized hand-held and launchable diversion devices which were deployed several times when occupants of the compound were spotted outside of the compound and did not heed the "Rules of Safety". This was an extremely effective means of controlling the movement of the occupants without using deadly force options.

On April 19th, HRT utilized the CEV's with a CS deployment system to inject gas into the compound. As well, the HRT operators in the Bradleys used the M-79 grenade launcher to shoot non-military ferret rounds of CS through the compound windows. Many of the rounds did not penetrate the building exterior or window coverings. Nearly 300 rounds were expended and plans were being made to obtain more of the rounds from Quantico which would be flown via FBI Saberliner aircraft.

Non-military rounds were utilized because they do not have a pyro-technic deployment system which burns and creates a fire hazard. Oddly, the gas plan called for continuous insertion of CS gas for up to 48 hours, yet the HRT did not have enough 40mm non-burning ferret rounds to last past the first 4 hours of the assault. Calls were made for additional 40mm rounds and plans were begun to utilize the less reliable and less accurate 37mm gas deployment systems which were readily available with local FBI and police SWAT

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teams.

HRT Snipers maintained their own Sniper TOC. This was staffed by HRT personnel near the crisis site. During the entire siege, HRT snipers obtained video photographs of occupants using cameras with a long-range lens. These videos were then run through a video print system to make color still photographs. A suspect photo gallery was then made available to the entire HRT.

Additionally, the HRT snipers radioed the sniper TOC every time they saw a weapon, possible weapon, or person in any location of the compound and their location. This was logged into a laptop computer database which could be used to generate a frequency chart of which times and windows/doors were most often used, where weapons were seen, and which person, if known was seen. This data would be valuable in planning an assault and in pending criminal cases where agents were assaulted by suspects during the operation.

Counter assault weapons were available to deliver sustained firepower, capable of penetrating the compound, in the event that the compound members attempted to deliver a high volume of heavy weapons firepower. These weapons consisted of M-79's, M-60's, Barret light .50 sniper rifles, (semi-automatic) and other tactical weapons.

AVIATION SUPPORT

FBI rotor wing pilots from various Field Divisions and from HRT were utilized to staff the four UH-1 (Huey) helicopters used in this operation. Three of the Hueys belonged to the U.S. Army and were loaned or leased to the FBI. HRT owned one Huey and a Hughes 500E helicopter. Additionally, the FBI used NIGHTSTALKER (Mitsubishi twin engine turbo-prop) and its Saberliner (business jet) to support this operation.

HOSTAGE NEGOTIATORS

The Hostage Negotiation effort was directed by a Negotiations Coordinator from the FBI Behavior Science Unit, Quantico who was physically on-site at the Negotiation TOC. The actual negotiations effort was supervised by the FBI Supervisor of the Austin Field Office who is a trained negotiator. Support was also obtained from various behaviorists previously identified and utilized by the FBI.

The Negotiation TOC was staffed by a lead negotiator, one or two "coaches", and the recorder.

The lead negotiator actually spoke with the occupants while the others monitored the conversation via headsets. The coaches

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provided written notes on points to make during the conversation, observation of the subjects, etc. The recorder was responsible for tape recording all calls, and maintaining a log. In addition, the recorder labeled all tapes as evidence and turned them over to the Electronic Surveillance evidence custodian who prepared two duplicates of each tape. One tape was maintained for playback, if needed, and the other was placed with the case file while the original was placed into evidence.

An external speaker was available for the OSC to monitor all conversations if he so desired.

Negotiators were used to introduce several Trojan Horse Title III devices. All but one of these was discovered by the occupants. The undiscovered device was not particularly useful for the remainder of the siege because of where it was subsequently placed by the occupants.

Efforts to place an FBI telephone (which contains an integral Title III device) within the compound were negative because of the occupant's suspicions that it was bugged or would explode. FBI Techs then provided a means for negotiators to generate random static on the telephone line. Elaborate discussions on the negotiator's part convinced the occupants that the trouble was within their line and junction box located inside the compound. They were convinced to accept a new line and junction box to which they could re-attach their own telephone. A hard-line trojan horse built into the junction box was introduced into the compound. This provided the best MISUR conversations because it did not rely upon radio transmissions. A subsequent trojan horse was introduced through negotiations on the evening of April 18th. This device also provided MISUR until it was run over by the CEV when it made penetration to the building while inserting CS.

Periodically, the negotiators would advise the occupants of the established "Rules of Engagement". These were instructions given to the occupants by the negotiators which were described to the occupants as "RULES FOR YOUR SAFETY". Each time this instruction was given it was logged in the negotiators log. This provided a documented effort to identify actions on the part of the occupants which were deemed hostile which would cause law enforcement to take appropriate action(s).

The overall negotiation strategy is set forth in several FBI documents attached to this memorandum.

It should be noted that this strategy included cutting ATF out of the negotiating process entirely. FBI negotiation strategy also included appearing to be sympathetic to the occupants concerns about ATF and the February 28th raid and convincing them that they might be able to beat all charges relative to this in court. While this is a valid negotiating strategy, I do not believe that, were

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the roles reversed, the FBI would allow another agency to take over negotiations if they were in a similar situation as ATF was in after February 28th (Assuming that ATF had its own negotiator program in place). I believe they would simply take the approach that they were not the FBI agents responsible for the initial raid/problem etc. and downplay the concerns of the occupants in that area while emphasizing the other negotiating strategies.

On April 19th, the negotiators initiated a call to the compound and attempted to communicate a message to the occupants through Steve Schneider, Koresh's "Second-in-Command". Schneider hung up after the first few sentences and then threw the telephone out the front door. The message was then broadcast via a PA system into the compound. This message served as a warning about the pending gas operation and announced that the FBI was NOT conducting an assault and would not physically enter the building etc. This warning is attached to this memorandum.

A list of DEMANDS and "POSITIVE POLICE ACTIONS" was maintained to document demands made and met by law enforcement. A copy of this demand list is attached to this memorandum.

MISUR OPERATIONS

An Emergency Title III was obtained shortly after the FBI took operational control of the crisis site. This emergency authorization is a standard format that can be done telephonically and followed up on with a written affidavit.

FBI Special Agents staffed the listening room, co-located in the FBI CP on a 24 hour basis. Tapes were treated the same as negotiation tapes, however, relevant conversations were immediately transcribed after a duplicate tape was made. In those instances where tactically relevant conversations were picked up, the negotiators, HRT and the OSC were notified verbally, shortly after the conversation took place.

ELSUR OPERATIONS

Electronic surveillance of radio transmissions generated in and near the compound were undertaken by FBI technicians with the assistance of the FCC. The compound members attempted to communicate externally with a CB radio.

Jamming of all radio signals into and out of the compound were done except during the daily news broadcasts.

Cellular telephone calls were detected and the electronic serial numbers of the originating cellular telephones were identified. Leads were set forth to obtain subscriber info etc. in an effort to

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obtain relevant intelligence. The telephones could be shut off by the cellular telephone company after the telephone was identified.

COMMUNICATIONS

The standard FBI DES radio system was used to support this operation. Portable base-type stations maintained in Zero-Haliburton cases were used in the CP, the HRT TOC and the forward TOCs.

Repeaters were available on at least four separate frequencies to facilitate excellent communications.

The HRT designated separate frequencies for their assault teams, snipers, medical TOC, and a command frequency. All others remained on their own frequencies and communication between them was facilitated by the HRT TOC and Forward TOC.

Aviation assets utilized whichever frequency needed to communicate with ground units, usually, the command frequency directed through the HRT Forward TOC.

FBI Technicians used a separate frequency when dealing with technical operations.

FBI SWAT used the command frequency and their own non-repeater channel to communicate with the HRT TOC and their own personnel.

A large PA system was built and placed outside the compound. FBI used the system to broadcast tape recorded messages, live verbal messages from the negotiators and to deliver a constant barrage of sound effects directed at the compound.

TACTICAL SUPPORT EQUIPMENT

Photographs were developed on-scene by the FBI who brought a portable system to the CP. Enlargements were done in the Washington D.C. area by a commercial firm contracted to the FBI and were delivered via overnight FEDEX. There was a 3-4 day lag time from photograph to delivery of enlargement.

Video tapes were copied with a high speed duplicator brought to the CP by the FBI.

Audio tapes were copied with as high speed duplicator that copied two copies at once. This machine was also located in the FBI CP.

Computer generated floor plan diagrams were made using a computer and plotter type printer at FBI HQ. These were sent via overnite mail when completed. They were updated as necessary based upon

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debrief information gained from released subjects.

Picto-Maps, i.e. aerial photographs with grids were sent via FBI HQ.

V. INVESTIGATIVE EFFORTS

The FBI investigative efforts were directed by an ASAC from the San Antonio Field Division. The ASAC was responsible for approving all leads sent out relative to this case. The ASAC monitored all investigative and intelligence related activities and reported to the OSC.

Of particular significance, the FBI utilized a more sophisticated approach to managing their investigative efforts than ATF. Utilizing a computer data base (RBASE), all investigative leads were logged and tracked numerically. A lead log showed all leads set forth and the results of each. Pending leads were followed up on by the ASAC to assure a timely response. A master event log was maintained which included all relevant events on a daily basis. Each unit provided a significant event report to the ASAC as soon as possible after the event. The ASAC would route a copy of the report to other units as deemed necessary. They would then be entered into the event log by the Rapid Start Unit.

The OSC could review the lead log and event log at any time to view the progress of the investigation. While this sounds time consuming, it was not and it provided a means of keeping everyone, especially the OSC, appraised of the operational and investigative efforts.

Most leads were responded to via FBI memorandum or FBI AIRTEL (similar to TECS message). FBI Official reports were generated only when a positive response to the lead, or information which will be used in court needed to be documented such as statements etc.

The use of memorandums instead of FBI 302's kept discoverable information to a minimum.

VI. ANALYSIS

ATF does not currently have the training and equipment necessary to mount an extended operation involving barricaded suspects. I believe the following should be looked upon as necessary items to support future ATF operations, both within our Division and Bureau-wide.

- Training for Hostage Negotiators Bureau-wide. These should

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NOT be SRT operators. Additionally, RACs and GS personnel should be trained as Negotiators so that they may assume supervision of the Negotiation TOC and negotiators.

- Command and supervisor training in hostage situations, barricaded suspects and other SRT type operations.

- Obtain Negotiator telephones to facilitate the negotiation process. (Specifically made by AT&T and available for about $5,000.00 each) While not absolutely necessary, these phones have a variety of special adaptions specific to the negotiating process. I recommend one unit be obtained for each Sector with the goal of one unit for each Field Division.

- Training and equipping SRT with 40mm gas deployment systems. These are capable of deploying diversion devices, gas rounds, smoke rounds and illumination rounds. They are available through DOD and DOD can provide a ready means of re-supply. They are both a versital and cost effective weapons deployment system. They are much more reliable and accurate than the civilian 37mm gas deployment systems.

- Training and equipping all SRTs with diversion devices. These proved an effective, "less than lethal" force option for containing the subjects in the compound during this incident and really necessary for high-risk entries, agent rescues, and other SRT operations.

- Development of various Trojan Horse options for Title III MISUR operations by Field Division TSO's and BHQ Tactical Operations Branch and the training for BHQ TOB and Field Division TSO's to develop and deploy same.

- Obtain additional optics for SRT forward observers/SRT operators to include video cameras with long-range lenses.

- Establish Field Division procedures to manage on-going critical incidents such as significant event reports, event and lead data bases, radio and telephone log sheets etc. Examples of log sheets are attached to this memorandum.

- Locate a commercial photography firm in the San Francisco Bay area capable of making color enlargements with a 1 day turnaround in tactical situations.

- Obtain a high speed video duplicator for either Division or BHQ which can be used to duplicate videos on-scene.

- Ensure that ATF TOO agents receive training in telephone for operations which can be used to isolate suspect's

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telephone lines for negotiating purposes in ATF tactical operations.

In regards to the FBI HRT operation, I believe that ATF SRT personnel could have done the same job as HRT. However, ATF did not have available the technical support that HRT had in the MISUR and ELSUR operations, nor does ATF have the advanced optics that the FBI HRT snipers possess. These cameras, scopes and viewing instruments give the HRT the all weather, 24 hour viewing capability necessary to maintain control of a crisis site.

HRT operators were taught to drive the Bradleys and other vehicles used by the Army and National Guard in Waco. ATF could have operated the vehicles etc. should we have been tasked to maintain the inner perimeter.

The FBI did an excellent job of documenting their actions and laying the groundwork for possible future tactical options and possible sniper intervention. Negotiators repeatedly gave the occupants the "RULES FOR YOUR SAFETY" briefing which was logged and tape recorded as well as delivered via PA system. The attempted warning given prior to the gas attack was documented as well. FBI Commanders were able to respond to the numerous questions and requests for justifications by locating source documents quickly via the ZYINDEX program.

A list of the questions Main Justice wanted answered before approving the gas plan is attached to this memorandum. This list provides an excellent check list which can be used by commanders in similar situations to develop tactical strategies.

Attachments:
A - Sample Significant Event Message Sheet
B - Sample On-Scene Activity Log
C - FBI AirTel message re: Negotiating Strategies
D - FBI Memorandum outlining Negotiating Strategies
E - Demand and "Positive Police Action" list
F - Trojan Horse list
G - FBI Memorandum re: MISUR overhears
H - Time Line
I - Negotiator's log 4/1 and 4-2-93
J - List provided to Main Justice re: negotiation contacts
K - Copy of Koresh letters sent to FBI
L - FBI analysis of Koresh letters by Behavior Science Personnel
M - FBI warning re: gas operation on April 19th
N - HRT TOC radio log for gas operation on April 19th
O - List of questions and issues to be addressed by FBI/ATF for Main Justice

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FD-302 (REV. 5-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/22/93

On April 20, 1993, Special Agent (SA) MARK E. TILTON was interviewed at Waco, Texas regarding the events which resulted in the resolution of the Branch Davidian complex situation. He furnished the following information:

SA TILTON, date of birth [redacted] has been assigned to the Hostage Rescue Team (HRT) since January of 1989. He is currently a member of the Golf Team Assault Team. On the morning of April 19, 1993, his assignment was as a M79 Ferret gas delivery gunner. As a M79 gunner, he was located in one of the Bradley vehicles. His function was to deliver M79 Ferret rounds where and when he was told to. Specifically his vehicle was assigned to cover the white side, the tower, and the green (left side) of the front. He was in position in his vehicle at approximately 6:00 a.m. Shortly thereafter, he was told that the compromise signal had been given. That meant to him that the operation had started and that he was to then deliver gas. Throughout the day he estimated that he delivered 60 to 65 rounds of Ferret gas which is non-incinerary into the complex. Specifically his rounds were delivered to various areas of the tower and other windows in front of the complex which was in accordance with the operation plan. His view was limited due to the small firing port in the Bradley vehicle. Consequently he was unable to observe any activity other than that which was directly in front of his firing port.

At approximately noon time, he observed a male individual behind an opening of what had previously been the front door to the compound. One of the combat engineering vehicles had knocked the door area down in an effort to allow anybody in the complex easy access to leave and also to assist in gas delivery into the compound. This individual was behind some debris in the compound and he had on a dark shirt and camouflage pants. SA TILTON stated that the individual was carrying an assault rifle in one hand and another object which he could not positively identify in another hand. The individual moved across SA TILTON's field of view and disappeared.

Investigation on 4/20/93 at Waco, Texas File #

by SSA JAMES F. ADAMS
SSA JAMES T. POWERS JFA/mes Date dictated 4/22/93

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EXHIBIT 35

DOJ CSTS

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CNG065-0090

FD-302a (Rev. 11-15-83)

Continuation of FD-302 of SA MARK E. TILTON, On 4/20/93, Page 2

The vehicle that SA TILTON was in then moved to the red or right side of the building. Shortly after that which was just after noon, SA TILTON could observe flames coming from a window on the second floor in the red/white corner. Approximately a minute later, he observed additional smoke and flames in the mid-area of the back part of the building.

Shortly after observing those flames his vehicle moved and assisted in rescuing a woman who was exiting the left side of the front of the compound. She was a black female who appeared to be in her thirties. The vehicle that he was in took her to the medical rally point and turned her over to Agents at that time. The vehicle that he was in then returned to his area of assignment however by that time the total compound was engulfed in flames and he was unable to provide any further assistance.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/22/93

Special Agent (SA) Cort Traylor, Hostage Rescue Team (HRT), Washington Metropolitan Field Office (WMFO), telephone number 703/640-1284, was telephonically contacted and advised of the identity of the interviewing Supervisory Special Agent (SSA). SA Traylor was advised that he was being interviewed in regard to the WACMUR investigation and, thereafter, provided the following information:

O-1

SA Traylor, date of birth [redacted] has been assigned to the HRT since September, 1989. He is currently assigned as an assault team member on the Golf team. He entered on duty with the FBI on 7/20/87.

SA Traylor related that his duties and responsibilities in support of WACMUR was that of a driver for the track vehicles, to include the Bradley and the M-1 Abrahms vehicles. He was assigned to the Sierra Two Alpha site. His primary duty was to shuttle personnel between the tactical operations center and the Sierra Two Alpha site. He was also responsible for fueling lights and charging generators for the site. The Sierra Two Alpha site had a number of fixed observation posts where the Golf team members would stand duty on the various sandbag positions. There were five or six observation posts in the Sierra Two Alpha site. In addition to rotating through the various crew positions on the two types of vehicles (Bradley and Abrahms), he also manned these observation posts. He helped the technical agents install phone wire systems and microphones, as well as wiring for various electrical systems. He traveled to the Waco, Texas, area on 2/28/93 and departed that area on 4/20/93.

SA Traylor related that between the time of his arrival and the fire on 4/19/93, he observed various people coming and going from the compound. All of his observations were reported to the tactical operations center where a log was kept. This was the HRT sniper's log which was kept at the tactical operations center 24 hours a day.

(telephonically)

Investigation on 6/21/93 at Washington, D.C. File # 66-HQ-19157-45

by DEW SSA Dennis R. Weaver/mfs Date dictated 6/21/93

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EXHIBIT 36

FD-302a (Rev. 11-15-83)

66-HQ-19157-45 F

Continuation of FD-302 of Cort Traylor, On 6/21/93, Page 2

SA Traylor related that on the morning of 4/19/93, he was assigned with various individuals in the Golf team track vehicle. SA Lambert was driving, and SA Dave Hackmeyer was the Golf team leader in charge of the track vehicle. Two of the Golf team members were armed with the M-79 grenade launcher, which was utilized to deliver CS tear gas. The Golf team was assigned responsibility for delivering CS gas into the white side of the compound. (The white side of the compound was the front entrance of the compound.) The Golf team had begun its gas delivery mission utilizing M-79 launchers at approximately 6:00 a.m. on the morning of 4/19/93. The Golf team track vehicle drove up and down the white side area and was responsible for one particular area of the white side. The M-79 launchers were loaded with 40 mm type ferret projectiles loaded with liquid CS gas. Two Golf team members utilized M-79s to deliver these liquid gas canisters by firing through the windows and doors of the compound. SA Traylor related that the Golf team Bradley vehicle had been utilized to deliver the gas projectiles prior to the time during which the combat engineer vehicles (CEVs) had made larger breaches in the compound. The CEVs had delivered gas through these larger breaches. SA Traylor related that his job that morning had been to assist the M-79 gunners and also to assist if anyone came out of the building.

SA Traylor related that, from his position inside the track vehicle, he was limited to what he could see outside the vehicle. He is not certain of the times of the various events, however, at one point that morning, after the building had caught on fire, he had seen a man on the roof of the white side of the compound below the tower. (The tower was in the middle of the compound.) SA Dave Hackmeyer, the Golf team leader, had also seen the white male on the roof and had attempted to talk him down off the roof. The white male would not come off the roof and began crawling back down the roof on the other side. Due to the heat from the fire, SA Hackmeyer had moved the Bradley vehicle away from the building and the white male was not seen again. SA Traylor related that he was hearing gunshots coming from the compound at this time. Due to the heat from the burning building, the Bradley vehicle was moved back about 50 to 75 feet away from the front of the white side of the compound. SA Traylor related that he did not see where the white male went. The building was very hot from the heat. SA Traylor related that subsequently he had seen a black female come out of the building. This female was on fire. He grabbed a fire extinguisher and

FD-302a (Rev. 11-15-83)

66-HQ-19157-45 F

Continuation of FD-302 of Cort Traylor, On 6/21/93, Page 3

exited from the track vehicle with SA Tilton. They utilized the fire extinguisher to put the fire out on the black female and then put her in the track vehicle and drove her to a medical aid station. They left the black female at the aid station and subsequently drove back to the site at the compound. SA Traylor related that, at about this time, fire trucks had begun to arrive and they began to escort fire trucks up to the front of the compound.

SA Traylor related that the fires in the compound were still burning and his team was assigned to clear a tunnel area near a buried school bus on the green side of the compound. Approximately five members of the Golf team went into the tunnel and searched the underground tunnel which was made of earth and concrete. The team cleared the tunnel to the school bus. There was about three or four feet of water in the tunnel. SA Traylor related that he observed numerous trash bags in the tunnel.

Approximately 30 to 40 minutes after they cleared the tunnel, SA Traylor related that he had observed a white male exit the compound from the water tower area. This white male was arrested by another HRT member. SA Traylor related that his team spent the rest of the afternoon observing the compound area to see if anyone else was coming out. He had seen no one else exit the compound.

SA Traylor related that his Golf team had been responsible for covering approximately 50 doors and windows on the white side of the compound. During the morning of 4/19/93, his team had fired approximately 100 M-79 tear gas canisters through these doors and windows into the compound.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/8/93

Supervisory Special Agent Timothy A. Nestor telephonically interviewed Special Agent David S. Corderman, Washington Metropolitan Field Office, Federal Bureau of Investigation. After being advised of the identity of the interviewing agent and the purpose of the inquiry, Special Agent Corderman advised as follows.

Corderman stated that he was on temporary assignment in Waco, Texas, as part of the complement of the WACMUR investigation, from 2/28/93 to 4/21/93. Corderman stated that while assigned to WACMUR, his duties were as a member of the FBI's Hostage Rescue Team (HRT) and that his specific assignment was that of a member of an assault team. Corderman stated that his duties were to protect the sniper/observer teams and also to do leg work associated the HRT function in and around the crisis site. This work included assistance with the search lights used.

Corderman stated that his role was as a team member and he was not part of the decision making process. He stated that the chain-of-command and reporting was the same as used regularly by the HRT. Corderman stated that his immediate supervisor was Special Agent Richard Intellini and that he reported his observations at the Branch Davidian compound to SA Intellini. Corderman stated that SA Intellini in turn reported by radio or otherwise the pertinent observations made by Corderman and others on the assault team to the Command Center. Corderman stated that he knows that there is an official mechanism for recording pertinent observations by the HRT and kept no personal records or notes. He did not use or operate any video or audio recording equipment.

Corderman stated that on 4/19/93, he was in a Bradley vehicle on the Branch Davidian compound which assaulted on side of the building. He stated that he was operating under the direct control and command of the HRT. Corderman stated that he had been instructed that when the individuals inside the building began shooting at the Bradley vehicle, he had the green light to

Investigation on 6/8/93 at Washington, D.C. File # 66-HQ-19157-45

by SSA Timothy A. Nestor:TAN:tan Date dictated 6/8/93

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EXHIBIT 37

FD-302a (Rev. 11-13-83)

66-HQ-19157-45 F

Continuation of FD-302 of David S. Corderman, On 6/8/93, Page 2

fire tear gas into the building. Corderman stated that he heard a radio announcement from other HRT members that they were being shot at and that he was aware that he was being shot at from inside the building. Corderman stated that he used an M-79 grenade launcher to deliver the gas and that he fired more than 100 rounds of gas into the building.

Corderman stated that during the activity on 4/19/93, he would yell his observations to SA Intellini who was inside the Bradley vehicle and who was reporting directly to the command post.

Corderman stated that the fire at the Branch Davidian compound was too strong to permit him or others to enter the building. Corderman stated that in hope of locating the children known to be in the compound and in the belief that they may have been sent to the underground bunker, he and others entered the bunker, but did find anyone.

Corderman stated that while the fire was being extinguished by local fire fighters, he and other observed their efforts.

Corderman stated that on 4/20/93, he and other HRT members went back to the Branch Davidian compound to clean up the site they had used as a sniper/observation post.

Corderman stated that he did not see anything extraordinary which was not reported through the chain-of-command.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/21/93

SA RICHARD INTELLINI was advised of the official status of the interviewing Agents and that he was being interviewed regarding his activities on 4/19/93 at the Branch Davidian Compound. SA INTELLINI entered on duty with the FBI on 9/19/83 and is currently assigned to the Hostage Rescue Team.

SA INTELLINI advised that he is the team leader for Charlie team and for this operation was assigned as the tank commander of the Charlie team Bradley vehicle assigned to the "green" side of the compound. There were four other members of Charlie team in the Bradley with INTELLINI.

As set out in the operation plan, at 6:00 am on 4/19/93 INTELLINI ordered his M-79 shooter to fire ferret rounds containing CS gas into the bunker on the green side. INTELLINI observed these rounds bounce off the bunker. Almost simultaneously, INTELLINI received the "compromise" command which caused him to order his M-79 shooter to begin firing ferret rounds into Charlie teams assigned openings on the "green" side of the compound. They shot all of the openings making sure that the rounds penetrated the walls. After this was done, INTELLINI advised that he ordered the Bradley driver to proceed to the "green /white" corner blocking position.

During the next few hours, Charlie team, when advised that shots were being fired out of the compound, would maneuver into position and fire additional ferret rounds into the openings on the "green" side.

INTELLINI observed from the Charlie Bradley while at the "green/white" corner, smoke coming from the "black/green" corner near what he knew as the kitchen area and also smoke and flame coming from the "white/red" corner area. As the fire intensified, INTELLINI saw a white male exit the B level onto the roof in the vicinity of the front door of the compound. He saw the man sit up then he heard shots. He advised that he at first thought that the man had shot himself but then the man sat up

Investigation on 4/21/93 at Waco, Texas File # 66F-19157-45

by SSA JAMES K. SCHWEITZER
SSA STUART B. SILVER JKS:sa Date dictated 4/21/93

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EXHIBIT 38

FD-302a (Rev. 11-15-83)

66F-19157-45 F

Continuation of FD-302 of SA RICHARD A. INTELLINI , On 4/21/93 , Page 2

again and INTELLINI realized that the shots had come from inside the compound. Eventually the man on the roof jumped or fell to the ground and wandered towards the "red" side of the compound.

INTELLINI, during the fire, observed 3 white males walking out of the building near the "white/red" corner, observed them dropping their weapons, magazines and load bearing vests on the ground.

As fire was engulfing the compound, Charlie team exited the Bradley vehicle enroute to the underground bus in hopes of finding the women and children. As they were exiting the Bradley, INTELLINI advised that a female approached the vehicle with severe burns on her hands, arms and face. INTELLINI called on the radio for a medical vehicle and asked the female if she knew where the kids were and if she knew if anyone was in the bus. The women gave negative responses to both questions. INTELLINI advised that he left a couple of team members with the woman and he and the others team members proceeded towards the bunker and the bus. The team attempted to enter the bus from the bunker but were unable to do so. They looked for other access points to the bus in the bunker but found none. They then returned to the Bradley vehicle.

INTELLINI advised that after returning to the Bradley he received a radio call that there was an armed male in the vicinity of the "black/green" corner. INTELLINI took a team over to that area on foot but did not see anyone. After approximately 20 minutes INTELLINI and his team returned to the Bradley where they remained during the rest of the operation.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/15/93

Special Agent (SA) R. WAYNE SMITH, SSAN [redacted], of the Richmond Office of the Federal Bureau of Investigation (FBI) was interviewed. SA SMITH was aware of interviewing agent's identity and was advised that the interview pertained to his travel to Waco, Texas. SA SMITH was further advised that the interview was being conducted as a result of an inquiry requested by the DEPARTMENT OF JUSTICE (DOJ) into the Branch Davidian Compound incident.

SA SMITH entered on duty with the FBI on September 24, 1973, and has been assigned to the Cincinnati and New York Field Offices, Monterey, California, Boston Field Office and currently is assigned to the Richmond FBI Office. SA SMITH currently holds a commercial aircraft pilot's license for single engine aircraft, has an instrument rating, and flew as Pilot-In-Command (PIC) for the Boston Office Surveillance Squad for six years prior to becoming Richmond's PIC and Aviation Coordinator.

SA SMITH advised that on approximately March 31, 1993, he was advised by FBI Headquarters, that he, SA CREASY and Richmond's aircraft would be required in Waco, Texas, sometime during the middle of April, 1993, to participate in air surveillance over the Branch Davidian Compound. On April 13, 1993, SA SMITH, accompanied by SA CREASY, departed Richmond, Virginia, in a Cessna 182RG, also known as an R182, arriving in Waco, Texas, at TCTI AIRPORT on April 14, 1993, at approximately 5:15 p.m. local Waco time.

Upon arrival at TCTI AIRPORT he immediately went to the Air Operations Command Post located in the hanger at TCTI AIRPORT and met with SA FRANK COSTANZA, who is assigned to the Hostage Rescue Team (HRT) as a helicopter pilot. SA COSTANZA provided three packages of printed material regarding the Waco air operations which spelled out the duties and responsibilities, shifts to be worked, agents who were working the shifts, brief background of the Branch Davidian Compound situation, and radio channels utilized for the operation. SA SMITH further advised that the frequency on which air operations communicated with

WACO 007222

Investigation on 6/9/93 at Richmond, Virginia File # 66 HQ-19157

by SSA PAUL E. STORER/jf Date dictated 6/14/93

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EXHIBIT 39

FD-302a (Rev. 11-15-83)

66 HQ-19157

Continuation of FD-302 of SA WAYNE R. SMITH, On 6/9/93, Page 2

ground operations was the one utilized by the sniper Tactical Operation Center (TOC). Any communications from aircraft to aircraft would be done via aircraft frequencies as opposed to Bureau frequencies. SA COSTANZA also provided topographical maps with designations marked on the maps showing landing zones for helicopters, all FBI positions, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS positions, as well as symbols depicting the location of sensors placed on one side of the Branch Davidian Compound. The Branch Davidian Compound locations were color coded as follows: white indicated the front of the compound; green indicated the left side of the compound; red indicated the right side of the compound, and black indicated the rear or back of the compound. Additionally, SA COSTANZA identified several color aerial photographs of the Branch Davidian Compound that were tacked to the Air Operations Command Post wall. SA SMITH advised that he and SA CREASY were assigned a 6:00 a.m. to 2:00 p.m. workshift with aerial surveillance to occur from 7:00 a.m. to 11:00 a.m. SA SMITH indicated that this initial briefing lasted approximately forty-five minutes. After receiving the briefing from SA COSTANZA, SA SMITH was released for the day and told that his first shift would begin in the morning hours of April 15, 1993.

SA SMITH also noted that he and SA CREASY brought with them two Motorola Saber hand-held radios that had been reprogrammed specifically to be compatible with the Branch Davidian Compound operation.

As part of his duties and responsibilities, SA SMITH advised that as part of the air surveillance, he was to communicate with the Sniper TOC and was, in fact, responsible to the Sniper TOC for operational instructions and directions. Also, prior to departing TCTI AIRPORT, SA SMITH was instructed to contact the FBI "Night Stalker" aircraft to inform the aircraft that his aircraft was taxiing and ready for departure. SA SMITH understood his mission to be one of observing the Branch Davidian Compound from approximately 2500 to 3000 feet but to go no lower than 1500 feet; however, as the airspace around the Branch Davidian Compound had been restricted and only FBI controlled aircraft permitted in the area, lower altitudes could have been utilized. SA SMITH indicated that his mission was to observe any person or persons entering or leaving the Branch Davidian Compound and to report such activity to the Sniper TOC. In the event he made such an observation he was to remain on station

WACO 007223

until helicopter support could be directed to the location where the individual might have been observed. SA SMITH also pointed out that the aircraft was to act as a relay point for communications, if such became necessary.

From April 15 until April 18, 1993, SA SMITH observed only Bradley Fighting Vehicles (BFV) servicing the gasoline generators that were necessary for perimeter lighting of the Branch Davidian Compound and observed nothing out of the ordinary.

On April 19, 1993, at approximately 6:00 a.m., he and SA CREASY arrived for duty at TCTI AIRPORT anticipating a flight departure at approximately 6:45 a.m. Due to low ceiling cloud cover conditions, launching of the aircraft was delayed. SA SMITH proceeded to the Air Operations Command Post and spoke to SA WALT GARCIA, a PIC of the FBI's Washington Metropolitan Field Office, who was filling in at the command post for SA FRANK COSTANZA. SA GARCIA advised SA SMITH that an tactical operation was underway in an attempt to resolve the situation, that began at approx- imately 6:00 a.m. wherein Combat Engineer Vehicles (CEV) were penetrating the Branch Davidian Compound perimeter walls and inserting gas. SA GARCIA advised that agents were being fired upon from individuals inside the compound at the time of the initial penetration. SA GARCIA advised that the weather was not conducive to safe flying conditions and recommended a delayed launching of the Richmond aircraft crew. SA GARCIA left the final decision to SA SMITH and SA CREASY and their judgment as to the weather conditions and safety of the aircraft and personnel.

With respect to the operation itself, SA SMITH advised that he had heard from other FBI pilots and personnel on the scene, that an operational plan had been on the Attorney General's desk, and if the Attorney General approved the plan it would be implemented as early as Monday, April 19, 1993. However, SA SMITH had no first-hand knowledge of the details of the operation prior to arriving for duty on April 19, 1993.

While checking weather conditions for a launch on April 19, 1993, FBI Special Agent in Charge (SAC) RICKS entered the Air Operations Command Post to check on the status of air surveill- ance aircraft. SAC RICKS was advised that as soon as weather permitted, SA SMITH and SA CREASY would depart TCTI AIRPORT to

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66 HQ-19157

Continuation of FD-302 of SA WAYNE R. SMITH On 6/9/93 Page 4

initiate air surveillance. Prior to departing Air Operations Command Post, SA GARCIA warned SA SMITH that weapons were being fired and reminded SA SMITH that it was believed that the individuals in the Branch Davidian Compound were in possession of a .50 caliber rifle. Additionally, SA SMITH advised that Richmond's aircraft had experienced mechanical difficulties and he was assigned another FBI Field Office's aircraft (Cessna R182) for the air surveillance mission on April 19, 1993.

During pre-flight preparations, SA SMITH recalled that "Night Stalker" landed prior to his departure with the "Night Stalker" pilot advising that the weather was bad, including high winds and a low ceiling. To the best of SA SMITH's recollection there was no air surveillance over the Branch Davidian Compound for approximately thirty minutes. At approximately 7:15 a.m., SA SMITH and SA CREASY determined that the cloud cover was sufficiently high to permit a safe takeoff, and air surveillance was initiated over the compound at approximately 7:30 a.m., April 19, 1993. SA SMITH advised that he was flying in the co-pilot position, while SA CREASY was in the PIC position.

Upon arriving on scene, SA SMITH observed BFVs at the corners of the compound and a CEV moving slowly up to the compound exterior walls, inserting a boom and penetrating the "white" side of the building. At the time he observed this boom penetration he was flying at approximately 2000 to 2500 feet and was utilizing gyro stabilized binoculars. SA SMITH advised that the boom penetrations appeared to occur approximately every one-half hour and observed numerous penetrations of the boom into the compound walls during the entire surveillance period of approximately three hours, from 7:30 a.m. to 10:30 a.m. While on station, SA SMITH observed an unknown individual leave the front side of the compound and return to the compound's interior. Although SA SMITH could not observe what the individual was doing he understood from radio traffic that the individual was picking up a telephone. This individual's activity was consistent with such movement. SA SMITH indicated that he was relieved on station by the Omaha FBI Office flight crew, and he and SA CREASY returned to TCTI Airport. SA SMITH cannot recall whether "Night Stalker" was flying at the time he was relieved of duty. Upon arrival at TCTI AIRPORT, SA SMITH returned to the Air Operations Command Post and was debriefed regarding observations made during his tour of duty. SA SMITH became aware of the fire at the

FD-302a (Rev. 11-15-83)

66 HQ-19157

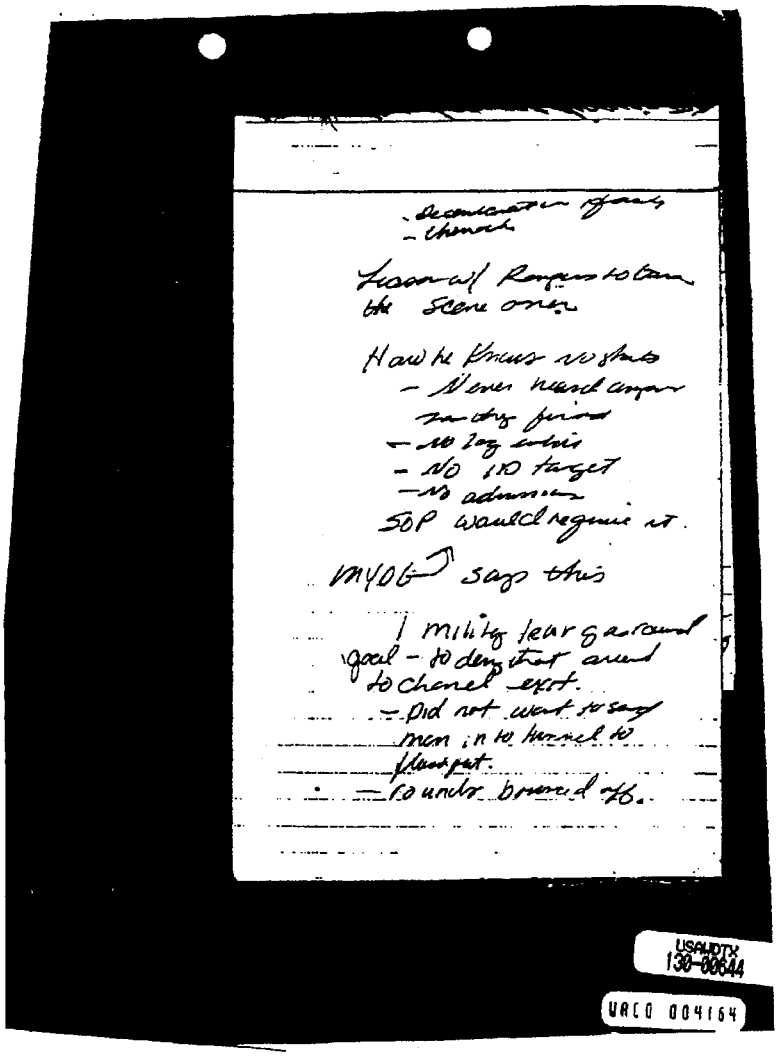
Continuation of FD-302 of SA WAYNE R. SMITH, On 6/9/93, Page 5

Branch Davidian Compound while listening to commercial radio news coverage.

Regarding radio transmissions heard on April 19, 1993, SA SMITH advised that there was a high volume of HRT traffic and Sniper TOC instructions regarding requests for the insertion of gas by ground units. SA SMITH recalls one conversation, relative to the utilization of some sort of military round to be used on a concrete bunker and additional traffic pertaining to the need for additional gas rounds for the M-79 grenade launchers. SA SMITH also recalled radio traffic regarding the coordination and eventual approval of gas insertions at the compound by the Sniper TOC.

SA SMITH advised that routine aircraft pilot logs containing the dates, type of aircraft flown, tail number of the aircraft flown, airport of departure, airport of return, total number of hours flown, number of landings made, name of person or persons aboard, category of the flight hours, was maintained. SA SMITH also filled out the standard FBI flight record, copies of which were sent to the San Antonio FBI Office, with the originals maintained in the Richmond FBI Office. There were no video or audio recordings made. Photographs were taken by SA CREASY and SA SMITH by 35 millimeter cameras, and some photographs taken of the Branch Davidian Compound were subsequently enlarged to 8"x10" photographs and sent to FBI Headquarters, Unit Chief MIKE HAGEN, of the Aviation Unit.

SA SMITH could provide no further information.



- Decontamination of [illegible]
- [illegible]

Lesson w/ Rangers to [illegible] the scene over

How he knows no shots
- Never heard anyone [illegible] firing
- No log entries
- No 10 target
- No admission

SOP would require it.

MYOG says this

1 military tear gas round
goal - to deny that area
to chanel exit.
- Did not want to send
men in to tunnel to
flush out.
- rounds bounced off.

USAWDTX
130-00644

UACO 004164

130-00644

PENGAD-Bayonne, N. J.
EXHIBIT
40

2 coll [illegible]

assaulter → Garage behind 300 or so people supposed Gold Snipers. Scenario 2.

loophole – numerous holes thruout structure
did not see them done – under the dog house cut out –

sawyers – none

guard → saw people in different positions; conjecture if they were strictly guard.

optics – binoculars, nice or twice during the time period – →
(that might have been told to me / not 100% certain

possessed weapons – saw top of barrel – realized it in
reputation – – next day after that
(did not personally observe the 50 cal.

Recalls seeing – Rodney King
– We went the press
Nothing about fire

Rich Apocalypse – some of the gaps to photos of the sign – possibly Chuck Pierce

---

4/19
← Coleman →

Coleman – mutting gas wound at the liner → Fired three 1–4
incendiary rounds

EXHIBIT
41

H090899 018

Cadenum

1 military road at ce-ment underground deal

Mohr - loaded military -

Intellini - saw [illegible] - piled [illegible] ↔

Hit front door - leg pressed in front of the door - move it
all way into the house

Wherefore starts - lack of Bradley -
Smoke coming from the kitchen
White smoke

White / Green

They get <Misty> -
anyone in the [illegible] - where are [illegible] she sd. she [illegible]

She was going into shock -

"Hard radio transmission
"I move out the [illegible]"

Ron Knight
↔ Denver or Dallas →
Biff Temple

H090899 019

Chart all receiving

Planned for extraction –

success

Decontamination – Searched – ATF receiving set up – Liaison w/ Rangers

failure
- 12 physicians
- Mass casualty - 100
- Chinook

No shots: never heard fire over radio net
no entries in log
no identifiable target reported
no one indicated fired

SOP – Express obligation to report

MIOG
~~says~~ must rept firing

OK Bunker

Firing cupcake round – blk roof
fired to penetrate – to
Open it up

Knew water / greater penetrator power – ferretts / to pla CS
poured off

Beginning operation – to deny them access

EXHIBIT 42

H090899 023

SEP-25-1999 14:33 DEPT OF JUSTICE 202 514 6714 P.05/23

WACMUR F.B.I. H.R.T. INTERVIEW SCHEDULE

11/9/93

	DATE/TIME OF INTERVIEW	INTERVIEWERS	WITNESS LIST [YES/NO]
WHITE SIDE			
BLUE SNIPERS		RAY JAHN AND JOHN PHINIZY 5:00P.M. TO END	
BARKER			
BAMFORD	Not here / file		X No
CURRAN			X
HAZEN			✓ view red/white on file
HIGGINBOTHAM			
HORIUCHI			
MONROE			X
QUINN			
WENGER			X
GOLF TEAM			
DEVLIN	Talk to	BILL JOHNSON RENEAU LONGORIA 9:00A.M. TO 10:00A.M	
MORRISON			✓
B.V.#2			
HACKEMEYER		RAY JAHN JOHN PHINIZY 1:00 P.M. TO 3:00 P.M.	X
LAMBERT			X
TILTON			✓ → Both
TIMMIS			✓
TRAYLOR			✓
STAFF BV			
ATHERTON		LEROY JAHN JOHN LANCASTER 9:00A.M.	✓ Yes glasses
Spotter BUTLER	Call		✓
MCGAVIN			✓ Yes first to boat / items
MEY			
MORIWAKI	Call		

EXHIBIT 43

H090899 024

M-88			
BOLINSKY		BILL JOHNSON RENEAU LONGORIA 10:00A.M. TO 11:00A.M.	X
PROCH			✓
COMMAND ABRAMS			
ASAC ROGERS	10/9/93 A.M.		?
ET OWENS			[redacted] - Rebutted
CARNEGIE			X
		BLACK SIDE	
SIERRA #2			X
LUTHIN		JOHNSON/LONGORIA TUESDAY A.M.	
ECHO TEAM		BILL JOHNSON RENEAU LONGORIA TUESDAY 1:00P.M.TO 2:00P.M.	X
DAER			✓
EASTER			X
HICKEY			✓
VENTURI			X
B.V. #4			
ROWAN		BILL JOHNSON RENEAU LONGORIA TUESDAY 2:00P.M. TO 3:00P.M.	✓
SACKET			X
SERVEL			✓BU
GOLD SNIPERS			
BATES	Monday - 11/8	BILL JOHNSON LEROYJAHN JOHN LANCASTER MONDAY	X
LOVE	" "		X
MERTA	" "		?
NISHIMOTO			X No Cummulative
TOULOUSE	" "		X yes
? → WHITCOMB			
MEDICAL B.V.			
BARKER	Call		

SEP-05-1999 14:34 DEPT OF JUSTICE 202 514 8714 P.07/23

RED SIDE			
SIERRA #3			
RASNER	Mar 11/08	ALL RED SIDE MEETING 3:00P.M. TO 5:00P.M.	Yes
? RILEY			
VINCENT			
HOTEL TEAM		ALSO	
HUNT	Reserve	LEROY JAHN JOHN LANCASTER	X
PIERCE			Took photos of proned out
MCGEE		1:00P.M.	
GREEN SIDE			
CHARLIE TEAM			
CORDERMAN		LEROY JAHN JOHN LANCASTER TUESDAY 5:00P.M.	? Rebuttal
INTELLINI			X
MOHR			X
PULLANO			
WARREN			X
WHITE/GREEN CORNER			
HOTEL TEAM\ CEV#1			
CRAIG		RAY JAHN JOHN PHINIZY TUESDAY 5:00P.M.	✓
SHELLENBERGER			✓
WHITE SIDE			
CEV #2 **CHARLIE TEAM**			
HARRIS		RAY JAHN JOHN PHINIZY TUESDAY 5:00P.M.	✓
WALDEN			✓
HELO SUPPORT			
COSTANZA		BILL JOHNSON RENEAU LONGORIA TUESDAY 5:00P.M.	X
KELLY			X
OTHER			
SIGLER			

H090899 026

SEP-05-1999 14:34 DEPT OF JUSTICE 202 514 8714 P.08/23

ROTTI			X
DIVAN			X
MOSHER			
SKINNER	Call		

H090899 027

- WACMUR F.B.I. H.R.T. INTERVIEW SCHEDULE 11/9/93

	DATE\TIME INTERVIEWED	INTERVIEWER	SIGNIFICANT OBSERVATIONS: DURING 51 DAYS & ON THE 19TH	WITNESS LIST YES/NO B.U.]
WHITE SIDE				
BLUE SNIPERS		RAY JAHN AND JOHN PHINIZY		
JEROME BARKER	11/8 AND 11/9 1993		-BEES NEST OF PEOPLE RUNNING	YES
WARREN BAMFORD	NO INTERVIEW			NO
CHRIS CURRAN	11/8 AND 11/9			NO
LES HAZEN	11/8 AND 11/9			NO
BARRY HIGGINBOTHAM	11/8 AND 11/9		-GUN BELT AND BLACK VEST CAME FROM ONE OF THE THREE ALSO SAYS ONE OF THE THREE WAS TOTALLY LOADED WITH MILITARY GEAR	YES
LON HORIUCHI	11/8 AND 11/9		-SEES WHAT HE BELIEVES TO BE A GUN BARREL -LOOKED FOR THE AVRAAM MAGS BUT COULD NOT FIND -1 OF 4 HAD A BLACK SKI CAP AND A HOLSTER-HE ALSO SAW 2 CAMO JACKETS AND DESCRIBES A DISTINCTION	YES
DALE MONROE	11/8 AND 11/9		-GOOD DESCRIPTION OF THE FIRE	NO
MIKE QUINN	11/8 AN 11/9		-SPOTTED AVRAAM & CALLS IT OUT NOT 50 CAL MAGS BC TOO SMALL	MAYBE
ED WENGER	11/8 AND 11/9			NO
GOLF TEAM				
DEVLIN	NO INTERVIEW	BILL JOHNSON AND RENEAU LONGORIA ON 11/9 AND RAY JAHN AND JOHN PHINIZY ON 11/10		NO
MORRISON	11/8 AND 11/9		-SEES MAN IN FOYER W/ MASK BEHIND PIANO WITH SWINGING MOTION(GOLF) AND THEN KNEEL AND 'WASH HANDS' -COULD HAVE SHOT BUT DIDN'T -SEES WHITE SIDE EVENTS FROM S-1 -DESCRIBES MARJORIE & THE 4 -BELIEVES MAN AT FRONT DOOR MAY BE AVRAAM BUT NOT ONE OF 3	YES
B.V.#2				

DAVE HACKEMEYER	11/8 AND 11/9		-ONE OCCASION FLASHBANG FIRED -FIRING PORTS OBSERVED W/THERM IMG 'BRIEF CHRONOLOGY FROM THE TEAM: -MARK SHOT 1ST ROUNDS INTO TOWER AND THEN PUT THREE APIECE INTO EACH WINDOW-TOTAL 120 90% IN -AROUND 10:00 SEE GUY CRAWLING -NEXT SEE PHONE GUY OUT FRONT -NEXT TAKE DEBREE OFF TANK -12:00 CEV MAKES 10-15 FT HOLE TO EXIT SEE BEES NEST OF PEOPLE -SEE MAN IN FOYER CROUCHING AND WALKING BACKWARD-. DAVE SEES	NO	
STEVE LAMBERT	11/8 AND 11/9		-DESCRIBES DIFFICULTY IN OPENING THE FRONT DOOR DUE TO FORTIFICATIONS	NO	
MARK TILTON	11/8 AND 11/9		-ASKED FOR PERMISSION TO BURY DOGS AND PICKED UP FLASHLIGHT AND BODY BUNKER -GRABBED ATF BAG THE DAY THEY REMOVED THE ATF VEHICLES -NEVER BUMPED THE BUILDING BEFORE THE 19TH -THEY BROUGHT A TECH OUT TO TAKE PHOTOS OF FRONT -GOOD DESCRIPTION OF 19TH/FIRE EVENTS INC. M79S DO NOT MAKE A POPP SOUND & THEY DID NOT HEAR FIRING -PULLS DEBREE OFF TANK AFTER DEEP PENETRATION ON WHITE SIDE -WHITE CLOUD CREATED WHEN GAS INSERTED & THEN DISSIPATES NO FIRE-FIRE STARTED A LONG TIME AFTER PENETRATION -MARK ,BRIAN AND JACK SEE MAN SHORTLY BEFOG FIRE ON WHITE SIDE WITH M-16 WALKING BACKWARDS WITH SOMETHING IN HER HANDS. MARK SAYS THEY WERE LESS THAN 40 YARDS AWAY AND HE WAS NOT PAYING ATTENTION TO THEM. -ARRESTS CRADDOCK, TAKES FOR MED OVERHEARS INTERVIEW W/SIGLER	YES	

BRYAN TIMMIS	11/8 AND 11/9			-SEES WINDOW ON W/R SIDE W/ PRODUCE BOX AND MATTRESS & BINOCULARS DURING DAY -IN THE SECOND WEEK THEY PICK UP THE INDIVIDUAL IN THE WINDOW USING NIGHT VISION AND SHINE THE LIGHTS ON HIM -BEFORE FBI BEGAN MUSIC THERE WAS ONE DAY WITH LOUD MUSIC -ON 19TH SEE MAN DIGGING IN BEDROOM -DESCRIPTION OF THERMAL IMAGING -DESCRIBES THE DISMANTLING PROCESS	YES
CORT TRAYLOR	11/8 AND 11/9			-RECUES MARJORIE WITH BRYAN -HEARS SHOTS AND MINUTES LATER IT WAS OVER	YES
STAFF BV					
ATHERTON			LEROY JAHN JOHN LANCASTER		YES
BUTLER					MAYBE
MCGAVIN					YES
MEY					YES
MORIWAKI					MAYBE
M-88					
BOLINSKY	11/9		BILL JOHNSON AND RENEAU LONGORIA	-HAND CUFFED DOYLE	NO
PROCH	11/9			-SAW A CHANGE OF GUARDS. W/LOADING OF MAGS AND SAND BAGS (THERM IMG.) -TOOK HRT PICTURES DURING FIRE	NO
COMMAND ABRAMS					
ASAC ROGERS	10/9/93 A.M.		ALL TEAM		NO
ET OWENS					REBUTTLE
CARNEGIE	11/9		JOHNSON & LONGORIA	-LISTENING TO 3 CHANELSIN ROGERS TANK DURING19TH -VISITED GARAGE TO CHANGE BATTERY	NO
				BLACK SIDE	
SIERRA #2					
BILL LUTHIN			JOHNSON & LONGORIA.	-HEARS SHOTS FIRED WHILE AT SAW J	NO

ECHO TEAM		BILL JOHNSON AND RENEAU LONGORIA		
ED DAER	11/9		-4/19 ED & BOB IN M-60 FOX HOLE BY BUS	NO
JEFF EASTER	11/9		-4/19 JEFF AND DOMINICK ON S-2 SAW	NO
BOB HICKEY	11/9		-THINKS 50 CAL WAS USED JUST AFTER FIRE STARTED & HEARS FIRE OVER HEAD -SAYS CHARLIES' UNSUCESSFUL ATTEMPT TO PUT GAS IN THE BUNKER=SMOKE IN BIG LIE FILM -WHEN FIRE STARTED THEY WERE UP CLOSE W/ ENGINE OFF & HEARD SHOOTING INSIDE IN A DISTINCT RYTHM THOUGHT THEY WERE SHOOTING EACH OTHER -BOB HEARS A ROUND OVER HIS HEAD LARGER THAN A 300-POSS 50 CAL	NO
DAVE VENTURI	11/9			NO
B.V. #4				
TOM ROWEN	11/9	BILL JOHNSON AND RENEAU LONGORIA	-MIKE TOM & JOE IN TANK[MIKE DROVE-TOM SHOT-JOE TC & SPOTER] -SAW PORT HOLES -CLOSE AS 20 YARDS IN BRADLEY -GUY DRESSED AS GIRL DUMPING WASTE INTO POND-DEAD GUY -SHOT FLASHBANGS AT PEOPLE COMMING OUTSIDE W/O AUTHORIZATION -SAW SCHNIEDER & 2 OTHERS & PICKED UP LETTER DURING SMOKE CAN INCID. -TOM HAS SOMEONE LEANING OUT AND SHOTING AT HIM HE RETURNS FERRETS ONLY BACK AND FORTH POPPING/FLASHE -HEARS CRACKING OVERHEAD WHILE AT BLACK WHITE CORNER	YES
MIKE SACKET	11/9		-BLACK D-1 FIRST TO SEE FIRE ALSO SAW FIRE FROM GD-1[JOE SAW FLASH B-D-1] -GOOD ON FIRE PROGRSSION ON BLACK -RECIEVING FIRE DURING THIS TIME -SAW HANDGUN, GASMASK ETC FROM CRADDOCK	NO

JOE SERVEL	11/9		-WERE TO HIDE B/H LIGHTS UNTIL COMP -1ST CEV NOT SEEN -IF COMPROMISE THEY WERE TO SHOT TEAR GAS AT DOG HOUSE, THEN TOWER, THEN 1ST & 2ND FLOORS[1ST WAVE] THEN 2ND WAVE EMPHASIS WAS ON KITCHEN(RECIEVED MUCH FIRE BY THIS TIME) -NOT SUCCESSFULPEN. DOG H B/C STURDY -WOULD NOT CONFUSE FERRETS W/GUN FIRE B/C NO POPPING,NO FLASH, WINDOWS KNOCKED OUT	YES
GOLD SNIPERS				
BATES	11/8	BILL JOHNSON LEROY JAHN JOHN LANCASTER		NO
LOVE	11/8			NO
MERTA	11/8			MAYBE
NISHIMOTO	11/8			NO
TOULOUSE	11/8			YES
WHITCOMB				BACK-UP
MEDICAL B.V.				
BARKER	NO INTERVIEW			
RED SIDE				
SIERRA #3				
RASNER	11/9	ALL RED SIDE MEETING ALSO LEROY JAHN JOHN LANCASTER	-FEMALE CAME OUT WANDERED AND WENT BACK INTO BLACK SIDE -LOVELOCK-BLUE JACKET,GAS MASK,GUN HOLSTER BELT, SKI CAP -DROPPED (ALSO HORUCHI AND VINCENT) -CASTILLO BLACK LOAD BEARING VEST, THEN YOU COULD SEE ARMS(ALSO VINCENT) -THIBADEAU-15 20 YDS BEHIND, BLACK GUNBELT, DID HIS STUFF EDARLY AND QUICKLY ON WAY OUT -SWEATSHIRT, CAMO JACKET, GREEN BELT W/ HOLSTER(VINCENT, BARKER)	YES
RILEY	11/9			MAYBE
VINCENT	11/9			YES
HOTEL TEAM				
HUNT	11/9			BACK-UP
PIERCE	11/9			BACK-UP

MCGEE	11/9				YES
GREEN SIDE					
CHARLIE TEAM					
DAVE CORDERMAN	11/9		BILL JOHNSON AND RENEAU LONGORIA	-51 DAYS FLASH BANGED IF CAME OUT NOTHING WAS PICKED UP -FERRET SHOOTER ON 19TH S-2 BRADLY -SMOKE ON FILM CAME FROM ATTEMPT TO PENETRATE BUNKER W/ 1 MILITARY AND 2 FERRET ROUNDS -MILITARY WAS GREY BUBBLEHEAD W/GREEN BASE -DAVE FIRES 3 ROUNDS INTO KITCHEN AND LESS THAN 30 SEC LATER SEES SMOK	NO UNLESS REBUTTLE
RICK INTELLINI	11/9			-TANK COMMANDER-DESCRIBES COMPROMISE -SAW BARRACADES BOXES AND MATTRES	NO
DAVE MOHR	11/9			-LOADER ON 19TH	NO
PULLANO	11/10			-DRIVER ON 19TH -HEARS GUNFIRE DURING THE TIME THE GUY WAS ON THE ROOF-SEES A VRAAM -GOOD DESCRIP OF FIRE FROM THAT PT -GOOD ON BUNKER INC. W/OPENING OFBACK AND SHOOTING AT ANGLE -BEST DESCRIP OF MISTY RESCUE(1ST SEE STANDING IN A DAZE 20-30 FT FROM BLDG ALSO TIES IN LOOKING FOR MAN WITH A GUN-OUTSIDE THE WIRE-CRADDOCK COULD BE SAME MAN IF HE STAYED INSIDE WIRE HELPS ARREST CRADDOCK **-HE ASKS AND CRADDOCK TELLS HIM HOW HHHE GOT THERE**	MAYBE REBUTTLE
SCOTT WARREN	11/9			-SAW BARREL AND SCOPE OF 50 CAL -RIFLE COVER ON 19TH -HEARS GUBFIRE WHEN FIRE STARTS-BACK OPEN FROM INSIDE	NO
WHITE/GREEN CORNER					
HOTEL TEAM					
CRAIG					
SHELLENBERGER					
WHITE SIDE					
CHARLIE TEAM					
HARRIS	11/9				NO
WALDEN	11/9				NO

HELO SUPPORT					
COSTANZA	11/9				NO
KELLY	11/9			-LAST 3 WKS IN BLUE HELO-STOP INGRES -DID NOT SEE BODY ON WATER TANK & THINKS HE WOULD HAVE IF IT WAS THERE -19TH MISSION MEDIVAC NO PICTURES	NO
OTHER					
SIGLER	11/10				NO
ROTTI	11/9			-HANDLED SUPPLIES & LOGISTICS	NO
DIVAN	11/9				NO
MOSHER	11/10				NO
SKINNER	NOT INTERVIEWED				NO

SEP-25-1999 14:33 DEPT OF JUSTICE 202 514 8714 P.05/23

WACMUR F.B.I. H.R.T. INTERVIEW SCHEDULE

11/9/93

	DATE\TIME OF INTERVIEW	INTERVIEWERS	WITNESS LIST (YES/NO)
	WHITE SIDE		
BLUE SNIPERS		RAY JAHN AND JOHN PHINIZY 5:00P.M. TO END.	
BARKER			
BAMFORD	Not here / file		X No
CURRAN			X ✓ view red light on fire
HAZEN			
HIGGINBOTHAM			
HORIUCHI			X
MONROE			7
QUINN			X
WENGER			
GOLF TEAM			
DEVLIN	Talk to	BILL JOHNSON RENEAU LONGORIA 9:00A.M. TO 10:00A.M	
MORRISON			✓
B.V.#2			
HACKEMEYER		RAY JAHN JOHN PHINIZY 1:00 P.M. TO 3:00.M.	X
LAMBERT			X
TILTON			✓
TIMMIS			✓ > Both
TRAYLOR			✓
STAFF BV			
ATHERTON		LEROY JAHN JOHN LANCASTER 9:00A.M.	✓ Yes glasses
BUTLER	Call		
MCGAVIN			✓
MEY			✓ Yes first to boat / items
MORIWAKI	Call		

Sport R.

EXHIBIT 44

H090899 024

M-88			
BOLINSKY		BILL JOHNSON RENEAU LONGORIA 10:00A.M. TO 11:00A.M.	X
PROCH			X
COMMAND ABRAMS			
ASAC ROGERS	10/9/93 A.M.		?
ET OWENS			[redacted] - Rebuttal
CARNEGIE			X
BLACK SIDE			
SIERRA #2			X
LUTHIN		JOHNSON/LONGORIA TUESDAY A.M.	
ECHO TEAM		BILL JOHNSON RENEAU LONGORIA TUESDAY 1:00P.M.TO 2:00P.M.	X
DAER			X
EASTER			X
HICKEY			X
VENTURI			X
B.V. #1			
ROWAN		BILL JOHNSON RENEAU LONGORIA TUESDAY 2.00P.M. TO 3:00P.M.	✓
SACKET			X
SERVEL			✓BU
GOLD SNIPERS			
BATES	Monday - 11/8	BILL JOHNSON LEROYJAHN JOHN LANCASTER MONDAY	X
LOVE	" "		X
MERTA	" "		?
NISHIMOTO			X No Cummulative
TOULOUSE	" "		X yes
? → WHITCOMB			
MEDICAL B.V.			
BARKER	Call		

RED SIDE			
SIERRA #3			
RASNER	Mon 11/08	ALL RED SIDE MEETING 3:00P.M. TO 5:00P.M.	Yes
RILEY			
VINCENT			
HOTEL TEAM		ALSO	
HUNT	Reserve	LEROY JAHN JOHN LANCASTER	X Took photos of proned out
PIERCE		1:00P.M.	
MCGEE			
GREEN SIDE			
CHARLIE TEAM			
CORDERMAN		LEROY JAHN JOHN LANCASTER TUESDAY 5:00P.M.	? Rebuttal
INTELLINI			X
MOHR			X
PULLANO			
WARREN			X
WHITE/GREEN CORNER			
HOTEL TEAM\ CEV#1			
CRAIG		RAY JAHN JOHN PHINIZY TUESDAY 5:00P.M.	✓
SHELLENBERGER			✓
WHITE SIDE			
CHARLIE TEAM			
HARRIS		RAY JAHN JOHN PHINIZY TUESDAY 5:00P.M.	✓
WALDEN			✓
HELO SUPPORT			
[illegible]			X
KELLY		BILL JOHNSON RENEAU LONGORIA TUESDAY 5:00P.M.	X
OTHER			
SIGLER			

CEV #1

SEP-05-1999 14:34 DEPT OF JUSTICE 202 514 8714 P.08/23

ROTTI			X
DIVAN			X
MOSHER			
SKINNER	Call		

HD90899 027

- WACMUR F.B.I. H.R.T. INTERVIEW SCHEDULE 11/9/93

	DATE/TIME INTERVIEWED	INTERVIEWER	SIGNIFICANT OBSERVATIONS: DURING 51 DAYS & ON THE 19TH	WITNESS LIST [YES/NO B.U.]
WHITE SIDE				
BLUE SNIPERS		RAY JAHN AND JOHN PHINIZY		
JEROME BARKER	11/8 AND 11/9 1993		-BEES NEST OF PEOPLE RUNNING	YES
WARREN BAMFORD	NO INTERVIEW			NO
CHRIS CURRAN	11/8 AND 11/9			NO
LES HAZEN	11/8 AND 11/9			NO
BARRY HIGGINBOTHAM	11/8 AND 11/9		-GUN BELT AND BLACK VEST CAME FROM ONE OF THE THREE ALSO SAYS ONE OF THE THREE WAS TOTALLY LOADED WITH MILITARY GEAR	YES
LON HORIUCHI	11/8 AND 11/9		-SEES WHAT HE BELIEVES TO BE A GUN BARREL -LOOKED FOR THE AVRAAM MAGS BUT COULD NOT FIND -1 OF 4 HAD A BLACK SKI CAP AND A HOLSTER-HE ALSO SAW 2 CAMO JACKETS AND DESCRIBES A DISTINCTION	YES
DALE MONROE	11/8 AND 11/9		-GOOD DESCRIPTION OF THE FIRE	NO
MIKE QUINN	11/8 AN 11/9		-SPOTTED AVRAAM & CALLS IT OUT -NOT 50 CAL MAGS BC TOO SMALL	MAYBE
ED WENGER	11/8 AND 11/9			NO
GOLF TEAM				
DEVLIN	NO INTERVIEW	BILL JOHNSON AND RENEAU LONGORIA ON 11/9 AND RAY JAHN AND JOHN PHINIZY ON 11/10		NO
MORRISON	11/8 AND 11/9		-SEES MAN IN FOYER W/ MASK BEHIND PIANO WITH SWINGING MOTION(GOLF) AND THEN KNEEL AND 'WASH HANDS' -COULD HAVE SHOT BUT DIDN'T -SEES WHITE SIDE EVENTS FROM S-1 -DESCRIBES MARJORIE & THE 4 -BELIEVES MAN AT FRONT DOOR MAY BE AVRAAM BUT NOT ONE OF 3	YES
B.V.#2				

DAVE HACKEMEYER	11/8 AND 11/9		-ONE OCCASION FLASHBANG FIRED -FIRING PORTS OBSERVED W/THERM IMG -BRIEF CHRONOLOGY FROM THE TEAM: -MARK SHOT 1ST ROUNDS INTO TOWER AND THEN PUT THREE APIECE INTO EACH WINDOW-TOTAL 120 90% IN -AROUND 10:00 SEE GUY CRAWLING -NEXT SEE PHONE GUY OUT FRONT -NEXT TAKE DEBREE OFF TANK -12:00 CEV MAKES 10-15 FT HOLE TO EXIT SEE BEES NEST OF PEOPLE -SEE MAN IN FOYER CROUCHING AND WALKING BACKWARD-. DAVE SEES	NO
STEVE LAMBERT	11/8 AND 11/9		-DESCRIBES DIFFICULTY IN OPENING THE FRONT DOOR DUE TO FORTIFICATIONS	NO
MARK TILTON	11/8 AND 11/9		-ASKED FOR PERMISSION TO BURY DOGS AND PICKED UP FLASHLIGHT AND BODY BUNKER -GRABBED ATF BAG THE DAY THEY REMOVED THE ATF VEHICLES -NEVER BUMPED THE BUILDING BEFORE THE 19TH -THEY BROUGHT A TECH OUT TO TAKE PHOTOS OF FRONT -GOOD DESCRIPTION OF 19TH/FIRE EVENTS INC. M79S DO NOT MAKE A POPP SOUND & THEY DID NOT HEAR FIRING -PULLS DEBREE OFF TANK AFTER DEEP PENETRATION ON WHITE SIDE -WHITE CLOUD CREATED WHEN GAS INSERTED & THEN DISSIPATES NO FIRE-FIRE STARTED A LONG TIME AFTER PENETRATION -MARK ,BRIAN AND JACK SEE MAN SHORTLY BEFOG FIRE ON WHITE SIDE WITH M-16 WALKING BACKWARDS WITH SOMETHING IN HER HANDS. MARK SAYS THEY WERE LESS THAN 40 YARDS AWAY AND HE WAS NOT PAYING ATTENTION TO THEM. -ARRESTS CRADDOCK, TAKES FOR MED OVERHEARS INTERVIEW W/SIGLER	YES

BRYAN TIMMIS	11/8 AND 11/9			-SEES WINDOW ON W/R SIDE W/ PRODUCE BOX AND MATTRESS & BINOCULARS DURING DAY -IN THE SECOND WEEK THEY PICK UP THE INDIVIDUAL IN THE WINDOW USING NIGHT VISION AND SHINE THE LIGHTS ON HIM -BEFORE FBI BEGAN MUSIC THERE WAS ONE DAY WITH LOUD MUSIC -ON 19TH SEE MAN DIGGING IN BEDROOM -DESCRIPTION OF THERMAL IMAGING -DESCRIBES THE DISMANTLING PROCESS	YES
CORT TRAYLOR	11/8 AND 11/9			-RECUES MARJORIE WITH BRYAN -HEARS SHOTS AND MINUTES LATER IT WAS OVER	YES
STAFF BV					
ATHERTON			LEROY JAHN JOHN LANCASTER		YES
BUTLER					MAYBE
MCGAVIN					YES
MEY					YES
MORIWAKI					MAYBE
M-88					
BOLINSKY	11/9		BILL JOHNSON AND RENEAU LONGORIA	-HAND CUFFED DOYLE	NO
PROCH	11/9			-SAW A CHANGE OF GUARDS, W/LOADING OF MAGS AND SAND BAGS (THERM IMG.) -TOOK HRT PICTURES DURING FIRE	NO
COMMAND ABRAMS					
ASAC ROGERS	10/9/93 A.M.		ALL TEAM		NO
ET OWENS					REBUTTLE
CARNEGIE	11/9		JOHNSON & LONGORIA	-LISTENING TO 3 CHANELSIN ROGERS TANK DURING19TH -VISITED GARAGE TO CHANGE BATTERY	NO
				BLACK SIDE	
SIERRA #2					
BILL LUTHIN			JOHNSON & LONGORIA.	-HEARS SHOTS FIRED WHILE AT SAW J	NO

ECHO TEAM		BILL JOHNSON AND RENEAU LONGORIA.		
ED DAER	11/9		-4/19 ED & BOB IN M-60 FOX HOLE BY BUS	NO
JEFF EASTER	11/9		-4/19 JEFF AND DOMINICK ON S-2 SAW	NO
BOB HICKEY	11/9		-THINKS 50 CAL WAS USED JUST AFTER FIRE STARTED & HEARS FIRE OVER HEAD -SAYS CHARLIES' UNSUCESSFUL ATTEMPT TO PUT GAS IN THE BUNKER=SMOKE IN BIG LIE FILM -WHEN FIRE STARTED THEY WERE UP CLOSE W/ ENGINE OFF & HEARD SHOOTING INSIDE IN A DISTINCT-RYTHM -THOUGHT THEY WERE SHOOTING EACH OTHER -BOB HEARS A ROUND OVER HIS HEAD LARGER THAN A 300-POSS 50 CAL	NO
DAVE VENTURI	11/9			NO
B.V. #4				
TOM ROWEN	11/9	BILL JOHNSON AND RENEAU LONGORIA	-MIKE TOM & JOE IN TANK[MIKE DROVE-TOM SHOT-JOE TC & SPOTER] -SAW PORT HOLES -CLOSE AS 20 YARDS IN BRADLEY -GUY DRESSED AS GIRL DUMPING WASTE INTO POND-DEAD GUY -SHOT FLASHBANGS AT PEOPLE COMMING OUTSIDE W/O AUTHORIZATION -SAW SCHNIEDER & 2 OTHERS & PICKED UP LETTER DURING SMOKE CAN INCID. -TOM HAS SOMEONE LEANING OUT AND SHOTNG AT HIM HE RETURNS FERRETS ONLY BACK AND FORTH POPPING/FLASHE -HEARS CRACKING OVERHEAD WHILE AT BLACK WHITE CORNER	YES
MIKE SACKET	11/9		-BLACK D-1 FIRST TO SEE FIRE ALSO SAW FIRE FROM GD-1[JOE SAW FLASH B-D-1] -GOOD ON FIRE PROGRSSION ON BLACK -RECIEVING FIRE DURING THIS TIME -SAW HANDGUN, GASMASK ETC FROM CRADDOCK	NO

JOE SERVEL	11/9			-WERE TO HIDE B/H LIGHTS UNTIL COMP -1ST CEV NOT SEEN -IF COMPROMISE THEY WERE TO SHOT TEAR GAS AT DOG HOUSE, THEN TOWER, THEN 1ST & 2ND FLOORS[1ST WAVE] THEN 2ND WAVE EMPHASIS WAS ON KITCHEN(RECIEVED MUCH FIRE BY THIS TIME) -NOT SUCCESSFULPEN. DOG H B/C STURDY -WOULD NOT CONFUSE FERRETS W/GUN FIRE B/C NO POPPING,NO FLASH, WINDOWS KNOCKED OUT	YES
GOLD SNIPERS					
BATES	11/8		BILL JOHNSON LEROY JAHN JOHN LANCASTER		NO
LOVE	11/8				NO
MERTA	11/8				MAYBE
NISHIMOTO	11/8				NO
TOULOUSE	11/8				YES
WHITCOMB					BACK-UP
MEDICAL B.V.					
BARKER	NO INTERVIEW				
RED SIDE					
SIERRA #3					
RASNER	11/9		ALL RED SIDE MEETING ALSO LEROY JAHN JOHN LANCASTER	-FEMALE CAME OUT WANDERED AND WENT BACK INTO BLACK SIDE -LOVELOCK-BLUE JACKET,GAS MASK,GUN HOLSTER BELT, SKI CAP -DROPPED (ALSO HORUCHI AND VINCENT) -CASTILLO BLACK LOAD BEARING VEST. THEN YOU COULD SEE ARMS(ALSO VINCENT) -THIBADEAU-15 20 YDS BEHIND, BLACK GUNBELT, DID HIS STUFF EDARLY AND QUICKLY ON WAY OUT -SWEATSHIRT, CAMO JACKET, GREEN BELT W/HOLSTER(VINCENT, BARKER)	YES
RILEY	11/9				MAYBE
VINCENT	11/9				YES
HOTEL TEAM					
HUNT	11/9				BACK-UP
PIERCE	11/9				BACK-UP

MCGEE	11/9			YES
GREEN SIDE				
CHARLIE TEAM				
DAVE CORDERMAN	11/9	BILL JOHNSON AND RENEAU LONGORIA	-51 DAYS FLASH BANGED IF CAME OUT NOTHING WAS PICKED UP -FERRET SHOOTER ON 19TH S-2 BRADLY -SMOKE ON FILM CAME FROM ATTEMPT TO PENETRATE BUNKER W/ 1 MILITARY AND 2 FERRET ROUNDS -MILITARY WAS GREY BUBBLEHEAD W/GREEN BASE -DAVE FIRES 3 ROUNDS INTO KITCHEN AND LESS THAN 30 SEC LATER SEES SMOK	NO UNLESS REBUTTLE
RICK INTELLINI	11/9		-TANK COMMANDER-DESCRIBES COMPROMISE -SAW BARRACADES BOXES AND MATTRES	NO
DAVE MOHR	11/9		-LOADER ON 19TH	NO
PULLANO	11/10		-DRIVER ON 19TH -HEARS GUNFIRE DURING THE TIME THE GUY WAS ON THE ROOF-SEES AVRAAM -GOOD DESCRIP OF FIRE FROM THAT PT -GOOD ON BUNKER INC. W/OPENING OFBACK AND SHOOTING AT ANGLE -BEST DESCRIP OF MISTY RESCUE(1ST SEE STANDING IN A DAZE 20-30 FT FROM BLDG ALSO TIES IN LOOKING FOR MAN WITH A GUN-OUTSIDE THE WIRE-CRADDOCK COULD BE SAME MAN IF HE STAYED INSIDE WIRE HELPS ARREST CRADDOCK -**HE ASKS AND CRADDOCK TELLS HIM HOW HHHE GOT THERE**	MAYBE REBUTTLE
SCOTT WARREN	11/9		-SAW BARREL AND SCOPE OF 50 CAL -RIFLE COVER ON 19TH -HEARS GUBFIRE WHEN FIRE STARTS-BACK OPEN FROM INSIDE	NO
WHITE/GREEN CORNER				
HOTEL TEAM				
CRAIG				
SHELLENBERGER				
WHITE SIDE				
CHARLIE TEAM				
HARRIS	11/9			NO
WALDEN	11/9			NO

HELO SUPPORT					
COSTANZA	11/9				NO
KELLY	11/9			-LAST 3 WKS IN BLUE HELO-STOP INGRES -DID NOT SEE BODY ON WATER TANK & THINKS HE WOULD HAVE IF IT WAS THERE -19TH MISSION MEDIVAC NO PICTURES	NO
OTHER					
SIGLER	11/10				NO
ROTTI	11/9			-HANDLED SUPPLIES & LOGISTICS	NO
DIVAN	11/9				NO
MOSHER	11/10				NO
SKINNER	NOT INTERVIEWED				NO

Tank Conference 11-12
Staff BV
Abrahams - Roger
Jamar - Forward TOC

X Double EE/2491

All out -> / JJ

Holding up center blk house
gas not working

Need to penetrate w/ spray
CEV #1 intrusion -> gas
CEV #2 Blk side work
> mark V

more effective

Discussed # Ferretts left (already made ferrett run)

Getting low -
[Houston SWATs brought wrong ferrett - 40]
not issue

Military gen - ring & outdoor pyrotechnic

Federal = fins white plastic

when CEV #2 started collapsing gym

Talked to CEV drivers

All Bradleys -> wedge location - talked

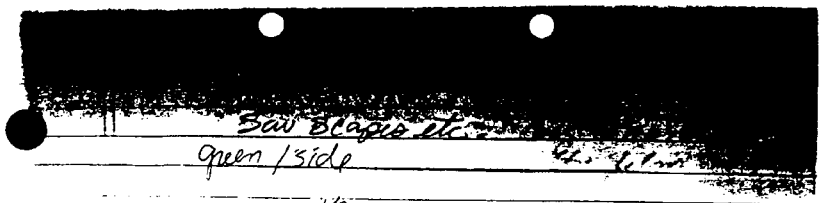
CEV #1 ready -> positn

Bradly -> support positn

CEV #2 shortly thereafter - inop
would probe cldnt release gas

EXHIBIT
45

H090899 037



Saw Scapes etc

Green / side

19th

pull up into position on green side
i.e. they would Green command
unless fired upon

Pullano sees guy on roof. good description of
i.e. from that vantage point
- decides to leave no - hands

Only heard gunfire when
guy was on roof -

Intellins — good description of compromise

Shot 1 gas round

Rebuttle

Smoke from Bunker - Come
when these guys tried to shoot
gas into the Bunker -
(Military gas round)
Dark grey bubble head w/
green base
1 military round - 20 thrs
ferret
↓ mcdoy

1st target ferret into Bunker
8 ft drop 3° angle
Military Bouncedoff Also

WACO 004134

CIV FO

EXHIBIT
46

WWC435-0255

CNG419-0409

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ISABEL G. ANDRADE, *et al.*	§	CIVIL ACTION NO. H-94-0923
	§	Judge Atlas
Plaintiffs,	§	
	§	and consolidated actions:
V.	§	*Holub v. Reno* H-94-2153
	§	*Ferguson v. Reno* H-95-0218
PHILLIP J. CHOJNACKI, *et al.*	§	*Brown v. U.S.* H-95-0587
	§	*Riddle v. Reno* H-95-0602
Defendants.	§	*Gyarfas v. U.S.* H-95-1142
	§	*Martin v. U.S.* H-95-4246

DECLARATION OF RICHARD L. SHERROW

INTRODUCTION

My name is RICHARD L. SHERROW and am President of RICHARD L. SHERROW and Associates in Mesa, Arizona. I am a former Fire and Explosion Investigator with the Bureau of Alcohol, Tobacco and Firearms, United States Department of Treasury, and retired as a Senior Explosive Ordnance Disposal Technician from the United States Army. I have more than thirty years experience as an explosives and arson investigator, have been involved in over 40 major fire investigations, and have qualified as an expert witness in federal and state court in 18 states. In addition to arson, fire and explosion expertise, I have served as a Staff Instructor at both the U.S. Army Chemical Center and School and Redstone Arsenal and have been a technical writer and instructor in the use of chemical and biological weapons, including riot control agents.

In addition, I have received training from the BATF, FBI, U.S. Army, U.S. Navy, U.S. Air Force, DuPont and the Federal Law Enforcement Training Center (FLETC).

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EXHIBIT
47

I have attended the Ohio Fire Academy and the National Fire Academy (NFA). I am also a graduate of the Police Academy at Jacksonville State University, Jacksonville, Alabama. I am a past member of the International Association of Bomb Technicians (IABTI).

I have made a preliminary investigation into the cause, origin, nature and growth of the fire which consumed the Mount Carmel Center near Waco, Texas, on April 19, 1993, and where members of the Branch Davidian religion perished as a result of said fire. This preliminary investigation was based upon the Forward-Looking Infrared (FLIR) video, still photographs extracted from the FLIR, still photographs taken from the air and from the ground during the fire, broadcast news video, videography taken by a private investigator while the government was in control of the Mount Carmel Center, signed statements and interviews of Branch Davidians who survived the fire, official reports and case notes of federal and state law enforcement agents, the reports of the United States' fire investigators (namely Paul Gray and James Quientere) and from my own personal inspection of the fire site.

Based upon this preliminary investigation, I am able to conclude, within my professional opinion, that it is consistent with this evidence that the fire originated from a single point and spread throughout the Mount Carmel structure. It is also consistent with evidence that the original fire was started by a M728 CEV striking the southeast corner tower of Mount Carmel. These conclusions are as consistent with the evidence as the conclusions reached in the Gray and Quientere reports and they are in direct contravention to conclusions reached in the Gray and Quientere reports.

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SITE INVESTIGATION

Mount Carmel Center was a multi-storied, wood-frame building of irregular construction. It was built of about half used lumber and building materials cannibalized from houses that had existed on the property previously and from new materials purchased for its construction. The building was constructed haphazardly over time without any attention to fire safety. Some of the building's interior lacked wallboard or finishing. Those areas of the building which had been finished were completed with highly flammable materials.

Contained within the building on the first floor were the living quarters, dining and kitchen areas, several storage rooms, a chapel and gymnasium. A four-story tower was located near the center of the structure and contained a reinforced-concrete room used to house a walk-in cooler for food storage. This concrete structure was built in the 1930's and had survived a previous fire some years before.

The second floor was contiguous over the first and also contained living quarters. Both corners of the building in front contained a third story. Moreover, the four-story tower had a fourth floor directly over the third.

Foundation, slabs and piers were homemade with unreinforced concrete and did not contribute significantly to the building's resistance to mechanical shock. The roof was of decked plywood construction, overlaid with asphalt composition roofing materials.

External electrical power was turned off to the structure prior to the fire but a diesel generator of unknown capacity was present within the structure and had been known to be energized intermittently between February 28 and April 19, 1993.

Moreover, several storage areas and rooms were known to contain large amounts of highly flammable and combustible materials, including, but not limited to, gasoline, kerosene, lamp oil, Coleman lantern fuel, paint, petroleum distillates, tar and roofing materials, acetylene and oxygen containers, gunpowder, metal shavings, and a large quantity of small arms ammunition.

Internal heating and cooking fires were provided by improvised wood-burning stoves and propane fueled gas ranges, respectively. Due to the lack of external electrical power, internal lighting was accomplished with Coleman-type gas pressurized lanterns and glass oil-burning wick lamps.

It is known that a large, commercial-type gas range was located in the kitchen/dining area adjacent to the four-story tower. This range was fed by a large, 100-pound propane tank located externally to the dining room. The propane was conducted through the wall at that location by a conduit pipe. The tank appeared to be nearly full of propane as evidenced by a spectacular boiling liquid expanding vapor explosion (BLEVE) during the fire.

Mount Carmel Center was occupied as a multi-family residential building with shared common areas, including a commercial-sized kitchen, and compartmented into many smaller rooms used for personal quarters.

INSERTION OF CHEMICAL AGENTS

On April 19, 1993, at approximately 6:00 a.m., agents of the Federal Bureau of Investigation began executing a plan to introduce a riot control agent, ortho-chlorobenzalmalononitrile (CS).

CS is a micro-pulverized particulate riot control agent designed for crowd dispersal in open areas. Although no open or closed cup flash point has been determined for CS, it is a combustible solid. Published information on CS by the National Institute for Occupational Safety and Health (NIOSH) states that the ceiling exposure limit for CS is 0.05 parts per million (ppm) or approximately 0.2 milligrams per cubic meter (mg/m^3). The ceiling exposure limit is not to be exceeded at any time. NIOSH information lists CS as having an immediate danger to life and health (IDLH) exposure limit of 2 mg/m^3. Information contained in the U.S. Justice Department report on Waco states that 10 mg/m^3 is the concentration of CS which will deter trained troops. Moreover, powdered CS may be a fire hazard in concentrated quantities and can produce a flammable dust.

During the next six hours, the FBI utilized M728 Combat Engineer Vehicles (CEV) to breach the outer walls of the building and to inject CS. A CEV is a large armored vehicle, weighing in excess of 50 tons, is equipped with a 165mm demolition gun and is a modification of the M60A1 Main Battle Tank. The CS was injected by use of a Mark V delivery device. The MK-5 delivery device consisted of several bottles of pressurized carbon dioxide which was used to entrain the particulate CS in a gaseous stream. This stream was injected into the structure through a nozzle located on the end of a boom connected to the CEV.

In addition to the CS injection utilizing the Mark-5 delivery systems on the CEVs, FBI agents in Bradley Infantry Fighting Vehicles (BIFV) fired SGA-400 Ferret barricade penetrating cartridges into windows and areas not reachable by the CEVs. A Ferret is a 40 mm projectile containing particulate CS and a liquid suspension agent, methylene

chloride. The Ferret is a non-pyrotechnic munition specifically designed for barricade situations. At least 400, and possibly more, of these Ferret rounds were fired in and at Branch Davidians during the breaching and CS insertion operation.

Besides the SGA-400 Ferret cartridges, information from documents obtained from the FBI through the United States Department of Justice indicates that military pyrotechnic munitions may have been fired into Mount Carmel. Documents disclosed indicate that agents could not penetrate either the underground shelter roof or the top of the rear four-story tower with Ferrets. Therefore, they fired at least one "military" round and referred to this munition as a "bubblehead." As a retired U.S. Army senior explosive ordnance disposal technician, I am unaware of the nomenclature and function of a "bubblehead" nor can I find any reference to such a munition in official military publications. However, I am familiar with a device known as a "bunker buster," which is a munition about the size of a softball and designed to penetrate fortifications. I recall that this munition was of foreign manufacture and filled with plasticized high explosive (HEP). It may have had other fillers, including chemical riot control agents. The exact identity of a "bubblehead" would have to be determined before any possible contribution to the fire could be established.

In the event that members of the Branch Davidians contemplated or began to execute a mass suicide, it was the plan of the FBI Hostage Rescue Team (HRT) "to disrupt any suicide attempt with flash-bangs." "Flash-bang" generically refers to pyrotechnic stun munitions designed to temporarily incapacitate or disorient personnel by producing a loud report and blinding flash. These munitions contain an

BREACHING OPERATIONS

During the six hours of the escalated plan to introduce CS (and possibly CN) into unt Carmel Center, CEVs made numerous breaches in the exterior walls of the re. The purpose of this breaching was ostensively to provide openings for rs of the Branch Davidians to "escape" the building. However, these operations intly damaged the structure, causing numerous internal load-bearing failures and d in restricted egress from the structure.

As an example, the area immediately over the trap door leading to the buried bus and external underground storm shelter was obstructed by debris. Further, aircases leading to the upper floors were disrupted or destroyed by the CEV ng operations. At one point, a significant portion of the building can be seen to s foundation because of the repeated collisions of the CEVs with the structure. breaching operations probably resulted in sprung doors, destruction of flooring ation of attendant falling and entrapment hazards and probably prevented normal nication between adjacent areas of the structure.

Despite the claim that the purpose of the breaching operation was to secure exits Branch Davidians, in reality the CEVs began to systematically dismantle the as evidenced by the destruction of the gymnasium immediately prior to the fire. During the breaching operation, one of the CEVs (CEV-1) was ordered to te the structure from one side to the other. CEV-1, with its bulldozer blade ; debris in front of it, penetrated to the base of the four-story tower, making with the concrete storage structure at the tower's base. This structure was

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explosive/incendiary pyrotechnic composition. A number of these munitions manufactured by the Nico Corporation were known to be fired during the 51 day standoff and were in the possession of the FBI HRT on April 19, 1993. Use of stun munitions in barricade situations is extremely hazardous due to the potential of causing an accidental fire.

In addition to the CS and methylene chloride introduced by the above methods, the Gray report refers to the induction of chloracetophenone (CN), another riot control agent. CN comes in both liquid and powder forms. CN-B is a mixture of CN and benzene and CN-C is a mixture of CN and chloroform in a liquid state. CN is highly flammable in its liquid state; in its powdered state, CN has a flashpoint of 55°C.

It is known that many of the Branch Davidians were in possession of protective masks. Therefore, the effective use of CS or CN would require the introduction of quantities of these agents far in excess of that required to deter trained troops (10 mg/m³ for CS) and well past the levels required to pose an immediate danger to life and health (2 mg/m³ for CS). Calculations by engineers for an independent casualty laboratory, Failure Analysis, Inc., have concluded that the average concentration of CS inside of Mount Carmel was 10 to 90 times that necessary to deter trained troops (100 to 900 mg/m³). In my professional opinion and based upon my experience with the use of these riot control agents, the concentration of CS and/or CN introduced was designed to overcome the protective masks by rapidly debilitating their filters and posed an immediate threat to the life, health and safety of those inside Mount Carmel, especially the unprotected children.

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already in a weakened condition from a previous fire as noted above. The contact, made by such a large and powerful vehicle, probably caused a structural failure and resulted in an internal avalanche of the room contents and partial failure of the concrete ceiling. This entrapped numerous people, mostly women and children, who had taken refuge therein.

CAUSE AND ORIGIN

Possible Origin

At about 12:05 p.m., CEV-1 was dismantling the southeast corner tower of the exterior wall at the ground level. At 12:06:24, CEV-1 departed the southeast corner, possibly clipping the edge of the structure as it turns away. At approximately 12:07:41, a small heat signature is observed on the FLIR in the second floor window of the southeast corner tower, less than two minutes (and possibly a little as one minute, seventeen seconds) after the CEV had made violent contact with that area of the building. This heat signature is described by the Quientere report as a 100 kilowatt fire, consistent with a "wastebasket" size fire and was estimated to be one-half meter in diameter (about a foot and a half). This is consistent with a small incipient smoldering fire that has erupted to produce visible flame.

Survivors of the conflagration reported that a lit Coleman lantern was located in that immediate vicinity. Coleman-type lantern becomes extremely hot in operation, reaching as much as 700 degrees Fahrenheit. This temperature is sufficient to cause ignition of combustible material even in absence of an external flame source. Moreover, if the flame of the lantern had been extinguished, the fuel would continue to be expelled

from the manifold under pressure from the tank. Personal conversations with the manufacture indicates that combustible materials should not be placed with one foot from the lateral sides of an operating lantern and no closer than four (4) feet from the top side due to heat production and risk of fire.

If a lit Coleman-type lantern, which had been operating for some time, had been knocked over by CEV contact with the building or shaking of the building by vibration from the operation of the CEVs outside, the heat from the lantern chassis, the mantle flame, and the continued production of atomized fuel could cause a fire consistent with that observed on the FLIR at 12:07:41.

FLIR Analysis

On April 19, 1993, the day of the fire, the government was operating a United States Customs Cessna Citation jet aeroplane equipped with a Forward-Looking Infrared (FLIR) video camera. A FLIR camera detects infrared (heat) radiation, both that which is reflected such as sunlight and that which is emitted from objects which are "hotter" than their background. These differences are referred to as "heat signatures." A FLIR camera cannot distinguish between reflection and emission or between visible flame and hot smoke and gas. Further, there are no industry accepted standards for use of this technology in fire cause and origin determination.

The following is the sequence of the fire as it appears on the FLIR:

12:06:24 CEV-1 leaves structure, possibly clipping southeast corner tower while turning away.

12:07:41 A small heat signature is observed in the southeast corner tower window, second floor, immediately over where CEV-1 had been operating a minute or so before.

12:08:49	A large heat signature is observed at the at the rear of the dining area and at the base of the tower.
12:08:56	As the FLIR aircraft circles the structure, sight is lost of the southeast tower but an explosion of hot gas is observed emanating from the southeast side. This appears to be consistent with a flashover and/or backdraft of the room of original fire origin. However, a flashover may have occurred earlier while outside the visual range of the camera.
12:09:12	A large heat signature appears in the front windows of the southeast tower. A long heat signature is observed streaming in the wind and spreading to the adjoining roof of the front of the structure.
12:09:31	A very large heat signature, consistent with fire and hot smoke, is seen breaking out around the eaves of the southeast tower.
12:09:44	A very large heat signature, consistent with hot smoke, gas or flame, is seen at the rear of the structure in the vicinity of the dining room area.
12:09:50	A small heat signature is observed in the windows of the chapel on the southeast side of the structure.
12:10:00	A small heat signature is observed in the windows along the back of the front corridor of the structure and is consistent with hot gas, smoke and possibly flame travelling down the corridor.
12:10:22	A growing heat signature is observed in the wreckage of the gym and is consistent with fire growth from the chapel.
12:11:02	A very large heat signature emanates from the southeast corner, dining area and gymnasium. Hot fire brands are seen blowing off of corner tower roof and landing in vicinity of the dining area.
12:11:05	Firebrands are seen blowing off of the southeast corner tower roof and are sucked into hole in chapel area wall by ambient external wind and internal venturi effects.

PRELIMINARY CONCLUSION OF CAUSE OF FIRE:

Wind

At the time of ignition, there were ambient winds in excess of 25 knots gusting to 40 knots (28.7 to 46 mph). These extremely high winds are quite significant with respect to the fire growth and spread. The angle of the wind to the structure, from southeast to northwest, is in direct line with the fire growth and propagation as would be expected.

There were two large holes made in the front of the structure by the CEVs: one through the front of the double doors and one directly in the center of he building. Both of these breaching operations caused considerable structural damage to the flooring of the second story, opening that story to he one below. Moreover, high winds were able to enter through these reaches and create a venturi, or wind-tunnel effect, in the transverse orridors in the front of the building. This venturi effect created a negative ressure zone in the interior and pulled air from the southeast corner of the uilding toward the west and north sides. The velocity of the airstream as considerable according to eyewitness survivors. Further, an additional enturi is created by the demolition of the gymnasium and breaching of the xterior wall directly behind the chapel on the southeast side of the ructure.

espite the conclusions articulated in the reports authored by Gray and dentere stating that the wind had nothing to do with the fire growth and opagation, another arson investigator retained by the United States to vestigate the Mount Carmel blaze testified at the criminal trial that:

> ...what I believe to be substandard construction and the fact that some of its integrity had been compromised by the tanks, the building was well ventilated. Once the fire started, there was no reason the fire... could not just burn unheeded.

> I might also add that the wind was a very real contributory factor to the... spread of the fire and to its intensity.

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(d) *Suspected*. This level of confidence corresponds to a perception that the hypothesis may be true, but there are insufficient data to draw a conclusion to the exclusion of any other reasonable conclusion.

If the confidence level of the opinion is only "possible" or "suspected," the cause should be listed as unknown, undetermined, or under investigation. However, the following scenario and the opinion expressed herein is consistent with the data available to me at this time. The degree of confidence which I set for this opinion is *possible*.

After reviewing the evidence, I have reached a preliminary conclusion on the cause, origin, nature and growth of the fire. This opinion is only preliminary as much additional evidence is required before any conclusion can be reached which has a confidence level greater than possible.

1. The fire originated in the southeast corner tower from the tipping of a lit Coleman-type lantern which fell onto combustible materials, most likely bedding materials, as the room was utilized as sleeping quarters, and was most likely caused by violent contact or mechanical shock associated with the CEV removing the corner of the southeast tower directly under the point of origin. The time of origin could have been as late as 12:06:24 p.m., but could have been earlier.

2. The fire smoldered, producing toxic and combustible gases in the room. As these gases collected, the combustible materials ignited, producing visible heat and flame. This ignition is first detected by the FLIR at 12:07:41 but may have been burning for some time prior to this.

3. A flashover of the second floor room of southeast corner tower occurs. This appears on the FLIR at 12:08:56 but appears to be already in progress. The flashover could not have been observed earlier because the FLIR operator had the southeast corner tower out of the field of view.

4. At the time of ignition, there were ambient winds in excess of 25 knots gusting to 40 knots (28.7 to 46 mph). These extremely high winds are quite significant with respect to the fire growth and spread. The angle of the wind to the structure, from southeast to northwest, is in direct line with the fire growth and propagation as would be expected.

5. There were two large holes made in the front of the structure by the CEVs: one through the front of the double doors and one directly in the center of the building. Both of these breaching operations caused considerable structural damage to the flooring of the second story, opening that story to the one below. Moreover, high winds were able to enter through these breaches and create a venturi, or wind-tunnel effect, in the transverse corridors in the front of the building. This venturi effect created a negative pressure zone in the interior and pulled air from the southeast corner of the building toward the west and north sides. The velocity of the airstream was considerable according to eyewitness survivors. Further, an additional venturi is created by the demolition of the gymnasium and breaching of the exterior wall directly behind the chapel on the southeast side of the structure.

6. Approximately ten minutes earlier, CEV-1 attempted to make a through and through penetration from the front of the structure to the rear. During this penetration, CEV-1 struck the reinforced concrete structure at the base of the center four-story tower wherein most of the women and children had taken refuge. This deep penetration severely disrupted the building structure and opened the ceiling of the dining area to the second story hallway.

7. As the fire flashes over in the southeast corner tower, the fire is pulled into the second story transverse hallway by the venturi created by the ambient winds. Hot, burning and combustible material is sucked by the wind and negative pressure into the hallway and transported rapidly throughout. Once these firebrands encounter the obstructions in the middle of the building from the CEV-1 penetration, they are ducted into the dining area by the breach in the floor.

8. At 12:08:49, approximately a little over one minute, a heat signature is observed at the rear of the dining area which appears to be fire. Most of the heat signature appears to be outside of the building at this point. The signature is unique in that comparisons with visible light video show it producing a white vapor which is consistent with burning propane. Moreover, much combustible material, petroleum distillates, paints, and lantern fuel were stored in the rear of the dining area according to witnesses.

9. In addition to the venturi ducting down the transverse front corridor, the fire grows because of the flashover from the southeast corner tower fire and spreads rapidly through the attic of the adjoining chapel. A surviving witness has stated that he heard a cry of fire coming from the second floor and went up into the chapel attic to investigate, crossing a causeway built

over the rafters. The chapel attic and causeway were contiguous with the second floor front corridor and separated only by a blanket. When the witness arrived at the junction of the transverse corridor hallway and the chapel attic, he observed a "wall of fire" traveling down the corridor. The witness stated that:

> I'm a drummer in a rock band. The fire was blowing down the hall like a blowtorch and was the loudest sound I've ever heard. There was no way I could get into that hall and couldn't stay there because of the intense heat.

The witness further advised that the time between when he heard the cry of fire and his arrival at the door to the corridor was approximately one minute, strongly indicating rapid fire propagation.

10. The fire growth in the chapel was accelerated by the presence of petroleum distillates and lantern fuels. Surviving witnesses stated that approximately one dozen cans of Coleman lantern fuel were moved from the front door area to the chapel to prevent their destruction by CEV penetration.

11. Once the chapel was fully involved, the fire then spread to the gymnasium area. The northwest side of the gymnasium had been completely destroyed by action of CEV-2. This reduced the surface to mass ratio of the fuel (building materials) such that the fire was able to secure a rapid purchase and accelerate its growth. In addition, the action of CEV-2 in this area may have crushed numerous fuel and propane containers, aiding in the rapid propagation and growth of the fire. Such fuel appears to show on the FLIR as dark spots and it is known from surviving Davidians that fuel and propane containers were there.

12. Abetted by high winds, the fire rapidly spreads, completely destroying the rest of the structure.

ESCAPE OF THE OCCUPANTS

The conclusions of the Government's experts assert that the occupants of the building could have escaped the fire had they wanted to. In fact, the Gray report states that occupants had up to five (5) minutes from the ignition of the fire to exit the building.

This is not consistent with the fire spread or known reactions of fire-related human behavior.

As noted above, the breaching operations of the CEVs caused considerable disruption and mechanical failure to large portions of the structure; in fact, the entire southeast side of the building was knocked off its foundation by action of the CEVs. This disruption probably created multiple hazards including entrapment, crushing, and restrictions of egress and community between floors. Early breaching operations are known to have occluded access to the trap door leading to an underground shelter. Eyewitness testimony and statements establish that CEV operations destroyed or significantly damaged the two stairways leading from the upper floors, trapping those occupants to the upper levels of the structure. Moreover, doors were known to be sprung and were unable to be opened because of structural distortion.

The noise generated by the high winds blowing through the building and that from the unmuffled CEV engines also would inhibit the spread of an alarm. In fact, eyewitness interviews establish that the alarm of fire, first broadcast from the site of origin, was not transmitted to the other occupants because of noise interference and attenuation or acoustic disruption due to structural damage.

Many of the fire victims, mostly the women and children, died inside or in close proximity to the concrete structure at the base of the four story tower. This is the same structure which had been in the path of CEV-1 during its deep penetration. The actions of CEV-1 in making this penetration had bulldozed large amounts of material, if not against, then in front of the door, limiting egress. Witnesses believe that many of the

women took their children into the walk-in cooler to protect them from the effects of the CS. The cooler had an air-tight door and was not electrically energized.

The injection of CS had occurred numerous times during the day. Each injection filled at least part of the building with a dense cloud of particulate matter, limiting breathing and visibility. When flashover occurred in the southeast corner tower, the combustion products were rapidly distributed throughout the building. This initial warning was ignored by some occupants because they mistook the fire products as another CS injection, delaying their apprehension of danger and severely limiting their time for escape.

As with all fires, the combustible products, including carbon monoxide, carbon dioxide, hydrogen cyanide (all of which were found in the Branch Davidian victims who died by smoke inhalation), deprive the brain of oxygen and cause confusion, limiting a fire victim's ability to apprehend danger and to execute a plan of escape. Moreover, the toxic combustion products produced by the injection of methylene chloride into the structure, phosgene (PG) and chlorine (Cl) gas, could have rendered large numbers of people unconscious and prevented their escape from the fire. According to the Material Safety Data sheet and hazardous chemical data published for methylene chloride, the vapors can readily accumulate and can cause unconsciousness and death in confined and poorly ventilated spaces. It is an eye, skin and respiratory tract irritant. Toxic methylene chloride is a narcotic in high concentrations and is metabolized by the body to form carbon monoxide. Moreover, methylene chloride is flammable in its vapor state, and may have contributed to the spread and rapid growth of the fire.

Taken in a totality, the government experts' claim that the occupants of Mount Carmel Center could have escaped and that they had at least five minutes to do so is not supported by the evidence. In fact, one expert testified at the criminal trial that:

> Q. All right. But in any event – but prior to it being – and all of it's involved, and so people that may have been in there at the time of the fire's beginning were in serious trouble within two minutes of the start of that fire, weren't they, from the smoke and whatever else was going on?
>
> A. Probably two minutes and thereafter, yes.

Some consideration must also be given to the psychodynamics of the group considering their subjugation to psychological pressure tactics, sleep deprivation and general apprehension and fear of the government agents outside contributing to their delay to exit the building. The behavioral response of an individual's awareness of the initial fire incident cue (odor or visible smoke) often is a determinant outcome of the fire incident. The manner in which an individual is alerted to the occurrence of a fire may predispose the perception of the threat involved.

Processes of social inhibition, diffusion of responsibility, and mimicking appear to be primarily responsible for the inhibition of adaptive and assistance behavior responses (rescue of self and others) by participants in emergency situations. The inhibition of behavioral responses in the early stages of a fire incident (when the fire incident cues are relatively ambiguous) may predispose participants to a nonadaptive type of behavior (failure to rescue self or others) since the available evacuation time has been expanded.

Thus, the psychological condition of the occupants after 51 days of siege, the excessive introduction of CS or CN and any attendant toxic effects, general and

pervasive fear of external conditions and induced group social dynamics most likely led to a delayed perception of danger with tragic consequences.

ADDITIONAL DISCOVERY INFORMATION

Before an expert opinion can be rendered in this case, much additional discovery information is required. Much could be learned from examination of the forensic evidence in the hands of the investigators, including *in situ* photographs, fire pattern analyses, aerial video other than the FLIR (there must be some), the original FLIR, identification of all munitions and ordnance used, audio and video surveillance recordings prior to and at the time of the fire, tactical and voice traffic logs and recordings, sketches, drawings, line-sight diagrams, etc.

Moreover, before an opinion can be rendered about the efficacy of using FLIR technology to determine the cause, origin and growth of the Mount Carmel fire, the exact manufacturer and nomenclature of the FLIR used and the altitude of the orbiting aircraft would have to be known to determine the FLIR's capabilities and resolution.

At this point in time, since the fire scene has been completely destroyed by the government, it is impossible to form an opinion on the cause and origin of the fire with any degree of certainty greater than possible without unrestricted access to the forensic information available to and relied upon by the government's fire investigators. Until such time as this information is available, no opinion can be expressed other than a tentative, preliminary opinion as contained in this declaration.

SUMMARY AND CONCLUSION

The accepted rule in fire investigation is to look for arson as the cause only after all other sources of ignition have been eliminated. It appears from an examination of the Gray and Quientere reports that they proceeded in reverse fashion: determined that the fire was arson and set out to prove it. Moreover, much valuable evidence was destroyed at the direction of agents of the United States by the subsequent and needless destruction of the fire scene by bulldozers.

There are many occasions where suspicious, multiple origin fires where initially thought to be arson but later were confirmed to be accidental. For example, a large fire in Hialeah, Florida had multiple points of independent origin and was ruled arson. Subsequent investigation showed that the initial investigators where wrong in their conclusions and the fire was determined to be accidental electrical in origin.

It also appears that the initial investigation at Mount Carmel did not attempt to rule out all possible causes of accidental origin as is required in any fire cause and origin determination. In 1986, a large loss-of-life fire occurred at the DuPont Plaza fire in San Juan, Puerto Rico, in which myself and the United States' expert, Dr. Quientere were involved. Despite the highly suspicious origin of the fire, an exhaustive search was made for possible accidental origins prior to focusing on arson as the cause. I do not believe this was done in this case.

Based upon the information and evidence available to me, that published by the United States Departments of Justice and Treasury, and that submitted in the United States' Motion for Summary Judgment in the above-captioned case, it is my expert

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opinion as a fire and explosion investigator that no opinion could be reached by the government's investigators which has a confidence level greater than possible as explained above.

The preliminary opinion expressed in this declaration is just as consistent with the evidence and as plausible a scenario as that postulated by the reports authored by experts for the United States. However, only through the examination of additional forensic evidence believed to be in the possession of the government's experts can a probable or conclusive cause and origin determination be made.

I declare under penalty of perjury that the foregoing is true and correct within my personal knowledge except where such is based upon information and belief, in which case I believe it to be true.

Executed on January 15, 1996.

RICHARD L. SHERROW
President, Richard L. Sherrow & Assoc.
Fire & Explosion Investigator

FEB-09-1996 17:06 FROM CLU II [redacted] P.01

RAGLE

Monty Jett
FTY

FBI
OFFICE OF THE GENERAL COUNSEL
FACSIMILE COVERSHEET

PRECEDENCE	CLASSIFICATION		
___ Immediate	___ Top Secret	Time Transmitted:	3:47pm
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x Routine	___ Confidential	Number of Pages:	23
	___ Sensitive		
	x Unclassified		

Date: February 9, 1996

To: Monty Brad Jett
HRT

Facsimile No: [redacted]

From: Jacqueline F. Brown
Assistant General Counsel

Telephone No: [redacted]xt. 9642)

Facsimile No: [redacted]324-1041

Subject: WACO-related civil litigation

Message: Per our discussions, attached is a copy of the Sherrow declaration that DOJ has asked for our assistance in responding to regarding the cause of the fire.

Thanks for your help

– LYN

PRIVACY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable Federal or state law. If the reader of the message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, please immediately call (202) 324-4522.

EXHIBIT
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ISABEL G. ANDRADE, *et al.*	§	CIVIL ACTION NO. H-94-0923
	§	Judge Atlas
Plaintiffs,	§	
	§	and consolidated actions:
V.	§	*Holub v. Reno* H-94-2153
	§	*Ferguson v. Reno* H-95-0218
PHILLIP J. CHOJNACKI, *et al.*	§	*Brown v. U.S.* H-95-0587
	§	*Riddle v. Reno* H-95-0602
Defendants.	§	*Gyarfas v. U.S.* H-95-1142
	§	*Martin v. U.S.* H-95-4246

DECLARATION OF RICHARD L. SHERROW

INTRODUCTION

My name is RICHARD L. SHERROW and am President of RICHARD L. SHERROW and Associates in Mesa, Arizona. I am a former Fire and Explosion Investigator with the Bureau of Alcohol, Tobacco and Firearms, United States Department of Treasury, and retired as a Senior Explosive Ordnance Disposal Technician from the United States Army. I have more than thirty years experience as an explosives and arson investigator, have been involved in over 40 major fire investigations, and have qualified as an expert witness in federal and state court in 18 states. In addition to arson, fire and explosion expertise, I have served as a Staff Instructor at both the U.S. Army Chemical Center and School and Redstone Arsenal and have been a technical writer and instructor in the use of chemical and biological weapons, including riot control agents.

In addition, I have received training from the BATF, FBI, U.S. Army, U.S. Navy, U.S. Air Force, DuPont and the Federal Law Enforcement Training Center (FLETC).

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I have attended the Ohio Fire Academy and the National Fire Academy (NFA). I am also a graduate of the Police Academy at Jacksonville State University, Jacksonville, Alabama. I am a past member of the International Association of Bomb Technicians (IABTI).

I have made a preliminary investigation into the cause, origin, nature and growth of the fire which consumed the Mount Carmel Center near Waco, Texas, on April 19, 1993, and where members of the Branch Davidian religion perished as a result of said fire. This preliminary investigation was based upon the Forward-Looking Infrared (FLIR) video, still photographs extracted from the FLIR, still photographs taken from the air and from the ground during the fire, broadcast news video, videography taken by a private investigator while the government was in control of the Mount Carmel Center, signed statements and interviews of Branch Davidians who survived the fire, official reports and case notes of federal and state law enforcement agents, the reports of the United States' fire investigators (namely Paul Gray and James Quientere) and from my own personal inspection of the fire site.

Based upon this preliminary investigation, I am able to conclude, within my professional opinion, that it is consistent with this evidence that the fire originated from a single point and spread throughout the Mount Carmel structure. It is also consistent with evidence that the original fire was started by a M738 CEV striking the southeast corner tower of Mount Carmel. These conclusions are as consistent with the evidence as the conclusions reached in the Gray and Quientere reports and they are in direct contravention to conclusions reached in the Gray and Quientere reports.

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SITE INVESTIGATION

Mount Carmel Center was a multi-storied, wood-frame building of irregular construction. It was built of about half used lumber and building materials cannibalized from houses that had existed on the property previously and from new materials purchased for its construction. The building was constructed haphazardly over time without any attention to fire safety. Some of the building's interior lacked wallboard or finishing. Those areas of the building which had been finished were completed with highly flammable materials.

Contained within the building on the first floor were the living quarters, dining and kitchen areas, several storage rooms, a chapel and gymnasium. A four-story tower was located near the center of the structure and contained a reinforced-concrete room used to house a walk-in cooler for food storage. This concrete structure was built in the 1930's and had survived a previous fire some years before.

The second floor was contiguous over the first and also contained living quarters. Both corners of the building in front contained a third story. Moreover, the four-story tower had a fourth floor directly over the third.

Foundation, slabs and piers were homemade with unreinforced concrete and did not contribute significantly to the building's resistance to mechanical shock. The roof was of decked plywood construction, overlaid with asphalt composition roofing materials.

External electrical power was turned off to the structure prior to the fire but a diesel generator of unknown capacity was present within the structure and had been known to be energized intermittently between February 28 and April 19, 1993.

Moreover, several storage areas and rooms were known to contain large amounts of highly flammable and combustible materials, including, but not limited to, gasoline, kerosene, lamp oil, Coleman lantern fuel, paint, petroleum distillates, tar and roofing materials, acetylene and oxygen containers, gunpowder, metal shavings, and a large quantity of small arms ammunition.

Internal heating and cooking fires were provided by improvised wood-burning stoves and propane fueled gas ranges, respectively. Due to the lack of external electrical power, internal lighting was accomplished with Coleman-type gas pressurized lanterns and glass oil-burning wick lamps.

It is known that a large, commercial-type gas range was located in the kitchen/dining area adjacent to the four-story tower. This range was fed by a large, 100-pound propane tank located externally to the dining room. The propane was conducted through the wall at that location by a conduit pipe. The tank appeared to be nearly full of propane as evidenced by a spectacular boiling liquid expanding vapor explosion (BLEVE) during the fire.

Mount Carmel Center was occupied as a multi-family residential building with shared common areas, including a commercial-sized kitchen, and compartmented into many smaller rooms used for personal quarters.

INSERTION OF CHEMICAL AGENTS

On April 19, 1993, at approximately 6:00 a.m., agents of the Federal Bureau of Investigation began executing a plan to introduce a riot control agent, ortho-chlorobenzalmalononitrile (CS),

CS is a micro-pulverized particulate riot control agent designed for crowd dispersal in open areas. Although no open or closed cup flash point has been determined for CS, it is a combustible solid. Published information on CS by the National Institute for Occupational Safety and Health (NIOSH) states that the ceiling exposure limit for CS is 0.05 parts per million (ppm) or approximately 0.2 milligrams per cubic meter (mg/m^3). The ceiling exposure limit is not to be exceeded at any time. NIOSH information lists CS as having an immediate danger to life and health (IDLH) exposure limit of 2 mg/m^3. Information contained in the U.S. Justice Department report on Waco states that 10 mg/m^3 is the concentration of CS which will deter trained troops. Moreover, powdered CS may be a fire hazard in concentrated quantities and can produce a flammable dust.

During the next six hours, the FBI utilized M728 Combat Engineer Vehicles (CEV) to breach the outer walls of the building and to inject CS. A CEV is a large armored vehicle, weighing in excess of 50 tons, is equipped with a 165mm demolition gun and is a modification of the M60A1 Main Battle Tank. The CS was injected by use of a Mark V delivery device. The MK-5 delivery device consisted of several bottles of pressurized carbon dioxide which was used to entrain the particulate CS in a gaseous stream. This stream was injected into the structure through a nozzle located on the end of a boom connected to the CEV.

In addition to the CS injection utilizing the Mark-5 delivery systems on the CEVs, FBI agents in Bradley Infantry Fighting Vehicles (BIFV) fired SGA-400 Ferret barricade penetrating cartridges into windows and areas not reachable by the CEVs. A Ferret is a 40 mm projectile containing particulate CS and a liquid suspension agent, methylene

chloride. The Ferret is a non-pyrotechnic munition specifically designed for barricade situations. At least 400, and possibly more, of these Ferret rounds were fired in and at Branch Davidians during the breaching and CS insertion operation.

Besides the SGA-400 Ferret cartridges, information from documents obtained from the FBI through the United States Department of Justice indicates that military pyrotechnic munitions may have been fired into Mount Carmel. Documents disclosed indicate that agents could not penetrate either the underground shelter roof or the top of the rear four-story tower with Ferrets. Therefore, they fired at least one "military" round and referred to this munition as a "bubblehead." As a retired U.S. Army senior explosive ordnance disposal technician, I am unaware of the nomenclature and function of a "bubblehead" nor can I find any reference to such a munition in official military publications. However, I am familiar with a device known as a "bunker buster," which is a munition about the size of a softball and designed to penetrate fortifications. I recall that this munition was of foreign manufacture and filled with plasticized high explosive (HEP). It may have had other fillers, including chemical riot control agents. The exact identity of a "bubblehead" would have to be determined before any possible contribution to the fire could be established.

In the event that members of the Branch Davidians contemplated or began to execute a mass suicide, it was the plan of the FBI Hostage Rescue Team (HRT) "to disrupt any suicide attempt with flash-bangs." "Flash-bang" generically refers to pyrotechnic stun munitions designed to temporarily incapacitate or disorient personnel by producing a loud report and blinding flash. These munitions contain an

explosive/incendiary pyrotechnic composition. A number of these munitions manufactured by the Nico Corporation were known to be fired during the 51 day standoff and were in the possession of the FBI HRT on April 19, 1993. Use of stun munitions in barricade situations is extremely hazardous due to the potential of causing an accidental fire.

In addition to the CS and methylene chloride introduced by the above methods, the Gray report refers to the induction of chloracetophenone (CN), another riot control agent. CN comes in both liquid and powder forms: CN-B is a mixture of CN and benzene and CN-C is a mixture of CN and chloroform in a liquid state. CN is highly flammable in its liquid state; in its powdered state, CN has a flashpoint of 59°C.

It is known that many of the Branch Davidians were in possession of protective masks. Therefore, the effective use of CS or CN would require the introduction of quantities of these agents far in excess of that required to deter trained troops (10 mg/m³ for CS) and well past the levels required to pose an immediate danger to life and health (2 mg/m³ for CS). Calculations by engineers for an independent casualty laboratory, Failure Analysis, Inc., have concluded that the average concentration of CS inside of Mount Carmel was 10 to 90 times that necessary to deter trained troops (100 to 900 mg/m³). In my professional opinion and based upon my experience with the use of these riot control agents, the concentration of CS and/or CN introduced was designed to overcome the protective masks by rapidly debilitating their filters and posed an immediate threat to the life, health and safety of those inside Mount Carmel, especially the unprotected children.

BREACHING OPERATIONS

During the six hours of the escalated plan to introduce CS (and possibly CN) into unt Carmel Center. CEVs made numerous breaches in the exterior walls of the re. The purpose of this breaching was ostensively to provide openings for rs of the Branch Davidians to "escape" the building. However, these operations antly damaged the structure, causing numerous internal load-bearing failures and d in restricted egress from the structure.

As an example, the area immediately over the trap door leading to the buried bus and external underground storm shelter was obstructed by debris. Further, aircases leading to the upper floors were disrupted or destroyed by the CEV ng operations. At one point, a significant portion of the building can be seen to s foundation because of the repeated collisions of the CEVs with the structure. breaching operations probably resulted in sprung doors, destruction of flooring ation of attendant falling and entrapment hazards and probably prevented normal nication between adjacent areas of the structure.

Despite the claim that the purpose of the breaching operation was to secure exits Branch Davidians, in reality the CEVs began to systematically dismantle the as evidenced by the destruction of the gymnasium immediately prior to the fire. During the breaching operation, one of the CEVs (CEV-1) was ordered to te the structure from one side to the other. CEV-1, with its bulldozer blade debris in front of it, penetrated to the base of the four-story tower, making with the concrete storage structure at the tower's base. This structure was

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already in a weakened condition from a previous fire as noted above. The contact, made by such a large and powerful vehicle, probably caused a structural failure and resulted in an internal avalanche of the room contents and partial failure of the concrete ceiling. This entrapped numerous people, mostly women and children, who had taken refuge therein.

CAUSE AND ORIGIN

Possible Origin

At about 12:06 p.m., CEV-1 was dismantling the southeast corner tower of the exterior wall at the ground level. At 12:06:24, CEV-1 departed the southeast corner, possibly dipping the edge of the structure as it turns away. At approximately 12:07:41, a small heat signature is observed on the FLIR in the second floor window of the southeast corner tower, less than two minutes (and possibly a little as one minute, seventeen seconds) after the CEV had made violent contact with that area of the building. This heat signature is described by the Quientere report as a 100 kilowatt fire, consistent with a "wastebasket" size fire and was estimated to be one-half meter in diameter (about a foot and a half). This is consistent with a small incipient smoldering fire that has erupted to produce visible flame.

Survivors of the conflagration reported that a lit Coleman lantern was located in that immediate vicinity. Coleman-type lantern becomes extremely hot in operation, reaching as much as 700 degrees Fahrenheit. This temperature is sufficient to cause ignition of combustible material even in absence of an external flame source. Moreover, if the flame of the lantern had been extinguished, the fuel would continue to be expelled

from the manifold under pressure from the tank. Personal conversations with the manufacture indicates that combustible materials should not be placed with one foot from the lateral sides of an operating lantern and no closer than four (4) feet from the top side due to heat production and risk of fire.

If a lit Coleman-type lantern, which had been operating for some time, had been knocked over by CEV contact with the building or shaking of the building by vibration from the operation of the CEVs outside, the heat from the lantern chassis, the mantle flame, and the continued production of atomized fuel could cause a fire consistent with that observed on the FLIR at 12:07:41.

FLIR Analysis

On April 19, 1993, the day of the fire, the government was operating a United States Customs Cessna Citation jet aeroplane equipped with a Forward-Looking Infrared (FLIR) video camera. A FLIR camera detects infrared (heat) radiation, both that which is reflected such as sunlight and that which is emitted from objects which are "hotter" than their background. These differences are referred to as "heat signatures." A FLIR camera cannot distinguish between reflection and emission or between visible flame and hot smoke and gas. Further, there are no industry accepted standards for use of this technology in fire cause and origin determination.

The following is the sequence of the fire as it appears on the FLIR:

12:06:24 CEV-1 leaves structure, possibly clipping southeast corner tower while turning away.

12:07:41 A small heat signature is observed in the southeast corner tower window, second floor, immediately over where CEV-1 had been operating a minute or so before.

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12:08:49	A large heat signature is observed at the at the rear of the dining area and at the base of the tower.
12:08:56	As the FLIR aircraft circles the structure, sight is lost of the southeast tower but an explosion of hot gas is observed emanating from the southeast side. This appears to be consistent with a flashover and/or backdraft of the room of original fire origin. However, a flashover may have occurred earlier while outside the visual range of the camera.
12:09:12	A large heat signature appears in the front windows of the southeast tower. A long heat signature is observed streaming in the wind and spreading to the adjoining roof of the front of the structure.
12:09:31	A very large heat signature, consistent with fire and hot smoke, is seen breaking out around the eaves of the southeast tower.
12:09:44	A very large heat signature, consistent with hot smoke, gas or flame, is seen at the rear of the structure in the vicinity of the dining room area.
12:09:50	A small heat signature is observed in the windows of the chapel on the southeast side of the structure.
12:10:00	A small heat signature is observed in the windows along the back of the front corridor of the structure and is consistent with hot gas, smoke and possibly flame travelling down the corridor.
12:10:22	A growing heat signature is observed in the wreckage of the gym and is consistent with fire growth from the chapel.
12:11:02	A very large heat signature emanates from the southeast corner, dining area and gymnasium. Hot fire brands are seen blowing off of corner tower roof and landing in vicinity of the dining area.
12:11:05	Firebrands are seen blowing off of the southeast corner tower roof and are sucked into hole in chapel area wall by ambient external wind and internal venturi effects.

PRELIMINARY CONCLUSION OF CAUSE OF FIRE.

Wind

At the time of ignition, there were ambient winds in excess of 25 knots gusting to 40 knots (28.7 to 46 mph). These extremely high winds are quite significant with respect to the fire growth and spread. The angle of the wind to the structure, from southeast to northwest, is in direct line with the fire growth and propagation as would be expected.

There were two large holes made in the front of the structure by the CEVs: one through the front of the double doors and one directly in the center of the building. Both of these breaching operations caused considerable structural damage to the flooring of the second story, opening that story to the one below. Moreover, high winds were able to enter through these breaches and create a venturi, or wind-tunnel effect, in the transverse corridors in the front of the building. This venturi effect created a negative pressure zone in the interior and pulled air from the southeast corner of the building toward the west and north sides. The velocity of the airstream was considerable according to eyewitness survivors. Further, an additional venturi is created by the demolition of the gymnasium and breaching of the exterior wall directly behind the chapel on the southeast side of the structure.

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Despite the conclusions articulated in the reports authored by Gray and Ulentere stating that the wind had nothing to do with the fire growth and propagation, another arson investigator retained by the United States to investigate the Mount Carmel blaze testified at the criminal trial that:

> ...what I believe to be substandard construction and the fact that some of its integrity had been compromised by the tanks, the building was well ventilated. Once the fire started, there was no reason the fire... could not just burn unheeded.
>
> I might also add that the wind was a very real contributory factor to the... spread of the fire and to its intensity.

(d) *Suspected*. This level of confidence corresponds to a perception that the hypothesis may be true, but there are insufficient data to draw a conclusion to the exclusion of any other reasonable conclusion.

If the confidence level of the opinion is only "possible" or "suspected," the cause should be listed as unknown, undetermined, or under investigation. However, the following scenario and the opinion expressed herein is consistent with the data available to me at this time. The degree of confidence which I set for this opinion is *possible*.

After reviewing the evidence, I have reached a preliminary conclusion on the cause, origin, nature and growth of the fire. This opinion is only preliminary as much additional evidence is required before any conclusion can be reached which has a confidence level greater than possible.

1. The fire originated in the southeast corner tower from the tipping of a lit Coleman-type lantern which fell onto combustible materials, most likely bedding materials, as the room was utilized as sleeping quarters, and was most likely caused by violent contact or mechanical shock associated with the CEV removing the corner of the southeast tower directly under the point of origin. The time of origin could have been as late as 12:06:24 p.m., but could have been earlier.

2. The fire smoldered, producing toxic and combustible gases in the room. As these gases collected, the combustible materials ignited, producing visible heat and flame. This ignition is first detected by the FLIR at 12:07:41 but may have been burning for some time prior to this.

3. A flashover of the second floor room of southeast corner tower occurs. This appears on the FLIR at 12:08:56 but appears to be already in progress. The flashover could not have been observed earlier because the FLIR operator had the southeast corner tower out of the field of view.

4. At the time of ignition, there were ambient winds in excess of 25 knots gusting to 40 knots (28.7 to 46 mph). These extremely high winds are quite significant with respect to the fire growth and spread. The angle of the wind to the structure, from southeast to northwest, is in direct line with the fire growth and propagation as would be expected.

5. There were two large holes made in the front of the structure by the CEVs: one through the front of the double doors and one directly in the center of the building. Both of these breaching operations caused considerable structural damage to the flooring of the second story, opening that story to the one below. Moreover, high winds were able to enter through these breaches and create a venturi, or wind-tunnel effect, in the transverse corridors in the front of the building. This venturi effect created a negative pressure zone in the interior and pulled air from the southeast corner of the building toward the west and north sides. The velocity of the airstream was considerable according to eyewitness survivors. Further, an additional venturi is created by the demolition of the gymnasium and breaching of the exterior wall directly behind the chapel on the southeast side of the structure.

6. Approximately ten minutes earlier, CEV-1 attempted to make a through and through penetration from the front of the structure to the rear. During this penetration, CEV-1 struck the reinforced concrete structure at the base of the center four-story tower wherein most of the women and children had taken refuge. This deep penetration severely disrupted the building structure and opened the ceiling of the dining area to the second story hallway.

7. As the fire flashes over in the southeast corner tower, the fire is pulled into the second story transverse hallway by the venturi created by the ambient winds. Hot, burning and combustible material is sucked by the wind and negative pressure into the hallway and transported rapidly throughout. Once these firebrands encounter the obstructions in the middle of the building from the CEV-1 penetration, they are ducted into the dining area by the breach in the floor.

8. At 12:08:49, approximately a little over one minute, a heat signature is observed at the rear of the dining area which appears to be fire. Most of the heat signature appears to be outside of the building at this point. The signature is unique in that comparisons with visible light video show it producing a white vapor which is consistent with burning propane. Moreover, much combustible material, petroleum distillates, paints, and lantern fuel were stored in the rear of the dining area according to witnesses.

9. In addition to the venturi ducting down the transverse front corridor, the fire grows because of the flashover from the southeast corner tower fire and spreads rapidly through the attic of the adjoining chapel. A surviving witness has stated that he heard a cry of fire coming from the second floor and went up into the chapel attic to investigate, crossing a causeway built

over the rafters. The chapel attic and causeway were contiguous with the second floor front corridor and separated only by a blanket. When the witness arrived at the junction of the transverse corridor hallway and the chapel attic, he observed a "wall of fire" traveling down the corridor. The witness stated that:

> I'm a drummer in a rock band. The fire was blowing down the hall like a blowtorch and was the loudest sound I've ever heard. There was no way I could get into that hall and couldn't stay there because of the intense heat.

The witness further advised that the time between when he heard the cry of fire and his arrival at the door to the corridor was approximately one minute, strongly indicating rapid fire propagation.

10. The fire growth in the chapel was accelerated by the presence of petroleum distillates and lantern fuels. Surviving witnesses stated that approximately one dozen cans of Coleman lantern fuel were moved from the front door area to the chapel to prevent their destruction by CEV penetration.

11. Once the chapel was fully involved, the fire then spread to the gymnasium area. The northwest side of the gymnasium had been completely destroyed by action of CEV-2. This reduced the surface to mass ratio of the fuel (building materials) such that the fire was able to secure a rapid purchase and accelerate its growth. In addition, the action of CEV-2 in this area may have crushed numerous fuel and propane containers, aiding in the rapid propagation and growth of the fire. Such fuel appears to show on the FLIR as dark spots and it is known from surviving Davidians that fuel and propane containers were there.

12. Abetted by high winds, the fire rapidly spreads, completely destroying the rest of the structure.

ESCAPE OF THE OCCUPANTS

The conclusions of the Government's experts assert that the occupants of the building could have escaped the fire had they wanted to. In fact, the Gray report states that occupants had up to five (5) minutes from the ignition of the fire to exit the building.

This is not consistent with the fire spread or known reactions of fire-related human behavior.

As noted above, the breaching operations of the CEVs caused considerable disruption and mechanical failure to large portions of the structure; in fact, the entire southeast side of the building was knocked off its foundation by action of the CEVs. This disruption probably created multiple hazards including entrapment, crushing, and restrictions of egress and community between floors. Early breaching operations are known to have occluded access to the trap door leading to an underground shelter. Eyewitness testimony and statements establish that CEV operations destroyed or significantly damaged the two stairways leading from the upper floors, trapping those occupants to the upper levels of the structure. Moreover, doors were known to be sprung and were unable to be opened because of structural distortion.

The noise generated by the high winds blowing through the building and that from the unmuffled CEV engines also would inhibit the spread of an alarm. In fact, eyewitness interviews establish that the alarm of fire, first broadcast from the site of origin, was not transmitted to the other occupants because of noise interference and attenuation or acoustic disruption due to structural damage.

Many of the fire victims, mostly the women and children, died inside or in close proximity to the concrete structure at the base of the four story tower. This is the same structure which had been in the path of CEV-1 during its deep penetration. The actions of CEV-1 in making this penetration had bulldozed large amounts of material, if not against, then in front of the door, limiting egress. Witnesses believe that many of the

women took their children into the walk-in cooler to protect them from the effects of the CS. The cooler had an air-tight door and was not electrically energized.

The injection of CS had occurred numerous times during the day. Each injection filled at least part of the building with a dense cloud of particulate matter, limiting breathing and visibility. When flashover occurred in the southeast corner tower, the combustion products were rapidly distributed throughout the building. This initial warning was ignored by some occupants because they mistook the fire products as another CS injection, delaying their apprehension of danger and severely limiting their time for escape.

As with all fires, the combustible products, including carbon monoxide, carbon dioxide, hydrogen cyanide (all of which were found in the Branch Davidian victims who died by smoke inhalation), deprive the brain of oxygen and cause confusion, limiting a fire victim's ability to apprehend danger and to execute a plan of escape. Moreover, the toxic combustion products produced by the injection of methylene chloride into the structure, phosgene (PG) and chlorine (Cl) gas, could have rendered large numbers of people unconscious and prevented their escape from the fire. According to the Material Safety Data sheet and hazardous chemical data published for methylene chloride, the vapors can readily accumulate and can cause unconsciousness and death in confined and poorly ventilated spaces. It is an eye, skin and respiratory tract irritant. Toxic, methylene chloride is a narcotic in high concentrations and is metabolized by the body to form carbon monoxide. Moreover, methylene chloride is flammable in its vapor state, and may have contributed to the spread and rapid growth of the fire.

Taken in a totality, the government experts' claim that the occupants of Mount Carmel Center could have escaped and that they had at least five minutes to do so is not supported by the evidence. In fact, one expert testified at the criminal trial that:

> Q. All right. But in any event – but prior to it being – and all of it's involved, and so people that may have been in there at the time of the fire's beginning were in serious trouble within two minutes of the start of that fire, weren't they, from the smoke and whatever else was going on?
>
> A. Probably two minutes and thereafter, yes.

Some consideration must also be given to the psychodynamics of the group considering their subjugation to psychological pressure tactics, sleep deprivation and general apprehension and fear of the government agents outside contributing to their delay to exit the building. The behavioral response of an individual's awareness of the initial fire incident cue (odor or visible smoke) often is a determinant outcome of the fire incident. The manner in which an individual is alerted to the occurrence of a fire may predispose the perception of the threat involved.

Processes of social inhibition, diffusion of responsibility, and mimicking appear to be primarily responsible for the inhibition of adaptive and assistance behavior responses (rescue of self and others) by participants in emergency situations. The inhibition of behavioral responses in the early stages of a fire incident (when the fire incident cues are relatively ambiguous) may predispose participants to a nonadaptive type of behavior (failure to rescue self or others) since the available evacuation time has been expanded.

Thus, the psychological condition of the occupants after 51 days of siege, the excessive introduction of CS or CN and any attendant toxic effects, general and

pervasive fear of external conditions and induced group social dynamics most likely led to a delayed perception of danger with tragic consequences.

ADDITIONAL DISCOVERY INFORMATION

Before an expert opinion can be rendered in this case, much additional discovery information is required. Much could be learned from examination of the forensic evidence in the hands of the investigators, including *in situ* photographs, fire pattern analyses, aerial video other than the FLIR (there must be some), the original FLIR, identification of all munitions and ordnance used, audio and video surveillance recordings prior to and at the time of the fire, tactical and voice traffic logs and recordings, sketches, drawings, line-sight diagrams, etc.

Moreover, before an opinion can be rendered about the efficacy of using FLIR technology to determine the cause, origin and growth of the Mount Carmel fire, the exact manufacturer and nomenclature of the FLIR used and the altitude of the orbiting aircraft would have to be known to determine the FLIR's capabilities and resolution.

At this point in time, since the fire scene has been completely destroyed by the government, it is impossible to form an opinion on the cause and origin of the fire with any degree of certainty greater than possible without unrestricted access to the forensic information available to and relied upon by the government's fire investigators. Until such time as this information is available, no opinion can be expressed other than a tentative, preliminary opinion as contained in this declaration.

SUMMARY AND CONCLUSION

The accepted rule in fire investigation is to look for arson as the cause only after all other sources of ignition have been eliminated. It appears from an examination of the Gray and Quientere reports that they proceeded in reverse fashion: determined that the fire was arson and set out to prove it. Moreover, much valuable evidence was destroyed at the direction of agents of the United States by the subsequent and needless destruction of the fire scene by bulldozers.

There are many occasions where suspicious, multiple origin fires where initially thought to be arson but later were confirmed to be accidental. For example, a large fire in Hialeah, Florida had multiple points of independent origin and was ruled arson. Subsequent investigation showed that the initial investigators where wrong in their conclusions and the fire was determined to be accidental electrical in origin.

It also appears that the initial investigation at Mount Carmel did not attempt to rule out all possible causes of accidental origin as is required in any fire cause and origin determination. In 1986, a large loss-of-life fire occurred at the DuPont Plaza fire in San Juan, Puerto Rico, in which myself and the United States' expert, Dr. Quientere were involved. Despite the highly suspicious origin of the fire, an exhaustive search was made for possible accidental origins prior to focusing on arson as the cause. I do not believe this was done in this case.

Based upon the information and evidence available to me, that published by the United States Departments of Justice and Treasury, and that submitted in the United States' Motion for Summary Judgment in the above-captioned case, it is my expert

opinion as a fire and explosion investigator that no opinion could be reached by the government's investigators which has a confidence level greater than possible as explained above.

The preliminary opinion expressed in this declaration is just as consistent with the evidence and as plausible a scenario as that postulated by the reports authored by experts for the United States. However, only through the examination of additional forensic evidence believed to be in the possession of the government's experts can a probable or conclusive cause and origin determination be made.

I declare under penalty of perjury that the foregoing is true and correct within my personal knowledge except where such is based upon information and belief, in which case I believe it to be true.

Executed on January 16, 1996.

RICHARD L. SHERROW
President, Richard L. Sherrow & Assoc.
Fire & Explosion Investigator

09/08/99 16:13 [redacted] DAG 003/007

(04/01/1995)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date: 02/15/1996

To: OFFICE OF GENERAL COUNSEL Attn: Jacqueline P. Brown

From: CIRG
HRT
Contact: Robert A. Hickey, x1270

Approved By: Wehmeyer Jon J

Drafted By: Hickey Robert A:rah

Case ID #: ~~244-30-SUB-CC~~ (Pending)
89B-SA-38851 (Pending)

Title: WACO RELATED CIVIL LITIGATION

Synopsis: To set forth CIRG responses to OGC in reference to the Sherrow declaration regarding the cause of the fire at Waco, Texas.

Details: Listed below are comments and observations to the declaration of Richard L. Sherrow, referencing the pertinent page and paragraph numbers:

Chemical Agents

Pages 4 & 5

CS is considered a riot control agent when contained in munitions designed for riot control. Since 1969, CS has been used for barricaded situations by law enforcement. The "Ferret" round used in Waco is designed for indoor use. The ferret contains liquid CS suspended in the liquid methylene chloride. According to the manufacturer, the ferret round is non-flammable, and to our knowledge, there are no reports of fire from its use. According to FBI laboratory experts, CS does have a flashpoint of approximately 1200 degrees Celsius. Unless CS was released into an extremely hot fire, this would not be a factor.

Page 5, paragraphs 2 & 3 89B-SA-38851-1029

Reference is made to the Mark V delivery system on the CEVs. The Mark V referred to by Mr. Sherrow is incorrect. The Mark V is an aerosol unit used as an individual protection device by law enforcement and civilians for self protection.

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89A-SA-40563

EXHIBIT 49

USAUDTX
130A-00354

130A-00354

To: OFFICE OF GENERAL COUNSEL From: CIRG
Re: 244-39 SUB CC, 02/15/1996

The delivery system used by the FBI on the CEVs was the "Projectojet Model 5". The Model 5 is a non-flammable delivery system for chemical agents (in this case, CS). The liquid CS is placed into the Model 5 tank and liquid CO2 is used to charge or pressure the Model 5. The Model 5 is designed for indoor or outdoor use. The range of the spray pattern of the Model 5 is approximately 20 yards long by 6 yards wide and is considered a cone, not a stream as referred to by Mr. Sherrow. [Note: CO2 is used to charge fire extinguishers]

Page 6, paragraph 2

All chemical agents purchased and used at Waco were non-flammable with the exception of two (2) or three (3) military 40mm CS round as detailed later under the "Tactical Considerations" portion of this communication.

Page 7, paragraph 2

In reference to the use of CN in Waco, it should be noted that the FBI does not use the chemical agent CN. The law enforcement community has slowly diminished its use of CN due to its toxicity. While there are documented deaths with the use of CN, to the best of our knowledge there are no documented deaths with the use of CS.

Page 7, paragraph 3

In reference to concentrations of CS and masks, we have no knowledge of the types of protective masks in the possession of the Branch Davidians. As a rule, most chemical agent mask filters are designed for eight (8) hours of continuous use. This is a military standard and normally applies to masks used by law enforcement as well. The eight (8) hours of continuous use standard is applied to an area with mild to heavy concentration and for the most part, free of ventilation. In an area as well ventilated as the Davidian compound, it would be very difficult to introduce enough chemical agent to overcome protective masks in good working condition.

In reference to the concentration of CS introduced into the compound, a formula was used to determine how much CS to use. Mr. Sherrow referred to CS concentrations. What must be realized is that these concentrations are determined in laboratory conditions, using test animals in areas free of ventilation, and where levels of chemical agents can be obtained and held for extended periods of time. The effectiveness of the CS introduced

USAWDTX
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To: OFFICE OF GENERAL COUNSEL From: CIRG
Re: 244-39 SUB CC, 02/15/1996

into the Branch Davidian compound was limited due to the ventilation of the building. The ATF gun battle with resultant bullet holes and broken windows, and escape routes created by the CEVs greatly reduced the effect and concentration of the CS. In addition, a particularly strong wind was blowing that day causing a good portion of the CS to be blown out of the building. The amount of CS used was well within the manufacturer's formula used to determine the amount to introduce into the compound. The amount of CS used never came near a lethal concentration. (Note: ASAC Anthony Betz, Baltimore Division, has knowledge concerning the formula for concentration levels of CS used in Waco.

TACTICAL CONSIDERATIONS

Page 5, paragraph 2

Shortly after the operation commenced on 4/19/93, the HRT (Charlie Team) determined, after two (2) or three (3) ferret rounds, that they were unable to penetrate the underground shelter roof which was their first target. Charlie Team then requested to use 40mm military CS rounds in an effort to penetrate the roof. Charlie Team was granted authority to fire the military CS rounds. A total of two (2) or three (3) rounds were fired at the underground shelter roof. These rounds hit the roof, bounced off and landed in the open field wall behind the main structure. This occurred shortly after 5:00 am. These were the only military rounds utilized. In fact, the military CS rounds were prohibited from being fired into the main structure due to their potential for causing a fire. No HRT personnel have any knowledge of the term "bubblehead."

Page 6, paragraphs 1 & 2

Approximately 380 ferret rounds were fired into the Branch Davidian compound, not at Branch Davidians. No attempts were made nor was consideration ever given to penetrate the top of the four-story tower.

While flashbang diversion devices were utilized on a few occasions during the 51 day operation, none were deployed on April 19, 1993. The Nico projectible flashbangs utilized earlier are claimed by the manufacturer to have no fire potential.

Page 8, paragraph 3

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130A-00356

130A-00356

To: OFFICE OF GENERAL COUNSEL From: CIRG
Re: 244-39 SUB CC, 02/15/1996

Mr. Sherrow stated that CEV-1 was ordered to penetrate the structure from one side to the other and made contact with the concrete base of the four-story tower. CEV-1's assignment was to create an escape route and to deliver CS to the interior of the structure. In doing so, CEV-1 penetrated the exterior of the building far enough for the CS to penetrate into the hallway in front of the concrete structure. Neither the CEV nor the boom penetrated as far as the hallway. The only thing that penetrated the hallway was the projected CS stream. After delivering the CS into the hallway and upon exiting, CEV-1 was able to observe cans of food stacked along the wall adjoining the hallway. All other debris in the room was back-dragged by the blade of the CEV to the exterior of the building. Neither of the CEVs penetrated to the concrete base of the tower. No avalanche of room contents was observed and in fact the food stacked along the wall was not disturbed by the CEV operations.

Page 9, paragraph 2
Page 14, number 1

The southeast corner of the structure was not dismantled. In fact, the only penetration into the southeast corner was by boom only. Neither the southeast corner nor the main stairwell were destroyed by the CEV.

Mr. Sherrow refers to the injection of CS through a nozzle located on the end of a boom connected to the CEV. It should be noted that each bottle had its own nozzle; there was not a common nozzle at the end of the boom.

Page 15, number 5

No damage to the second story flooring was observed by the CEV drivers.

Page 17, paragraphs 1 & 2

Again, the only penetration into the southeast corner was by the boom only. In reference to the noise generated by the "unmuffled CEV engines", the M60A1 chassis/automotive system of the CEV has not only mufflers, but exhaust grates that diffuse exhaust.

USAWDTX
130A-00357

130A-00357

09/08/99 16:15 [redacted] DAG 007/007

To: OFFICE OF GENERAL COUNSEL From: CIRG
Re: 244-39 SUB CC, 02/15/1996

CC: 1-OGC (Ms. Brown)
1-244-39 Sub CC
1-ASAC WISLEY
1-SSA WHEMEYER
1-SSA HICKEY
1-SA SIGLER
1-Mr. JETT (FTO)

5

USAWDTX
130A-00358

130A-00358

From: Jim Touhey
To: mhagen, ppyles, mzabel, syarosh
Date: 8/19/99 3:13pm
Subject: Military tear gas rounds

I spoke to Lynn Brown about the document I found (WAC126-0011 thru 0015), 2/15/96 memo by Robert A. Hickey to attn. of Jacqueline F. Brown. Lynn said that the first she heard of this memo was during her conversation with Greg Parsons, her HRT liason, which she related to Marie this morning. She has no recollection of having seen the memo, and says two of her binders covering that period are missing. She asked me to fax her a copy, which I did, as she has been trying unsuccessfully to track down a copy. She bristled a bit when I said that finding the memo this late in the day had caused concern over here, in that we have been trying to learn about the accusations of the use of military munitions for several weeks. She said that our senior management (Donald Remy) had ordered the FBI not to investigate because of the Rangers investigation. I tried to defuse the situation by stating that I was not accusing Lynn of having hidden anything (I do believe she's telling the truth when she states that she can't recall having seen the memo before). In any event, she now has the leads to try to nail down what happened. I asked her to set up interviews with SAs Corderman, Hickey, and Hackemeyer, who appear to have relevant information.
--JGT



WWC594-0550
OSC449-0550

RECEIVED
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CLERK, U. S. DIST. COURT
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

FILED
APR 03 1997
Clerk, U.S. Dist. Court
By _____ Deputy

ISABEL G. ANDRADE, *et al.*,	§	Civil Action No. W 96 CA 139
	§	JUDGE SMITH
Plaintiffs,	§	
	§	and consolidated actions:
	§	*Holub v. Reno* W 96 CA 140
v.	§	*Ferguson v. Reno* W 96 CA 141
	§	*Brown v. U.S.* W 96 CA 142
	§	*Riddle v. Reno* W 96 CA 143
PHILLIP J. CHOJNACKI, *et al.*, AND	§	*Gyarfas v. U.S.* W 96 CA 144
UNITED STATES OF AMERICA,	§	*Martin v. U.S.* W 96 CA 145
	§	*Holub v. U.S.* W 96 CA 146
Defendants.	§	*Brown v. U.S.* W 96 CA 147
	§	*Sylvia v. U.S.* W 96 CA 373

EXHIBIT
51

UNITED STATES' REPLY TO PLAINTIFFS' SUPPLEMENTAL RESPONSE TO U.S.' MOTIONS FOR SUMMARY JUDGMENT AND SUPPLEMENTAL DECLARATION OF RAMSEY CLARK

Presently pending before the Court are motions to dismiss and for summary judgment filed by the United States. Plaintiffs' claims center on four areas of allegedly negligent conduct by the United States. First, they challenge investigatory and planning activities that occurred prior to the arrival of the ATF agents at the Branch Davidian compound on February 28, 1993. Second, they complain about the manner in which the FBI managed the standoff between February 28, 1993, and April 19, 1993. The United States has moved to dismiss the claims stemming from these two courses of conduct. Third, the plaintiffs allege that the Branch Davidians did not ambush the ATF agents on February 28, but rather were fired upon first by the agents. Fourth, the plaintiffs aver that the fire that consumed the compound on April 19, 1993, was started by the FBI and not Davidians inside the compound. Regarding the latter two areas, the United States has moved for summary judgment.

It should be noted at the outset that regardless of whether the plaintiffs have met their burden for avoiding summary judgment at the present time as to these two issues, the United

States' motions to dismiss as to the first two issues should be granted. There is no basis for proceeding further on claims that Congress intended to shield from liability through the discretionary function exception, 28 U.S.C. § 2680(h).

With respect to the latter two issues, plaintiffs have presented numerous arguments in an attempt to establish that genuine issues of material fact exist concerning who shot first on February 28 and how the fire was started on April 19. However, the cumulative presentation of non-probative or inadmissible evidence cannot transform their speculative and fanciful theories into *genuine* disputes of material fact. By failing to improve on the legal insufficiency of their evidence, plaintiffs' latest offering adds only to the quantity of insufficient evidence.

1. *The Declaration of David Hardy.*

The declaration of David Hardy, a purported author who is seeking documents for the plaintiffs from ATF and the FBI through Freedom of Information Act (FOIA) requests and litigation, *Hardy v. FBI*, D. Az. Civil Action No. CV 95-883 TUC ACM, does not create a genuine issue as to any material fact regarding either the shootout or the fire. Mr. Hardy wonders whether other videotapes may exist which show the events of February 28, 1993, as viewed from the helicopters. Hardy Decl. at 2-3. However, Mr. Hardy is merely speculating that some "smoking gun" footage exists among the tapes he claims were taken by other ATF agents. Mr. Hardy's statement that, "If obtained through discovery or the FOIA action, [the alleged tapes] might enable this Court to ascertain what happened that day, including details such as who fired first and whether an announcement was made," Hardy Decl. 3-4, is rank speculation. This Court and the Fifth Circuit have reviewed extensive evidence and have ascertained what happened that day. The Fifth Circuit held that the Branch Davidians fired the first shots, *United States v. Branch*, 91 F.3d 699, 716 (5th Cir. 1996), and that "[t]he record belies the defendants' contention that they did not know the identity of the ATF agents

outside the compound on February 28," *id.* at 715:

> Viewing the record as a whole and in the light most favorable to the defendants, we are not persuaded that a reasonable jury could harbor a reasonable doubt that the defendants knew the approaching ATF agents' identity.

Branch, 91 F.3d at 716.[1] Mr. Hardy's speculation about what *might* be present on a tape which *might* exist is simply insufficient to avoid the operation of *stare decisis* to bar the claims based on the shootout on February 28, 1993.

Similarly, Mr. Hardy's conjecture about what a different copy of the FLIR tape might show and that another aircraft in the area may have made another set of tapes (Hardy Decl. at 5-6) is insufficient to avoid summary judgment. Plaintiffs' expert has examined the FLIR tapes and presented his analysis to the Court. *See, e.g.*, Declaration of Richard Sherrow, January 16, 1996, Appx. to Plaintiffs' Joint Response to the United States' Motions [S.D. Texas *Andrade* doc. 135] at Tab D-2. That analysis, however, is insufficient to create an genuine factual issue because the audiotape made of the Branch Davidians setting the fires conclusively establishes their cause. *See Branch* Trial Transcripts at 6267-74, 6300-02, 6307, and 6311, *Branch* exhibits 2216 and 2217, and *Branch* Sentencing Hearing Transcript, June 17, 1994, at 220.[2]

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[1] Plaintiffs complain (Supp. Resp. at 7-8 and n. 14) that the record in *Branch* has been unavailable to them. This cannot be so. First, plaintiffs Livingston Fagan, Clive Doyle, Rita Riddle, and Norman Allison were defendants in *Branch*, were present at trial, and have had access to these materials. Second, the plaintiffs have submitted a number of declarations from counsel for the defendants which indicate that information and materials from *Branch* are available to the plaintiffs. *See, e.g.*, Decl. of Mike DeGeurin, Supp. Resp. Exh. 7. Finally, the *Branch* trial transcript is a matter of public record and may be purchased from the court reporter.

[2] The plaintiffs argue, incorrectly, that statements of the Branch Davidians such as "I want a fire around the back," and "Let's keep that fire going," are inadmissible hearsay. Supp. Resp. at 9. Most if not all of the statements about the fire are not hearsay because they are *admissions* of the plaintiffs themselves. FED. R. EVID. 801(d)(2). Nearly every Branch Davidian in the compound on the morning of April 19, 1993, is represented in this action.

Mere speculation that another aircraft in the area might have made another set of FLIR tapes is not sufficient to avoid summary judgment or even warrant relief under Rule 56(f), FED. R. CIV. P. In *Paul Kadair, Inc. v. Sony Corp.*, 694 F.2d 1017, 1029-30 (5th Cir. 1983), the Fifth Circuit pointed out that:

> Something more than a fanciful allegation is required to justify denying a motion for summary judgment when the moving party has met its burden of demonstrating the absence of any genuine issue of material fact. A "bare assertion" that the evidence supporting the plaintiff's allegation is in the hands of the defendant is insufficient to justify a denial of a motion for summary judgment under Rule 56(f).

Paul Kadair, 694 F.2d at 1030 (citing *Contemporary Mission, Inc. v. United States Postal Service*, 648 F.2d 97, 107 (2d Cir. 1981)). Plaintiffs should not be permitted to avoid summary judgment based on Mr. Hardy's speculation when the direct evidence before the Court establishes the absence of a genuine issue of material fact.

2. *The Declaration of Harry Hollien.*

The declaration of Harry Hollien, Ph.D., does not create a genuine issue of material fact regarding who shot first. After listening to sounds on the videotapes made in ATF

Even if some of the statements are hearsay, they fall within at least four exceptions to the hearsay rule. First, the statements are "present sense impressions," for which the availability of the witness is immaterial. FED. R. EVID. 803(1). Second, statements of the then existing intent of the declarant such as, "I want a fire around the back," also are admissible. FED. R. EVID. 803(3). Third, statements such as "Let's keep that fire going," which are powerful evidence of Branch Davidians committing suicide and/or murder, are admissible as statements against interest. FED. R. EVID. 804 (b)(3). Finally, the statements fulfill the requirements of the "catch-all" hearsay exceptions of FED. R. EVID. 803(24) and 804(5). The statements are offered in order to prove a fact that is plainly material -- that the Branch Davidians started the fires that consumed their compound on April 19, 1993. Because these statements are direct evidence of the actions of some of plaintiffs' decedents inside the compound on April 19, 1993, it plainly is more probative than other available evidence. Finally, the interests of justice will be served by admitting these probative and highly trustworthy recordings of the Branch Davidians about starting the fires. Accordingly, the statements included in the tapes made on April 19, 1993, are admissible. *Frazier v. Continental Oil Co.*, 568 F.2d 378, 382 (5th Cir. 1978) (when circumstances show that statement is unusually trustworthy, hearsay should be admitted).

helicopters that approached the Branch Davidian compound that morning, Dr. Hollien concluded:

> [F]rom the tape provided, it is not possible to determine with reasonable probability 1) whether the sounds are gunfire 2) the origin of the sounds or 3) the number and caliber of the guns employed.

Decl. by Harry Hollien, Ph.D. at 2-3 (Exh. 5 to Supp. Resp., dated March 24, 1997). Thus, this declaration does not advance plaintiffs' position. Even if Dr. Hollien had concluded that the sounds were gunfire (and that the sounds came from the sidearms of the agents riding in the helicopters)[3] (Supp. Resp., Exh. 8 at 3185), such a conclusion plainly would not be probative as to the issue of who shot first. The videotapes cited by plaintiffs only establish that ATF agents in the helicopters came under fire from the compound: plaintiffs point to no footage depicting agents returning fire or stating that they had initiated a gun battle with the compound. Accordingly, plaintiffs' supplementation of Dr. Hollien's declaration is a red herring, and it does not stand in the way of summary judgment in favor of the United States as to the claims concerning the shooting on February 28, 1993.

3. *Supplemental Declarations of Richard Sherrow.*

Likewise, plaintiffs' supplemental evidence concerning the start of the fire on April 19, 1993, is legally inadequate to avoid summary judgment. Testimony as to what *could* have

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[3] The plaintiffs contend that the side arms carried by the agents on board the helicopters "raises a question for discovery and the trier of fact: why were these agents carrying weapons when the stated purpose of the helicopters was mere diversionary, unless 'diversion' included shooting the Davidians?" Supp. Resp. at 4. Whether the agents in the helicopters carried side arms is not material to the issues before the Court. Far from being unreasonable, it is prudent law enforcement practice for ATF agents (who are authorized to carry firearms, 26 U.S.C. § 7608(a)(1)) to have their sidearms with them during an operation that may have unanticipated developments. In any event, that these agents carried side arms was among the evidence in the record before the Fifth Circuit when it held that "[t]he evidence does not permit any reasonable inference but that the Davidians fired the first shots that morning." *Branch*, 91 F.3d at 716. *See* Exh. 8 to Supp. Resp. (*Branch* Trial Transcript at 3184-85).

occurred amounts to mere speculation which is insufficient to create a genuine issue of material fact. *See Ruiz v. Whirlpool, Inc.*, 12 F.3d 510 (5th Cir. 1994). Richard Sherrow has supplemented his previous declaration with three new opinions as to the start of the fire. Sherrow's declarations offer nothing but conclusory opinions. *See Orthopedic & Sports Injury Clinic v. Wang Laboratories, Inc.*, 922 F.2d 220, 224-225 (5th Cir. 1991). In *Wang Laboratories*, the Fifth Circuit warned that "there is a level of conclusoriness below which an affidavit must not sink" and accordingly, a "district court may inquire into the reliability and foundation of any expert's opinion to determination its admissibility." *Wang Laboratories*, 922 F.2d at 224. These opinions are not grounded in *scientific* knowledge, as opposed to Sherrow's subjective belief, and thus, they are legally inadmissible under FED. R. EVID. 702 and 703. *See Daubert v. Merrell Dow*, __ U.S. __, 113 S. Ct. 2786, 2795 (1993); *Wang Laboratories*, 922 F.2d at 225 ("'Without more than credentials and a subjective opinion, an expert's testimony that 'it is so' is not admissible.'") (citations omittted).

Sherrow fails to explain how the mere presence of a 40 mm ordnance at the site justifies an opinion that, more likely than not, conduct by the United States led to the fire. Likewise, his conclusion (that because a windblown substance was seen in a videotape, the United States must have started the fire) is unreliable and cannot withstand the force of the United States' evidence in support of summary judgment. His wholesale adoption of a television reporter's demonstration of two types of smoke is plainly insufficient to withstand summary judgment. Among the obvious legal flaws with his methodology are his failure to conduct a scientific experiment himself, his reliance on a television show, his failure to consider alternative causes (apart from those shown on television) of the windblown substance seen in a videotape and his failure to explain his leap from the use of tear gas to the ignition of a fire.

earlier versions, does not establish that relief under Rule 56(f) is appropriate in this action. For example, plaintiffs seek the deposition of Jamie Castillo, the Branch Davidian whose version of the events of February 28, 1993, was rejected by the Fifth Circuit. *Branch*, 91 F.3d at 717. They also seek the allegedly missing front door, which was discussed at the criminal trial (*see Branch* Trial Transcript at 6596). The Fifth Circuit considered Jack Zimmerman's testimony about the holes he observed in the door, and dismissed the holes he described as lacking probative value. *Branch*, 91 F.3d at 716 ("At most, his testimony indicates that gunfire was exchanged"). Plaintiffs also seek to depose a number of witnesses who testified at trial and were subjected to extensive cross-examination, including Roland Ballesteros and Curtis [sic] Mayfield. The testimony of these witnesses was in the record before the Fifth Circuit; plaintiffs cannot avoid *stare decisis* and summary judgment by claiming that they will do a better job than the *Branch* defense counsel. *See, e.g., EEOC v. Trabucco*, 791 F.2d 1 (1st Cir. 1986) (weak presentation in earlier case does not deprive ruling of *stare decisis*).

Mr. Phillips indicates that the plaintiffs also seek to depose "all ATF agents and administrators sued in the Plaintiffs' lawsuits," Phillips Decl. at ¶ 1(o), "all . . . FBI agents and administrators, and all Justice Department officials sued by the Plaintiffs in their lawsuit," *id.* at ¶ 2(g), and virtually every federal employee present in the Waco area from February 28 through April 19, 1993. *Id.* at ¶ 1(d, e, h, l), ¶ 2(f, g), ¶ 3(f, g, h, i, j). He does not state, however, how these depositions might establish the existence of a genuine issue of material fact. Indeed, the declaration is a laundry list of discovery sought by plaintiffs concerning the litigation as a whole, including issues and events which are within the ambit of the pending motions to dismiss for lack of subject matter jurisdiction.

Similarly, Mr. Phillips claims that the plaintiffs cannot respond to the United States'

motions for summary judgment as to the cause of the fire unless they have a large quantity of documents, including, *inter alia*, "communications between command center personnel in Washington, D.C. . . . and all persons at the White House." Phillips Decl. at 5. There has been absolutely no showing of how such information will aid plaintiffs in overcoming the conclusive effect of the recorded words of the Branch Davidians who set the fires.

The list of allegedly necessary discovery set forth in the Supplemental Declaration of Joe Phillips should not be permitted to muddle the simple issues before the Court on summary judgment -- whether summary judgment should be granted as to the events of February 28, 1993, based on (1) the evidence reviewed by this Court in *Branch*, (2) the plaintiffs' failure to present direct, contrary evidence, and (3) the operation of *stare decisis*, and whether the plaintiffs have shown the existence of a *genuine* issue of material fact as to the fire on April 19, 1993, given the taped voices of the Branch Davidians who set the fires.[4]

6. *Declaration of Benton K. Partin.*

The *Brown* plaintiffs have submitted the declaration of a retired Air Force general[5] who contends that he can establish that the explosion which occurred during the fire on April 19, 1993, was caused by "a powerful explosive breaching, demolition charge . . . detonated on the top of the concrete Church vault." Supp. Decl. of Ramsey Clark at 2. Gen. Partin's analysis does not establish a genuine issue of material fact precluding summary judgment on

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[4] Among the videotapes Mr. Phillips mentions is "A videotape allegedly in the possession of David Hall, a news reporter, purportedly showing the ATF's assault at the front door of Mt. Carmel." Phillips Decl. at 3. As will be set forth in greater detail in the United States' opposition to plaintiffs' motion to lift the stay, Mr. Hall has advised that the only videotape he has of the ATF effort to serve warrants at the compound on February 28, 1993, is the one taken by Dan Mulloney of KWTX-TV, to which Mr. Hall has added a series of still photographs which he describes as being "in the public domain".

[5] This declaration is annexed to the Supplemental Declaration of Ramsey Clark filed on March 25, 1997 [doc. 143].

claims arising out of the fire. The explosion occurred nineteen minutes after the first fires were reported.[6] Even assuming, *arguendo*, that the explosion was caused by some sort of demolition charge, there is simply no evidence to support the inference that the charge was placed inside the compound by agents of the United States. Indeed, given the amount of illegal weaponry found within the compound after the fire, including 48 machineguns, four live hand grenades and numerous fragments, and two .50 caliber anti-tank rifles,[7] Partin's declaration provides no basis for any conclusion as to the source of the "demolition charge" (if such a charge existed). There being no basis for a conclusion that a charge was placed inside the compound by the United States, the Court need not determine the chemical source of the explosion.

7. *Affidavit of Dr. Fardal.*

Finally, the affidavit of Dr. Fardal, also submitted by the *Brown* plaintiffs, does nothing to further their position. Even if some Branch Davidians were killed in the vault by blunt force trauma when the vault collapsed, plaintiffs have pointed to no evidence to suggest that that collapse was caused by conduct of the United States as opposed to stemming from the fire started by the Branch Davidians (e.g. the explosion, the collapse of the building above the vault, or ammunition within the vault exploding due to heat from the fire).

For these reasons and those previously set out, the United States respectfully submits that its motions to dismiss and for summary judgment should be granted.

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[6] *See Branch* Trial Transcript at 5901, 5927; *Fire Development Analysis* [S.D. Texas *Andrade* doc. 123, Tab H] at 8 and 18 (first fire started at 12:07, large explosion occurred at 12:26). This explosion was described by the author of the *Fire Development Analysis* as "somewhat consistent with the sudden rupture of a large . . . propane tank. . . . It is also possible that this explosion could have been due to a propellant-like material." *Id.* at 43.

[7] *See Branch* Trial Transcript at 814-816; Sentencing Findings and Opinion, June 21, 1994, at 6.

Dated: April 1, 1997

Respectfully submitted,

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

ISABEL G. ANDRADE, *et al.*,	§	Civil Action No. W 96 CA 139
	§	JUDGE SMITH
Plaintiffs,	§	
	§	and consolidated actions:
v.	§	*Holub v. Reno* W 96 CA 140
	§	*Ferguson v. Reno* W 96 CA 141
PHILLIP J. CHOJNACKI, *et al.*, AND	§	*Brown v. U.S.* W 96 CA 142
UNITED STATES OF AMERICA,	§	*Riddle v. Reno* W 96 CA 143
	§	*Gyarfas v. U.S.* W 96 CA 144
Defendants.	§	*Martin v. U.S.* W 96 CA 145
	§	*Holub v. U.S.* W 96 CA 146
	§	*Brown v. U.S.* W 96 CA 147
	§	*Sylvia v. U.S.* W 96 CA 373

REPLY MEMORANDUM OF LAW

DEFENDANTS' MOTIONS TO DISMISS
UNITED STATES' MOTION FOR SUBSTITUTION
UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT



March 19, 1998

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Part One: UNITED STATES' ARGUMENT

Introduction

The issues before the Court are straightforward, notwithstanding plaintiffs' efforts to obfuscate them and avoid dismissal of their claims. Challenges to the investigations into criminal activity at the Branch Davidian compound, the planning of the warrant operation, and the manner and means chosen to end the stand-off are barred by the discretionary function exception, 28 U.S.C. § 2680(a). This type of conduct falls within the exception because it involves judgment and choice and is grounded in substantive law enforcement policy, even if the discretion allegedly was abused. Plaintiffs have failed to show otherwise and thus have failed to meet their burden of establishing that the Court has subject matter jurisdiction. The United States' motion to dismiss the claims based on the investigation, planning, and stand-off should be granted.

Equally straightforward are the issues raised by the United States' motion for partial summary judgment. The consistent testimony of eyewitnesses and other evidence previously considered by this Court and the Court of Appeals in *United States v. Branch*, 91 F.3d 699 (5th Cir. 1996), *cert. denied*, __U.S. __, 117 S. Ct. 1467 (1997), establishes that the Branch Davidians fired the first shots on February 28, 1993. The Davidians ambushed federal agents who were discharging their official duties by attempting to serve search and arrest warrants. Plaintiffs have no evidence to the contrary, other than the testimony of convicted killer Brad Branch, who presses a scenario specifically rejected by the Fifth Circuit as incredible. Similarly conclusive are the recorded words of the Branch Davidians who chose to set fire to the compound and kill themselves and others rather than surrender to federal authorities. Plaintiffs argue that with access to more documents and physical evidence, their experts might be able to testify that the

facts are otherwise. Summary judgment cannot be sidestepped so easily. Although the United States' experts confirm that the fires were started intentionally from within the compound, the Court does not need the assistance of any expert testimony to find that the Davidians set the fires -- the statements of the Davidians themselves irrefutably established this fact.

The only claims that have not been addressed in the United States' motion are the relatively new allegations that FBI agents fired shots at the Branch Davidians on April 19, 1993. These claims were not raised in the *United States v. Branch* trial because no eyewitnesses -- including the *Branch* defendants -- ever claimed that such shots were fired. Plaintiffs have invented this issue, propped up by the junk science of their purported expert, Edward Allard, whose testimony and theories are baseless.

I.

THE UNITED STATES' MOTION TO DISMISS SHOULD BE GRANTED

A. THE DISCRETIONARY FUNCTION EXCEPTION DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION OVER ALL CLAIMS OTHER THAN THOSE BASED ON THE ALLEGED USE OF DEADLY FORCE.

Although contested by the United States, the various complaints aver that the United States used excessive and deadly force during the shoot-out on February 28 and in causing the fire on April 19. Because such conduct, if it had actually occurred, would not involve the permissible exercise of policy judgment because it would violate the Constitution, the United States has not sought dismissal of claims based on such conduct.[1] However, the plaintiffs have failed to show any reason why the following claims should not be dismissed because the

[1] As is set forth in the motion for summary judgment, these allegations are without merit and the claims should be dismissed for that reason.

challenged conduct involved the permissible exercise of policy judgment:

(1) claims which challenge the quality of ATF's investigation into the Branch Davidians and the decisions regarding the manner and timing of the operation to execute the search and arrest warrants; and

(2) claims which challenge the FBI's acts or omissions during the stand-off, including the decision to use tear gas.

In sum, plaintiffs argue that the ATF should have chosen another method by which to conduct a search of the Branch Davidian compound and that the FBI should have chosen different tactics in trying to end the stalemate. The discretionary function exception was designed to prohibit precisely this "second-guessing" of discretionary, policy-based decisions of federal officials. Accordingly, any claim based on this conduct is barred.

1. The Discretionary Function Exception Bars All Claims Arising Out Of The ATF Investigation, ATF Decisions Regarding How The Warrants Should Be Served, And FBI Conduct During The Stand-off.

As set forth more fully in the United States' opening memoranda, the discretionary function exception to the Federal Tort Claims Act (FTCA) limits the waiver of sovereign immunity by precluding claims based on governmental actions that are "susceptible to policy analysis." *United States v. Gaubert*, 499 U.S. 315, 325 (1991). The failure to acknowledge this principle appears to be at the heart of plaintiffs' flawed application of the law to the facts alleged in their complaints. This standard does not require any showing by the United States of the manner in which discretion actually was exercised in a particular case. The Court need only consider whether the actions alleged, by their nature, are susceptible to judgments implicating law enforcement policies.

Law enforcement operations clearly implicate significant policy concerns, as has been

recognized uniformly and repeatedly by the Fifth Circuit and other courts.[2] When investigating Koresh and other Branch Davidians for suspected violations of federal firearms laws, ATF was concerned with the public policy goal of enforcing federal law in connection with the receipt, possession, and manufacture of weapons and destructive devices, such as the machine guns and hand grenades found in the ashes of the Branch Davidian compound. *See United States v. Branch*, W.D. Tex. Crim. No. W-93-CR-046, slip op. June 21, 1994, at p. 6 (US App. L);[3] *see also* TC Compl. ¶ 7.18. Similarly, the ATF's decisions in planning the service of the warrants were discretionary judgments grounded in significant law enforcement concerns. (*See* United States Motion to Dismiss and for partial Summary Judgment [hereafter "Mot."] at 17-18.) Prior to the service of an arrest or search warrant, decisions concerning how extensively to investigate the location and subject and how to accomplish the service of the warrants in light of the dangers posed and available resources are protected by the discretionary function exception. *Mesa v. United States*, 123 F.3d 1435, 1438 (11th Cir. 1997). Thus, the ATF's judgment calls about whether to arrest Koresh away from the compound, the timing of the operation, use of local law

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[2] *See Buchanan v. United States*, 915 F.2d 969 (5th Cir. 1990) (decisions made by prison officials faced with violent uprising); *B&F Trawlers, Inc. v. United States*, 841 F.2d 626 (5th Cir. 1988) (actions of the Coast Guard in apprehending drug running vessels); *Smith v. United States*, 375 F.2d 243, 247 (5th Cir.), *cert. denied*, 389 U.S. 841 (1967) (decisions regarding arrest or prosecution of suspected criminals "can affect the policies, duties, and success of a function placed under the control of the Attorney General."); *Pooler v. United States*, 787 F.2d 868, 870 (3d Cir.), *cert. denied*, 479 U.S. 849 (1986) ("deficiencies in . . . investigative methods" which led to plaintiffs' arrest represented discretionary choices shielded from FTCA liability); *Mesa v. United States*, 123 F.3d 1435, 1438 (11th Cir. 1997) (decisions regarding how to investigate and identify a suspect); *McElroy v. United States*, 861 F. Supp. 585 (W.D. Tex. 1994) (decisions as to how to best fulfill mandatory duty to enforce the law); *Rourke v. United States*, 744 F. Supp. 100, 102 (E.D. Pa. 1988), *aff'd*, 909 F.2d 1477 (3d Cir. 1990) (claims arising out of an alleged "'haphazard' investigation calculated to achieve a quick arrest" were barred by the discretionary function exception).

[3] "US App." refers to the Appendix to the United States' Motion to Dismiss and for Partial Summary Judgment.

enforcement, etc. (TC Comp., ¶ 7.9-7.11) cannot be the basis of a tort action under the FTCA.

In deciding the manner and means of ending the stand-off so that the offenders could be apprehended, the FBI was effectuating the policy goal of bringing to justice those involved in the murders of four federal agents during the shoot-out. As the Fifth Circuit has held, "[t]he federal government's decisions concerning enforcement of its criminal statutes comprise a part of its pursuit of national policy." *Smith v. United States*, 375 F.2d 243, 247 (5th Cir.), *cert. denied*, 389 U.S. 841, 88 S. Ct. 76 (1967).[4] Clearly, then, the actions of the federal employees who investigated potential firearms violations by the Branch Davidians and who determined to end the stand-off are susceptible to policy analysis.

2. The Plaintiffs Have Not Shown That Either The ATF Or FBI Agents Were Required To Follow A Specifically Prescribed Course Of Action.

The plaintiffs completely misinterpret the discretionary function exception by arguing that the discretion of federal officials was "regulated" and therefore the discretionary function exception does not apply. (Opp. at 3-4.) The existence of federal statutes or regulations in and of themselves is not determinative. The issue is whether the regulations (or statutes or policies) allow the employee to exercise judgment and choice or whether they "*specifically* prescribe[] a course of action for an employee to follow." *Gaubert*, 499 U.S. at 322 (emphasis added).[5]

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[4] In their brief, the plaintiffs argue that "the U.S. does not contest . . . that the physical psychological assault during the siege was unconstitutional or otherwise illegal." (Opp. at 3.) This is incorrect. As explained by its opening brief, the United States has shown that the decision to use "psychological or physical intimidation" by the FBI during the stand-off is protected by the discretionary function exception. (Mot. at 22-27.) Moreover, the actual use of these law enforcement measures did not violate the Constitution or any applicable law. *See* Part Two, Reply of the Individual Federal Defendants, *infra*.

[5] Thus, in *Berkovitz v. United States*, 486 U.S. 531, 542-43 (1988), the Supreme Court held that agency conduct would not be protected if it **violated** mandatory regulations, not simply because regulations existed. *See also Gaubert*, 499 U.S. at 324. Indeed, the Supreme Court in

The ATF agents who investigated the potential firearms violations and planned the operation to serve the warrants and the FBI agents and federal officials who determined the manner and means for ending the stand-off were not required to follow a specifically prescribed course of action. As the Fifth Circuit observed in a case involving the actions of prison officials in attempting to quell a violent uprising, "no statute, regulation, or policy does, **or indeed could**, specifically prescribe a course of action for . . . officials to follow." *Buchanan v. United States*, 915 F.2d 969, 971 (5th Cir. 1990) (emphasis added). In planning the service of the warrant, ATF agents necessarily had to evaluate and analyze potential reactions of the Davidians under various scenarios, and choose the approach which appeared to be the best to achieve their objectives. The plaintiffs admit as much by averring that the ATF ignored other more peaceful scenarios for arresting Koresh. (Opp. at SF-3 ("They had several options but they chose the most violent."); TC Compl., ¶ 7.9, 7.17.) Like the prison officials in *Buchanan*, in managing and attempting to end the stand-off, the FBI agents were faced with an evolving and volatile situation, which required a course of action tailored for the specific situation. By its very nature, such action is not subject to specific, mandatory regulations.[6] Accordingly, the conduct was within the exception and the Court lacks jurisdiction over claims based on these decisions.

Gaubert held that "if a regulation allows the employee discretion, the very existence of the regulation creates a strong presumption that a discretionary act authorized by the regulation involves consideration of the same policies which led to the promulgation of the regulations," and is thus protected by the exception. *Gaubert*, 499 U.S. at 324.

[6] The following acts fall within the exception: maintaining an armed perimeter, using "flashbangs" to warn adults who came out of the building without warning, maintaining control over the manner and conditions under which the Davidians left the compound, patrolling the area with armored vehicles, using harsh language, shining bright lights, playing loud music, broadcasting distasteful sounds, crushing vehicles, and cutting off electricity, as well as any other effort to resolve the stand-off peacefully.

(a) The Conduct During The Investigation, Planning, And Stand-off Did Not Violate The Constitution.

The plaintiffs argue, without any supporting precedent, that employees of the United States violated the First, Fourth, and Fifth Amendments to the Constitution by investigating members of a religious organization, in planning the warrant operation, and in managing the stand-off. (Opp. at 3 n. 5.) As is set forth more fully in the reply of the Individual Federal Defendants, Part Two, *infra*, and Mot. at 99-111, there is no legal basis for these assertions. First, the decision to investigate Koresh and other Davidians for violation of a neutral statute was not tantamount to discrimination and did not violate the First Amendment.

> [W]hen the government seeks to enforce a "valid and neutral law of general applicability," the fact that an investigation incidentally targets a specific religious group does not render the investigation violative of the first amendment.

United States v. Allibhai, 939 F.2d 244, 250 (5th Cir. 1991), *cert. denied*, 502 U.S. 1072 (1992) (citing *Employment Division, Department of Human Resources of the State of Oregon v. Smith*, 494 U.S. 872, 879 (1990)). Those who violate federal criminal laws cannot claim First Amendment protection on the ground that their illegal conduct is part of their church practices.

Second, the warrant to search the compound for illegal firearms was supported by probable cause, as shown by the information contained in the accompanying affidavit (*see* discussion in Mot. at 47) and confirmed by the number of illegal weapons and destructive devices found at the compound, *see United States v. Branch*, W.D. Tex. Crim. No. W-93-CR-046, slip op. June 21, 1994, at p. 6. (US App. L). In order to establish a Fourth Amendment violation based on a search warrant, plaintiffs must provide an "offer of proof" that specifies which portions of the evidence used to secure the search warrant allegedly were false. Even assuming the search warrant contained some inaccurate information, the warrant is still

considered valid as long as it contained enough evidence to establish "probable cause" of criminal activity. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). Here, plaintiffs have failed to meet their burden of alleging specific facts to establish that the evidence used to obtain the search warrant for the Mt. Carmel Center was insufficient to establish probable cause. Thus, plaintiffs have failed to show that the ATF agents lacked discretion to obtain the search warrant.

Finally, the manner chosen for executing the warrants on February 28 (including the choice of a dynamic entry) and conduct during the ensuing stand-off (such as playing loud music and blaring lights) even as alleged and characterized by the plaintiffs, were not "excessive force" and did not violate any clear Constitutional standard. The Fifth Circuit specifically rejected the notion that the ATF's choice of a "dynamic entry" constituted excessive force. *Branch*, 91 F.3d at 720. Plaintiffs similarly have no legal authority to support their contention that the FBI's tactics to end the stand-off constituted excessive force. The plaintiffs also have failed to state or set forth any facts supporting a Fifth Amendment claim. Specifically, they have failed to explain how the United States could have violated their Fifth Amendment rights by engaging in legitimate law enforcement activity -- securing the search warrant and deciding how to execute it, and determining what tactics to use during the stand-off o bring it to a conclusion. Thus, the plaintiffs have not alleged any conduct relevant to the discretionary function issue that is violative of a course of action specifically prescribed by the Fifth Amendment. As the Fifth Circuit held, individuals like the plaintiffs cannot "forcibly resist arrest and then put their arresters on trial for the reasonableness of their tactical decisions." *Branch*, 91 F.3d at 720.

(b) The Conduct During The Investigation, Planning, And Stand-off Did Not Violate Federal Law.

Plaintiffs' argument that the United States violated federal law (Opp. at 3) is similarly without legal authority. Because the United States has not argued that the discretionary function exception bars claims arising out of the use of force which allegedly resulted in the deaths of plaintiffs' decedents, federal and state homicide statutes are inapposite to the analysis. The federal laws prohibiting conspiracy to violate the Constitution also are inapposite because, as discussed above, the Constitution was not violated by the challenged conduct.

A further example of plaintiffs' misunderstanding of the law is the argument that allegations of RICO "racketeering" violations preclude application of the discretionary function exception. Under RICO, "racketeering" activity is defined as a crime such as "murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter," certain drug crimes, or other of various federal crimes. *See* 18 U.S.C. § 1961(1). RICO criminalizes use of income from a "pattern of racketeering activity" in a business or other enterprise. 18 U.S.C. § 1962. Here, plaintiffs have not alleged that ATF or FBI agents committed any RICO-defined "racketeering" crimes in the conduct for which the United States raises the discretionary function exception -- ATF's investigation and planning of the search of the Branch Davidian compound and the FBI's handling of the 51-day stand-off with the Branch Davidians. Because no racketeering crimes are alleged to have been committed during these times, neither RICO nor plaintiffs' rootless allegations of "racketeering" activity blocks application of the discretionary function exception to these claims.

The plaintiffs' argument (TC Compl., ¶ 7.20, 7.55; Opp. at 3, n. 5) that federal employees violated the Posse Comitatus Act, 18 U.S.C. § 1385, also is unavailing. Allegations that the

military was used to train or provide equipment to law enforcement officers does not state a violation of the Act. Cases interpreting the Posse Comitatus Act make clear that it prohibits use of the military only in **direct coercion** of private citizens. The Act does not prohibit use of the military in assisting law enforcement personnel in **passive** and **indirect** ways, such as providing advice, training, equipment, or reconnaissance. *United States v. Red Feather*, 392 F. Supp. 916, 925 (D.S.D. 1975) (setting forth a comprehensive discussion of the Posse Comitatus Act). Moreover,

> assistance by the military in civil investigations . . . is not a violation of the Posse Comitatus Act in that the military participation in this case did not pervade the activities of civilian officials, and *did not subject the citizenry to the regulatory exercise of military power.*

United States v. Bacon, 851 F.2d 1312, 1313 (11th Cir. 1988) (emphasis added); *see also United States v. McArthur*, 419 F. Supp. 186, 193-94 (D.N.D. 1975) (because Posse Comitatus Act is designed to avoid authoritarian use of military against citizenry, Posse Comitatus Act was not violated by military's advice or lending of equipment), *aff'd*, 541 F.2d 1275 (8th Cir. 1976), *cert. denied*, 430 U.S. 970, 97 S. Ct. 1654 (1977). Thus, allegations that the military was used in training, investigating, or providing equipment do not involve a violation of the Act.[7]

(c) The Conduct During The Investigation, Planning, And Stand-off Did Not Violate State Law.

The allegation that the agents violated Texas statutes prohibiting homicide (Opp. at 9) is inapposite because the United States has not asserted that the discretionary function exception

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[7] Plaintiffs allege, in the alternative, that the National Guard may have been "federalized" and used in law enforcement activities at Waco. (TC Compl. ¶ 7.20.) Even if it were true that the President "federalized" the National Guard pursuant to his powers under 10 U.S.C. §§ 331-333, the use of the National Guard would have been "under circumstances expressly authorized by the Constitution or Act of Congress," 18 U.S.C. § 1385, and thus would not violate the Posse Comitatus Act.

bars the claims which are based on alleged homicide.

Plaintiffs' claim that Texas criminal statutes regarding assault and restraint were violated during the planning of the warrant operation and the stand-off (Opp. at 9) fails under the circumstances alleged in the complaints. The United States has shown that it did not commit any criminal acts on February 28. *See Branch*, 91 F.3d at 714-16 (the Branch Davidians ambushed the ATF agents, and not vice versa). Since the actual execution of the search warrant was not criminal, the planning for the operation cannot be deemed criminal either.[8] As to the actual warrant operation, the plaintiffs admit that they shot at federal agents. (TC Compl., ¶ 7.16.) During the ensuing shoot-out, the Davidians killed four federal agents. (*Brown* Amended Compl. ¶ 96, 104(k).) Plaintiffs further admit that they refused to leave the compound. (*Brown* Amended Compl. ¶ 118, p. 54.) These allegations alone are sufficient to justify the restriction of the Davidian's movements during the stand-off. Thus, even if the FBI's conduct during the stand-off constituted "force" as plaintiffs allege, such conduct would be privileged under Texas law. *See* TEXAS PENAL CODE ANN. § 9.51.

The other Texas statutes cited by the plaintiffs (Opp. at 9) are plainly irrelevant to the discretionary function analysis. They cite TEXAS PENAL CODE ANN. §§ 7.02(a-b), 15.02, which are criminal laws concerning soliciting a crime, assisting a crime, conspiring to commit a crime, and other offenses that are dependant upon the establishment of an underlying predicate crime.

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[8] Nor does the planning of an assault constitute a civil assault. One of the elements necessary to state a claim for assault under Texas law is that the conduct causes or threatens to cause bodily injury. *See Garza v. United States*, 881 F. Supp. 1103, 1106 (S.D. Tex. 1995); and Mot. at 73. A plaintiff must have been put in "imminent apprehension" of the harmful or offensive contact. *See* RESTATEMENT (SECOND) OF TORTS § 21 (1965). Because plaintiffs have not alleged that they were present during the planning of ATF and FBI operations, such conduct did not by itself place them in imminent apprehension of harmful contact. Thus, plaintiffs cannot establish a critical element of their claim.

However, because the plaintiffs have failed completely to establish that federal employees committed **any** crimes while engaging in the conduct at issue -- securing the search warrant and planning for the warrant operation and managing the stand-off -- citation to additional "dependent" criminal laws is plainly irrelevant.

Under the circumstances, it is incontrovertible that the FBI's conduct was privileged under Texas law. Plaintiffs appear to be suggesting that, having been repelled forcefully by the Davidians, the federal agents should have taken their dead and wounded away from the compound and dropped the matter entirely. Nothing under Texas law requires such an absurd result.

(d) The Conduct During The Investigation, Planning, And Stand-off Did Not Violate Any Internal Mandatory Regulations.

The plaintiffs argue that the discretionary function exception cannot apply because the ATF and FBI violated internal agency rules. (Opp. at 21.) The only allegations regarding violation of internal rules and policies in any of the active complaints against the United States are found in TC Compl. at ¶ 7.55, which alleges that the United States violated "ATF and FBI internal rules and policies for the use of force, including deadly force."[9]

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[9] The plaintiffs also allege that the federal employees violated "rules of engagement" in connection with the gassing of children (TC Compl. ¶ 7.25(tt)), and orders of the Attorney General regarding the manner in which the tear gas operation was to be conducted. (TC Compl. ¶ 7.25 (yyy).) However, such standards, according to the plaintiffs' allegations, would provide for a broad range of discretion. For example, they allege that the rules prohibited inserting tear gas in "any area where they expected the children to be," continuing with the operation "if there was any indication of danger to the children," and continuing when "they reasonably feared that the Davidians would commit suicide." (TC Compl. ¶ 7.25 (ttt).) Each alleged instruction would necessarily require the exercise of judgment: determining where the children might be, whether there is an indication of danger, and whether it appeared that the Davidians would commit suicide. Far from establishing a "specifically prescribed course of action," such rules would be in the nature of policy guidelines which are within the discretionary function exception. Finally,

Any internal rules and policies regarding the use of force are irrelevant to the applicability of the discretionary function exception at this juncture because the United States has not argued that the exception bars claims arising out of alleged use of deadly force at the Branch Davidian compound; to wit, plaintiffs' claims that the United States fired the first shots without provocation on February 28 and started the fire on April 19.

The plaintiffs' argument that the use of unpleasant noises and bright lights amounts to excessive force is unprecedented, unsupportable, and patently without merit. Even if the use of certain tactics during the stand-off "disoriented the Davidians and inhibited their ability to think rationally" (Opp. at 8), the Davidians' reactions to the tactics used during the stand-off[10] would not convert these tactics into excessive force.[11]

In sum, the plaintiffs have not alleged "facts which would support a finding that the challenged actions are not the kind of conduct that can be said to be grounded in the policy" of law enforcement regarding the investigation, planning of the operation to serve the warrants, and management of and efforts to end the stand-off. *See Gaubert*, 499 U.S. at 324-25. Therefore, these claims must be dismissed.

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the alleged orders of the Attorney General do not apply to the conduct which the United States has argued was within the discretionary function exception, and thus are irrelevant to the discretionary function analysis.

[10] *See* TC Compl. ¶ 7.22 and *Brown* Amended Compl. ¶ 109, 110, and 112.

[11] In any event, as noted by the *Brown* plaintiffs, the Branch Davidians were calm, rational, and steadfast in their determination to remain inside the compound. (*Brown* Amended Compl. ¶ 114.)

3. The Discretionary Function Exception Bars Claims Arising Out Of The Investigation, Planning, And Stand-off. Notwithstanding The Law Enforcement Proviso.

The plaintiffs argue (Opp. at 18-20) that the discretionary function exception is inapplicable because they have stated claims for torts which fall within the law enforcement proviso to 28 U.S.C. § 2680(h). It is undisputed that claims based on alleged conduct which, if true, would violate the Constitution are not protected by the discretionary function exception. However, the claims arising out of the ATF investigation and planning of the warrant service operation and the conduct of the FBI during the 51-day stand-off in which the plaintiffs refused to submit to federal authorities are jurisdictionally barred, notwithstanding the plaintiffs' futile attempt to cast these claims as common law torts which fall within the proviso.

(a) The Law Enforcement Proviso.

Although 28 U.S.C. § 2680(h)[12] excludes certain intentional torts from the FTCA's waiver of sovereign immunity, it contains an "exception to the exception," known as the proviso, for assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution when

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[12] Title 28 U.S.C. § 2680(h) provides that the waiver of sovereign immunity set forth in the FTCA does not apply to:

> (h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided*, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of [the FTCA] shall apply to any claim arising, or on after the date of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For purposes of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violation of Federal law.

committed by investigative or law enforcement officers. The proviso was added to § 2680(h) in response to a series of "abusive, illegal, and unconstitutional 'no-knock' raids" engaged in by federal narcotics agents in Collinsville, Illinois, and in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). S. REP. NO. 93-588, 93d Cong., 2d Sess., reprinted in, 1974 U.S. Code Cong. & Ad. News 2789, 2790. Congress intended to make the United States "independently liable in damages for the same type of conduct that is alleged to have occurred in *Bivens*." *Id.* at 2791.[13]

(b) The Interplay Between The Proviso And The Discretionary Function Exception.

Contrary to plaintiffs' argument (Opp. at 18), the Fifth Circuit has held that claims ostensibly falling within the proviso to 28 U.S.C. § 2680(h) may be barred by the discretionary function exception:

> [n]either § 2680(a) or § 2680(h) exist independently of the other nor does one predominate over the other. . . . What relief is and is not available under the FTCA necessarily requires a synthesis of the policies behind §§ 2680(a) and (h) as applied to the specific facts of each situation.

Sutton v. United States, 819 F.2d 1289, 1295 (5th Cir. 1987). The *Sutton* court concluded that "it is both impossible and certainly inappropriate for us to declare categorically -- or to try to state in a principled way -- the circumstances in which either the discretionary function exception or the law enforcement proviso governs to the exclusion of the other." *Id.* at 1298. Thus, the Fifth Circuit already has rejected plaintiffs' argument that the discretionary function exception cannot apply to the claims enumerated in the proviso.

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[13] As shown in the United States opening memoranda (Mot. at 76), the ATF agents who attempted to serve warrants at the compound did comply with the federal "knock and announce" statute, 18 U.S.C. § 3109.

Further, although decided four years before *Gaubert*, the analytical framework provided by the Fifth Circuit in *Sutton* is consistent with the Supreme Court's approach. The *Sutton* court noted that § 2680(a) was enacted to prevent judicial inquiry into governmental decisions that "'entail[] balancing considerations of social, economic, or political policy' [such as] law enforcement decisions by U.S. Attorneys on when, where, and how to investigate, and whether to prosecute." *Sutton*, 819 F.2d at 1293 (quoting *Collins v. United States*, 783 F.2d 1225, 1229 (5th Cir. 1986) (Brown, J., concurring)). The *Sutton* court recognized that the policy behind § 2680(h) was to waive sovereign immunity for specific claims for which relief was not otherwise available. *Sutton*, 819 F.2d at 1298. The court further noted that "[t]he Supreme Court provided the means to balance these interests in [*United States v. Varig Airlines*, 467 U.S. 797 (1984)] by emphasizing the necessity of examining the nature and quality of the agents' conduct against the congressional intent underlying the separate provisions of the FTCA." *Sutton*, 819 F.2d at 1298-99. In holding that both sections must be considered by the court in light of the facts presented, the Fifth Circuit's holding confirms that if the challenged conduct is discretionary and of the nature and quality Congress sought to protect by the discretionary function exception, § 2680(a) will deprive the court of jurisdiction notwithstanding the proviso to § 2680(h).

(c) Conduct During The Investigation, Planning Of The Warrant Operation, And The Stand-off Falls Within The Discretionary Function Exception.

As previously demonstrated (Mot. at 17-19), ATF's conduct in investigating suspected crimes and planning the execution of the warrants and the FBI's conduct during the stand-off (Mot. at 22-27) fall within the parameters of the discretionary function exception. Contrary to plaintiffs' assertion (Opp. at 18), it is not necessary to synthesize the policies underlying the law

enforcement proviso and the discretionary function exception in deciding the instant motion because the United States has not asserted that the use of force by the ATF agents at the Branch Davidian compound on February 28, 1993, and the use of force by the FBI on April 19, 1993, if true, are protected by the discretionary function exception. On the other hand, the conduct of ATF in the investigation and planning of the warrant operation and FBI conduct during the stand-off clearly is protected by the discretionary function exception because it involves the permissible exercise of law enforcement policy judgment.

The plaintiffs acknowledge that they were heavily armed. (*See* TC Compl., ¶ 7.11(a) ("an armed assault . . . would cause an unnecessary violent confrontation"), ¶ 7.22(h) ("some Davidians fired upon the ATF agents").) Notwithstanding their allegations about the amount of firepower used by ATF, the allegedly peaceful Branch Davidians themselves had enough firepower to repel the ATF agents, and thwart ATF's efforts to execute the warrants which had been issued by the federal court in Waco. *United States v. Branch*, 91 F.3d 699, 720 (5th Cir. 1996) ("Indeed, as events bore out, the ATF possessed too little, not too much, firepower."). Moreover, by their own conduct and admissions, a number of the adults in the compound during the stand-off acknowledged that they were willing to kill federal agents rather than submit to lawful authority. *Branch*, 91 F.3d at 709; *Branch* trial transcript at 4479-80 ("*Branch* tr."), testimony of Kathryn Schroeder (February 2, 1994).

Knowing that the residents of the compound were equipped with such firepower and that the Davidians were willing to use it against federal officers, the agents necessarily had to exercise some control over the manner in which people left the compound. ATF and the FBI had to balance factors such as the risk to the agents and others inside and outside the compound when considering how best to achieve their objective of executing the search warrant and,

equently, taking known and suspected criminals into custody.[14] It is precisely this type of y-based risk analysis that the discretionary function exception protects from second- sing in a tort suit.

Thus, the exception protects the FBI decisions enumerated in TC Compl. ¶ 7.22 and n Amended Compl. ¶ 109, 110, and 112, such as maintaining an armed perimeter, using hbangs" to warn adults who came out of the building without warning, maintaining control the manner and conditions under which the Davidians left the compound, patrolling the area armored vehicles, using harsh language, shining bright lights, playing loud music, dcasting distasteful sounds, removing vehicles, and turning off electricity.

Plaintiffs complain repeatedly about the FBI's efforts to end the stand-off without further nce and its failure fully to comprehend that the Branch Davidians would rather die and kill own children than submit to federal authorities. (TC Compl. ¶ 7.25(lll).) However, the sions at issue were the result of the exercise of judgment as to the best course of action to w in attempting to resolve a stand-off with armed resisters. As set forth in note 59, *infra*, the of tear gas is an accepted choice for law enforcement officers to use in attempting to achieve goals. The fact that plaintiffs argue that other alternatives were available serves to confirm, r than negate, the discretionary nature of the decisions.

Plaintiffs' interpretation of the proviso flies in the face of the Fifth Circuit's decision in n because it would render the discretionary function exception a dead letter in the law rcement context. In plaintiffs' view, if a law enforcement officer allegedly violates a

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Plaintiffs argue, without support, that claims based on the *planning* of an assault are in § 2680(h). (Opp. at 2.) However, the planning of an assault does not constitute a civil ult (*see* note 8, *supra*, and Mot. at 73) and thus is not encompassed by § 2680(h).

fugitive's civil rights while apprehending him, any law enforcement decision which preceded such conduct is automatically outside the ambit of the discretionary function exception because it "arises out of" the actionable claim. (Opp. at 2, 19.) This argument is flawed for two basic reasons. First and foremost, it contravenes *Sutton*'s holding that, while some law enforcement conduct may be challenged under the proviso, law enforcement decisions which are policy-based and discretionary are shielded from second-guessing under the FTCA. *Sutton*, 819 F.2d at 1295. The Fifth Circuit has admonished: "Neither § 2680(a) or § 2680(h) exist independently of the other nor does one predominate over the other. Both sections recognize serious legitimate policies that must be preserved." *Id.*

Second, it strains logic past the breaking point to argue that the claims challenging the FBI's manner of handling the stand-off, for example, can be said to "arise out of" the alleged use of excessive force on April 19. Likewise, the claim that the ATF used excessive force depends on the plaintiffs being able to prove that the ATF, unprovoked, shot first at the Branch Davidians -- not that the officers planning the execution of the search warrant failed to consult religious experts, use local law enforcement, or chose to arrest Koresh away from the compound, etc.

The Fifth Circuit recognized that conduct which precedes an alleged use of excessive force can nonetheless involve policy-based judgments which are protected by the discretionary function exception. *Sutton*, 819 F.2d at 1293 (conduct in deciding how to investigate can be protected even if acts of excessive force are not). Thus, the decisions regarding negotiation tactics (use of loud devices, cutting of electricity, etc.) and how best to end the stand-off (the insertion of gas from CEVs) constitute policy-based decisions protected by the discretionary function exception. Far from attempting to "disregard" the proviso (Opp. at 18), the United States' position appropriately effectuates congressional intent. As the Fifth Circuit explained,

"Immunity was retained to protect necessary, but necessarily imperfect, functions of government involving discretion on policy judgments and decisions from tort inspired judicial scrutiny." *Sutton*, 819 F.2d at 1298. By attempting to conflate the factual allegations of excessive force and the law enforcement decisions concerning planning, supervision, and training, plaintiffs seek to extend the law enforcement proviso to a point where the discretionary function exception is written out of existence.[15]

4. The Plaintiffs' Remaining Arguments Against The Applicability Of The Discretionary Function Exception Are Without Merit.

Plaintiffs make numerous conclusory statements about the discretionary function exception which warrant brief reply.

First, plaintiffs are flatly wrong in their argument (Opp. at 22) that the exception does not apply because they have alleged that the United States assumed a duty to secure the Branch Davidians' safety but then breached it.[16] As the Supreme Court held over forty years ago,

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[15] It is important to note that dismissal of the claims arising out of the ATF's investigation and strategy for apprehending Koresh and the FBI's conduct during the stand-off because those claims are barred by the discretionary function exception does not *per se* bar any claim by plaintiffs that excessive force was used during the shoot-out of February 28 or the end of the stand-off on April 19. Whether the execution of the search warrant or the insertion of gas was "excessive" under the Fourth Amendment (Opp. at 24) is analytically distinct from whether judgment and policy informed the law enforcement decisions that preceded those events. Accordingly, there is no merit to plaintiffs' assertion that the "substantive and jurisdictional issues . . . are deeply intertwined" (Opp. at 24) and the cases relied on by the plaintiffs are inapposite. *See Augustine v. United States*, 704 F.2d 1074 (9th Cir.1983) (jurisdictional question (for statute of limitations) about when patient learned of illness implicated merits of case (whether doctor properly diagnosed illness and told patient)); *Sun Valley Gas v. Ernst Enterprises, Inc.*, 711 F.2d 138 (9th Cir. 1983) (jurisdictional issue of whether gas station was a franchisee also determined whether it could state a claim under federal statute). Thus, plaintiffs' attempt to use the excessive force claim to stave off dismissal of the claims barred by the discretionary function exception has no basis in law or fact.

[16] The plaintiffs cite *Indian Towing Co. v. United States*, 350 U.S. 61 (1955), to support their contention that once "the U.S. undertakes to provide a service, it must be held responsible

"Congress exercised care to protect the government from claims, however negligently caused, that affected the governmental functions." *Dalehite v. United States*, 346 U.S. 15, 32 (1953). *See also Gaubert*, 499 U.S. at 323; *Hughes v. United States*, 110 F.3d 765, 767, n. 1 (11th Cir. 1997) ("Our concern under the discretionary function exception is not whether the allegations of negligence are true; instead, our concern is whether the nature of the conduct involves judgment or choice and whether that judgment is of the kind that the exception was designed to protect."). Therefore, the discretionary function exception would still apply even if the United States negligently failed to secure the safety of the Branch Davidians. *See Daniels v. United States*, 967 F.2d 1463, 1465 (10th Cir. 1992)

Second, their argument that the exception does not "protect decisions based merely on professional law enforcement judgment [] but those based on broad social, political and economic policy concerns" (Opp. at 21) also is misguided. By this argument, plaintiffs have reverted to the defunct notion that the discretionary function exception only applies to decisions made by high-level policy makers. The Supreme Court has dispelled this mistaken belief categorically. *Gaubert*, 499 U.S. at 325 ("A discretionary act is one that involves choice or judgment; there is nothing in that description that refers exclusively to policy-making or planning functions."). In short, "[d]iscretionary conduct is not confined to the policy or planning level." *Id.*

In the law enforcement context, the case law is clear that decisions regarding

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for even negligent acts in supplying that service." (Opp. at 22.) Apart from the absurd notion that the ATF or FBI were providing "a service" to the Branch Davidians by enforcing federal criminal laws, the plaintiff's reliance on *Indian Towing* is misplaced because the discretionary function exception was not at issue in that case. *See Indian Towing*, 350 U.S. at 64, and *Gaubert*, 499 U.S. at 326.

"professional law enforcement judgment" (Opp. at 21) can fall within the discretionary function exception. *See, e.g., Mesa v. United States*, 123 F.3d 1435 (11th Cir. 1997) (decision as to how to identify the subject of an arrest warrant). As the Supreme Court cautioned: "If the routine or frequent nature of a decision were sufficient to remove an otherwise discretionary act from the scope of the exception, then countless policy-based decisions by regulators exercising day-to-day supervisory authority would be actionable. This is not the rule of our cases." *Gaubert*, 499 U.S. at 334. There exists no basis for plaintiffs' contention that professional law enforcement judgment is per se outside the scope of the discretionary function exception.

Further illustrating their misunderstanding of the discretionary function exception, plaintiffs rely on several cases which are either inapposite or of questionable precedential value in light of the Supreme Court's subsequent decisions. For example, the analysis in *Downs v. United States*, 522 F.2d 990 (6th Cir. 1975), heavily relied upon by plaintiffs (*see* Opp. at 5), is based on an analysis that has been discredited expressly by the Supreme Court. The court in *Downs*, which was decided before three seminal Supreme Court cases,[17] held that the decision by FBI agents to storm a hijacked airplane was not within the exception because the exception only "immunizes Government employees while they are formulating policy." *Downs*, 522 F.2d at 996. Sixteen years after *Downs* was decided, the Supreme Court reaffirmed that the discretionary function exception is not limited to policy formulation, holding that:

> when established governmental policy, as expressed or implied by statute, regulation, or agency guidelines, allows a Government agent to exercise discretion, it must be presumed that the agent's acts are grounded in policy when exercising that discretion.

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[17] *Varig, supra*, 467 U.S. 797 (1984); *Berkovitz v. United States*, 486 U.S. 531 (1988); and *Gaubert, supra*, 499 U.S. 315 (1991).

Gaubert, 499 U.S. at 324

Plaintiffs attempt to distinguish *Reeves v. U.S. Dept. of Treasury*, 809 F. Supp. 92 (N.D. Ga. 1992), *aff'd without op.*, 996 F.2d 1232 (11th Cir. 1993), because the challenged conduct involved a refusal to conduct an investigation. (Opp. at 16.) They provide no legal basis for their attempted distinction between omissions and affirmative acts in the application of the discretionary function exception. No such distinction can be made, of course, because § 2680(a) bars claims arising out of:

> the exercise or performance **or the failure to exercise or perform** a discretionary function . . . whether or not the discretion involved be abused.

Title 28 U.S.C. § 2680(a) (emphasis added).

Plaintiffs correctly note that the Supreme Court has expressly rejected the notion of a "planning v. operational" standard for application of the exception. (Opp. At 16-17.) However, their attempt to distinguish *Smith v. United States*, 330 F. Supp. 867 (E.D. Mich. 1971), on that basis is flawed. Although cases which rely on the planning/operational distinction must be re-evaluated in light of *Gaubert*, it does not follow that all such decisions are erroneous. Thus, even though the court in *Smith* did rely on the planning/operational distinction, the conclusion that the decisions regarding the use of the National Guard are within the exception is consistent with the two-pronged *Gaubert* analysis. The decision involved considerations of public policy and an element of judgment or choice. Accordingly, the holding in *Smith* remains good law after *Gaubert*, and supports the applicability of the exception to the issues before this Court. *See Horta v. Sullivan*, 4 F.3d 2, 21 (1st Cir. 1993); *Goldstar v. United States*, 967 F.2d 965, 970 (4th Cir) (citing *Smith*, the court held that the discretionary function exception bars claims arising out of looting and rioting in the wake of the 1989 United States invasion of Panama), *cert. denied*,

506 U.S. 955 (1992).

Finally, in a last ditch attempt to avoid dismissal of the claims barred by the discretionary function exception, plaintiffs argue that discovery is necessary as to these claims. (Opp. at 23.) No amount of discovery, however, will alter the inherently discretionary and policy-based nature of the conduct challenged by the plaintiffs. *See Mesa*, 123 F.3d at 1439. Discovery is wholly unnecessary for the Court to adjudge whether the challenged activities involve judgment and choice and are grounded in law enforcement policy. Regarding these claims, the United States has assumed for purposes of the present motion that the factual allegations are true. As the Supreme Court directed,

> for a complaint to survive a motion to dismiss, it must allege facts which would support a finding that the challenged actions are not the kind of conduct that can be said to be grounded in the policy of the regulatory regime.

Gaubert, 499 U.S. at 324-25. Lacking factual allegations which, if proven true, would establish that the challenged conduct does not fall within the discretionary function exception, the plaintiffs' claims must be dismissed now. *See Mesa*, 123 F.3d at 1439 (denying a request for discovery because the allegations on the face of the complaint established the applicability of the discretionary function exception).

In light of the assumed truthfulness of plaintiffs' allegations, there is no justification for delaying the inevitable dismissal of plaintiffs' claims. On the other hand, any discovery on these areas would effectively destroy the immunity preserved by the discretionary function exception by allowing the plaintiffs' to second-guess these policy-based decisions. *See Sutton*, 819 F.2d at 1299 ("Governmental immunity is a threshold question which acts as a bar to a court's right to adjudicate the claim. It is a defense to the burdens of litigation, not just the burdens of liability."); *Williamson v. U.S. Dept. of Agriculture*, 815 F.2d 368, 382 (5th Cir. 1987) ("In the

particular context of claims against the United States and federal officials. particular considerations weigh heavily [against unwarranted discovery]"). Because discovery could not assist the Court's analysis. the claims barred by the discretionary function exception should be dismissed without delay.

B. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR FAILURE TO PROTECT OR RESCUE, FALSE IMPRISONMENT, ABUSE OF PROCESS, OR FOR BYSTANDER RECOVERY.

Claims based on conduct protected by the discretionary function exception are subject to dismissal for lack of jurisdiction without regard to whether a claim is stated under state law. *See* Mot. at 10-12. Plaintiffs' common-law claims for failure to protect or rescue, false imprisonment. abuse of process. and bystander recovery, cited in Part III (b) of their opposition, also are subject to dismissal for failure to state a claim under Texas law. In addition to the specific points set forth below. plaintiffs' Opposition suffers from two fundamental -- and fatal -- misconceptions. First. plaintiffs' Texas common-law claims of "special relation," "creation of danger." "duty to rescue" and "false imprisonment" are premised on a nonsensical assumption -- that the FBI held the Branch Davidians in their compound for 51 days *against their will*. As plaintiffs themselves allege. the 51-day stand-off ensued because the Branch Davidians chose to sequester and barricade *themselves* inside their compound and refused to come out and submit themselves to federal officials. (TC Compl. ¶ 7.22(n).) Second, even if plaintiffs could state a claim under Texas law through these claims, they are not actionable because the discretionary function exception excludes the claims arising out of the investigation and stand-off from the FTCA's waiver of sovereign immunity.

1. The United States Did Not Owe Plaintiffs Any Duty to Protect Them From Themselves or Other Branch Davidians.

Plaintiffs allege that the United States owed a duty to protect them.[18] Neither of the theories that plaintiffs assert, "special relation" and duty to rescue, however, establishes a duty to protect the Branch Davidians from each other.

Under Texas law, a tort claim cannot be maintained unless the plaintiff establishes that the defendant owed it a duty, as a matter of law. *Greater Houston Transportation Co. v. Phillips*, 801 S.W. 2d 523, 525 (Tex. 1990). "Generally, a person has no legal duty to protect another from the criminal acts of a third person." *Centeq Realty Inc. v. Siegler*, 899 S.W. 2d 195, 197 (Tex. 1995); *see Greater Houston Transportation Co. v. Phillips*, 801 S.W. 2d 523, 525 (Tex. 1990); *Doe v. Boys Clubs of Greater Dallas, Inc.*, 868 S.W. 2d 942 (Tex. Civ. App. - Amarillo 1994), *aff'd on other grounds*, 907 S.W. 2d 472 (Tex. 1995); RESTATEMENT (SECOND) OF TORTS § 315.[19] The United States had no duty to protect plaintiffs from harms caused by other Branch Davidians.

Plaintiffs cite the doctrine of "special relation," which imposes a duty upon certain actors to act reasonably to try to protect those with a "special relation" to the actor from the harms of a third person. RESTATEMENT §§ 314A, 320; *Centeq Realty*, 899 S.W. 2d at 197 (applying the

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[18] *See* TC Compl. ¶ 7.25 (ff. mm), ¶ 7.64, 7.66; Opp. at 25.

[19] Each of the Texas cases cited here notes the RESTATEMENT (SECOND) OF TORTS, which states:

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
> (b) a special relation exists between the actor and the other which gives to the other a right to protection.

RESTATEMENT § 315.

RESTATEMENT standard). Plaintiffs' argument falls short, however, because the RESTATEMENT imposes a "special relation" duty only for limited categories of actors. There is a "special relation" between (1) a common carrier toward its passengers, (2) an innkeeper toward its guests, (3) a landowner toward persons who accept a public invitation to enter, and (4) a party that takes physical custody of another. *See* RESTATEMENT. §§ 314A, 320. Because none of these "special relations" existed between the United States and the Branch Davidians, plaintiffs' "special relation" contention fails.

Plaintiffs argue that a "special relation" existed because the government controlled the region surrounding the Branch Davidian compound after February 28, 1993. (Opp. at 26.) However, the Restatement creates no such "special relation" in such a situation and creating one in this case would be unwarranted. The Restatement situations engender a special duty because, in each case, the defendant actually controls the physical space which the other person occupies--for example, railroads and airlines control the seats on which passengers sit, hotels control the beds in which guests sleep, stores control the floors on which customers walk, and hospitals control the wards in which patients are treated. In each of these instances, the potential defendant holds the authority to supervise to some extent the movements of the customer while he or she is within the actor's partial control.

Diametrically opposite to the situations put forth in the Restatement, a fugitive is not under the control of the police because he has resisted capture and arrest. In fact, it was precisely because the United States could *not* control what was happening *inside* the Branch Davidian compound that the stand-off lasted for 51 days. The United States was not able to control the physical movements of the Davidians inside the compound or to get them to submit to law enforcement officials and the courts in connection with the killings of federal agents on February

28, 1993.[20] The United States could not physically control the movements of the Branch Davidians inside the compound on April 19, 1993, and could not physically prevent some Branch Davidians from starting the fire that killed many of the Branch Davidians. Because their allegations fail to meet the test of RESTATEMENT § 314A, plaintiffs cannot establish a "special relation" duty existed to protect them from other Branch Davidians.

Finally, even if plaintiffs could establish a "special relation," it would not enable them to avoid dismissal of their claims. Contrary to plaintiffs' intimation (Opp. at 26-30), the "special relation" doctrine does *not* establish strict liability upon the actor for harm done to the other by a third person. Rather, the doctrine simply imposes upon the actor the common-law duty of reasonable care to try to prevent the harm from occurring. *See* RESTATEMENT § 314A comment e, § 315. Thus, even if a "special relation" existed, the analysis under Texas law would be identical to the remainder of plaintiffs' claims of "negligence" and other torts, which allege a breach of the common-law duty of reasonable care. As explained above, the decisions of the

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[20] Plaintiffs attempt to argue that the United States "controlled the Davidians' space" by surrounding the compound and taking measures to prevent certain Branch Davidians from leaving the compound during the stand-off. (*See* Opp. at 26-27.) Controlling the region *around* the compound was not equivalent to controlling the movements of the Branch Davidians *inside* the compound in which they had barricaded themselves. Indeed, the United States had no control of the spaces inside the compound in which the Branch Davidians ate, sat, slept, and started fires -- in sharp contrast to the control of airlines, hotels, and hospitals over their customers, which is the basis for the "special relation" duty under RESTATEMENT § 314A. The United States did not succeed in its ultimate goal of persuading most of the Branch Davidians to leave the barricades of compound and submit themselves to the judicial system.

Many of the Branch Davidians did successfully leave the compound during the stand-off. *See* TC Compl. ¶ 7.22-24. Thus, it is preposterous of plaintiffs to intimate that the United States held the Branch Davidians inside the compound against their will. In addition, plaintiffs' allegation that the FBI overreached on the morning of April 19, 1993, may be relevant to their claims of assault, battery, and other tort charges, but not does establish that the United States met any of the tests for a "special relation" set forth in RESTATEMENT § 314A.

United States in handling the stand-off are protected from liability under the FTCA scrutiny by the discretionary function exception. Thus, even if the United States had a Texas common-law duty of reasonable care to protect one Branch Davidian from another, such claims are barred in this FTCA action by the discretionary function exception.

Likewise, plaintiffs fail to state a claim that the United States owed them a "duty to rescue" them from the acts of other Branch Davidians. *See* Opp. at 28.[21] As noted above, Texas follows the general tort doctrine that an actor does not owe any duty to protect another from harms caused by a third person. Plaintiffs rely on the exception that imposes a duty of reasonable care upon an actor who undertakes to "render services" to another in need of aid. *See* RESTATEMENT (SECOND) OF TORTS § 323 (cited in Opp. at 29). This "rendering services" exception, which quintessentially applies to an actor who begins to render assistance to another but then stops, leaving the other in a worsened predicament, *see* RESTATEMENT § 323 illustration 1, plainly does not apply here. Because the purpose of the FBI's conduct on April 19, 1993, was to cause the surrender of the Branch Davidians in order to bring them to justice, it is legally erroneous to characterize the FBI's conduct as "rendering services" in aid of the Branch Davidians.

Under Texas law, a plaintiff cannot state a claim against law enforcement officers for failing to take additional steps to protect them from the criminal acts of third parties. *Munoz ex rel. Martinez v. Cameron County*, 725 S.W. 2d 319, 321-22 (Tex. App. 1986). In the face of this law, plaintiffs fall back on their assertion that the FBI unjustly "assaulted" them on April 19,

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[21] To the extent that plaintiffs argue that the United States injured them directly -- as opposed to acting negligently in permitting other Branch Davidians to harm them -- the response of the United States is set forth in section II, *infra*. This current section addresses only the discrete legal assertion that defendant owed a duty to protect and/or a duty to rescue plaintiffs from other Branch Davidians.

1993. This assertion, which is relevant to other claims, does not establish that defendants "rendered services" to plaintiffs on April 19, 1993.

In sum, there is no basis for plaintiffs' assertion that the United States held a "duty to rescue," or otherwise "rendered services" to plaintiffs. Accordingly, plaintiffs' claims that the United States is liable for the harm that the Branch Davidians inflicted upon each other -- including the fire -- should be dismissed.

2. Because Plaintiffs Barricaded Themselves Within Their Compound, They Cannot Assert A Claim For False Imprisonment.

One of plaintiffs' more nonsensical claims is that the United States falsely imprisoned them inside the Branch Davidian compound. (Opp. at 154.) This claim is utterly devoid of both factual and legal support. Under Texas law, "the key elements of a false imprisonment cause of action are: (1) willful detention; (2) without consent; and (3) without authority of law. *Sears, Roebuck & Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985). As the Fifth Circuit observed, "[t]he compound residents were free to leave Mount Carmel at any time." *Branch*, 91 F.3d at 734. Indeed, plaintiffs themselves reference the Davidians' "weigh[ing] the advantages and disadvantages of surrendering" (TC Compl. ¶ 7.22(c)). They also allege that government conduct made it more likely that "the Davidians would not surrender but would die by alleged suicide or at the hands of other Davidians," TC Compl. ¶ 7.22(n), and that some Branch Davidians successfully left their sequestration within compound during the stand-off (TC Compl. ¶ 7.22(y, ee), ¶ 7.24). *See also* TC Compl. ¶ 7.22(q).

Thus, plaintiffs' own allegations defeat their claim for false imprisonment; the false imprisonment claims, therefore, should be dismissed.

3. Because ATF Plainly Did Not Use Process for an Illegal Purpose, Plaintiffs Do Not Have a Claim for Abuse of Process.

Plaintiffs assert that the United States "abused process" in obtaining the search warrant of the Branch Davidian compound and the warrant for the arrest of David Koresh. (Opp. at 33.) Plaintiffs apparently misunderstand the tort of "abuse of process," which does not apply to the facts they allege. Under Texas law, the elements of a cause of action for abuse of process are: "(1) that the defendant made an illegal, improper, perverted use of the process; (2) that the defendant had an ulterior motive or purpose in exercising such illegal, perverted, or improper use of process; and (3) that damage resulted to the plaintiff from the irregularity." *Detenbeck v. Koester*, 886 S.W. 2d 477, 480 (Tex. Ct. App. 1994). Significantly, "[w]hen the process is used for the purpose for which it is intended, even though accompanied by an ulterior motive, no abuse of process occurs." *Id; see also, In Re Burzynski*, 989 F.2d 733, 739 (5th Cir. 1993). The tort applies when a party uses process for a purpose that is illegal -- such as obtaining property or money -- that is different from the purpose for which it legally may be used. *Detenbeck*, 886 S.W. 2d at 480. Here, the ATF did not "use" the warrants for a purpose other than what they were supposed to be used for -- searching the Branch Davidian compound and arresting David Koresh. Because the process was not used illegally, it is irrelevant that plaintiffs allege the warrants were obtained with bad motives. *See Detenbeck*, 886 S.W. 2d at 480 (motive irrelevant if process not used illegally).[22] Accordingly, plaintiffs' "abuse of process" claim should be dismissed.

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[22] Plaintiffs contend that the "process was used to justify the ATF's unconstitutional and illegal 'shoot first' assault." (Opp. at 33.) However, the Fifth Circuit described ATF's use of force on February 28, 1993, as "lawful," *Branch*, 91 F.3d at 714.

4. The Claims Of All Grandparents and Siblings Should Be Dismissed.

Many of the plaintiffs who seek emotional distress damages are grandparents and siblings of Branch Davidians who died during the events at issue. Neither class of plaintiffs has a claim for wrongful death under Texas law. *See* Texas Wrongful Death Act, TEX. CIV. PRAC. & REM. CODE ANN. § 71.004(a), and Mot. at 51. Moreover, in Texas "[t]here is no general duty not to negligently inflict emotional distress." *Washington v. Knight*, 887 S.W.2d 211, 215 (Tex. App.--Texarkana 1994). Thus, grandparents and siblings who were not present at the compound on February 28 or April 19, 1993, have failed to state a claim for which relief can be granted.

(a) Bystander Recovery Is Not Available To Plaintiffs Who Witnessed The Fire on Television.

The bystander claims of plaintiffs who were not present at the compound site and allegedly watched the fire on television should be dismissed. Plaintiffs' paraphrase of the standard for bystander recovery (Opp. at 88), omits precise language that weighs against plaintiffs' argument for an extension of bystander liability to television viewers. In Texas,

> [t]hree factors guide a determination of whether a plaintiff has a cause of action for emotional harm arising out of the injuries sustained by another:
> (1) whether plaintiff was located near the scene of the act *as contrasted with one who was a distance away from it*;
> (2) whether the shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, *as contrasted with learning of the accident from others after its occurrence*; and
> (3) whether the plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship.

Washington v. Knight, 887 S.W.2d 211, 214 (Tex. App. -- Texarkana, 1994) (emphasis added); and *Freeman v. Pasadena*, 744 S.W.2d 923, 924 (Tex. 1988), which cites *Dillon v. Legg*, 69 Cal. Rptr. 72 (Cal. 1968) (copy attached in Reply App. Q-1). Plaintiffs who watched the fire on

television have failed to allege facts which would meet the first two of these required factors. First, they were not physically near the scene of the fire. Second, they did not observe the injury to their relatives, but only learned afterward which Branch Davidians had died and which had escaped the fire.

An analogous case is *Scherr v. Las Vegas Hilton*, 214 Cal. Rptr. 393 (Cal. Ct. App. 1985) (copy attached in Reply App. Q-2),[23] in which the court found that a plaintiff could not recover as a bystander for emotional distress although she saw a live television broadcast of a hotel fire and knew her husband to be somewhere in the hotel at the time. *Id.* The *Scherr* court, applying the *Dillon* standard, held that the plaintiff must, "actually and contemporaneously witness[] not just the fire but the *infliction of injuries* upon her husband." *Id.* at 394 (emphasis added). In the present action, the plaintiffs claim to have seen the live media broadcast of the burning compound on television, but none of these plaintiffs actually viewed their relatives suffering injuries. The perception of endangerment is different from, and does not rise to the level of, the contemporaneous observance of the actual infliction of injury. *Id.* As the court observed:

> [t]he effect of the broadcast is an issue closely related to the questions of whether plaintiff was located near the scene of the fire and whether her observation of the fire was sensory and contemporaneous. But the decisive question in this case is whether plaintiff, through whatever medium, received a sudden and severe shock by actually and contemporaneously witnessing not just the fire but the infliction of injuries upon her husband.

Scherr, 214 Cal. Rptr. at 394-95. None of the plaintiffs who watched the fire on television have

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[23] Whether the viewing of a potentially injury-causing event through the medium of television may provide the basis for bystander recovery is an issue of first impression in Texas. Since Texas courts have adopted the *Dillon* standard of bystander liability of California, *Freeman*, 744 S.W.2d at 924, it is appropriate and instructive to examine how California courts have applied the *Dillon* standard in similar situations.

averred that they actually saw the infliction of injuries upon their relatives. As in *Scherr*, this is "an inadequate basis for [their] claim[s] of shock and injury." *Scherr*, 214 Cal. Rpt. at 395.

Since the *Scherr* decision, the *Dillon* standard was refined and expounded upon in *Thing v. La Chusa*, 257 Cal. Rptr. 865 (Cal. 1989) (copy attached in Reply App. Q-3).[24] In *Thing*, the guidelines for determining when a plaintiff may recover for the emotional distress arising from the injury to another were altered, allowing recovery only:

> if, said plaintiff: (1) is closely related to the injury victim; (2) is *present at the scene* of the injury producing event at the time it occurs and is then *aware that it is causing injury* to the victim; and (3) as a result suffers serious emotional distress--a reaction beyond that which would be anticipated in a disinterested witness and which is not an abnormal response to the circumstances.

Id. at 829-30 (footnotes omitted) (emphasis added). The plaintiff in *Thing*, a mother who was nearby when her son was struck by a car, but did not see or hear the accident did not meet this test. Similarly, in *Fife v. Astenius*, 284 Cal. Rptr. 16 (Cal. Ct. App. 1991) (copy attached in Reply App. Q-4), appellants heard a car crash, but did not realize their relative was involved until shortly thereafter. Relying on *Thing*, the trial court's denial of recovery was affirmed. *Id.* at 18.[25]

The plaintiffs in the instant action could not have known with any certainty while they were watching the compound fire on television whether their relatives had sustained injury. Because they did not know which of the Branch Davidians were injured until after the fire, the

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[24] The Supreme Court of Texas has recognized the soundness of this decision: "[w]e find the experience in California to be instructive." *Boyles v. Kerr*, 855 S.W.2d 593, 599 (Tex. 1993).

[25] In *Wilks v. Hom*, 3 Cal. Rptr. 2d 803 (Cal. Ct. App. 1992) (copy attached in Reply App. Q-5), after the appellee asked her daughter to unplug an electrical cord there was an explosion and one of her daughters was killed and another was injured. The court in *Wilks*, also applying the *Thing* standard, affirmed the appellee's award for her injuries as a bystander based in large part on the fact that the appellee was "'present at the scene of the accident at the time it occurred [and was] aware that such accident caused the injury'" to her daughter, *Wilks*, 3 Cal. Rptr. 2d at 807.

plaintiffs cannot establish all the required elements of this tort.[26]

Plaintiffs here cannot recover for an additional reason: they were connected with the incident only through broadcast media. In Texas, bystanders who did not witness an injury may recover only if they had an "experiential perception" of the injury. *Landreth v. Reed*, 570 S.W.2d 486, 490 (Tex. Civ. App. 1978). In *Landreth*, a child was allowed to recover as a bystander for emotional distress because she was present in the pool area of a day care facility and actually witnessed the attempts to resuscitate her drowned fourteen-month-old sister, even though it could not be proven that the child saw her sister in the pool. *Id.* at 489. The court found that the child's presence at the emergency scene, combined with her witnessing, up-close, the unsuccessful attempts to resuscitate her sister brought her, "so close to the reality of the accident as to render her experience an integral part of it." *Id.* Similarly, in *Dawson v. Garcia*, 666 S.W.2d 254 (Tex. Ct. App. 1984), plaintiffs who were rendered unconscious but survived the same car accident which killed their relative, met the requisite "experiential perception" requirement. *Id.* at 260-1.

Unlike the plaintiffs in *Landreth* and *Dawson*, the plaintiffs in this action were not participants in the injury-causing event. Watching an incident unfold on television is insufficient to state a claim as a bystander under Texas law. These claims should be dismissed.

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[26] Similarly, in *In re Air Crash Disaster Near Cerritos, CA, on August 31, 1986*, 967 F.2d 1421 (9th Cir. 1992), the plaintiff had very recently and very briefly left the house, "leaving her husband in his pajamas in the living room and her children asleep in bed." *Id.* at 1425. When she returned home, she saw that an airplane had crashed into her house, which was on fire with her husband and children inside. *Id.* at 1422-3. The Court affirmed the district court's award of damages to the mother as a bystander plaintiff, distinguishing *In re Air Crash Disaster* from *Thing* and *Fife* because "[in] *Thing* and *Fife*, . . . the plaintiffs did not know until the accidents were over that their children were the victims of the accidents." *Id.* at 1424. The same distinction applies here because the plaintiffs did not know who was injured by the fire until it was over.

(b) This Court Should Not Expand Texas Law on Bystander Recovery.

As noted above, Texas courts have not addressed the issue of bystander recovery by a plaintiff who viewed the injury-causing incident on television. To allow recovery in such a situation would be an unwarranted extension of Texas law which is discouraged in the Fifth Circuit.

To illustrate, in *Harmon v. Grande Tire Co., Inc.*, 821 F.2d 252 (5th Cir. 1987), a wife attempted to recover mental anguish damages she allegedly suffered when her husband was involved in a car accident which she did not witness. The Fifth Circuit eliminated from the judgment that portion of the award arising from plaintiff's claim of mental anguish on the grounds that "affirming the award of mental anguish damages . . . would require us to extend Texas law. . . . *it is not our job to lay down broad new rules of state law.*" *Id.* at 259 (emphasis added).[27] The Fifth Circuit reiterated this policy in *Galindo v. Precision American Corp.*, 754 F.2d 1212 (5th Cir. 1985), stressing, "it is not for us to adopt innovative theories of recovery or defense for Texas law, but simply to apply that law as it currently exists." *Id.* at 1217 (discussing absence of Texas state law on issue of strict liability for occasional sellers of product). Thus, plaintiffs' request for an extension of the law regarding the circumstances in which a bystander may recover for emotional distress should be rejected.

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[27] The *Harmon* case directly addressed the extension of recovery for mental anguish: "In light of longstanding reluctance of the courts to allow recovery for mental anguish and the measured steps of the Texas courts in relaxing barriers to such recovery, we cannot confidently say that the Texas court would allow recovery in this case." 821 F.2d at 259.

C. THE COURT LACKS JURISDICTION OVER CLAIMS OF PLAINTIFFS WHO HAVE FAILED TO COMPLY WITH THE ADMINISTRATIVE CLAIM REQUIREMENTS OF THE FTCA.

1. The *Ferguson* Plaintiffs.

The United States established that fifteen of the *Ferguson* plaintiffs failed to comply with the FTCA's administrative claim requirement for all or part of their claims. (Mot. at 34-36.) Plaintiffs do not contest this, except to argue that the *Ferguson* plaintiffs remedied the jurisdictional defect by re-filing as plaintiffs in the *Sylvia* action. A comparison of the Ferguson plaintiffs listed in Mot. at 34-36, with the claims asserted in *Sylvia* shows that the defect has been remedied as to fourteen of the *Ferguson* plaintiffs,[28] who should have voluntary dismissed the earlier actions by these plaintiffs. Wendell Elliott did not cure the jurisdictional defect within in the time allowed by the FTCA. *See* paragraph 2, below.

Contrary to plaintiffs' assertion (Opp. 125, n. 343), no plaintiff by the name of "Joe Jones" joined in any of these consolidated actions. A "Joel Jones" is a plaintiff in the *Brown* actions, but did not join in either the *Ferguson* or the *Sylvia* action. His claims are subject to dismissal for the reasons set forth in paragraph 3, below.

Also contrary to plaintiffs' assertion (Opp. 125, n. 343), Clive Doyle was not a plaintiff in *Ferguson*. In *Sylvia*, Doyle sought damages solely on behalf of the estate of Shari Elayna Doyle. *See Sylvia* Complaint ¶2.5 (p. 8); First Amended Complaint ¶ 2.5 (p. 8). He did not include any claim for his own injuries in *Sylvia*. The *Sylvia* plaintiffs were incorporated into the Third Consolidated Complaint along with all plaintiffs other than those on the *Holub* and *Brown*

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[28] These plaintiffs are Debborah K. Brown, Judith Mary Houtman, Joel Matthew Houtman, Tobias Hosea Houtman, Gabriella Marie Houtman, Sherry Ann Burgo, Floyd Houtman, Jr., Geoffrey Sellors, Marjorie Sellors, Livingston Fagan, Derek Lovelock, Neharah Fagan, Renae Fagan, and Natalie Nobrega.

actions. (Third Consolidated Complaint at 1.) The Third Consolidated Complaint does not contain claims for the estate of Shari Elayna Doyle[29] or any claims by Clive Doyle. It appears, therefore, that the only claims presented by Clive Doyle are those included in *Brown I* and *Brown II*. As is set forth in paragraph 3, below, since Doyle's administrative claim was not ripe at the time *Brown I* was filed and *Brown II* is subject to dismissal for insufficiency of service of process, his claims should be dismissed.

2. Wendell Elliott.

Contrary to plaintiffs' characterization, the United States has not claimed that "there was 'no claim received' for Elliott." (Opp. at 125.) Rather, the United States has shown that no claim was received "prior to the filing of *Ferguson*." (Mot. at 35.) Notwithstanding the testimony of Mr. Elliotts' attorney, Kirk Lyons (Opp. App. 75), ATF has no record of having received Mr. Elliott's claim. *See* the declarations of David V. Kitchen and Rosemary Kvaka, Mot. App. Tabs B and C, respectively.

3. *Brown I* and *Brown II* Plaintiffs

Plaintiffs' sole argument in connection with the failure of fifteen *Brown I* plaintiffs to comply with the administrative claim requirement is that these plaintiffs refiled their claims in *Brown II*. (Opp. at 126.) However, *Brown II* should be dismissed for failure to serve the Attorney General as required by Rule 4(i), FED. R. CIV. P. Plaintiffs argue that the Attorney General was served in May of 1997. (Opp. at 126.) Plaintiffs have not attached any United States mail return receipt to their Opposition, however. After a reasonable search, no record has

[29] The Third Consolidated Complaint does contain Debborah Brown's wrongful death claim arising out of the death of her daughter Shari Elayna Doyle, ¶ 2.4(21), p. 18, notwithstanding that Debborah Brown remains the lead plaintiff in both *Brown I* and *Brown II*.

been located within the Department of Justice which indicates that the Attorney General was served with the *Brown II* complaint. In any event, since *Brown II* was filed on January 16, 1996, even if *Brown II* had been served on the Attorney General in May of 1997, the *Brown II* action should be dismissed for failure to do so within 120 days as required by Rule 4(m), FED. R. CIV. P. (*See* Mot. at 37.)

4. David Koresh's wives.

Plaintiffs' argument that "there are disputed issues of fact and law with respect to the wrongful death claims" of alleged wives of David Koresh, Opp. at 127, is patently without merit. The claims of Robun Bunds and Dana Okimoto should be dismissed. *See* Mot. at 53.

II.

PARTIAL SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF THE UNITED STATES

Plaintiffs have failed to establish the existence of a genuine issue of material fact as to either the shoot-out on February 28 or the start of the fire on April 19. Accordingly, the United States' motion for partial summary judgment should be granted. As noted in the United States opening memoranda (Mot. at 57), to oppose summary judgment, a plaintiff must either present admissible evidence showing that there is a genuine issue of material fact for trial, *see* Rule 56(e), or at least must explain specifically, by Rule 56(f) affidavit, what means of discovery will result in admissible evidence to counter the defendant's evidence and create a genuine issue for trial.

Notwithstanding the outdated cases cited by the plaintiffs (Opp. at 37-38), the standard for meeting a motion for summary judgment requires that the plaintiffs show by specific, non-conclusory affidavits or other admissible evidence that there is a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).[30] Rule 56 states plainly that affidavits supporting or opposing summary judgment "shall be made on personal knowledge" and the facts set forth must "be admissible in evidence." FED. R. CIV. P. 56(e); *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992) ("Evidence inadmissible at trial cannot be used to avoid summary judgment"). Factual statements that are not admissible in evidence, such as hearsay statements, are to be disregarded. *Pan-Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539, 556 (5th Cir. 1980) (no hearsay permitted), *cert. denied*, 454 U.S. 927 (1981); *Richardson v. Oldham*, 12 F.3d 1373 (5th Cir. 1994) (affirming striking of plaintiff's affidavits that contained inadmissible statements and affirming summary judgment for defendant).

Plaintiffs have submitted a number of documents to the Court, none of which establish a genuine issue as to any material fact. First, the documents are not probative as to *material* facts and do not warrant the inferences pressed by plaintiffs. Second, many of the documents are unsworn and unauthenticated. Third, the sworn statements contain primarily contain inadmissible hearsay.[31] *See* Rule 802, FED. R. EVID. Thus, even if authentic, the contents of the declarations and affidavits are not entirely admissible, and may be relied upon only to the extent they contain admissible evidence.

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[30] Regardless of plaintiffs' argument (Opp. at 110) against the imposition of collateral estoppel against plaintiffs who have had an opportunity to litigate issues pertaining to procurement and service of the warrants, they have failed to meet their burden as the non-moving party to establish a genuine issue as to a material fact in order to avoid summary judgment. *See* Rule 56(e), FED. R. CIV. P. Although not required by Rule 56 to support its motion with concrete evidence, the United States has cited to the findings of this Court in *United States v. Branch* to demonstrate that its contentions, unlike many of those of the plaintiffs, have a basis in fact.

[31] For example, the new declarations of James L. Pate (Opp. App. 52) and Samantha Lake (Opp. App. 77) contain no relevant or material information that is not hearsay.

A. *STARE DECISIS* APPLIES TO ISSUES RESOLVED AS A MATTER OF LAW IN *BRANCH*.

The earlier conclusions of this Court and the Fifth Circuit in *Branch* hold *stare decisis* effect with respect to whether plaintiffs' evidence is sufficient to allow them to proceed with their allegation that ATF agents shot first at Branch Davidians on February 28, 1993. Contrary to plaintiffs' contentions in their Opposition, (1) the facts alleged by plaintiffs are substantially similar to those offered in the criminal case, (2) the *stare decisis* argument applies to legal conclusions concerning factual evidence, not to alleged facts, (3) the standard applied in *Branch* and the summary judgment standard at issue here are identical, (4) decisions adverse to criminal defendants may apply by *stare decisis* to civil cases, and (5) none of plaintiffs' assertions of "lost evidence" hold any weight.

As explained in the United States' motion (Mot. at 61), the doctrine of *stare decisis* requires lower courts to follow higher courts' rulings on both questions of law and conclusions of law as applied to specific factual evidence. *See* 1B MOORE'S FEDERAL PRACTICE ¶ 0.402[1] at I-4 (1996); *See Robbins v. Amoco Production Company*, 952 F.2d 901 (5th Cir. 1992) (applying *stare decisis* to affirm summary judgment as to the legal determination regarding the status of a deed); *Peregoy v. Amoco Production Co.*, 929 F.2d 196 (5th Cir.) (applying *stare decisis* to application of law to specific facts identical to those at issue in a prior case, barring "similarly situated" plaintiffs at summary judgment), *cert. denied*, 502 U.S. 864 (1991); *United States v. Reveron Martinez*, 836 F.2d 684 (1st Cir. 1988); *United States v. Schreiber*, 150 F.R.D. 106 (S.D. Ohio 1993) (once a court has applied a principle of law to a certain set of facts, it will apply that principle to all future cases involving facts that are substantially the same).

The critical issue here is precisely the same issue decided by the Fifth Circuit in *Branch*:

whether the Branch Davidians shot first at ATF agents on February 28, 1993. The Fifth Circuit held that no reasonable fact-finder could have found that ATF agents shot first at the Branch Davidians on February 28, 1993, and thus affirmed the District Court's refusal to give a jury instruction as to self-defense. *Branch*, 91 F.3d at 716. Because the legal standard at issue in the Fifth Circuit's decision is identical to the summary judgment standard here, and because the facts are the same and the evidence at issue is nearly identical, the doctrine of *stare decisis* applies.

1. Plaintiffs' Proposed Evidence Is Nearly Identical To That Considered And Rejected As Insufficient By The Fifth Circuit.

Plaintiffs fail to show that the evidence they seek to offer in this case differs in *substantial* and *relevant* ways from the evidence offered at the criminal trial for their assertion that ATF shot first at the Branch Davidians on February 28, 1993.

First, plaintiffs attempt to rely on the affidavit of Brad Branch, who did not testify at the criminal trial. However, Branch 's story essentially parrots the tetimony of Jaime Castillo, which the Fifth Circuit considered and rejected as being illogical and insufficient to create a material issue for the jury. *See Branch*, 91 F.3d at 717. Moreover, Branch's averred sighting of a dog being shot is irrelevant to the determination, made by the Fifth Circuit, that the Branch Davidians shot at ATF agents before ATF agents returned fire.[32]

Second, plaintiffs offer affidavits from Clive Doyle and Rita Riddle as to what they allegedly heard on February 28, 1993. Unlike the eye-witnesses who testified at the criminal trial and who were cited by the Fifth Circuit, neither Doyle not Riddle witnessed the beginning of the

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[32] Even if plaintiffs sought to prove that the first shot on February 28, 1993, was fired by an ATF agent towards a dog -- a reasonable measure, considering the potential danger that dogs pose to law enforcement officers -- this would not justify the Davidians' responsive use of deadly force.

shoot-out; they were in their rooms. Their impressions of the locations of noises they allegedly heard fall far short in view of creating a genuine issue of material fact in light of the unambiguous, the first-hand, personal knowledge testimony adduced at the criminal trial.

Third, plaintiffs attempt to attack the conclusion that the Branch Davidians shot at ATF agents first by citing an excerpt of the report of ATF agent Kris Mayfield. Again, plaintiffs' effort fails because Agent Mayfield stated that first shots he heard appeared to come from the Branch Davidian's building, not from ATF agents. Fourth, plaintiffs try to rely once again on the statement of Jack Zimmerman, an attorney for one of the Davidians, that appears to be the identical to testimony that was considered and summarily rejected by the Fifth Circuit in Branch as insufficient.

Fifth and last, plaintiffs attempt to obscure the first-hand evidence adduced at trial with a number of insignificant factual allegations which do not suffice to create a genuine issue of material fact. They state that an ATF agent could not reproduce a certain malfunction on an ATF camera, but this is a red herring and has no bearing on the issue before the Court on this motion--namely, who shot first. They highlight the fact the National Guard made an FLIR[33] tape on February 28, 1993. This tape, however, should not be new to the plaintiffs -- it was produced to the *Branch* defendants and was discussed during the criminal trial (*see Branch* tr. at 3240-42 and 3268-69 (January 27, 1994)). Furthermore, having been taken from a helicopter considerably behind the Branch Davidian compound, this tape contains no footage of the start of the shooting at the front of the building. Accordingly, plaintiffs hold no probative evidence related to the "first shot" issue that differs from that already considered and rejected by the Fifth Circuit. *See*

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[33] "FLIR" stands for Forward Looking Infrared, a type of camera used for surveillance purposes.

Branch, 91 F.3d at 716.

2. The United States Seeks Application of *Stare Decisis* to a Conclusion of Law as Applied to Factual Evidence, Not to a Question of Pure Fact Alone.

The United States has not argued that *stare decisis* applies to a question of pure fact. (*See* Mot. at 61; *cf.* Opp. at 104.) Rather, the doctrine applies to a *legal* conclusion of law applied to factual evidence -- to wit, that the evidence offered by plaintiffs for their allegation that the ATF agents shot first at the Davidians on February 28, 1993, is insufficient to sustain their claim that ATF shot first at the Branch Davidians.

In other cases, the Fifth Circuit has applied *stare decisis* to bar a party from relitigating a proposed inference from certain evidence. Such a doctrine makes sense from the perspective of preserving judicial resources and ensuring fundamental fairness. Without such a rule, any requested inference that has been considered and rejected by a court as insufficient could be re-litigated again and again by other parties. Once a court, especially an appellate court, has made a legal ruling concerning the sufficiency of particular evidence, *stare decisis* requires lower courts in later cases to follow that ruling. *See Robbins*, 952 F.2d 901 (Fifth Circuit applies *stare decisis* to affirm summary judgment as to the legal determination regarding the status of a deed); *Peregoy*, 929 F.2d 196 (Fifth Circuit applies *stare decisis* to application of law to specific facts identical to those at issue in a prior case).

In *Branch*, the Fifth Circuit concluded that the evidence relied on by the defendants was insufficient to support the Davidians' assertion that the ATF agents shot first at the Branch Davidian compound on February 28, 1993. *See Branch*, 91 F.3d at 716. Because plaintiffs here seek to offer essentially the same evidence, or seek to offer other evidence that plainly is not

probative. this Court should rule, through *stare decisis*, that plaintiffs lack sufficient evidence with which to avoid summary judgment.

3. The Standards of Proof Are Identical.

Plaintiffs attempt to escape the force of *stare decisis* by arguing that the standard for granting a jury instruction for a criminal defendant is higher than the standard for avoiding summary judgment in a civil action. (Opp. at 106.) Plaintiffs are incorrect -- the standards are identical.

The standard applied by the Fifth Circuit in *Branch* in considering whether the jury instruction was warranted was that the party must bring forth "'evidence sufficient for a reasonable jury to find in the defendant's favor.'" *Branch*, 91 F.3d at 712 (quoting *Mathews v. United States*, 485 U.S. 58, 63 (1988)) (emphasis added). The Fifth Circuit then cited its own precedent that "the evidence [must] be sufficient to raise a factual question for a reasonable jury." *Id.* (emphasis added).

A party opposing summary judgment can avoid summary judgment only by showing that there is a genuine issue of material fact. Rule 56(c), FED. R. CIV. P. According to the Supreme Court, this means that summary judgment is improper when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis added). The Supreme Court stressed that plaintiffs must bring forth "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Id.* at 249. Consequently, there is no wriggle room for the plaintiffs; the standards are identical.

Plaintiffs attempt nonetheless to crawl out of their inextricable dilemma by mistakenly arguing that the standard for granting a jury instruction permits "weighing" of the evidence, while

the summary judgment standard does not. In neither situation is the judge entitled to usurp the jury's role of weighing the probative evidence on one side against that probative evidence offered by the other side: if a reasonable jury could enter a verdict for either party, the judge may not interfere. *Compare Branch*, 91 F.3d at 712 (noting that judge may not take over the role of the jury) with *Anderson*, 477 U.S. at 255 (noting that judge may not take over the role of the jury).

Nonetheless, under both situations, the judge is entitled to disregard evidence that is a mere "scintilla" or that is not probative -- evidence that would not permit a reasonable jury to decide in the party's favor. *Compare Branch*, 91 F.3d at 712 (noting insufficiency of "scintilla" evidence under jury instruction standard) with *Anderson*, 477 U.S. at 252 (noting insufficiency of "scintilla" evidence under summary judgment standard). There is a tremendous difference between, on one hand, the level of evidence amounting to a "scintilla," which is a generous assessment of the Branch Davidians' evidence offered in *Branch* and here, and, on the other hand, that constituting sufficient evidence to permit a reasonable jury to decide in a party's favor, which the Branch Davidians did not offer either in *Branch* or here. The Fifth Circuit in *Branch* did not weigh the evidence, as plaintiffs contend. Rather, the Fifth Circuit determined that the evidence proffered by the Branch Davidians was simply not probative, and held that:

> [w]hen the contended for inference becomes an absurdity in light of all the fact adduced at trial, we invade no province of the jury in refusing to pretend it has probative value.

Branch, 91 F.3d at 714 (citation omitted). The same principle holds true in this civil action.

4. *Stare Decisis* Appropriately Applies From a Criminal Case to a Civil Case.

Finally, plaintiffs' contention that an appellate decision in a criminal case should not have *stare decisis* in a civil case (Opp. at 107) is wrong. The one case cited by plaintiffs for this

proposition -- a 1927 Virginia decision[34] -- did not discuss at all the potential effect of *stare decisis* from a criminal decision to a later civil case. Moreover, plaintiffs' argument that judgments in criminal cases should have less *stare decisis* effect than civil cases because criminal defendants may decline to offer evidence is plainly not relevant in the present situation; in *Branch*, the Davidians did offer the testimony of Jaime Castillo, whose story the Fifth Circuit rejected as incredible, and which essentially is repeated in this civil action by the affidavit of Brad Branch, and did offer the testimony of Jack Zimmerman, which the Fifth Circuit also rejected as not probative. Meanwhile, plaintiffs' argument that "preclusive effect is reduced" when the parties differ between the first and second suit (Opp. at 108) is incorrect as applied to the doctrine of *stare decisis*. Unlike *res judicata*, the doctrine of *stare decisis* binds all litigants who repeat contentions of law that have previously been rejected in an earlier suit. *See Robbins*, 952 F.2d 901; MOORE'S, *supra*, ¶ 0.401 at I-2.

Plaintiffs' argument also misses the mark with the contention that the United States' *stare decisis* argument is "too broad." (Opp. at 109-10.) Contrary to plaintiffs' intimation, the United States does not raise *stare decisis* in support of its arguments for summary judgment as to the claims surrounding the fire of April 19, 1993, the tactics used by the FBI during the stand-off, or any claim other than those alleging that ATF agents shot first at Branch Davidians on February 28, 1993. This is the only factual predicate on which the Fifth Circuit reached a legal conclusion in *Branch* that is applicable to the current civil action. The United States does not urge *stare decisis* as a shovel to discard a wide swath of plaintiffs' claims, but as a scalpel to remove only the claims and arguments of plaintiffs that have already been decided as a matter of law applied

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[34] *Eagle Star and British Dominions Ins. Co. v. Heller*, 149 Va. 82, 140 S.E. 314 (1927). The *Heller* court applied a criminal conviction to preclude a party from recovering insurance proceeds; *stare decisis* was not addressed.

to factual evidence by the Fifth Circuit in *Branch*.

B. PLAINTIFFS CANNOT ESTABLISH A GENUINE ISSUE OF MATERIAL FACT BY POSTULATING FANCIFUL THEORIES.

Instead of setting forth actual, direct evidence to support their allegations, plaintiffs have postulated fanciful theories about what might have happened. They then seek to use Rule 56(f) to obtain discovery allegedly needed to prove or debunk their baseless theories. However, "[t]he intent of Rule 56(f) of the Federal Rules of Civil Procedure is not to open the discovery net to a fishing expedition." *Paul Kadair, Inc. v. Sony Corp.*, 694 F.2d 1017, 1029 (5th Cir. 1983). It is well-settled in the Fifth Circuit that

> a plaintiff's entitlement to discovery prior to ruling on a motion for summary judgment is not unlimited, and may be cut off when the record shows that the requested discovery is not likely to produce the facts needed by plaintiff to withstand a Rule 56(e) motion for summary judgment.
>
> * * * *
>
> It is clear that a plaintiff cannot defeat a motion for summary judgment by merely restating the conclusory allegations contained in his complaint, and amplifying them only with speculation about what discovery might uncover.

Id. at 1029-30. *See also Wichita Falls Office Associates v. Banc One Corp.*, 978 F.2d 915, 919 (5th Cir. 1992) (To obtain a continuance for discovery, the nonmoving party must, *inter alia*, "demonstrat[e] to the trial court specifically how the requested discovery pertains to the pending motion."), *cert. denied*, 508 U.S. 910 (1993); *International Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257, 1267 (5th Cir. 1991) ("The nonmoving party must show how the additional discovery will defeat the summary judgment motion."), *cert. denied*, 502 U.S. 1059 (1992); and *Fisher v. Metropolitan Life Ins. Co.*, 895 F.2d 1073, 1078 (5th Cir. 1990) ("it is the established law of this circuit that a plaintiff's entitlement to discovery may be cut off when, within the trial court's discretion, the record indicates that further discovery will not likely produce facts necessary to defeat the motion.")

In *Paul Kadair, supra*, the Fifth Circuit confirmed that:

> Something more than a fanciful allegation is required to justify denying a motion for summary judgment when the moving party has met its burden of demonstrating the absence of any genuine issue of material fact. A "bare assertion" that the evidence supporting the plaintiff's allegation is in the hands of the defendant is insufficient to justify a denial of a motion for summary judgment under Rule 56(f).

Paul Kadair, 694 F.2d at 1030 (citing *Contemporary Mission, Inc. v. United States Postal Service*, 648 F.2d 97, 107 (2d Cir. 1981)).[35] This is precisely what plaintiffs have done here.

For example, plaintiffs allege -- contrary to the direct testimony of the pilots and other witnesses -- that shots were fired from the helicopters. (Opp. at 44.) They strive to bolster this claim by arguing that one of the Branch Davidians who died in the gun battle on February 28, 1993, Winston Blake, may have been killed by a shot through the ceiling and not at close range as suggested by the coroner's report. (Opp. at 46-47.) They allege that Michael Schroeder may have been shot at close range rather than from a distance. (Opp. at 57.) They also argue that the non-standard munitions allegedly found in the remains of the compound must have been manufactured for the United States and fired by the military, notwithstanding the Davidians' practice of modifying weapons in their compound. (Opp. at 58-61; *cf. Branch*, 91 F.3d at 736-7.)

Plaintiffs have no evidence for any of these allegations -- not even the speculation of their own experts. Instead, they have secured the statements of experts who testify that they cannot

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[35] As noted in the United States' motion (Mot. at 56-57), the rules of civil procedure do not permit plaintiffs to include in their complaint factual allegations that lack evidentiary support. Under Rule 11, FED. R. CIV. P., a hope that discovery will turn up some evidence to support alleged facts is not enough to justify making the allegations. "To state as a fact what is at best a guess and a hope . . . is a violation of the rule." 5A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 1335, at 66-67 (1990); *see, e.g., Johnson v. A.W. Chesterston Co.*, 18 F.3d 1362, 1366 (7th Cir. 1994) (a party cannot make factual allegations based on a gamble that litigation will uncover facts to support allegations).

test plaintiffs' theories without more information. In essence, plaintiffs have created fanciful theories and then claim to be prejudiced because they have not had an opportunity to test the theories. This type of procedural bootstrapping was rejected by the Fifth Circuit in *Paul Kadair*.

The plaintiff in *Paul Kadair* alleged that over forty manufacturers' representatives, distributers, and retailers of stereo equipment conspired to boycott plaintiff's business. In response to the defendants' motion for summary judgment, the plaintiff sought discovery under Rule 56(f). The plaintiff's' Rule 56(f) motion claimed, *inter alia*, "the need for discovery since knowledge and facts underlying the conspiracy claim were largely in the hands of defendants, [plaintiff] had been unable to obtain information by means of personal interviews, and it had no means of refuting [defendants'] affidavits filed pursuant to Rule 56(e)." *Paul Kadair*, 694 F.2d at 1021. The district court entered summary judgment in favor of the defendants, and denied the plaintiff's Rule 56(f) motion. The court concluded, *inter alia*, that

> a continuance pursuant to Rule 56(f) in order to allow discovery would be nothing more than an abuse of the purpose of the rule. Since the plaintiff has failed to set forth specific requests for discovery, despite an order to do so, **the Court will not sanction a proverbial fishing expedition designed to grasp at whatever may be uncovered by such unfettered discovery practices.**

Paul Kadair, 694 F.2d at 1024 (emphasis added).

On appeal, the Fifth Circuit upheld the court's decision to deny the plaintiff's Rule 56(f) motion, notwithstanding that "summary judgment procedures 'should be used sparingly in complex antitrust litigation where motive and intent play leading roles.'" *Id* at 1027 (internal citation omitted). The Court affirmed that

> summary judgment may be granted where a plaintiff can aver no significant probative facts in support of its conclusory allegations of conspiracy against defendants' specific averments to the contrary.

Id. Plaintiffs here have no facts on which to base their allegations. Rather, they seek unfettered

discovery in the hope that they will uncover something.

Plaintiffs' tacit argument, that they are permitted to make an end run around the requirements of Rule 56(f) by fabricating theories based on conjecture, is wrong. Their approach effectively eviscerates Rule 56, since any party would be able to circumvent the requirements of Rule 56(f) by simply making up new theories out of whole cloth. That these plaintiffs have no direct evidence for their claims beyond speculation confirms that their Rule 56(f) motion should be denied.

C. BALD CHALLENGES TO CREDIBILITY ARE INSUFFICIENT TO DEFEAT SUMMARY JUDGMENT.

In opposing the United States' motions for summary judgment, the plaintiffs show that they have no direct evidence with which to oppose the sworn testimony in *United States v. Branch* that the Branch Davidians ambushed the ATF agents at the Branch Davidian compound, and that ATF agents shot Michael Schroeder in self-defense on February 28, 1993. *See* Mot. at 58-61 and 65. The only evidence that plaintiffs have, indeed, the only evidence that they argue they might acquire during discovery (*see* discussion at section III, *infra*), is extremely attenuated circumstantial evidence -- such as how shots sounded to plaintiffs who were not present by the front door of the compound when the shooting began. Tacitly acknowledging that such evidence is insufficient to establish a genuine issue of material fact, plaintiffs fall back on challenging the *credibility* of the United States' direct evidence, including the sworn testimony of ATF agents Ballesteros and Brigance. (Opp. at 39-41 and 55-56.)

A party cannot avoid summary judgment with a bald assertion that they hope to attack a witness's credibility. When confronted with an uncontradicted affidavit, "neither a desire to cross-examine an affiant nor an unspecified hope of undermining his or her credibility suffices to

avert summary judgment." *National Union Fire Ins. Co. v. Argonaut Ins. Co.*, 701 F.2d 95, 97 (9th Cir. 1983); *see also Moreau v. Local Union No. 247*, 851 F.2d 516, 519 (1st Cir. 1988) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 243, 247 (1986) ("the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment")).[36] Rather, "the general rule is that specific facts must be produced in order to put credibility in issue so as to preclude summary judgment. Unsupported allegations that credibility is in issue will not suffice " 10A WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE, § 2726 at 119 (1983); *see also Sterling National Bank & Trust Co. of New York v. Federated Dep't Stores, Inc.*, 612 F. Supp. 144, 146 (S.D.N.Y. 1985) (summary judgment can be avoided only when non-movant presents "specific bases for possible impeachment") (cited by plaintiffs cite at Opp. at 38 n.108). The approach advanced by the plaintiffs -- that summary judgment may be avoided simply because they desire an opportunity to attempt to impeach the witnesses without any competing evidence -- has not been followed by the federal courts in recent decades.[37]

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[36] The landmark Supreme Court summary judgment decisions of 1986 clarified that, contrary to the plaintiffs' contentions, summary judgment is not a procedural shortcut, but an integral part of the Federal Rules. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

[37] The older cases cited by plaintiffs appear to follow the approach of the late Judge Frank of Second Circuit, who opposed the grant of summary judgment on the basis of affidavits alone. *See* 10A WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE § 2726, at 118; *Susman v. South Texas Package Stores Ass'n*, 33 F.R.D. 340, 344 (S.D. Tex. 1963) (relying on Judge Frank's views); *Shahid v. Gulf Power Co.*, 291 F.2d 422, 424 (5th Cir. 1961) (quoting Judge Frank), *cert. denied*, 370 U.S. 923, 82 S. Ct. 1563 (1962). Plaintiffs' argument that, "where the facts are peculiarly in the knowledge of the defendants or their witnesses, the plaintiffs should have the opportunity to impeach them at trial and their demeanor may be the most effective impeachment" (Opp. at 37) is misleading and inaccurate. Plaintiffs' argument paraphrases an opinion of Judge Frank, quoted in *Shahid*. *See* 291 F.2d at 424 (*quoting Subin v. Goldsmith*, 224 F.2d 753, 758 (2d Cir. 1955)).

Judge Frank's approach has been discredited, however, because its effect would be to "cripple the summary judgment procedure." 10A WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE § 2726, at 118. Under Judge Frank's approach, any party could preclude

It is true that the 1963 committee notes to Rule 56(e) state that: "Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate." However, this principle should not be interpreted so as to eviscerate the "salutary device of summary judgment." Fed. R. Civ. P. 56(e) committee notes. For example, when determination of the facts necessarily depends on a balancing of the credibility of *two conflicting* eyewitnesses, summary judgment properly is denied. Thus, in *Richardson v. Oldham*, 12 F.3d 1373, 1379 (5th Cir. 1994), cited by plaintiffs, the court ruled that summary judgment was inappropriate because there was a conflict between two sources of direct evidence; the court properly did not make a credibility choice between the two on summary judgment. Likewise, *Susman v. South Texas Package Stores Ass'n*, 33 F.R.D. 340, 345 (S.D. Tex. 1963) (*see* Opp. at 37-38), stands only for the proposition that in an antitrust conspiracy action -- in which the difference between reasonable business conduct and illegal conduct may be merely the intent of the defendant -- the trial court should be hesitant to grant summary judgment before permitting depositions.[38]

Here, by contrast, plaintiffs raise their "credibility" assertion not for issues of psychological intent, but for questions of whether overt, violent actions actually occurred, *i.e.*, whether the Branch Davidians shot an ATF agent as he approached the compound on February 28, 1993, whether Michael Schroeder shot at ATF agents later the same day, and whether the

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summary judgment simply by stating that it wished to challenge at trial the credibility of the witness for the movant. This plainly is not the purpose of Rule 56, which specifically provides for summary judgment by affidavit. *See* Rule 56(e), FED. R. EVID.

[38] Plaintiffs seek to extend *Susman* to stand for the proposition that a plaintiff can always defeat summary judgment simply by alleging a "conspiracy." It is sufficient for current purposes to note that if the ATF agents did not commit the alleged unconstitutional acts, they cannot be held accountable in tort for "conspiracy" to do something they did not do.

Branch Davidians started the fire that consumed the compound on April 19, 1993. No inquiry into the mind is necessary in order to conclude that these events actually did occur, based on the uncontradicted testimony of ATF agents Roland Ballesteros and Jimmy Brigance, as well as the testimony of the members of the media present on February 28, *see Branch*, 91 F.3d at 717, and the recorded words of the Davidians who spread the fuel and ignited the blaze.[39]

Simply alleging that the witness has a self-interest -- as plaintiffs here allege concerning the testimony of agents Ballesteros and Brigance -- is not sufficient to preclude summary judgment. The court in *Sterling*, in which the nonmoving party opposed summary judgment on the ground that the crucial witness's testimony was "tainted by continuing self-interest," 612 F. Supp. at 146, held that there must be "more than mere allegations in a memorandum of law to place credibility in issue and preclude summary judgment; specific facts must be produced." *Id.* Thus, because the non-moving party did not present any grounds on which to impeach the witness other than a bald allegation of "self-interest," the *Sterling* court granted summary

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[39] The claims for which the plaintiffs do raise questions of bad intent or malice -- allegations that the ATF's decision to search the Mt. Carmel Center was motivated by dislike of the Branch Davidians and that the FBI's decisions concerning how to end the stand-off were tainted by bad intentions -- are barred by 28 U.S.C. § 2680(a) because they challenge discretionary functions of government. Because the discretionary function exception prohibits scrutiny even as to an alleged "abuse of discretion," claims of malice or animus do not save a claim from dismissal. As held by the Supreme Court in *Gaubert*, the

> focus of the [discretionary function] inquiry is not on the agent's subjective intent in exercising the discretion conferred by statute or regulation, but on the nature of the actions taken and on whether they are susceptible to policy analysis.

499 U.S. at 325. It is settled law that the subjective intent of the implicated federal employee is irrelevant. *See, e.g., Myslakowski v. United States*, 806 F.2d 94, 97-98 (6th Cir. 1986), *cert. denied*, 480 U.S. 948 (1987); *Allen v. United States*, 816 F.2d 1417, 1241 n.5 (10th Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988); *Golden Pacific Bancorp v. Clarke*, 837 F.2d 509, 512 (D.C. Cir.) ("even a *gross abuse of discretion* will not predicate an award of tort damages" under the FTCA), *cert. denied*, 488 U.S. 890 (1988).

judgment. *Id.*

Plaintiffs have offered no specific grounds for their challenge to the credibility of witnesses whose testimony was found admitted in *United States v. Branch*, other than "self-interest." Their complete lack of evidence to support their conclusory allegations compels the entry of summary judgment in favor of the United States.

D. THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT REGARDING THE SHOOT-OUT.

Plaintiffs have not shown that a genuine issue exists as to any material fact in connection with the shoot-out on February 28, 1993.[40] The affidavits and declarations of plaintiffs Riddle, Thibodeau, and Doyle,[41] establish that none of these individuals were present with Koresh when he slammed the front door of the compound in the face of the agent who was running towards the compound. (*See* Mot. at 60.)[42] Their speculative arguments regarding subsequent events, such as ATF radio van conversations and the source of bullet holes in the roof are irrelevant to the issue before the Court: whether plaintiffs have any evidence with which to counter the Fifth Circuit's conclusion that no reasonable fact-finder could decide, based on the evidence, that ATF agents shot first at the Branch Davidians on February 28, 1993. *Branch*, 91 F.3d at 716. The plaintiffs do not deny that the Branch Davidians fired on the federal agents. (*See, e.g.*, Opp. at 40.) Since the use of force by agents would have been privileged under Texas law if their arrival

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[40] Plaintiffs' evidence on this point is summarized in the Opposition at page 41-44.

[41] In view of the number of illegal weapons found in the compound after the fire, *see United States v. Branch*, W.D. Tex. Crim. No. W-93-CR-046, slip op. June 21, 1994, at p. 6. (Mot. App. TabL), the statements by Doyle and Thibodeau that they never saw illegal weapons are meaningless and irrelevant. Perhaps these witnesses do not know the difference between legal and illegal weapons, or they were sheltered from the activities of some of their fellow members.

[42] Clive Doyle was in his room (Opp. App. 9), David Thibodeau was in the kitchen (Opp. App. 12), and Rita Riddle was in her room (Opp. App. 8).

at the compound was met with a barrage of gunfire from the Davidians within (*see* Mot. at 73-74), testimony about these later shots is irrelevant.

Like the statements submitted by plaintiffs Doyle, Thibodeau, and Riddle, the testimony of plaintiff Kathryn Schroeder at the criminal trial (Opp. App. Ex. 11), is not probative on this point. By her own account, she was in her room when the shooting began, spent most of the time on the floor, and could not tell whether the first shots came from within or outside the compound. Opp. App. 11, p. 4463-64. *Branch* 91 F.3d at 715-16.

Similarly, the statements of attorneys Zimmerman and DeGuerin regarding bullet holes in the right front door of the compound (Opp. App. 13 and 14) do not establish the existence of a genuine issue of material fact. Indeed, Mr. Zimmerman's lay testimony[43] has been expressly rejected by the Fifth Circuit. *Branch*, 91 F.3d at 716. Zimmerman visited the compound on April 1, 1993, more than a month after the shooting. *Id.* He "testified that he observed bullet holes in the front door and walls of the compound. In his opinion, the holes had been caused by shots coming from outside the compound." *Id.* Zimmerman's assessment was appropriately disregarded by the Fifth Circuit as not probative as to who shot first on February 28, 1993. The Fifth Circuit observed that "Zimmerman acknowledged that he could not tell who fired first. At most, his testimony indicates that gunfire was exchanged." *Id.* The condition of the doors after a shoot-out which lasted over one-hour[44] is not probative on the material issue of whether the ATF or Branch Davidians fired the first shots. In any event, the statements of Zimmerman and

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[43] Plaintiffs presume that Mr. Zimmerman's prior military service qualifies him as an expert on the subject of bullet holes. However, they have utterly failed to show that he has any training or expertise in this area. Because this testimony was not found by the Fifth Circuit to be insufficient to overcome the testimony of eyewitnesses to the ambush, Mr. Zimmerman's qualifications to give expert testimony need not be examined at this juncture.

[44] *See* Affidavit of Clive Doyle (Opp. App. 9) second page.

DeGuerin about what they allegedly were told by those inside the compound after the shoot-out are rank hearsay and are not admissible. *See* Rule 802, FED. R. EVID.

The 911 call allegedly placed by Branch Davidian Wayne Martin also lacks probative value; the document does not show any more than what the caller said to an operator during the shoot-out. Although arguably not hearsay,[45] the transcripts do not show whether Martin had any personal knowledge about how the shooting started. Accordingly, these tapes are insufficient to overcome entry of summary judgment in favor of the United States.

The declaration of Brad Branch (Opp. App. 7) also is insufficient to create a genuine issue of material fact because the Fifth Circuit considered and expressly rejected the scenario presented by Branch, who was tried and convicted of criminal offenses in *Branch*. This declaration is the only proposed direct evidence presented by plaintiffs to support their version as to which side initiated the shooting. Branch's declaration claims that when the ATF agents approached the front door of the compound, David Koresh "shut the front door. At that instant, bullets, fired from outside the building, began to penetrate the front door and walls of the foyer." (Opp. App. 7, at 2.)

The version of events outlined by the Branch declaration is essentially the same as that posited in a statement made by Jaime Castillo which was offered as evidence by the criminal defendants in *Branch*:

> In that statement, Castillo described the scene at the front door of the compound on February 28 as the ATF agents unloaded from the cattle trailers and approached the residence. According to Castillo, Koresh held the front door ajar and said, "Wait a minute, there's women and children in here." Castillo claimed that gunfire immediately erupted through the door from the outside, injuring Koresh.

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[45] *See* Rule 803(1), FED. R. EVID.

Branch, 91 F.3d at 717.

The scenario described by Castillo's statement was rejected as incredible by the Fifth Circuit in *Branch*. The legal sufficiency of the Branch declaration should be treated in the same manner. As the Fifth Circuit observed, such an implausible scenario:

> . . . stands alone against the uniform and overwhelming testimony of numerous agents and members of the media and, significantly, against the undisputed physical facts. That every ATF agent and member of the media who testified under oath at trial disputed this version of the facts, which Castillo related in an unsworn post-arrest statement, is perhaps powerful enough, but we do not rest there.
>
> Castillo's unsworn observation cannot be squared with undisputed facts. The ATF agents testified that as they approached the residence, they heard gunfire coming from the front of the compound. Agent Ballesteros was one of the first agents out of the cattle trailer that stopped in front of the compound. The agents who followed Ballesteros out of the trailer came under large caliber and automatic gunfire. As Ballesteros ran to his assigned position at the front door, he saw Koresh standing in the foyer holding one of the double front doors open. According to Castillo's post-arrest statement, Koresh announced that there were women and children in the compound; after that announcement, gunfire came through the door and, he "believed," Koresh was hit. At that time, Ballesteros was either at or near the front door. Ballesteros was carrying a shotgun loaded with 00-buckshot at the ready position. If fired, the shotgun blast would have been conspicuous. Its telling signature was absent as demonstrated by photographs of the gunbattle at the front of the compound. Rather, Ballesteros, who was hit after Koresh closed the door, took cover in the dog pen next to the front door, where he remained, pinned down, for the duration of the gunbattle. In other words, to accept Castillo's unsworn recollection of events, a reasonable juror would have had to believe either that Ballesteros shot at Koresh at the front door or that some other ATF agent fired through Ballesteros to the front door. Neither version works.

Branch, 91 F.3d at 717 (footnote omitted).

During the *Branch* trial, this Court heard extensive evidence from eyewitnesses to the events at the compound on February 28, 1993. The Fifth Circuit conducted a detailed review of the evidence presented, and concluded that the narrative proffered by Castillo, which is the same as that posited by Branch, "when viewed in light of the testimony and evidence in this

six-week-long trial, does not support the contested-for inference" that ATF agents shot first and the Branch Davidians returned fire only in self-defense. *Branch*, 91 F.3d at 717.

Also contrary to the conclusion reached by the Fifth Circuit in *Branch*, 91 F.3d at 719, plaintiffs seek to establish that ATF agents fired shots at them from helicopters. They lack any direct evidence on this point, however. The three helicopter pilots testified consistently and unequivocally at the *Branch* trial that no shots were fired from the helicopters, which were forced by Davidian gunfire to land before reaching the compound. The National Guard pilot of the Blackhawk helicopter testified that he never hovered over the compound. Instead he broke away from his approach when his aircraft took fire 350 to 400 meters away from the compound. *Branch* tr. at 3163-3166 (January 26, 1994). He also testified that no guns were fired by or from the helicopter he piloted on February 28, 1993. *Id.* at 3165. The pilots of the two smaller helicopters gave similar testimony. *See Branch* tr. at 3226-27 (January 27, 1994) (no shots fired were from the OH-58 helicopter piloted, no one on board was armed, and the helicopter cut off its approach when it took fire when within 400 meters of the compound); and *Branch* tr. at 3274-75 (January 27, 1994) (second OH-58 helicopter piloted was not armed and the doors were shut; helicopter received gunfire as it was approaching the compound and "turned to get away from that area.").

This direct testimony is not refuted by the speculative affidavits of the plaintiffs who allege shots were fired from the helicopters (Opp. at 48), since those plaintiffs did not actually witness shots being fired from the helicopters. Their testimony is based on observations made inside the compound, and not based on observation of the helicopters themselves. For example, although plaintiff David Thibodeau makes a conclusory statement (Opp. App. 12, 2d page) that "the agents shot . . . from helicopters," it is clear from the details he provides that he did not

actually see any shots being fired from the helicopters. Thibodeau alleges that he was in the kitchen area when Koresh was talking with Robert Rodriguez and when the ATF agents arrived at the compound. He "heard gunfire coming from the front of Mt. Carmel . . . from the area of the front door. [He] laid down on the dining room floor." *Id.* Thereafter, he heard helicopters and crawled along the floor to the weight room before hiding in the underground school bus. *Id.* On its face, Thibodeau's account indicates that he heard the shots at the front door before he heard the helicopters, and that he himself did not see any shots being fired. Similarly, plaintiff Clive Doyle testified that other Davidians told him "about shots fired from the helicopter." (*See* Opp. App. 9.) This is rank hearsay. Because this testimony is not admissible, it may not be relied upon to defeat a properly supported motion for summary judgment. *Celotex, supra*, 477 U.S. at 324. Plaintiff Rita Riddle also heard shots at the front of the compound before hearing the helicopters. Opp. App. 8. Rita Riddle also did not see anyone firing from the helicopters; her testimony about the origin of a bullet that she claims came through the ceiling of her room is mere speculation, and insufficient to overcome the direct testimony of the helicopter pilots.

Plaintiffs describe the FLIR videotape taken by one of the National Guard helicopter pilots on February 28, 1993, as "a previously unknown FLIR video of the February 28 assault." (Opp. at 51.) Plaintiffs' allegations about this tape are wrong in almost every respect. Far from being "previously unknown," the tape was made available to the defendants in *Branch* and was discussed during the trial. *See Branch* tr. at 3240-42 and 3268-69 (January 27, 1994).[46]

Typifying the inadmissible and unreliable statements plaintiffs use to support their claim

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[46] Plaintiffs' discussion of the pleadings in the Freedom of Information Act (FOIA) action brought by their associate David Hardy to obtain materials for use in this action reflects both a lack of understanding about FOIA and a deliberate misreading of the pleadings filed by ATF in the Hardy action. However, plaintiffs' collateral *Hardy* litigation is not before this Court.

is the affidavit of Samantha Pearl Lake. (Opp. App. 77.) Even plaintiffs recognize that the germane contents of this affidavit are rank hearsay. They admit that they have been "unable to confirm her testimony," but "she appears sincere and competent" to them (Opp. at 49), and urge this Court to consider her testimony as a basis for requiring discovery on this issue. This "testimony" is not admissible and is utterly insufficient to warrant further discovery, plaintiffs' counsels' opinion as to the reliability notwithstanding, because Rule 56 requires that plaintiffs show by specific, non-conclusory affidavits or other *admissible* evidence that there is a genuine issue of material fact. *Celotex, supra*, 477 U.S. at 324.[47] Plaintiffs have submitted patently unreliable and inadmissible evidence to support their claim for discovery. Fortunately, the law does not allow for such an absurd procedure. *See* Rule 56(g), FED. R. CIV. P.

Even assuming shots were fired from the helicopters during the shoot-out -- which is denied -- plaintiffs have failed to show that such shots were fired prior to the ambush of the ATF agents by the Davidians. First, plaintiffs have submitted sworn testimony that shots were fired at the front of the compound before the helicopters approached the compound. (*See* Opp. App. 12, 2d page (statement of plaintiff David Thibodeau); Opp. App. 8 at 1 (statement of Rita Riddle).) Thus, plaintiffs' own evidence belies their contention that "even if the Davidians fired first at Mt. Carmel's front door, the Davidians may have been firing in justified self-defense because of gunfire from helicopters." (Opp. at 44.)

Second, this "self-defense" argument is unsupported and illogical. As the Fifth Circuit held:

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[47] Preliminary inquires have not located any records of a Sgt. Jesse L. Graham born on or near April of 1945, having served in either the Navy, the Marines, the FBI, or the Secret Service.

> Even if, for example, the National Guard helicopters did fire, the contended-for inference that the four defendants acted in self-defense by letting loose a volley of fire upon the ATF agents on the other side of the compound is untenable.

Branch, 91 F.3d at 719. Not surprisingly, plaintiffs have pointed to no Texas law that would support such an outlandish result.[48]

E. THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT REGARDING THE SHOOT-OUT WITH MICHAEL SCHROEDER.

The plaintiffs also have failed to establish through admissible evidence that a genuine issue of material fact exists with regard to the death of Michael Schroeder. The United States cited evidence based on personal knowledge concerning the death of Michael Schroeder. Contrary to plaintiffs' factual allegation, ATF Agent Jimmy Brigance has testified that he personally saw Schroeder open fire on the agents, after Schroeder was spotted by Brigance and after ATF agents identified themselves. (*See* Mot. at 65, citing *Branch* tr. at 3696-3700 (testimony of Jimmy Brigance, January 28, 1995).)

The United States is entitled to summary judgment on this point because plaintiffs can point to no evidence to contradict the direct evidence of Agent Brigance, which was based on his personal knowledge. The statements cited by plaintiffs (Opp. at 55-58) are insufficient to meet their burden under Rule 56. First, ATF Agent Marvin Richardson's statement, cited by plaintiffs, does not contradict Agent Brigance's testimony that Schroeder shot first. Agent Richardson's statement says that after an agent alerted others that he had spotted a man with a blue hat "down off in the ravine," the agents hit the dirt, after which time Agent Richardson says "we started drawing fire from down off in the ravine." (*See* Richardson Statement, Opp. App. 23, at 6.) The

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[48] Of course, the use of force by ATF agents was privileged under Texas law because of the deadly force used by the Branch Davidians against the agents on the ground. *See* TEXAS PENAL CODE ANN. § 9.51 (West 1997) and discussion in the United States' Motion at 73.

fact that Agent Richardson thought the shot sounded like a rifle and not a 9 mm gun does nothing to contradict the testimony of the statements of ATF agents, including Richardson, who agreed with Agent Brigance that the person "down off in the ravine" -- Michael Schroeder -- shot at ATF agents first.

Second, the affidavit of plaintiff Norman Allison (Opp. App. 25) does not contradict Agent Brigance because Allison does not claim to have witnessed the first shot, only that he thought the first shot came from "ahead of us."[49] Moreover, Allison's statement that, after he saw Schroeder drop to the ground some 90 feet away, he did not *see* Schroeder holding a gun does not contradict Agent Brigance's statement, based on his personal knowledge, that he saw Schroeder shoot first. Third, the statement of Woodrow Kendrick (Opp. App. 27) does not contradict Agent Brigance's testimony because Kendrick admits that he had lost sight of Schroeder and, consequently, has no personal knowledge of who shot first. Indeed, Kendrick was so far away from the shoot-out with Schroeder that he, unlike Allison, succeeded in eluding the ATF agents who captured Allison.

Fourth, the statement of Kathryn Schroeder (Opp. App. 29), to the effect that she doesn't believe it would be in his character to shoot anyone without provocation is symptomatic of the kind of non-probative speculation that plainly does not fulfill plaintiffs' burden under Rule 56. Fifth, plaintiffs employ a red herring in their intimation that locating Schroeder's missing blue stocking cap might show that Schroeder was shot at close range. There is no reason whatsoever to believe that Schroeder was shot at close range -- even Allison, who claims to have been 90 feet

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[49] Plaintiffs' response overreaches in stating that Allison "testified that (1) the ATF fired before Schroeder drew his weapon." (Opp. at 56.) Allison's statements did not purport to state the source of the first shot that Allison heard. Nor did Allison testify that he saw the first shot.

away, does not make any such allegation.[50] Finally, plaintiffs raise another empty argument by intimating that Michael Schroeder may not have heard ATF agents identify themselves or seen their uniforms (Opp. at 57-58). Even if this were true, and Schroeder shot first at ATF agents without knowing who they were, the ATF agents' use of force would have been privileged under Texas law. *See* TEXAS PENAL CODE ANN. § 9.51 (West 1997).

In sum, because plaintiffs can point to no evidence based on affidavits "made on personal knowledge" setting forth facts that are "admissible in evidence," *see* FED. R. CIV. P. 56(e); *Salas, supra*, 980 F.2d at 305, to contradict the personal knowledge testimony of Agent Brigance that Michael Schroeder shot at ATF first and that the agents returned fire in self defense, summary judgment should be entered in favor of the United States on plaintiffs' claims concerning the death of Michael Schroeder.

F. THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT REGARDING THE START OF THE FIRE, WHICH WAS SET INTENTIONALLY BY BRANCH DAVIDIANS INSIDE THE COMPOUND.

The plaintiffs have failed to submit any admissible evidence that the fire that destroyed the compound was caused by something other than the intentional acts of individuals inside the compound. Nor have they shown any evidence to support their claim that the use of tear gas constituted excessive force. They argue only unsupported and irrational theories. Accordingly, summary judgment should be granted in favor of the United States.

1. There Is No Genuine Issue As To The Origin Of The Fire.

Plaintiffs cannot overcome the words of the Branch Davidians who prepared for and lit

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[50] The declaration of Dr. Radelat, (Opp. App. 31) establishes only that the distance from which some shots were fired cannot be made without examination of the hat Schroeder was wearing when he was shot, which plaintiffs have averred has been destroyed or lost. (Opp. at 35.)

the fires by arguing that such conduct would have been illogical. (*See* Opp. at 58.)[51] Their attempt to refute this direct evidence with nothing but the thinnest of speculation must fail.

Even without the compelling words of the Davidians who burned the compound, plaintiffs' experts' speculation about what may have caused the fire is insufficient to avoid summary judgment on this issue. For example, plaintiffs argue (Opp. at 65) that the fire may have been started by a CEV[52] knocking over a kerosene lantern, and that the fire may have then spread to the three points of origin that were observed by the independent fire experts who examined the cause of the fire. (*See* Mot. at 69.) The only support submitted by the plaintiffs for their suggestion that the fire was started by a CEV is an opinion set forth in the Declaration of Richard Sherrow (Opp. App. 40), who admits that he cannot reach a more-likely-than-not conclusion as to the cause of the fire. Moreover, Mr. Sherrow's statement contains significant amounts of speculation and hearsay, and is inadmissible because it is unreliable. As an example of this unreliable hearsay, the plaintiffs have offered no evidence to support Mr. Sherrow's

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[51] The scenario posited -- that the Davidians "suddenly decided it was time for immolation" (Opp. at 58) -- is far from illogical as suggested by plaintiffs. Indeed, plaintiffs have admitted to having formulated a plan to be "translated," i.e. go to heaven through death or otherwise, while killing federal agents in the process. Plaintiff Kathryn Schroeder and Davidian Victorine Hollingsworth both testified about a plan formulated in early March whereby the Davidians were to shoot Koresh if he had not already died from his wounds, carry his body outside the compound, and *fire at and draw fire from* the FBI agents. Davidians who were not killed by gunfire would kill themselves using hand grenades. *Branch* tr. at 4479-82, testimony of Kathryn Schroeder (February 2, 1994) and 4117-19, testimony of Victorine Hollingsworth (February 1, 1994); *see also* 4731-32 (February 3, 1994) (Schroeder was willing to kill federal agents if necessary). To the extent logic can be applied to the actions of the Branch Davidians, a logical explanation of the timing of events on April 19 is that they spread the fuel and then waited to light the fires until federal agents were close enough to be killed by the fire. When the agents remained inside tanks and appeared close to accomplishing their goal of forcing the Branch Davidians out of the building, the Branch Davidians chose to die rather than surrender to lawful authorities.

[52] CEV stands for "combat engineering vehicle."

speculation that "breaching operations probably resulted in sprung doors, destruction of flooring and creation of attendant falling and entrapment hazards and probably prevented normal communication between adjacent areas of the structure." (Opp. App. 40 at 8.) Moreover, the FLIR videotape taken on April 19, 1993, which was reviewed by Mr. Sherrow (Opp. App. 40), contradicts his statement that the CEV contacted the concrete storage structure at the base of the tower and that "the contact . . . probably caused a structural failure and resulted in an internal avalanche of the room contents and partial failure of the concrete ceiling." (Opp. App. 40 at 8-9.) The infrared photographs submitted by plaintiffs also show that none of the CEVs came close to the concrete storage area located at the base of the four-story tower. (*See* Opp. App. 35, Exs. 6, 7, 8, 9, and 10; *see also* Mot. App. P, declaration of Richard Rogers.)

In the end, Mr. Sherrow characterizes his own conclusions as only "possible." Under the applicable industry standards as he understands them, he concedes that he has a hypothesis which "can be demonstrated to be feasible but cannot be declared probable," where "probable" is defined as "the chance of the hypothesis being true is more than 50 per cent." (Opp. App. 40 at 13-14.) Thus, Mr. Sherrow's declaration is insufficient to create a genuine issue of material fact as to the origin of the fire. Because his conclusion lacks a confidence level of even 50 per cent, it is insufficient as a matter of law. *Neimann v. Refugio County Memorial Hospital*, 855 S.W.2d 94, 96 (Tex. App. - Corpus Christi 1993) (it must be shown that malpractice **probably** caused the injury; possibility is insufficient); *Ruiz v. Whirlpool, Inc.*, 12 F.3d 510, 513 (5th Cir. 1994) ("Testimony based on conjecture or speculation is insufficient to raise an issue of fact to defeat a summary judgment motion . . . .").

Plaintiffs also argue that the fire may have been started by "munitions fired by the U.S." (Opp. at 58.) Like the testimony regarding the start of the fire, however, this theory is mere

speculation which simply ignores the recorded words of the Davidians who spread the fuel and lit the fires. Such speculation dissolves in the face of the recording made on April 19.[53]

The testimony of individuals present in the compound when the fire started does not refute the statements of the individuals who lit the fires. (*See* statements of plaintiffs Misty Ferguson, Opp. App. 49, David Thibodeau, Opp. App. 12, and Clive Doyle, Opp. App. 12.) None of these plaintiffs claims to know how the fire started. At most, they have implied that they did not start it, but they cannot say whether someone else in the compound did. Accordingly, these statements are insufficient as a matter of law, and summary judgment should be entered in favor of the United States.

Plaintiffs Ferguson, Thibodeau, and Doyle also claim that it was against their religious beliefs to commit suicide. (Opp. at 68.) This claim, like the claim of plaintiffs' religious experts (Opp. at 66 and Opp. App. 48) that "it was against the Branch Davidians' religion to commit suicide" (Opp. at 67), is remarkable in view of plaintiff Kathryn Schroeder's testimony about preparations for suicide and murder by the Davidians. *Branch* tr. at 4117-19 (February 1, 1994)

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[53] The degree to which plaintiffs' expert testimony is based on speculation is demonstrated by Mr. Sherrow's conclusion that the 40 mm ordnance found within the compound "probably was fired by the U.S." because it "could be fired only from a military weapon and civilian possession of these weapons is severely restricted." (Opp. at 59.) This statement is extraordinary in that it ignores the virtual arsenal gathered by the Davidians, including two .50 caliber anti-tank guns. *See Branch*, 91 F.3d at 730 and 744. The conclusions plaintiffs draw from the testimony of their alleged munitions expert, Rick Stauber (Opp. at 60), are equally illogical. Stauber's claim that these same munitions are "not of standard military issue," (indeed he cannot identify the munitions) and therefore "only a military organization probably would possess them" (Opp. at 61 (emphasis omitted)), does not make any sense. Stauber's characterization of the munitions, even if true, does not warrant plaintiffs' inference that the United States must have fired them. In fact, since the Branch Davidians were manufacturing their own weapons in the compound, *see Branch*, 91 F.3d at 736-37, a more logical inference would be that the Davidians had manufactured the non-standard munitions. The Court need not make a factual finding on this point, however, because the recorded voices of the Davidians are incontrovertible evidence that the fires were set intentionally from within the compound.

and 4479-82 (February 2, 1994);[54] *see also Branch* tr. 4117-19 (February 1, 1994) (testimony of Victorine Hollingworth). To the extent the intentions of the Branch Davidians who started the fire are at issue,[55] Ms. Schroder's statement is an admission that suicide, or "translation," was indeed consistent with the Davidians' religious beliefs. Clearly, *some* of the Davidians planned suicide and murder. Dr. Tabor's speculations to the contrary and the disclaimers of plaintiffs Ferguson, Thibodeau, and Doyle are insufficient to overcome the direct testimony of Schroeder and Hollingsworth. The United States is not liable for injuries caused to Davidians who were killed by their colleagues. (*See* Mot. at 40.) Thus, whether plaintiffs such as Ferguson,

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[54]
Q That would have been March the 1st?
A Right, the very next day.
Q Okay. Did there come an occasion shortly thereafter where you became aware of a plan that involved translation?
A Yes.
Q Can you tell the jury what "translation" means?
A "Translation" is going to heaven, whether it be without seeing death -- if we had all seen eye-to-eye, then we could have been translated without seeing death -- or it would have been through a battle and then ensuing death and being translated by dying.
Q Okay. What -- what did you learn concerning a translation plan sometime after your children left?
A Neil Vaega told me that there had -- there was a plan that David was making a tape, that when it was aired -- after it was aired, we were all going to come out, David on a stretcher that the FBI had sent in and fire and draw fire.
Q Okay. Fire at whom?
A The agents.
Q Okay. What was Mr. Koresh's condition to be when he was carried out on the stretcher?
A If he was not already dead, we would shoot him.
Q Okay. And what was the intention of firing and drawing fire?
A That we would all be killed.

Branch tr. at 4479-80.

[55] Even if the Branch Davidians who started the fire did so in a misguided effort to injure federal agents and/or avoid capture, their conduct nonetheless was the proximate cause of the fire.

Thibodeau, and Doyle knew that others within the compound planned their deaths is, ultimately, irrelevant.

Finally, the statement of Dr. Uhlig (Opp. App. 46) is entirely speculative, is misquoted by the plaintiffs, and in any event does not support the plaintiffs' arguments. For example, despite plaintiffs' mischaracterization that "Dr. Uhlig . . . states that the ignition source was probably a pyrotechnic stun munition fired into the back of the gym" (Opp. at 64), Dr. Uhlig actually says in his report is that it is "inconceivable to me that the Branch Davidians would commit suicide . . . I would anticipate they were preparing 'Molotov cocktails' in an effort to destroy the CEV's [sic]. . . . the ignition source may turn out to be a pyrotechnic penetration stun munition." (Opp. App. 46 at 5.) Dr. Uhlig clearly was speculating and clearly did not state the *probable* source of ignition as claimed by the plaintiffs.[56]

(a) The Tapes Made On April 19 Are Not Hearsay.

The conversations, questions, and directives heard on the surveillance tapes made on April 19, 1993, are not hearsay under Rule 801, FED. R. EVID. The conversations are not offered for the truth of the matter asserted, but to show their effect on the listeners. Plaintiffs have offered neither legal authority nor factual argument in support of their assertion to the contrary.

1. *The statements may be offered to show their effect on the listeners.*

When a statement is offered to show its effect on the listener regardless of the truth of any assertions made, it is not hearsay under Rule 801(c). *United States v. Manqueros*, 107 F.3d 18 (9th Cir. 1997); *United States v. Williams*, 993 F.2d 451 (5th Cir. 1993); *United States v. Garza*,

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[56] The court need not reach the issue of Dr. Uhlig's qualifications as a "professor of Chemistry and Engineering" (Opp. App. 46, second page) to give a psychological opinion on the likelihood that the Branch Davidians would commit suicide.

754 F.2d 1202 (5th Cir. 1985) (error to exclude defendant officers' testimony regarding what was reported to them about the arrestees; testimony was offered for its effect on the officers to explain the arrests); *United States v. Rubin*, 591 F.2d 278 (5th Cir.) (reversible error to exclude defendant's testimony regarding what he was told by union officials; testimony was offered to show the statements' effect on the defendant's state of mind, thus tending to negate criminal intent), *cert. denied*, 444 U.S. 864 (1979).

In the instant case, orders such as "You got to put the fuel in there too" (Mot. App. K, Title III Trans., Tape SA 73-3, Side A, at 2), "I want a fire around the back" (*id.*, Tape SA 73-5, Side B, at 2), and "Let's keep that fire going" (*id.* at 3), are not offered for truth, but for the fact that a command was issued. It does not matter whether the speaker personally desired a fire, but merely that the order to start a fire was given. Such speech is not assertive, but performative; it is not made for the purpose of conveying information, but for achieving a result. 4 CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, FEDERAL EVIDENCE §391 at 110 (2d ed.1994) (discussing the performative nature of directives and commands). The statements therefore are not hearsay under Rule 801.

2. *The conversations are not offered to prove the truth of the matter asserted..*

Under Rule 801(c), statements are considered hearsay only if offered to prove the truth of the matter asserted.[57] FED R. EVID. 801(c). "A statement offered for a purpose other than

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[57] The statements actually may be verbal acts or verbal parts of acts. A verbal act is a statement which has independent legal significance. Such verbal conduct properly is excluded from the hearsay definition. *United States v. Boyd*, 566 F.2d 929, 936 (5th Cir. 1978). The most common examples are testamentary statements and oral contracts which in and of themselves give rise to legal consequences. Additionally, "[non-hearsay treatment is warranted for] verbal acts in the criminal setting, where the performative aspect justifies treating them as part and parcel of criminal acts, such as extortion, conspiracy, robbery, or assault." MUELLER & KIRKPATRICK, *supra* at 110-111. In the instant case, the orders given by some Davidians to

establishing the truthfulness of the assertion is not hearsay." *United States v. Abroms*, 947 F.2d 1241, 1249 (5th Cir. 1991), *cert. denied* 505 U.S. 1204 (1992).

> Implicit in both the definition and justification for the [hearsay] rule . . . is the recognition that whenever an out-of-court statement is offered for some purpose other than to prove the truth of the matter asserted, the value of the statement does not rest upon the declarant's credibility and, therefore, is not subject to attack as hearsay.

United States v. Parry, 649 F.2d 292 (5th Cir. 1981).

For example, an unidentified male on the tapes is heard to say, "The fuel has to go all around to get started." (Mot. App. K, Title III Trans., Tape SA 73-3, Side A, at 2.) To be offered for truth within the meaning of Rule 801(c), the statement would have to be offered to show that the fuel in fact had to "go all around" in order to ignite. The hearsay problems posed by such use of the statement include the difficulty of establishing that the declarant was qualified to make judgments about the flammable properties of the fuel and of determining whether the declarant was attempting to mislead the hearer into believing that the fuel would not ignite unless further spread. If, however, the statement is used for some other purpose (e.g., to show that the declarant knew that fuel was generally flammable), the statement is not offered for truth within the meaning of Rule 801(c) and is not inadmissible hearsay.

(b) The Taped Statements Are Admissible As Exceptions To The Hearsay Rule.

Even if the statements on the tapes were hearsay, they nonetheless would be admissible both because tapes made during these events have circumstantial guarantees of trustworthiness equivalent to the various exceptions to the hearsay rule, *see* Rules 803(24) and 804(5), FED. R.

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others constitute conspiracy to commit murder.

EVID. and because they fall within specific exceptions.

1. *The statements are excepted under Rule 803 as present sense impressions.*

Plaintiffs have correctly identified the requirements of the present sense impression exception under Rule 803(1) (Opp. at 77, n. 233), but their conclusory application of the Rule is faulty. The statements on the tapes, under careful analysis, plainly meet the requirements of Rule 803(1) and therefore are admissible.

Under Rule 803(1), a statement must (1) describe or explain an event or condition and (2) be made while or immediately after the declarant perceives the event or condition. FED. R. EVID. 803 (1), *United States v. Peacock*, 654 F.2d 339 (5th Cir. 1981), *vacated on other grounds*, 686 F.2d 356 (5th Cir. 1982), *cert. denied*, 464 U.S. 965 (1983). "[T]he timeliness of the statement [is] the key to determining whether the statement meets the present-sense-impression exception to the hearsay rule." *First State Bank of Denton v. Maryland Casualty Co.*, 918 F.2d 38 (5th Cir. 1990).

Plaintiffs have first asserted that the statements on the surveillance tapes are not present sense impressions because "they do not describe or explain [the] event." (Opp. at 77.) Plaintiffs have not identified the "event" used in their analysis, but appear to treat the entire stand-off situation as an all-encompassing "event." Plaintiffs have offered no reason for such an unusual approach to their analysis. The common-sense approach to the analysis is to consider individually the many separate "events" and "conditions" which took place during the stand-off. Each statement should be evaluated individually to determine whether it qualifies as a present sense impression.[58]

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[58] Rules 803(1) and (2) replaced the common-law *res gestae* exception to the hearsay rule. This historical fact sheds light on the application of these rules. The *res gestae* exception

Plaintiffs apparently overlook that the Rule allows for statements which describe or explain a "condition." Indeed, many of the statements on the surveillance tapes are quintessential present sense impressions. For example, statements such as, "We need fuel," (Mot. App. K, Title III Trans., Tape 73-2, Side A, at 5), "I already poured it. It's already poured," (*id.* at 7), "He's got it poured already," (*id.* at 8). describe conditions. By their very terms the statements appear to be contemporaneous with the perception of the conditions -- the speakers observe the need for fuel and condition of fuel (poured), and say so. Similarly, many of the statements on the tapes are communications between Davidians about events happening and conditions observed within and without the compound. For example, the observation of a fire by the speaker is implicit in the statement "Let's keep that fire going," (Mot. App. K, Title III Trans., Tape 73-3, Side A, at 2). Such statements all fall under the rubric of the present sense impression exception and should therefore be excepted from the hearsay rule.

2 *The conversations are excepted under Rule 804 as statements against interest.*

A declarant is unavailable if deceased. FED R. EVID. 804(a)(4). Thus, David Koresh and any other identified and deceased declarants heard on the surveillance tapes are unavailable for

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allowed statements made during an event to be admitted as part of the *res gestae*, the "thing done." 2 JOHN W. STRONG, ET AL., MCCORMICK ON EVIDENCE § 268, at 206-08 (4th ed. 1992) ("Res Gestae and the Hearsay Rule"). This broad exception fell into disrepute and was replaced by more refined exceptions. *Id.* Typical statements that would have fallen under this exception were descriptions of conditions and events observed at the time of an accident. Under Plaintiffs' analysis, no statements ever would qualify for these exceptions unless the event was a sudden instantaneous one (because statements otherwise would take place over a period of time, thus lacking contemporaneity) and unless the statements described the entire event (since the event is treated as a whole under Plaintiffs' analysis). This makes little sense. In a typical accident case, a bystander's conclusory description of an accident (e.g., "the defendant caused the accident") is much less credible (and much less useful) to a finder of fact than the bystander's description of individual components of the event (e.g., "the light was red," "the road was icy," or "the man in the blue car did not signal his turn").

Rule 804 purposes. Moreover, a declarant is unavailable if the declarant is absent and the proponent is unable to procure the declarant by process or other reasonable means. FED R. EVID. 804(a)(5). Plaintiffs claim (Opp. at 76, n. 231) that a declarant is not unavailable "merely because he or she cannot be identified." Rule 804(a)(5) in fact contains no such limitation on the definition of unavailability. Plaintiffs offer no support for their argument, and similar claims have been rejected by other courts. For example, in *Minneapolis Electric Supply Castings Co. v. Ross*, 1985 WL 2875 (N.D. Ill. 1985) (copy attached in Reply App. Q-6), a purchaser of stolen goods attested in an affidavit that he purchased the goods from two unidentified persons who told him that the goods had been stolen from the plaintiff. The court held that the unidentified declarants were unavailable. "Because the identities of the declarants . . . are unknown, [the proponent] is unable to procure their testimony by process or other reasonable means." *Ross*, 1985 WL 2875 at 4.

The position taken by the court in *Ross* is strengthened in light of the parallel test in criminal cases. To avoid running afoul of the Confrontation Clause, the prosecution must show a good faith effort to procure the declarant if it seeks to use hearsay evidence against the defendant. *Ohio v. Roberts*, 448 U.S. 56 (1980). Even under this enhanced burden, the Tenth Circuit held that anonymity gives rise to unavailability, and that the burden on the prosecution is thus relieved: "'The law does not require the doing of a futile act. Thus, if no possibility of procuring the witness exists . . . "good faith" demands nothing of the prosecution.' . . . [T]he state had no reasonable means available to secure the presence of the unidentified witness at trial." *Cole v. Tansy*, 926 F.2d 955 (10th Cir. 1991) (*citing Ohio v. Roberts*, 448 U.S. at 74). Since courts have accepted the unavailability of witnesses for the stricter purpose of adhering to the Constitution, this is persuasive authority that the unidentified declarants are unavailable for the purpose of

admitting their statements under Rule 804.

In addition, statements which "so far tend[] to subject [the declarant] to civil or criminal liability . . . that a reasonable man in his position would not have made the statement unless he believed it to be true" are excepted from the hearsay rule. FED. R. EVID. 804(b)(3). As discussed above, the statements on the tape are verbal acts constituting conspiracy to commit murder. As such, they tend to subject the declarants to severe criminal liability. No reasonable person would falsely claim to conspire to commit murder or arson. The statements should therefore be excepted from the hearsay rule.

The conversations heard on the surveillance tapes are not hearsay because they are not offered for truth under Rule 801(c). Even if they were hearsay, they would fall under either the present sense impression exception in Rule 803(1) or the statement against interest exception in Rule 804(b)(3). Accordingly, they should be admitted.

2. There Is No Genuine Issue As To The Use Of Tear Gas.

Plaintiffs claim that the use of tear gas was excessive force which injured their decedents. (Opp. at 79.) The potential effect of tear gas is a red herring which does not preclude the entry of summary judgment in favor of the United States. It is beyond dispute that tear gas is a tool which has been used for decades by law enforcement officials to extricate individuals with a minimum of force. The United States does not dispute that tear gas causes irritation, discomfort, and some pain. Indeed, that is the very purpose of tear gas -- to cause such discomfort that the person breathing it will leave the building and surrender to authorities without further

resistance.[59] The Branch Davidians knew that tear gas was inserted, knew who was inserting it, and knew why it was being inserted. (*See, e.g.*, Affidavit of Clive Doyle, third page, Opp. App. 9: "I also heard an announcement by the FBI that they were assaulting us with tear gas.") The Davidians could have left the compound and surrendered to federal authorities, as contemplated by the FBI when the gas was inserted. Instead, they chose to remain inside for over six hours. (*See, e.g.*, Affidavit of David Thibodeau, third page, Opp. App. 12.) Even assuming the use of tear gas facilitated the spread of the fire started by the Davidians -- which is denied -- the Davidians would not have died had they surrendered that morning before the fire was started by those within the compound. The United States is entitled to judgment as a matter of law on this issue.[60]

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[59] Chemical agents such as tear gas have long been used by law enforcement officers to apprehend or subdue fugitives. *See, e.g., Ginter v. Stallcup*, 869 F.2d 384 (8th Cir. 1989) (government agents acted reasonably in using tear gas to force a fugitive out of a private residence); *Soto v. Dickey*, 744 F.2d 1260, 1270 (7th Cir. 1984) (use of tear gas to subdue a prisoner or prevent escape is not per se unconstitutional), *cert. denied*, 470 U.S. 1085 (1985); *Clemmons v. Greggs*, 509 F.2d 1338, 1340 (5th Cir.) (same), *cert. denied*, 423 U.S. 946 (1975); *Estate of Bryant v. Buchanan*, 883 F. Supp. 1222 (S.D. Ind. 1995) (city policy for using tear gas was constitutional); *Briggs v. State*, 746 S.W.2d 331 (Tex. Ct. App. 1988) (recognizing that tear gas is used for riot control because of the adverse physiological and psychological effects that it has); *Customer Company v. City of Sacramento*, 23 Cal. Rptr. 2d 154 (Ct. App. 1993) (police officers properly exercised their discretion in using tear gas to extricate a fugitive from a store), *aff'd*, 41 Cal. Rptr. 2d 658 (Cal. 1995), *cert. denied*, 516 U.S. 1116 (1996); *Coutee v. Am. Druggist Ins. Co.*, 453 So.2d 314 (La. Ct. App. 1984) (use of tear gas was both reasonable and necessary to apprehend a fugitive).

[60] Plaintiffs' also complain that the United States used CEVs to insert tear gas and this insertion caused the walls to collapse injuring or killing Davidians on the other side (TC Comp., ¶ 7.25). Apart from the fact that the plaintiffs have offered no evidence to support this conjecture -- in fact, the medical examiner testified that the only Davidians who died from suffocation were found in the bunker, *see Branch* tr. 5971-82 (February 10, 1994) -- the conduct of the FBI in using vehicles to insert tear gas was a privileged use of force under Texas law. Even assuming that the knocking down of walls and the insertion of gas was "force," police officers are entitled to use force reasonable necessary when affecting an arrest. TEXAS PENAL CODE ANN. § 9.51(a). The pertinent facts surrounding the FBI's decision to use gas to extricate the Davidians is incontrovertible: (1) the FBI was trying to apprehend individuals who had murdered four ATF

3. There Is No Genuine Issue As To The Use Of Explosive Devices.

Plaintiffs' allegations (Opp. at 71) that the United States detonated "an explosive breaching charge" on top of the concrete storage room in the compound, are outrageous, unsupported by the information they cite, and contradicted by the testimony of plaintiffs' fire expert, Richard Sherrow. First, Brig. Gen Partin describes damage caused by the explosion that occurred while the fire was raging, but fails to mention that the explosion occurred well into the fire. *See Branch* trial testimony of Dr. James Quintiere at 5910-11 (February 10, 1994) (the fireball "had nothing to do with the fire development, it was an event later in the fire."); Opp. App. 40 at 9 (fires first spotted at 12:07 p.m.); and *Brown I* Second Amended Complaint ¶ 124 (huge explosion occurred at "about 12:20 p.m."). Second, he concludes that "the explosion could not have been caused by propane." (Opp. App. 54 at 5). This is directly at odds with the opinion of plaintiffs' fire expert Richard Sherrow, who attributes the "spectacular boiling liquid expanding vapor explosion" to a "large 100-pound propane tank located externally to the dining room." (Opp. App. 40 at 4.) Brig. Gen. Partin also opines that the point of origin of the explosion was on the second floor of the compound. (Opp. App. 54 at 5.) Even if true, it does not follow that the alleged "breaching charge" was placed there by federal agents as opposed to

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agents; (2) these individuals were heavily armed and had barricaded themselves for 51 days; (3) negotiation efforts had repeatedly failed to convince them to surrender; (4) Koresh had broken promises to surrender despite certain preconditions having been met; and (5) attempts to make life in the compound extremely uncomfortable had not resulted in the surrender of all the inhabitants. Prior to any walls crumbling, the Davidians had ample opportunity to surrender peacefully. The FBI's conduct in slowly inserting tear gas reasonable under these difficult and dangerous circumstances. Hence, as a matter of law, because the FBI's conduct was reasonable under the circumstances, it does not give rise to an actionable claim.

the Davidians who started the fire.[61] He does not explain how the charge got there in the first place. For this link, plaintiffs submit the farcical hearsay affidavit of Samantha Pearl Lake. (Opp. App. 77.) Plaintiffs cannot rely on such rank hearsay to create a genuine issue of material fact. *See* Rule 56(g), FED. R. CIV. P.

Equally lacking in value is the testimony of *Soldier of Fortune* reporter James L. Pate (Opp. at 72 and Opp. App. 52 and 52A) whose allegations about FBI infiltration into the compound are internally illogical and inadmissible hearsay. Plaintiffs' argument (Opp. at 72, n. 225) that Pate's testimony is not hearsay ignores the multiple levels of hearsay it contains. The alleged statements of others which Pate claims "confirmed" that the person with whom he spoke was an HRT member are themselves hearsay. In any event, Pate's claims do not make sense. For example, Pate claims that:

> . . . HRT inserted four to six men into . . . the gymnasium . . . . HRT members hid among a jumble of boxes when they heard someone approaching. It was Koresh, alone and unarmed, apparently looking for something. As he rummaged through a carton, the team quietly radioed the command post that Koresh was in close proximity . . . .

How was it that agents supposedly hiding in a room "in close proximity" to Koresh (Opp. App. 52A) were able to "quietly radio the command post," *id.*, for instructions without Koresh hearing them? Plaintiffs cannot rely on outrageous, unattributed statements to avoid summary judgment.

G. THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT REGARDING THE DEATH OF THE *HOLUB* PLAINTIFFS.

Plaintiffs blatantly misconstrue the statements of personnel involved in the tear gas

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[61] Brig. Gen. Partin ignores that the Davidians were shooting at the tanks, *Branch* tr. at 5017-18, 5085 (February 7, 1994), 5588-90, 5599-5601, 5616 (February 9, 1994), and 5936-37 (Febuary 10, 1994), and that the federal agents left the tanks to approach the compound only when necessary to save the life of Davidians who exited the compound, *see, e.g., id.* at 5245-48 (February 7, 1994).

ıtion to salvage their allegation that the CEVs caused the collapse of the compound's central
:. (*See* Opp. at 83-84.) None of the statements cited by plaintiffs contradict the sworn
nony of Texas Ranger David A. Byrnes (Mot. App. O) and Richard M. Rogers (Mot. App.
.s is clear from the April 19, 1993, FLIR tape as well as the statements quoted by plaintiffs,
of the CEVs were able to reach the base of that tower. For example, notwithstanding the
ts of the driver of CEV-1 to get close to the tower to insert tear gas, his testimony
ɔnstrates that he penetrated approximately fifteen feet into the building, but could not enter
pletely because to do so might have caused the second floor to collapse on the CEV. *Branch*
5526-27.[62] In any event, the photographs submitted by plaintiffs (Opp. App. 35, Ex. 6, 7, 8,
ıd 10) show that the tower was still standing even after the gym had collapsed as the CEV
to get closer to the tower, *id.*, Ex. 10, and after the fires began, *id.*, Ex. 11 and 12. Indeed,
ɔost-fire photograph submitted by plaintiffs, *id.*, Ex. 20, proves that the interior walls around
ɔunker or "church vault" did nor collapse during the fire on April 19, 1993. Plaintiffs'
ience belies their argument.

H. THE UNITED STATES IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Plaintiffs have failed to establish a *genuine* issue of material fact as to the start of the
ot-out, the death of Michael Schroeder, the start of the fire, and the collapse of the tower and
bunker beneath it. Accordingly, the United States is entitled to judgment as a matter of law
all claims arising out of these events. *See* Mot. at 71-88.

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[62] He did not penetrate any interior walls, *Branch* tr. at 5528, and therefore could not have
ısed the collapse of the tower. *See* diagram of compound, Opp. App. 35. Ex. 1, which shows
east three interior walls between the front of the compound breached by Craig and the
ıcrete room (marked "Dry Food Storage" and "Cold Food.").

operation to salvage their allegation that the CEVs caused the collapse of the compound's central tower. (*See* Opp. at 83-84.) None of the statements cited by plaintiffs contradict the sworn testimony of Texas Ranger David A. Byrnes (Mot. App. O) and Richard M. Rogers (Mot. App. P). As is clear from the April 19, 1993, FLIR tape as well as the statements quoted by plaintiffs, none of the CEVs were able to reach the base of that tower. For example, notwithstanding the efforts of the driver of CEV-1 to get close to the tower to insert tear gas, his testimony demonstrates that he penetrated approximately fifteen feet into the building, but could not enter completely because to do so might have caused the second floor to collapse on the CEV. *Branch* tr. at 5526-27.[62] In any event, the photographs submitted by plaintiffs (Opp. App. 35, Ex. 6, 7, 8, 9, and 10) show that the tower was still standing even after the gym had collapsed as the CEV tried to get closer to the tower, *id.*, Ex. 10, and after the fires began, *id.*, Ex. 11 and 12. Indeed, the post-fire photograph submitted by plaintiffs, *id.*, Ex. 20, proves that the interior walls around the bunker or "church vault" did nor collapse during the fire on April 19, 1993. Plaintiffs' evidence belies their argument.

H. THE UNITED STATES IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Plaintiffs have failed to establish a *genuine* issue of material fact as to the start of the shoot-out, the death of Michael Schroeder, the start of the fire, and the collapse of the tower and the bunker beneath it. Accordingly, the United States is entitled to judgment as a matter of law on all claims arising out of these events. *See* Mot. at 71-88.

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[62] He did not penetrate any interior walls, *Branch* tr. at 5528, and therefore could not have caused the collapse of the tower. *See* diagram of compound, Opp. App. 35, Ex. 1, which shows at least three interior walls between the front of the compound breached by Craig and the concrete room (marked "Dry Food Storage" and "Cold Food.").

III.

PLAINTIFFS' MOTIONS FOR RELIEF UNDER RULE 56(f) SHOULD BE DENIED, OR, IN THE ALTERNATIVE, DISCOVERY SHOULD BE LIMITED TO THE AREAS RAISED IN THE RULE 56(f) MOTIONS

Plaintiffs have moved for relief under Rule 56(f), FED. R. CIV. P., but have not made a showing sufficient to warrant discovery. Notwithstanding that discovery has been stayed in these actions, it is clear from the complaints, memoranda, and documents filed by the plaintiffs that they have access to a large volume of information about the events at the Branch Davidian compound in 1993. As is discussed in greater detail in Mot. at 5-58, it is well-settled in the Fifth Circuit that:

> [t]o obtain a Rule 56(f) continuance, the nonmovant must present specific facts explaining his inability to make a substantive response as required by Rule 56(e) and by **specifically demonstrating "how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact."**

Washington v. Allstate Insurance Co., 901 F.2d 1281, 1285 (5th Cir. 1990) (quoting *Securities and Exchange Commission v. Spence & Green Chemical Co.*, 612 F.2d 896, 901 (5th Cir. 1980), *cert. denied*, 449 U.S. 1082 (1981) (emphasis added)).

Plaintiffs have described discovery they claim to need, and have contrived to show how the discovery will create a genuine issue of material fact. In most instances, however, plaintiffs have postulated baseless, fanciful theories and then claimed to need discovery to prove or debunk the theories. This is not the purpose of Rule 56(f), however. *Paul Kadair*, 694 F.2d at 1030. The following brief discussion of each request amply demonstrates the inadequacy of plaintiffs' arguments.

(1) *Videos and other materials for analysis by plaintiffs' audio expert*

Plaintiffs contend (Opp. at 45) that their audio expert needs original videotapes to determine whether the gunshots heard on board the helicopter came from within, from another helicopter, or from the compound. In connection with this contention, plaintiffs misstate their own expert's statement. Dr. Hollin notes that "The audio portion [of the tape he allegedly analyzed]. . . includes wind sounds which suggest that one or more doors, hatches or ports could have been open in the helicopter." (Opp. App. 15D at 3.)[63] The helicopter pilot testified in *Branch* that a port was open in the helicopter for filming, *Branch* tr. at 3165 (January 26, 1994). Thus, plaintiffs' expert analysis is consistent with the testimony of eyewitnesses on this point and discovery is unnecessary. Plaintiffs' effort to stave of the inevitable dismissal their specious theories should fail.

(2) *Winston Blake autopsy information for plaintiffs' medical expert*

It appears from the statement of plaintiffs' pathologist, Dr. Fardal (Opp. App. 78), that he was asked to establish whether various scenarios formulated by Gordon Novel, plaintiffs' investigator, could be proven based on autopsy information provided. Dr. Fardal essentially says there is insufficient evidence to rule out *Gordon Novel's theory* that material identified in Winston Blake's autopsy as gunpowder was in fact "tar paper residue." *Id.* at 3. However, Dr. Peerwani, the medical examiner, testified that he identified the gunpowder specifically through the use of "FTIR Studies" (Flourea Transmission Infrared Spectroscopy). *Branch* tr. 5991 (February 11, 1994). There is simply no basis for Mr. Novel's theory. In any event, even if tar paper residue had been found on Blake's body, it would not follow that the tar paper came from

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[63] Plaintiffs contort that statement when they claim that "Dr. Hollin . . . states that there are wind sounds suggesting that the helicopter's doors or windows were *being opened.*". Opp. at 45 (emphasis added).

the roof as opposed to some other source, such as the walls, or that the shot that killed Blake came from a helicopter.[64]

(3) *Documentary evidence about training for the ATF warrant service operation*

Plaintiffs claim that they must be allowed to depose the author of notes regarding the training at Ft. Hood because of a comment in a note that using "simultaneous gunfire worked in Seattle." (Opp. at 48.) First, whatever had "worked in Seattle" is irrelevant to whether the Branch Davidians ambushed the ATF agents. Second, this testimony would not change the results reached by the Fifth Circuit in *Branch.* The testimony before the Fifth Circuit in *Branch* was that there was no plan to use gunfire from the helicopters, *Branch* tr. at 3167 (January 26, 1994), and that no shots were fired.

(4) *Investigation of the claims of Samantha Pearl Lake*

Plaintiffs seek to avoid dismissal by saying they need to investigate the claims of Samantha Pearl Lake. (Opp. at 49; *cf.* discussion at page 60-61, *supra.*) They offer no explanation for their failure to do so before submitting her affidavit to the Court. Plaintiffs should not be permitted to use unreliable -- indeed patently frivolous -- claims to avoid summary judgment. *See* Rule 56(g), FED. R. CIV. P.

(5) *ATF audio communications*

Plaintiffs argue that statements made during the shoot-out by ATF agents about Peter Gent, who was shooting from the water tower at the agents below, create a genuine issue of material fact about whether shots were fired from a helicopter. (Opp. at 50-51.) The argument

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[64] Interestingly, Dr. Fardal notes Mr. Novel's error in concluding that "Doe #50 suffered shearing of the skull" because the autopsy identified shearing of the head of the humerus -- the arm bone -- and not the skull. *Id.*

misses the mark because, by plaintiffs' own account, the statements come more than twelve minutes after shots were first fired. (Opp. at 50.) Discussions about sources of shots well after the shoot-out began are irrelevant to the "first shot" issue. In any event, because Gent was shooting at ATF agents, the responsive use of deadly force by the ATF agents was appropriate, lawful, and privileged under Texas law. *See* TEXAS PENAL CODE ANN. § 9.51 (West 1997); Mot. at 72-73.

(6) *Additional videos and photographs*

It is unclear what videos and photographs plaintiffs have gathered from the *Branch* defense attorneys and their colleague David Hardy's FOIA litigation. (*See* Opp. at 52-54.) What is clear is that examination of videos taken from the helicopters -- including the National Guard FLIR tape -- could not lead to a result different than that reached by the Fifth Circuit in *Branch*, because the helicopters arrived late, *see Branch*, 91 F.3d at 710, and in any event did not make it to within 200 yards the compound as planned. Two of the helicopters were forced down by gunfire from the compound; the third hovered nearby to protect the crews who were inspecting the damage to their aircraft. *See Branch* tr. at 3163-3166 (January 26, 1994), 3257 and 3275 (January 27, 1994).[65]

(7) *The "stocking cap" worn by Michael Schroeder*

Somewhat incongruously, plaintiffs allege throughout their complaint and opposition that the United States has lost or destroyed evidence, including the "stocking cap"[66] presumably worn

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[65] Plaintiffs' argument (Opp. at 53) that "it is difficult to believe that . . . no photos were taken as they approached Mt. Carmel and of the assault itself," seems absurd given the mortal danger in which the ATF agents faced when they were confronted by the more heavily-armed Branch Davidians. *Cf. Branch*, 91 F.3d at 720.

[66] The DPS inventory refers to this as a "blue wool-type tobbogan." (Opp. App. 31 at 2.)

by Michael Schroeder when he died, and then claim they need to examine the hat before summary judgment can be granted. However, plaintiffs have no evidence whatsoever to support their theory that Schroeder was killed by shots fired at close range. Once again they have invented a theory and complain that they lack the evidence with which to test it. To achieve that end, plaintiffs have again inappropriately stretched the testimony of their own expert. Dr. Radelat acknowledges that no gun powder was found on Schroeder's fatal wounds. (Opp. App. 31 at 2.) In essence, he says that he cannot confirm or disprove plaintiffs' theory that the shots were fired at close range without determining whether Schroeder's hat absorbed the gun powder he would expect to find from a close range shot. *Id.* This is not a sufficient basis on which the Court should allow this matter to proceed.

(8) *Ordnances found in the remains of the compound for plaintiffs' munitions experts*

One of plaintiffs' munitions experts acknowledges that he cannot identify the munitions in the photographs plaintiffs have provided, despite having "access to all public references regarding ordnances," (Opp. App. Ex. 39 at 2.) This expert then speculates about how these mysterious munitions may have functioned, notwithstanding his lack of familiarity with them. *Id.* In any event, examination of the munitions would be relevant only if the cause of the fire were not known.

(9) *Discovery Listed in Previously Filed Rule 56(f) Motions.*

In addition to discovery described in their opposition, plaintiffs incorporate their previous requests for discovery (Opp. at 94 and Opp. App. 73.) None of these additional items suffices to create a genuine issue of material fact or to warrant discovery, as shown by the following:

(a) *Katherine Schroeder deposition.*
(b) *Kevin Whitecliff deposition.*

Plaintiffs contend that Ms. Schroeder and Mr. Whitecliff will testify that ATF agents failed to identify themselves. However, whether or not the agents identified themselves is not a *material* fact in view of plaintiffs' allegations that the Branch Davidians suspected that the undercover agent was a law enforcement officer and that the Davidians knew that the ATF operation was imminent (TC Compl. ¶ 7.10(b)) and Ms. Schroeder's testimony in *Branch* that she assumed the people outside the compound were government agents. *Branch*, 91 F.3d at 716. As the Fifth Circuit characterized it, "[t]he notion that this was some alien and unidentified army is beyond the pale." *Id.* at 715.[67] Indeed, even the testimony which the plaintiffs themselves have submitted to the Court, Opp. App. 11 at 4463-64, confirms that Ms. Schroeder was upstairs with her children when the shooting began and, as found by the Fifth Circuit in *Branch*, did not witness the start of the shooting. *Branch*, 91 F.3d at 715-16.

(c) *Agent Chris Mayfield deposition.*
(d) *Agent Bill Bofard deposition.*

Plaintiffs contend that agent Mayfield and an agent Bofard would testify that federal agents failed to identify themselves. Plaintiffs cite no basis for this contention, notwithstanding that agent Mayfield testified extensively at the criminal trial, and that plaintiffs have the trial transcripts. The United States is unaware of the existence of an ATF agent named Bofard. An agent named William Buford testified at the criminal trial that he heard gunfire while he was still inside the cattle trailer in which he traveled to the

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[67] Of course, contrary to plaintiffs' claim (Opp. App. 73, second page) Kathryn Schroeder is a plaintiff in this litigation.

compound. In addition, as noted above, the fact plaintiffs hope to prove with his testimony is immaterial in view of the Fifth Circuit opinion in *Branch* that the Davidians knew the ATF agents were federal officers and plaintiffs' own allegations and admissions that the Branch Davidians suspected that the undercover agent was a law enforcement officer and that the Davidians knew that the ATF operation was imminent. (TC Compl. ¶ 7.10(b).) It is also immaterial because the Branch Davidians fired the first shots. That the Branch Davidians may have ambushed unknown targets does not create a genuine issue or warrant further discovery.

(e) *Subpoena or request for production of 911 tape transcripts.*

The 911 call was not made until after the shooting began (Opp. App. 10, 10A) and 10B, and the statements contained therein are inadmissible because they are unauthenticated, lack foundation (it cannot be shown what the speaker knew about the start of the shoot-out), and constitute hearsay. In any event, the transcripts do not show whether Martin had any personal knowledge about how the shooting started. Accordingly, these tapes are insufficient to overcome entry of summary judgment in favor of the United States.

(f) *Employment history of Paul Gray.*

The plaintiffs purport to need this information to attack Mr. Gray's credibility. However, they ignore that Mr. Gray was only one of four municipal fire experts who authored the *Fire Investigation Report, Branch Davidian Compound.* (*See* Mot. at 68.) The credibility of one author of this report is not a material fact. The material fact before the Court is that the fires were started from within the compound by some of the Davidians. There is no genuine issue as to this fact.

(g) *Visual records of the exterior fire development.*
(h) *photographs taken before, during, and after the fire,*
(i) *"Live coverage by Channel 10,"*
(j) *information on FLIR,*
(k) *Mt. Carmel dimensions*, and
(l) *Mt. Carmel drawings.*

Again, the plaintiffs offer only speculation that the information they seek may allow their experts to reach a result contrary to that reached by the fire investigators. (*See* Mot. App. M and N.) They do not show how the evidence will establish the existence of a genuine issue of material fact. Rather, their inability to provide specifics demonstrates that they have no factual basis for their contentions. Moreover, as noted above, the bare assertion that the defendant controls the evidence is insufficient to satisfy Rule 56(f). Not only does Mr. Sherrow state that he reviewed a copy of the FLIR tape (Sherrow Declaration p. 2), but copies of diagrams of the compound are set forth in Opp. App. 35 as Ex. 1 and 2. Finally, there is no genuine issue as to the material fact before the Court: that the Davidians themselves set the fires.

(m) *Deposition of Henry McMahon.*

Whether Koresh invited ATF agents to come to the compound to inspect weapons is not a material fact in connection with the claims on which summary judgment is sought. As demonstrated previously, whether the agents should have concluded that they could best achieve their law enforcement goals by giving Koresh the opportunity to control the manner and timing of the search for illegal firearms and destructive devices is within the discretionary function exception.

Moreover, McMahon's testimony about available alternatives would be immaterial to the excessive force issue, since the Fifth Circuit held that the manner in

which the warrants were executed were not excessive:

> The ATF had cause to believe that the Davidians had amassed a large supply of weaponry, including grenades and fully automatic assault rifles. In light of this knowledge and concern that other methods would endanger the lives of residents of the center, the ATF concluded that a "dynamic entry" raid was the proper method to execute the search and arrest warrants. This evidence will not support an inference of unreasonable force.

Branch, 91 F.3d at 720.[68]

Finally, plaintiffs' claim that they are unable to obtain information from Mr. McMahon is tenuous, at best, given that Mr. McMahon was represented in his own action against various ATF agents which was pending in this Court, *McMahon v. Aguilera*, Civil Action No. W-95-CA-087, by Mr. Lyons, who is counsel of record for the *Ferguson, Gyarfas*, and *Sylvia* plaintiffs in these consolidated actions.

(n) *FBI and ATF "rules of engagement."*

Again, the discovery sought has no bearing on any material facts at issue in the United States' motion for summary judgment. In order to defeat this motion, the plaintiffs would have to show that they did not ambush the ATF agents and that the Branch Davidians did not start the fire themselves. The rules of engagement, if any, have no relevance to these issues. With respect to the motion to dismiss, the United States has taken the factual allegations as true and has not asserted the discretionary function exception as to the claims arising from the initial confrontation and the fire; thus, the rules are irrelevant here as well. Moreover, contrary to the Federal Rules, the plaintiffs

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[68] *See also Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994) (In reviewing a claim for alleged excessive force, the court considered whether the officers acted reasonably, not whether they had less intrusive alternatives available to them.), *cert. denied*, 515 U.S. 1159 (1995).

have failed to show how these rules will create a genuine issue as to material facts, and their allegation that the defendant controls the evidence is insufficient under Rule 56(f).

(o) *Dates, places, and times Koresh was seen outside the compound.*

As with the issues to which plaintiffs claim Mr. McMahon would testify, whether Koresh left the compound at times is not a material fact in connection with the claims on which summary judgment is sought. As demonstrated above and in Mot. at 17, whether the agents should have concluded that they could best achieve their law enforcement goals by arresting Koresh outside the compound and giving his followers an opportunity to control the manner and timing of the search is within the discretionary function exception. And again, the bare assertion that the defendant controls the evidence is insufficient (as well as unlikely, considering that a number of the plaintiffs were residents of the compound and presumably could testify as to Koresh's actions).

(p) *Information regarding whether additional tear gas/ferret rounds were requested and supplied,*
(q) *who supplied the additional material,*
(r) *when the requests were made, by whom, and why,*
(s) *documents in connection with any such requests,*
(t) *documents in connection with the requisition of tear gas and supplies, and*
(u) *documents relating to tear gas storage tanks for the tanks and assault vehicles.*

The United States has demonstrated (note 59, *supra*) that the use of tear gas is an accepted practice in law enforcement, and if the tear gas injured the plaintiffs, it was due to their refusal to leave the compound for over six hours. The amount of tear gas used, then, is not a material fact for purposes of avoiding summary judgment. Moreover, the plaintiffs have failed to even suggest how this information will enable them to rebut the showing made by the United States that the Branch Davidians started the fire.

Finally, plaintiffs' argument regarding the efforts of their colleague, Mr. Hardy, to obtain

information through the Freedom of Information Act (FOIA) (Opp. App. 73, sixth page) is irrelevant. If the plaintiffs had a factual basis for their allegations, some discovery would be inevitable. Where, as here, the Court lacks subject matter jurisdiction over most of the claims and there are no genuine issues of material fact as to the remaining claims, discovery is not warranted.

IV.

THE MOTION FOR SUBSTITUTION SHOULD BE GRANTED

In opposing the United States' Motion for substitution in *Brown I*, plaintiffs make a number of odd arguments. First, notwithstanding the relative clarity with which the parties and claims are identified in the Third Consolidated Complaint and the *Holub I* Complaint, plaintiffs now claim that "all plaintiffs have alleged and intend to prove and recover damages from individual defendants for their conduct outside the scope of employment." (Opp. at 113.) Nowhere in the Third Consolidated Complaint do plaintiffs allege that any of the individual federal defendants were acting outside the scope of their employment at material times. Moreover, the Complaint specifically characterizes the individual defendants as "*Bivens*, §§ 1983 and 1985(3), and RICO Defendants." (TC Compl. at i.) The Third Consolidated Complaint does indicate that "[t]hese claims are based in part on Texas Civil Practice and Remedies Code § 71.004 [Wrongful Death Statute] and the Texas common law for bystander claims. " (TC Compl. ¶7.54(c).) However, these provisions are theories of recovery which depend on an underlying actionable claim. A fair reading of the Third Consolidated Complaint is that plaintiffs with a statutory cause of action for wrongful death will seek to recover from those individuals whose alleged constitutional, civil rights, and RICO violations allegedly caused the

deaths of plaintiffs' decedents, and that the plaintiffs who do not have standing to bring a wrongful death action will seek to recover for alleged constitutional, civil rights, and RICO violations on a bystander theory of recovery. In addition, neither the Third Consolidated Complaint, the *Holub I* Complaint, nor the *Brown I* Second Amended Complaint contain any allegations that the individual defendants were acting outside the scope of their federal employment at material times. However, notwithstanding the foregoing, in an abundance of caution, the United States submits herewith a revised certification that all individual federal defendants were acting within the scope of their federal employment at all material times. (Mot. App. R.)

Second, without citing any applicable legal authority, plaintiffs' challenge the certification filed in support of the United States' motion for substitution. Their claim that the certification is invalid because it was drafted before the *Brown I* First Amended Complaint was filed fails because the applicable statute does not require the Attorney General's designee to base the certification on a particular pleading. *See* 28 U.S.C. § 2679(d)(1).[69]

The argument that the certification "should be based on all of the information within the Attorney General's knowledge, possession, and control" (Opp. at 115) also is without support. Indeed, the Attorney General or her designee "does not need to provide reasons or factual detail showing that the federal employee was acting within the course and scope of his employment." *Rodriguez v. Sarabyn*, 908 F. Supp. 442, 445 (W.D. Tex. 1995) (citing *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 115 S. Ct. 227, 2230 (1995)). Moreover, "'the Court is entitled to treat

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[69] The United States acknowledges that the certification contained a typographical error in that it references § 2679(d)(2) rather than § 2679(d)(1). This error is *de minimus*, however, and should not invalidate the certification. In any event, plaintiffs' argument on this point is moot in light of the revised certification annexed hereto in the Appendix as R.

the Attorney General's certification as prima facie evidence that the employee's conduct at issue occurred within the scope of [his] employment.' *S.J. & W. Ranch v. Lehtinen*, 913 F.2d 1538, 1543 (11th Cir. 1990) [, *cert. denied*, 502 U.S. 813 (1991)]." *Id.* Since plaintiffs have offered nothing to counter the certification, the motion for substitution should be granted.

Despite plaintiffs' strained reading of the applicable regulations, it is beyond dispute that the Assistant Attorney General for the Civil Division has broad authority over tort litigation against the United States. *See* 28 C.F.R. § 0.45(g) (1997). They have not shown that it would be outside the authority of the Assistant Attorney General for the Civil Division to delegate authority for scope certifications to Directors of the Torts Branch. *See* Civil Division Directive No. 90-79, in the Appendix to 28 C.F.R. Part 15.

In addition, there is no conflict of interest that would personally disqualify the Director of the Torts Branch from executing the scope certification. Further, to the extent that plaintiffs are suggesting an institutional conflict, the Supreme Court recognized the potential conflict of interest inherent in scope certifications and considered that this factor counseled in favor of subjecting scope certifications to judicial review. *Gutierrez de Martinez*, 515 U.S. at 428.[70] Moreover, notwithstanding the Fifth Circuit's 1995 holding in *Garcia v. United States*, 22 F.3d 609, 611 (5th Cir. 1994) (*see* Opp. at 117), at the time the Director signed the certification, the "United States . . . [read] the Westfall Act to allow a plaintiff to challenge the Attorney General's scope-of-employment certification." *Gutierrez de Martinez*, 515 U.S. at 423, n. 4

Finally, plaintiffs have utterly failed to meet their burden of showing why the employees

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[70] Interestingly, the federal employee whose conduct was at issue in *Gutierrez de Martinez* was employed by the Drug Enforcement Administration, an arm of the Department of Justice. *Gutierrez de Martinez*, 515 U.S. at 417.

at issue were not acting within the scope of employment at material times. Indeed, it is not clear from the complaints or the Opposition which conduct plaintiffs claim was outside the scope of employment. They assert that "a certification must be reevaluated when facts become known that cast doubt upon its correctness." (Opp. at 120.) Assuming *arguendo* that plaintiffs' conclusion is correct, they have failed to show any facts requiring reevaluation. Accordingly, the United States' motion for substitution should be granted.

Conclusion

For the reasons set forth above, the United States' motions to dismiss, for partial summary judgment, and for substitution should be granted.

Part Two: **Reply of the Individual Federal Defendants and Edward S.G. Dennis, Jr.**

INTRODUCTION

The individual federal defendants respectfully request this Court to enter an order dismissing plaintiffs' claims against them in their entirety. Plaintiffs' papers provide no basis upon which to predicate their claims for relief. Despite the conclusory allegations in the complaint, and in light of the misguided legal arguments contained in plaintiffs' opposition to the individual federal defendants' motion to dismiss[71], plaintiffs have failed to demonstrate that their claims are cognizable under the Constitution in these circumstances.

As the Court of Appeals pronounced, "[I]n reviewing a 12(b) dismissal, we do not take account of allegations that are wholly conclusory and that do not set forth facts that, if proved, would warrant the relief requested." *Thibodeaux v. Bordelon*, 740 F.2d 329, 332 n.2 (5th Cir. 1984). Here, plaintiffs have set forth conclusory allegations but have failed to set forth facts, which if proved, would state a cognizable constitutional claim for relief in light of defendants' entitlement to qualified immunity. Plaintiffs have failed to provide facts to support their argument that defendants' actions at the Branch Davidian Compound violated clearly established rights of which a similarly situated official reasonably should have been aware. For that reason, plaintiffs' claims against the individual federal defendants should be dismissed.

Further, plaintiffs evidently misapprehend the relevant legal rules upon which defendants' entitlement to qualified immunity rests. Plaintiffs base their qualified immunity argument on the remarkable notion that the Court of Appeals "readily looks to other circuits"

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[71] For the sake of clarity, references to the "individual federal defendants" include defendant Edward S.G. Dennis, Jr.

to determine whether a defendant's acts violated clearly established law, citing as authority *Doe v. Taylor Independent School District*, 975 F.2d 137, 143 (5th Cir. 1992), an opinion vacated by *Doe v. Taylor Independent School District*, 15 F.3d 443 (5th Cir.)(*en banc*), *cert. denied*, 513 U.S. 815 (1994).[72] In fact, a careful review of the qualified immunity aspect of the Court of Appeals' *en banc* decision in *Doe* reveals that it is based solely on Fifth Circuit and Supreme Court precedent. *See Doe*, 15 F.3d at 450-56. Moreover, the Fifth Circuit does not turn to decisions of other courts of appeal when its own decisions are directly controlling. In this matter, *United States v. Branch*, 91 F.3d 699 (5th Cir. 1996), *cert. denied*, 117 F.3d 1436,1467 (1997), which is directly on point, and Fifth Circuit and Supreme Court precedent make clear that at a minimum, the individual federal defendants are entitled to qualified immunity for plaintiffs' claims alleged to arise from the incident at Waco.

Plaintiffs also mistakenly assert that defendants' entitlement to qualified immunity is a matter for the jury. Pl. Opp. at 132. Defendants' entitlement to qualified immunity is a matter of law and is for the court to determine in the first instance, based upon plaintiffs' few well-pled factual allegations, as opposed to the numerous legal conclusions, rhetoric and speculation contained in the complaints. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991); *Colston v. Barnhart*, 130 F.3d 96, 98-99 (5th Cir. 1997). In light of the fundamental flaws in plaintiffs' papers, plaintiffs' claims against the individual federal defendants should be dismissed.

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[72] At issue in Doe was whether a 15-year old female high school student who had been sexually molested by a teacher stated a cognizable constitutional claim against the superintendent of schools and the school principal. The Court of Appeals, *en banc*, determined that plaintiff had a liberty interest sufficient to hold the supervisory school officials liable where their failures resulted in the molestation of plaintiff if the supervisors were deliberately indifferent to the child's constitutional rights. The *en banc* Court of Appeals held that the law *in the Fifth Circuit* was clearly established at the time that plaintiff had been molested. *Doe*, 15 F.3d at 445, 450, 455 and 456.

ARGUMENT

1. Plaintiffs have alleged no facts to support their claim that the individual defendants violated the First Amendment.

Plaintiffs themselves refute their unsupported assertion that the individual defendants targeted the Davidians because of their religious beliefs. Plaintiffs admit that "[B]eginning in the Summer of 1992, the ATF resurrected an investigation into possession of illegal firearms which the Federal Bureau of Investigation (FBI) had dropped." Pl. Opp. at SF-2; *see also Brown* 2d Am. Compl. ¶ 94: "ATF had expanded an investigation of David Koresh and other church members for possession of illegal firearms . . . its formal investigation focused on firearms purchases and possession." The allegations in plaintiffs' papers thus consistently support that the Davidians were investigated for violation of federal firearms violations, *e.g.*, possession of illegal firearms, rather than because of their religious beliefs. There are no facts alleged which, if proven, would support an inference that defendants' actions at Waco were based on hostility to plaintiffs' religious beliefs.

The Free Exercise Clause simply does not relieve an individual of the obligation to comply with neutral laws of general applicability. *Employment Division, Department of Human Resources of the State of Oregon v. Smith*, 494 U.S. 872, 879 (1990). The Supreme Court has stated that since such laws do not specifically endeavor to regulate religious conduct, they can be enforced to proscribe conduct which one's religion prescribes without offending the First Amendment. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535 (1993). This Court found that probable cause existed to believe that the Branch Davidians were in possession of both machine guns and other illegal destructive devices and that David Koresh violated the laws controlling the possession of such dangerous weapons;

accordingly, this Court issued search and arrest warrants that had nothing to do with plaintiffs' religious beliefs beyond the stockpiling of illegal weapons.

Plaintiffs next contend that "[B]y alleging a pattern of targeting religious separatist groups, Plaintiffs state a First Amendment claim against the defendants." Pl. Opp at 162.[73] However, plaintiffs concede that they have provided no facts to support their First Amendment claim, because they contend mistakenly that where mental state is an issue, a cognizable claim is stated by mere "allegations of circumstantial evidence." Pl. Opp. at 162. To the contrary, inquiry into motive where a complaint contains no facts to support the inference of bad motive is improper. *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1188 (5th Cir. 1990).

Plaintiffs fail to supply any facts which, if proven, would support their conclusory assertion that the Branch Davidians were investigated because of their religious beliefs rather than their suspected violation of the firearms laws, which apply to all individuals equally. There are simply no facts alleged in the complaints to support plaintiffs' First Amendment claims. For that reason, plaintiffs' First Amendment claims should be dismissed.

2. Plaintiffs' Fourth Amendment claims are deficient.

a. The search warrant

Plaintiffs also challenge the search and arrest warrants for the Branch Davidian Compound and for David Koresh. The Court is respectfully referred to the Appendix, Tab E to the United States' Motions to Dismiss, for Substitution and for Partial Summary Judgment, served October 31, 1997, for a copy of the search warrant and affidavit in support. Plaintiffs'

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[73] Plaintiffs' complaints do not allege facts which, if proven, would establish that what they characterize as "religious separatist groups" shared any common religious perspective, and that the allegedly common religious perspective was what drew the defendants' alleged ire. Rather, the plaintiffs refer to groups whose common element is their possession of illegal weapons.

nent consists of three paragraphs in which they mischaracterize the affidavit and assert he warrant was deficient because the affidavit represented that "(a) Koresh possessed the r and lower receivers of AK-47 firearms, when in fact the AK-47 has no lower receiver.")pp. at 147. In fact, the affidavit contains no such reference and plaintiffs' assertion is mpanied by no citation to the warrant affidavit. Plaintiffs next contend that the affidavit based on false information because it stated that "(b) the Branch Davidians received destine publications' such as *Shotgun News*, when such publication is available by cription on a national basis. . . ." Pl. Opp. at 147-148. However, far from alleging that *gun News* was a "clandestine publication," the affidavit advises the Court that it is a lished magazine," and that the compound contained other publications which were destine. In fact the warrant affidavit actually alleges that one Mr. Block, who had been le the Mount Carmel fortress, "stated that he observed at the compound **published azines such as, the** *'Shotgun News'* and other related clandestine magazines." Affidavit 14. (emphasis supplied.) In any event, were the allegedly offending "statements" struck the affidavit, the affidavit would still support the magistrate judge's conclusion that there probable cause to search the compound for illegal weapons. *See Franks v. Delaware*, 438 . 154, 171-72 (1978).

Plaintiffs close their challenge to the search warrant by the conclusory assertion that e defects in the Aguilera affidavit meant that there was not probable cause for the search rant." Pl. Opp. at 148. As a threshold matter, probable cause requires not a *prima facie* wing, but only the probability of criminal activity. *Illinois v. Gates*, 462 U.S. 213, 235 3). Moreover, plaintiffs have failed to demonstrate that probable cause would be lacking if the defects they allege were actually contained in the affidavit. For this reason,

iffs' Fourth Amendment challenge to the validity of the search warrant is deficient.

The Court of Appeals' decision in *Branch* clearly demonstrates that plaintiffs' challenge validity of the search warrant is without merit. In rejecting the Davidians' argument that sive force was used to execute the search and arrest warrants, the Court noted that "ATF ause to believe that the Davidians had amassed a large supply of weaponry, including des and fully automatic assault rifles." *Branch*, 91 F.3d at 720. Even without the ed defects of which plaintiffs complain, the warrant affidavit established probable cause to e David Koresh and the Branch Davidians were violating the federal firearms laws.

b. Excessive force

Plaintiffs misapprehend the Fourth Amendment's requirements in respect of the use of in a given situation. Law enforcement officers may use such force as is objectively nable under the circumstances. *Graham v. Connor*, 490 U.S. 386, 397 (1989)(emphasis ied).[74] The use of deadly force is reasonable where "the officer has probable cause to ve that the suspect poses a significant threat of death or serious physical injury to the er or others." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985); *Graham*, 490 U.S. at 396. . reasonableness inquiry is not judged in hindsight, but rather according to the mstances the officer faced at the time, and without regard to underlying intent or vation. *Graham*, 490 U.S. at 396-97. In the present case, this Court found probable e to believe that David Koresh possessed numerous illegal, high caliber weapons at the ch Davidian Compound and accordingly issued search and arrest warrants. Plaintiffs' rs fail to demonstrate how, under the circumstances of the incident at the Branch Davidian

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[4] The qualified immunity inquiry in a use of force case is the same as the inquiry made on nerits. *Harper v. Harris County*, 21 F.3d 597, 600-01 (5th Cir. 1994).

Compound, defendants' actions were unreasonable in light of settled law as previously announced in cases presenting similar circumstances.

Notably, plaintiffs completely fail to grapple with the import of the Court of Appeals' decision in *Branch* that the force ATF used to execute the warrants was not unreasonable, in light of ATF's knowledge that "the Davidians had amassed a large supply of weaponry, including grenades and fully automatic assault rifles." *Branch*, 91 F.3d at 720. Even leaving aside the Court of Appeals' decision in *Branch*, the amended complaints leave no room to doubt that defendants' conduct was reasonable under the circumstances at Waco. For example, plaintiffs concede that the Davidians were armed, prepared to shoot at and in fact shot at law enforcement during the attempted execution of the warrants and during the attempt to end the standoff on April 19. *See* TC Compl. ¶¶ 5.9; 7.5(i); 7.9(h); 7.10(f); 7.11; 7.16(a)-(c) etc.; *Brown* 2d Am. Compl. ¶¶ 94; 96. There is simply no justification in threatening deadly force to oppose federal officers, even if the officer's conduct is invalid. *United States v. Johnson*, 542 F.2d 230, 233 (5th Cir. 1976); *see also United States v. Branch*, 91 F.3d at 714 (rejecting the Branch Davidians' claims that the jury should have been given a self-defense instruction to the manslaughter charge, stating: "We do not need citizen avengers who are authorized to respond to unlawful police conduct by gunning down the offending officers.").

Given the nature of the offenses underlying the warrants, the Supreme Court's decision in *Tennessee v. Garner* establishes that the ATF agents' actions in attempting to execute the search warrant were not proscribed by the Constitution. As the Court of Appeals stated in *Branch,* "The [Branch Davidians] responded to the *agents' lawful force* with a deadly barrage of gunfire." *Branch*, 91 F.3d at 714 (emphasis supplied). As the Court of Appeals further noted, ATF's choice of a "dynamic entry raid was the proper method to execute the search and

arrest warrants" under these circumstances. *Id.* at 720. The Court stated: "We reject this invitation for individuals to forcibly resist arrest and then put their arresters on trial for the reasonableness of their tactical decisions." *Id.*

Further, the Court of Appeals determined in *Branch* that the Davidians "had amassed a large supply of weaponry," 91 F.3d at 720, necessitating a 51-day standoff when they refused to surrender to lawful authority; accordingly, the methods the FBI defendants used to end the standoff, *i.e.*, initially shrinking the perimeter around the Branch Davidian Compound, and finally inserting tear gas into the compound, were not unreasonable under these circumstances. Even assuming *arguendo* the wild and baseless allegation that FBI agents used deadly force when they allegedly shot at the Davidians on April 19th while tear gas was being inserted into the compound, such force would not be unreasonable under the circumstances. As noted above, plaintiffs admit that the Davidians were armed and shooting at law enforcement on the 19th. *See* TC Compl. ¶ 7.25 (t), 7.25 (tt), 7.25 (rr). Thus, the Supreme Court's decision in *Garner,* in which plaintiff's decedent was unarmed, is inapposite for plaintiffs. The Court's decision establishes that if in fact FBI agents used deadly force against the armed Branch Davidians, it would not have been proscribed by the Constitution. *Garner*, 471 U.S. at 11. Therefore, the FBI defendants would be entitled to qualified immunity for such claims.[75]

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[75] The "reasonableness" standard in *Graham v. Connor* governs the individual defendants' entitlement to qualified immunity for the alleged use of force in this matter. The Court in *Graham* noted, "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the offices or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396. Furthermore, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a

Moreover, even assuming as true plaintiffs' unsupportable claim that the FBI's actions caused the fire at the Branch Davidian Compound, the individual defendants would nevertheless be entitled to qualified immunity for such claims because in light of pre-existing law, the putative unlawfulness of such conduct was not apparent. In *In Re: City of Philadelphia Litigation*, 49 F.3d 945, 969 (3d Cir.), *cert. denied*, 116 S.Ct. (1995), which arose following law enforcement's confrontation with members of the MOVE organization, the Court of Appeals for the Third Circuit determined that dropping an explosive device onto a bunker on the roof of a house, and allowing the resultant fire to burn, in order to force the occupants of the house to cease their armed resistance to lawful search and arrest warrants did not vitiate the individual law enforcement officers' entitlement to qualified immunity. The court reasoned that the use of explosives, and the use of the fire to destroy the bunker, was not objectively unreasonable in light of the information the defendants possessed, despite that several of the occupants of the house were killed in the blaze. *Id.* at 970. The court noted that the use of an explosive device as a means to insert tear gas into the house, and the subsequent burning of the bunker to force out the armed and dangerous occupants barricaded inside the house presented a "far from analogous case" to that of *Tennessee v. Garner*. *City of*

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particular case." *Id.* at 396-97. Thus, neither *Garner* nor *Graham* directly states that an armed suspect must present an immediate threat of harm before the use of deadly force becomes constitutionally permissible, although both decisions clearly contemplate consideration of that issue, among others, when determining whether the use of force is objectively reasonable. The Constitution does not require law enforcement officials to wait to be shot at before protecting themselves or others. Here, assuming for purposes of argument only, plaintiffs' conclusory allegation that FBI agents shot at them on April 19, 1993 "without adequate provocation," *see* TC Compl. ¶ 7.25(s), it cannot be said that it would have been objectively unreasonable for the defendants to use deadly force in the confusion of the 19th, given the arsenal at the Branch Davidian compound, and given that four law enforcement agents had been killed in the initial shootout, and given that plaintiffs were actively resisting arrest.

Philadelphia, 49 F.3d at 971. The Third Circuit further stated that there were no "justly analogous cases" to the situation before it, despite the decision of the Court of Appeals for the Eighth Circuit in *Ginter v. Stallcup*, 869 F.2d 384 (1989), which presented a somewhat similar situation involving the use of tear gas and fire to force a fugitive out of a residence.[76] The Third Circuit distinguished *Ginter* on the grounds that a few officers in *Ginter* had to take immediate action against an armed murderer, as opposed to the *City of Philadelphia* situation "where the police presence was on a massive scale." *City of Philadelphia*, 49 F.3d at 971. The Third Circuit ultimately determined:

> Overall, it is clear that even if somehow a court found that there was an unreasonable seizure in this case, it could not possibly say, in the words of *Anderson v. Creighton*, "that in the light of pre-existing law the unlawfulness" of either dropping the explosive or letting the fire burn should have been apparent. 483 U.S. at 640 (*further citation omitted*). The 1985 MOVE confrontation was unprecedented in the case law. The exceptional circumstances here constitute precisely the kind of situation that requires the firm and swift official action which must be shielded by qualified immunity.

Id. at 972. Given the Third Circuit's statement in 1995 that the law enforcement officials in the MOVE situation were entitled to qualified immunity from plaintiffs' constitutional claims because their actions were not unlawful in light of pre-existing law, it follows that in this situation, the use of tear gas on April 19, 1993 did not violate plaintiffs' clearly established constitutional rights. Further, even assuming *arguendo* that the FBI defendants used

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[76] At issue in *Ginter* was an effort by federal and state law enforcement officials to capture a fugitive charged with murder who was hiding at a residence and shooting at the officers with automatic weapons. The officers poured a combination of diesel fuel and tear gas into a vent on the roof of the house and set fire to the roof, hoping to force out the fugitive, who, unbeknownst to the officers, had died in the shootout. The Eighth Circuit upheld the district court's grant of qualified immunity to the two officers for deliberate destruction of property, reasoning that unless the officers knew of the fugitive's death before the fire, they had not been shown to have acted unreasonably in setting the fire. *Ginter v. Stallcup*, 869 F.2d at 389.

explosives and deliberately let the fire at the Compound burn, as plaintiffs allege, they would nevertheless be entitled to qualified immunity from liability for such claims because there was no pre-existing law sufficient to put them on notice that the methods used to end the standoff were unconstitutional. Accordingly, plaintiffs' claims arising from the methods used to execute the search warrants and to attempt to end the standoff should be dismissed.

c. Alternative means

Plaintiffs make the remarkable assertion that because the Supreme Court merely recited, without disagreement, the district court's reasoning in *Tennessee v. Garner*, 471 U.S. 1 (1985), as part of its exposition of the procedural history, that the Supreme Court requires law enforcement to use the least intrusive alternative means of force used to execute a warrant. Pl. Opp. at 135. Plaintiffs' papers thus demonstrate that they want this Court to engage in the type of "unrealistic second guessing" against which the Supreme Court has repeatedly counseled. *See United States v. Sharpe*, 470 U.S. 675, 686 (1985). As the Court noted, "Creative judges, engaged in *post hoc* evaluations of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished," (citations omitted) . . . "[B]ut the fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means, does not, in itself, render the search unreasonable." *United States v. Montoya de Hernandez*, 473 U.S. 531, 542 (1985).

As noted above, plaintiffs mistakenly assert that "[W]here alternative means exist to arrest, deadly force cannot be used." Pl. Opp. at 135, n. 373. As a preliminary matter, the Constitution imposes no requirement that officers use alternative means to the force they deem reasonable to effect an arrest. Contrary to plaintiffs' assertions, the Court of Appeals has held that the inquiry is only whether the officers acted reasonably, not whether they had less

intrusive alternatives available to them. See *Stroik v. Ponseti*, 35 F.3d 155, 158 (5th Cir. 1994), *cert. denied*, 514 U.S. 1064 (1995)(Title 42 U.S.C. § 1983 action in which a police officer shot and wounded a hostage, believing her to be an armed robbery suspect, analyzed under excessive force analysis: "the only question is whether Ponseti's use of force was "'objectively reasonable' in light of the facts and circumstances confronting [him], without regard to [his] underlying intent or motivation," *citing Graham*, 490 U.S. at 397, *Scott v. United States*, 436 U.S. 128, 136 (1978), and *Terry v. Ohio*, 392 U.S. 1, 19-21 (1968)). Moreover, courts of appeals have generally held that the inquiry is only whether the officers acted reasonably, not whether they had less intrusive alternatives available to them. *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994), *cert. denied*, 515 U.S. 1159 (1995), *citing Illinois v. Lafayette*, 462 U.S. 640, 647 (1983), *accord Hegarty v. Somerset County*, 53 F.3d 1367, 1377 (1st Cir.), *cert. denied*, 116 S.Ct. 675 (1995)(stating that in an excessive force case, a court does not determine which strategy was more prudent, or which posed the least serious risk to the suspect, the officers, or others in the vicinity; rather, the inquiry is whether a competent police officer in these circumstances acted reasonably); *Schulz v. Long*, 44 F.3d 643, 649 (8th Cir. 1995)(holding that the inquiry in an excessive force case focuses not on what the most prudent course of action was or whether there were other alternatives available, but instead whether the actions taken fall within the range of conduct which is objectively reasonable); *Plakas v. Drinski*, 19 F.3d 1143, 1149 (7th Cir.), *cert. denied*, 513 U.S. 820 (1994)(holding that officers are not required to use the least intrusive or even less intrusive alternatives in search and seizure cases); *cf. Hunter v. Bryant*, 502 U.S. 224, 228 (1991)(stating that the inquiry is whether the agents acted reasonably under settled law in the circumstances, not whether another more reasonable interpretation of the events can be

constructed). As the Court of Appeals held in *Branch*, in light of ATF's knowledge of the armaments possessed by the Branch Davidians, "and the concern that other methods would endanger the lives of residents of the center," the ATF's choice of a dynamic entry to execute the search and arrest warrants "will not support an inference of unreasonable force." *Branch*, 91 F.3d at 720.

In fact, the Supreme Court has repeatedly stressed that the nature of law enforcement requires affording deference to the officer's discretion in deciding how to perform his job. *See Graham v. Connor*, 490 U.S. at 396-97 (stating that all determinations of unreasonable force must embody allowance for the fact that police officers are often forced to make split second judgments about the amount of force that is necessary in a particular situation); *Malley v. Briggs*, 475 U.S. 335, 346 (1986)(holding that it is reasonable to require a police officer to exercise reasonable professional judgment in obtaining a search warrant); *Anderson v. Creighton*, 483 U.S. 635, 637 (1987)(holding that law enforcement officers who use their judgment to make an objectively reasonable but difficult determination that a search or seizure comports with the Fourth Amendment should not be held personally liable in damages). The Supreme Court has never proscribed the use of force under the circumstances faced by the defendants at the Branch Davidian compound.[77] Indeed, such circumstances are *sui generis*. Further, such an argument would be a novel application of the law entitling defendants to qualified immunity in the event of such a legal construction.

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[77] That the Constitution does not forbid the use of deadly force where alternatives are available disposes of the plaintiffs' claims under the Constitution in this case. There are alternative sources of authoritative rules, such as an agency's guidelines, to control unnecessary uses of force. However, these guidelines do not provide the basis for individual liability in damages. *Davis v. Scherer*, 468 U.S. 183, 194 n.12 (1984).

In sum, plaintiffs have failed to plead facts that if proven would demonstrate that the individuals named in the complaint who were involved in the attempt to execute the search and arrest warrants, the individuals named in the complaint who were involved in attempting to end the standoff, and the supervisory officials named as defendants in this case acted unreasonably under the circumstances alleged in the complaint. For that reason, plaintiffs' claims that defendants used excessive force against them in attempting to end plaintiffs' armed resistance to the search and arrest warrants should be dismissed.

3. Plaintiffs have failed to state a cognizable Fifth Amendment[78] substantive due process claim against the individual federal defendants.

In every case alleging constitutional claims, the first step is to identify the specific constitutional right infringed. *Albright v. Oliver*, 510 U.S. 266 (1994). Plaintiffs' claims arising from the methods used at Waco to execute the arrest and search warrant and to end the standoff are properly analyzed under the Fourth, not the Fifth, Amendment. *Graham v. Connor*, 490 U.S. at 395, *see also Whren v. United States*, 116 S.Ct. 1769, 1774 (1996). However, even assuming *arguendo* that the situation at Waco may implicate substantive due process guarantees, plaintiffs have failed to state a claim for relief against the individual federal defendants.

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[78] Plaintiffs cite *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983), as support for their theory that the complaint states a claim for a violation of their Fifth Amendment right of access to the courts because it alleges that the investigation into the incident at Waco was inadequate. Pl. Opp. at 159-160. As defendants noted in their motion to dismiss, the right of access to the courts protects the right to institute suit. *See Foster v. City of Lake Jackson*, 28 F.3d 425, 430 (5th Cir. 1994)(holding that the right of access is implicated only where the ability to file suit was delayed, or blocked altogether, noting that "*Ryland*...concerned an *officially-created impediment to the ability to file an action.*")(emphasis supplied). Here, plaintiffs have instituted and are proceeding with their civil suit. Therefore, the constitutional right of access to the courts, whether derived from the First Amendment or the Fifth, is not implicated in this situation.

a. State-created danger, special relationship and failure to rescue

Plaintiffs' Fifth Amendment claim is based in part upon a "state-created danger" theory. Pl. Opp. at 153. Alternatively, plaintiffs allege that defendants developed a special relationship with plaintiffs and had a constitutional duty to protect plaintiffs from harm in the first instance, and failed to rescue plaintiffs. Pl. Opp. at 155. However, as defendants noted in their motion to dismiss, in this Circuit, none of these theories states a cognizable claim under these circumstances.

As recently as December 22, 1997, the Court of Appeals held that in the Fifth Circuit, the "state-created danger" theory has not been affirmatively recognized as the basis for a cognizable constitutional claim. *See Randolph v. Cervantes*, 130 F.3d 727 (5th Cir. 1997)("The state-created danger theory has not been adopted in this Circuit.") Thus, plaintiffs are asking this Court to find the defendants liable under a theory of constitutional law not yet recognized in this circuit. The defendants' actions that allegedly created the dangers plaintiffs faced and caused the injuries they suffered took place in 1993. Plaintiffs had no clearly established substantive due process claim arising from defendants' alleged creation of the dangers at the Branch Davidian compound at that time, nor do they now. For this reason, plaintiffs' state-created danger theory fails to overcome defendants' entitlement to qualified immunity because their actions did not violate rights that were clearly established at the time of the incidents alleged in the complaint.

Moreover, the *en banc* Fifth Circuit flatly rejected a "special relationship" claim for damages outside the context of involuntary confinement. *Walton v. Alexander*, 44 F.3d 1297, 1302 (5th Cir. 1995). *See also Piotrowski v. City of Houston*, 51 F.3d 512, 515 n. 6 (5th Cir. 1995), noting that the recent decision in *Walton* precludes a "special relationship" argument

absent facts that demonstrate "involuntary confinement against the plaintiff's will through the affirmative exercise of state power."

Plaintiffs argue that the defendants prevented the Davidians from leaving the Compound. Pl. Opp. at 154. However, the Court can take judicial notice that it was the Davidians' refusal to surrender that engendered the 51-day standoff. Further, plaintiffs acknowledge as much in their complaints: TC Compl.¶ 7.22 (n)(stating that the defendants ignored that "the Davidians would not surrender but would die by alleged suicide or at the hands of other Davidians."); *see also* ¶¶ 7.6, 7.11, 7.15, 7.16(b), 7.22(b),(k),(o), (aa). These allegations refute the notion that plaintiffs were involuntarily confined by the defendants' actions. The Court of Appeals noted as much in *Branch* when it stated, "[T]he compound residents were free to leave Mount Carmel at any time. The Davidians chose to remain, to stand guard against the FBI, and, if necessary, to use deadly force to repel the FBI." *Branch*, 91 F.3d at 734.

Moreover, plaintiffs actually concede that the Davidians were in the compound voluntarily. *See* Pl. Opp. at 157: " . . . though the Decedents and survivors did voluntarily go to Mt. Carmel to study religion . . . ." The allegations in plaintiffs' complaints directly contradict their theory that defendants confined the Davidians in the Compound involuntarily. *See e.g.* TC Compl. ¶5.17: "David Koresh promised that everyone would surrender;" ¶¶ 7.16(a)-(c): "They ignored that the Davidians would defend their sacred ground, wounding and killing law enforcement officials, and thereby make it difficult to negotiate a resolution of the subsequent siege and make a violent end to any siege more likely;" and *Brown* 2d Am. Compl. ¶ 113 "David Koresh . . . promised that everyone in the Church would peacefully surrender . . . " Plaintiffs' concessions demonstrate that they are not entitled to relief for a claim that defendants deprived them of their rights in accordance with a substantive due

process theory of liability.

Even assuming *arguendo* that plaintiffs were involuntarily confined, plaintiffs' allegations demonstrate that it was not the individual defendants' actions that confined them, but rather the actions of David Koresh that caused them to remain in the compound. In *Bryson v. City of Edmond*, 905 F.2d 1386 (10th Cir. 1990), as in the present suit, plaintiffs alleged that a special relationship was formed and breached when several hostages were killed or injured after law enforcement personnel surrounded a building in which a gunman had taken postal employees hostage. The Tenth Circuit squarely rejected plaintiffs' "special relationship" theory of liability, reasoning that the limitations on the employees' liberty were imposed by the gunman, not the law enforcement officers. *Id.* at 1393. The court noted that "A contrary rule would impose constitutional duties on the police whenever they respond to reports of violence and assemble at the scene, not just in 'certain limited circumstances' and 'with respect to particular individuals' as taught by *DeShaney*." *Id.*

In accordance with the allegations in the complaints presented in the instant case, the federal defendants had no constitutional duty towards plaintiffs because they did not impose limitations on the plaintiffs' liberty. Plaintiffs have failed to state a claim for relief under the due process clause of the Fifth Amendment; accordingly, their Fifth Amendment claims should be dismissed.

b. Deliberate indifference

In an attempt to bootstrap their Fourth Amendment excessive force claim into a Fifth Amendment substantive due process claim, plaintiffs assert that their claims allege that defendants' actions amount to "a general deliberate indifference to the Davidians' life and liberty." Pl. Opp. at 149. To support their "deliberate indifference" claims, plaintiffs allege

for example that defendants failed to handle the negotiations properly, that defendants were not trained properly, and that defendants failed to have firefighting equipment on the scene. TC Compl. ¶¶ 7.25(b), (v) and ¶ 7.8. However, there are no facts alleged in the complaints that would support a constitutional claim under these circumstances.

A constitutional claim based upon an allegation of "deliberate indifference" requires a factual demonstration that reflects intentional, complete indifference to an unusually serious risk--when the actor knows, but does not care whether the other person lives or dies, and fails to take obvious steps to address the risk. *Leffall v. Dallas Independent School District*, 28 F.3d 521, 531 (5th Cir. 1994), *citing Manarite v. City of Springfield*, 957 F.2d 953, 956 (1st Cir.), *cert. denied*, 506 U.S. 837 (1992), and *Salazar v. City of Chicago*, 940 F.2d 233, 238 (7th Cir. 1991).

First, the allegations in plaintiffs' complaints demonstrate that defendants were anything but deliberately indifferent to the Davidians at the Compound. *See e.g.*, TC Compl. pages 89-97, discussing the many tactics used to end the standoff; *Brown* 2d Am. Compl., pp. 46-53 (same).[79] Second, in support of their "deliberate indifference" theory of liability, plaintiffs point to *Salas v. Carpenter*, 980 F.2d 299 (5th Cir. 1992). As defendants noted in their motion to dismiss, *Salas*, which presented a hostage negotiation situation similar to that in the instant matter, provides no avenue of constitutional relief to plaintiffs. In *Salas*, the Court of Appeals reversed the district court's denial of qualified immunity for the defendant sheriff, noting that "[r]easonable officials may disagree over when a duty to protect private citizens

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[79] In support of their "deliberate indifference" theory of liability, plaintiffs cite *Grandstaff v. City of Borger, Texas*, 767 F.2d 161 (5th Cir. 1985), *cert. denied*, 480 U.S. 916 (1987). Pl. Opp. at 149. There is no mention of a "deliberate indifference" theory of liability in *Grandstaff*.

arises." *Id.* at 310. The Court of Appeals in *Salas* explicitly recognized that the Constitution does not provide a right to protective services such as ambulances or firefighting equipment, nor does the Constitution mandate a duty to provide adequate hostage negotiation training. *Salas*, 980 F.2d at 310. As the Court explained, "Lawsuits alleging that police should have acted one way or another in response to a hostage situation pose a no-win situation for the police and do nothing to encourage law enforcement or a respect for constitutional rights." *Salas*, 980 F.2d at 311.

Plaintiffs have provided no facts or applicable authorities upon which to base a valid Fifth Amendment substantive due process claim for "deliberate indifference" under these circumstances. Therefore, those claims should be dismissed.

4. Plaintiffs' Eighth Amendment claims are frivolous.

The lack of any basis for plaintiffs' Eighth Amendment claims is underscored by plaintiffs' statement, unaccompanied by any citation to legal authority, that "There is no basis in the Constitution for affording protection to convicted prisoners from assault by law officers and denying them to innocent Church members involuntarily confined like prisoners." Pl. Opp. at 163. Moreover, plaintiffs concede that the Eighth Amendment is inapplicable to this situation: "If defendants had inflicted the punishment on prisoners, they would also have violated Eighth Amendment rights." Pl. Opp. at 162-63. As defendants noted in their motion to dismiss, the Eighth Amendment's protections simply do not apply under these circumstances. The protections of the Eighth Amendment do not attach until after conviction and sentence. *Ingraham v. Wright*, 430 U.S. 651, 671, n. 40 (1977); *Baker v. Putnal*, 75 F.3d 190, 198 (5th Cir. 1996)(holding that the Eighth Amendment "protects only those who have been convicted.") Plaintiffs' Eighth Amendment claims under the circumstances presented at

the Branch Davidian Compound are plainly untenable. Moreover, even were any court to determine somehow that the Eighth Amendment's proscription against cruel and unusual punishment did apply in similar circumstances, such a construction would be a new application of the law, rather than an application of legal rules that were clearly established at the time of the incident. Even in that event, defendants would be entitled to qualified immunity for plaintiffs' Eighth Amendment claims.

5. Plaintiffs have failed to state a cognizable civil RICO claim against the individual federal defendants.

Plaintiffs assert that their RICO allegations are sufficient because "The complaints charge defendants with a wide range of actions to cover up their misconduct, including destruction and loss of evidence and much disinformation on virtually all crucial issues." Pl. Opp. at 167. However, as defendants noted in their motion to dismiss, the allegations in the complaint fall far short of stating a claim against the individual federal defendants under RICO.[80] A well-plead RICO claim requires factual allegations that demonstrate "1) a person

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[80] In response to defendants' argument that damages for personal injury of the type plaintiffs seek are not recoverable under RICO, plaintiffs state, without citation to authority, that "the destruction and ruin of the Association's buildings and land for which recovery is sought is surely injury to business or property for RICO purposes, both for the Association and for members of the Association who are also plaintiffs." Pl. Opp. at 167. However, there are no facts alleged in the complaint to support that any plaintiff possessed a legal claim of entitlement to the property. Moreover, the plaintiffs must plead facts to demonstrate a "'concrete financial loss,' an actual loss 'of their own money,' and not mere 'injury to a valuable intangible property interest.'" *In re Taxable Municipal Bond Securities Litigation*, 51 F.3d 518, 523 (5th Cir. 1995)(*quoting Steele v. Hospital Corporation of America*, 36 F.3d 69, 70 (9th Cir. 1994). There are no allegations in the complaint that any of the plaintiffs lost money as a result of defendants' alleged RICO scheme, a prerequisite for standing to assert such a claim. *In re Taxable Municipal Bond Securities Litigation*, 51 F.3d at 523; *cf. National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 258 (1994)(holding that a civil RICO claim is maintainable without proof of economic motive *only* if alleged conspirators conducted a racketeering enterprise.)

who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct or control of an enterprise." *Word of Faith World Outreach Center Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996), *cert. denied*, 117 S.Ct. 1248 (1997). *See also Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). Plaintiffs state that they have alleged "an enterprise consisting of a continuing association-in-fact in which government officers and law enforcement agents and agencies such as the FBI's Hostage Rescue Team and other government units have participated for years." Pl. Opp at 168. Plaintiffs state that "the enterprise Plaintiffs allege is a single enterprise extending over time, with changing members and shifting geographical focus." Pl. Opp. at 169. However, the complaints are noticeably devoid of facts that would support that the individual federal defendants actually formed a conspiracy to violate the plaintiffs' constitutional rights and that the defendants' actions at the Branch Davidian Compound constituted a pattern of "racketeering activity" within the purview of 18 U.S.C. 1962(c)and (d). Plaintiffs state only that their "RICO claims are specific and detailed, and there is ample nexus between the enterprise alleged, which is unmistakably continuing, the Defendants and the pattern of racketeering activity that is charged." Pl. Opp. at 170. Plaintiffs' contentions are patently frivolous.

Contrary to plaintiffs' assertion that their allegations are specific and detailed, there are no facts, as opposed to the many wholly conclusory allegations, alleged in the complaints to support plaintiffs' RICO theory of liability. The complaints are bereft of any description of specific conduct occurring at the Branch Davidian Compound that would fit into the meaning

of 18 U.S.C. § 1962(c). Plaintiffs' allegation that the United States government is an "enterprise" and that the individual federal defendants formed an "association-in-fact" is nothing more than a legal conclusion. Moreover, plaintiffs have utterly failed to identify exactly what actions of the defendants constitute a pattern of racketeering activity. To establish a pattern of racketeering activity, a plaintiff must plead facts to show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989); *Word of Faith*, 90 F.3d at 122. Plaintiffs must demonstrate the element of relatedness by pleading facts to show that the acts have the same or similar purposes, results, participants, victims, or methods of commission. *H.J. Inc.*, 492 U.S. at 240; *Word of Faith*, 90 F.3d at 122. There are no such allegations contained in the complaints. Plaintiffs have not stated a cognizable claim against the individual federal defendants under RICO. For that reason, the RICO claims should be dismissed.

6. Plaintiffs may not maintain a claim under 42 U.S.C. § 1983 against the individual federal defendants.

Plaintiffs insist that because some state employees may have assisted the individual defendants at Waco, the individual federal defendants are liable under 42 U.S.C. § 1983. Pl. Opp. at 164-165. Plaintiffs misstate the law.

In the first instance, liability under § 1983 attaches only where a defendant, acting under color of state law, causes a person to be deprived of a federally secured right or interest. As the Court explained, "[t]his requirement that action be under color of state law is as essential as it is rigorous; a person does not act under color of state law solely by virtue of her relationship to the state, but depending on her function -- i.e., the nature of the challenged

conduct." *Doe v. Rains County Independent School District*, 66 F.3d 1402, 1411 (5th Cir. 1995). A person acts under color of state law only when exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Polk County v. Dodson*, 454 U.S. 312, 317-18 (1981), *quoting United States v. Classic*, 313 U.S. 299, 326 (1941). Here, all of the actions of which plaintiffs complain arise from the individual federal defendants' exercise of authority given them under federal, not state law.

Plaintiffs attempt to bootstrap their anemic conspiracy claim to support their § 1983 and § 1985(3)[81] claims, and cite in support *Hampton v. Hanrahan*, 600 F.2d 600 (7th Cir. 1979), *judgment reversed in part on other grounds, Hanrahan v. Hampton*, 446 U.S. 754 (1980). Pl. Opp. at 163. However, *Hampton* does not support plaintiffs' § 1983 claim in the instant suits. The issues giving rise to claims for damages in *Hampton* grew out of a county-initiated investigation into the activities of the Black Panther Party, a county-application for a county-issued search warrant, and a county-prosecution following the raid. In *Hampton*, the Court determined that the "state defendants played a significant role" in the investigation and prosecution of the Black Panther Party, in conjunction with employees of the FBI, sufficient to create a state action nexus for the FBI's activities in the investigation. *Hampton*, 600 F.2d at 623.

By contrast, the state defendants did not have a significant role in the incidents at

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[81] Plaintiffs' claim under 42 U.S.C. § 1985(3) is not actionable. The Court of Appeals does not recognize a § 1985(3) claim motivated by religious animus. *Word of Faith World Outreach Center Church v. Sawyer*, 90 F.3d at 124 (explicitly stating, "We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed to racial, animus.").

Waco. Plaintiffs point out the activities of the state defendants: they allege in part that the federal defendants obtained "information and intelligence" from McClennan County Sheriff's Department employees, who "conducted or caused to be conducted daily aerial reconnaissance flights" over the compound, that aerial photographs of the compound were taken and interpreted by the Texas National Guard, which conducted six flights over the compound, and that the affidavit which supported probable cause for the arrest warrant "contained allegations of criminal wrongdoing under state law . . . ." Pl. Opp. p. 164-65. None of these allegations supports plaintiffs' § 1983 claims against the individual federal defendants.

Rather, as plaintiffs themselves allege, in this case there was a federal investigation, an application for a federal search warrant and the attempt to execute that federal search warrant by special agents of the BATF, a federal investigative agency. These facts require the conclusion that the state actors did not play a significant role and that the federal defendants may not be held liable under § 1983. For that reason, plaintiffs have failed to state a claim under 42 U.S.C. § 1983 against the individual federal defendants, and those claims should be dismissed.

7. Plaintiffs have failed to state a cognizable constitutional claim for failure to supervise and failure to train.

Plaintiffs' conclusory allegations that "defendants Higgins, Hartnett, Troy, Conroy, Chojnacki, Dunagan, Royster, Mastin, Sessions, Potts, Jamar, Ricks and others failed to train and to supervise their subordinates at Waco," Pl. Opp. at 175, fall far short of stating a claim under the Constitution.

In order to maintain a claim for damages based on an alleged failure to train and failure to supervise, a plaintiff must first plead facts, as opposed to conclusory allegations, that

demonstrate a constitutional violation. *Baker v. Putnal*, 75 F.3d at 199. Supervisory officials may only be held liable if they affirmatively participate in acts that cause the constitutional deprivation; or if they implement unconstitutional policies that causally result in plaintiff's injury. *Id.* For supervisory liability to attach in the failure to train context, a plaintiff must demonstrate (1) that the supervisor failed to supervise or train the officer, (2) that a causal connection existed between the failure to supervise or train and the violation of plaintiffs' rights, and (3) such failure to supervise or train amounted to gross negligence or deliberate indifference. *Id.*

Here, plaintiffs have failed to plead facts to show that the defendants acted in any way to violate the Constitution. Moreover, as the Court of Appeals explicitly noted in *Branch*, the Davidians were not free from fault in prompting defendants' actions at Waco. *See Branch*, 91 F.3d at 717. With respect to ATF's actions in attempting to execute the search warrant, the Court of Appeals determined that ATF's use of force was reasonable under the circumstances. *Id.* at 720. With respect to the standoff, the Court of Appeals noted that "The Compound residents were free to leave Mount Carmel at any time. The Davidians chose to remain, to stand guard against the FBI, and, if necessary, to use deadly force to repel the FBI." *Id.* at 734. Under these circumstances, plaintiffs have failed to state a cognizable constitutional claim in the first instance; therefore, their claims for failure to train and supervise should be dismissed.

CONCLUSION

For the foregoing reasons, and for the reasons advanced in the motion to dismiss, the complaints should be dismissed.

As to the United States' Motions and Part One, only:

Dated: March 19, 1998

Respectfully submitted,

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As to the Motions of the Individual Federal Defendants and Edward S.G. Dennis, Jr., and Part Two, only:

Dated: March 19, 1998

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May 13, 1999

RECEIVED
MAY 14 1999
CLERK, U.S. DISTRICT COURT
By: Deputy

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

VIA FEDERAL EXPRESS

Honorable William G. Putnicki, Clerk
United States District Court
Western District of Texas
800 Franklin Street
Waco, Texas 76703

Re: *Andrade, et al. v. Chojnacki, et al.*,
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE AND BRIEFING

Dear Mr. Putnicki:

Plaintiffs' motion for leave to file yet more briefing and evidence in this matter should be denied. The issues to which plaintiffs claim this evidence -- none of which is "new" -- pertains have been fully briefed by all parties and are ripe for ruling by the Court. These issues, as stated by plaintiffs, are: "was excessive force used to kill Schroeder, who shot first on February 28; did Defendants intentionally or recklessly start the April 19 fire." Plaintiffs' Motion for Leave to File Supplemental Evidence and Briefing ("Pltfs' Mot.") at p. 2.

Plaintiffs' open-ended motion essentially seeks discovery in this matter prior to resolution of the pending threshold motions. However, all defendants are entitled to a ruling on their immunity defenses prior to the opening of discovery. The individual defendants' FED.R. CIV. P. 12 (b)(6) motion asserts that plaintiffs have failed to state a claim for relief against the individual federal defendants in light of their entitlement to qualified immunity from suit in their individual capacities for the actions alleged. Defendants are entitled to immunity from suit even if plaintiffs' rights were violated so long as those rights were not "clearly established" at the time of the incident, or if reasonable officials in the defendants' position could disagree as to whether their conduct would violate plaintiffs' rights. *Mitchell v. Forsyth*, 472 U.S. 511, 535 and n. 12 (1985). As the Court of Appeals recently noted, "[e]ven limited discovery on the issue of qualified immunity must not proceed until the district court first finds that the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity.'" *Heitschmidt v. City of Houston*, 161 F.3d 864, 840 (5th Cir. 1998), *citing Vander Zee v. Reno*, 73

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F.3d 1365, 1368-9 (5th Cir.1996). The jurisdictional defenses of the United States also should be adjudicated before this litigation goes forward. *See Sutton v. United States*, 819 F.2d 1289, 1299 (5th Cir. 1987).

Moreover, plaintiffs have submitted nothing other than vague generalizations and speculation about the existence of evidence that they claim was somehow missed by the prosecutors and defense attorneys in *United States v. Branch*, as well as by congressional investigators. Such unsworn, unsupported speculation is insufficient to warrant discovery at this juncture. Plaintiffs have had ample opportunity to make their case for discovery in their prior submission to the Court. After almost four years of litigation and submissions by the parties, the Court has more than enough information on which to base a ruling as to whether further discovery is necessary on any of the factual issues.

1. *Results of audio analysis.*

Plaintiffs argue that the results of work by an "audio expert ... may establish that gunfire was directed from the helicopters." Pltfs' Mot. at 2. First, whether shots were fired from the helicopters during the shootout is not relevant to the issue before the Court: who shot first?[1] Second, it is significant for purposes of the motion at hand that the existence of such evidence is not "new" -- indeed, plaintiffs have had access to videotapes, audiotapes, and other materials through Freedom of Information Act actions brought by their colleague, David Hardy, *see* Plaintiffs' Consolidated Response to Defendants' Motions, filed 1/21/98 [document # 185 on the Court's docket sheet] ("Pltfs' Response"), at p. 44, and allegedly have submitted tapes to their own expert for evaluation. *Id.* at 45. That Mr. McNulty or some other third party is having similar studies performed has no bearing on the disposition of the pending motions in this case. The issues raised by the proposed examination of tapes by expert audiologists have been fully briefed by the parties. *See, e.g.*, Pltfs' Response at 44-46 and Defts' Reply at 80-83. Further briefing is neither necessary nor warranted, and Plaintiffs' motion for leave to do so should be denied.

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[1] Moreover, the Fifth Circuit, in addressing this same issue, concluded that the allegations that shots were fired from the late-arriving helicopters were deficient.

> Even if, for example, the National Guard helicopters did fire, the contended-for inference that the four defendants acted in self-defense by letting loose a volley of fire upon the ATF agents on the other side of the compound is untenable.

United States v. Branch, 91 F.3d 699, 719 (5th Cir. 1996), *cert. denied*, __U.S. __, 117 S. Ct. 1467 (1997). *See also* Defendants' Reply Memorandum of Law in support of the dispositive motions, filed 3/20/98 [document # 198] ("Defts' Reply") at 61-62.

2. *Videotape of April 19, 1993, and munitions recovered from the compound.*

Plaintiffs fail to show how an April 19, 1993, videotape or munitions examined by Mr. McNulty warrant further submissions prior to the Court's ruling as to the cause of the fire. The issue before the Court is whether summary judgment is appropriate as to the cause of the fire because the voices of the Davidians establish that they themselves set the fire and the Court has so found. Plaintiffs have previously briefed their argument concerning the cause of the fire, Pltfs' Response at 58-78, and the alleged need for discovery and expert testing. Pltfs' Response at 78-79. Defendants also have briefed these issues fully. *See, e.g.*, Defendants' Motions filed 11/10/97 [document # 177] ("Defts' Mot.") at p. 67-70, Defts' Reply at p. 64-78.

3. *Michael Schroeder's hat.*

Plaintiffs' theory that Michael Schroeder "might" have been shot at close range was based solely on speculation about his allegedly missing hat. *See, e.g.*, Pltfs' Response at p. 35.[2] They are not entitled to discovery to disprove a theory that they have created. *See* Defts' Reply at 48-51. That plaintiffs now allege that the hat is not missing does not add any substance to plaintiffs' initial baseless speculation regarding the death of Michael Schroeder.[3]

Following receipt of plaintiffs' motion, the undersigned counsel for the United States spoke with Texas Ranger Captain Charlie Brune, who accompanied Mr. McNulty when he looked at the Branch Davidian evidence. According to Capt. Brune, the blue hat located by

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[2] The statement about Schroeder's hat in Plaintiffs' Response in turn cites their Motion to Intervene in the *Risenhoover* litigation. The Motion to Intervene contains the same allegation, but cites no evidence in support of the claim that the hat is missing. *See* Motion to Intervene, filed 11/25/96 [document # 95] at 7. A review of the *Branch* trial transcript reveals that the hat was collected by the Texas Rangers when Schroeder's body was recovered, *see, e.g.*, trans. 1/31/94 at 3879-80 (testimony of T.J. Almond). The Medical Examiner testified that the hat was not listed on an inventory included in his autopsy report. *See* trans. 2/11/94 at 6013 (testimony of Dr. Peerwani).

[3] As was pointed out in the Defts.' Reply at 62-64, the facts surrounding Schroeder's death were established in the *Branch* trial by the testimony of eyewitnesses. Significantly, the declarations of Norman Allison and Woodrow Kendrick, Davidians who were present at the scene of the shootout with Schroeder, do not contradict the testimony of the ATF agents. Allison does not claim to have witnessed the first shot, and states only that he thought the first shot came from "ahead of us," and admits that he was some 90 feet away from Schroeder during the shootout. Kendrick admits that he had lost sight of Schroeder and, consequently, has no personal knowledge of who shot first. Indeed, Kendrick was so far away from the shoot-out with Schroeder that he, unlike Allison, succeeded in eluding the ATF agents who captured Allison.

McNulty is in a brown paper bag marked "Name: John Doe #1." The label indicates that it was made by the office of the Tarrant County Medical Examiner.[4] Regardless of whether the hat was omitted from the inventory of items included in the report of Schroeder's autopsy (*see* note 2, *supra*), it's existence adds nothing to the issues that have been briefed in full by the parties.

Plaintiffs' allegations of excessive force in connection with the death of Michael Schroeder were addressed at length in Pltfs' Response at, *inter alia*, p. 55-58, as was their argument for discovery prior to ruling on the pending dispositive motions. *Id.* at p.57. The defendants addressed these allegations in Defts' Mot. at, *inter alia*, p. 65, 72-79, and in Defts' Reply at, *inter alia*, p. 48-55, 62-64, 80, 83-84. Further briefing is not necessary on this issue.

Since all issues have been briefed fully through the parties' previous submissions, Plaintiffs' Motion for Leave to File Supplemental Evidence and Briefing should be denied.

Respectfully,

MARIE LOUISE HAGEN
Trial Attorney
Civil Division, Torts Branch
Counsel for the United States of America

cc: Counsel of Record

---

[4] Captain Brune has agreed to furnish a declaration for submission to the Court at the appropriate time, if necessary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 1999, I served copies of the foregoing Defendants' Opposition to Plaintiffs' Motion for Leave to File Supplemental Evidence and Briefing by first-class mail to counsel for the plaintiffs and defendants as follows:

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BY FACSIMILE

August 30, 1999

Honorable Janet Reno
Attorney General of the United States
Washington, D.C.

Dear Madam Attorney General Reno:

As I have watched the responses made by the Department of Justice to the recent Davidian evidence controversy, I have formed the belief that facts may have been kept from you - and quite possibly are being kept from you even now, by components of the Department. Therefore, this letter is written in an attempt to advise you of facts which might allow you to better deal with the issues at hand.

As you recall, shortly after the failed February 28, 1993, raid by ATF, I asked the Texas Rangers to come into the case as an objective agency which could investigate the circumstances of the shootout and present evidence for a possible prosecution. Thankfully, the Rangers agreed. Their job was not to be an easy one, and their work was made more difficult when the FBI altered the crime scene by using armored vehicles to push Davidian vehicles away from the compound. This problem, along with others, caused me to write the letter to you dated March 23, 1993, seeking help with what I termed, "...a crisis within our District... ." You responded shortly thereafter in an attempt, I know, to gain control over a very difficult situation.

In addition to their role as investigators, the Rangers have been the primary custodians of the evidence gathered during the investigation. In 1998, an independent film-maker from Colorado named Mike McNulty began making requests to view the evidence. He contacted the Public Affairs section of the Department of Justice and he contacted me. After we had both received numerous phone calls from McNulty, Bert Brandenburg and I spoke about how to respond to his requests. We both had some reservations about dealing with Mike McNulty, in part, because of his first film, "Waco- Rules of Engagement." I felt at that time that the film was inaccurate, if not irresponsible. However, I expressed to Mr. Brandenburg that to stonewall McNulty tended to lend some credence to his already held belief that the government had something to hide. Because much of the evidence which McNulty sought to view had been in the public domain at trial, and because McNulty was not

EXHIBIT
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a litigant, I believed that some reasonable but limited access should be granted him. Sometime after our discussion, Bert Brandenberg telephoned me to say that I should serve as the Department's contact with McNulty and that if I could get the Rangers to assist in allowing McNulty reasonable access to the evidence, then I should proceed in allowing him access. I have recently been told that Bert Brandenberg now distances himself from that decision and states that it was "Johnston's idea." No matter how he casts it, I am glad that McNulty was allowed to see the evidence.

Following my call to them, the Rangers kindly allowed McNulty to view the evidence. I was present on one occasion when McNulty came to Austin to see the evidence. I did not attend when he came a couple of times later. I know that his visits were closely supervised by the Rangers. At no time did he alter or disturb the integrity of any item of evidence. Following his viewing of the evidence, McNulty sought permission to interview you and me for his film. This request was denied by Bert Brandenberg. In his letter denying the request, Brandenberg discusses the fact that McNulty had been given access to the evidence (letter attached).

Based upon his observation of the evidence, Mike McNulty began to believe that evidence existed that the FBI had fired some sort of 40 millimeter projectile which could have started the fire on April 19, 1993. He has stated to me that in November of 1998, he wrote a letter to the Department of Justice, alleging facts in connection with the 40 millimeter projectiles.

On a Saturday morning in June of 1999, I received a telephone call at my home from DOJ Torts Branch lawyer Marie Hagen. Ms. Hagen was extremely upset with me. She demanded to know whether or not I had allowed Mike McNulty to view the Davidian evidence. I responded that I had. Ms. Hagen asked me what I thought I was doing, and inquired if I had received permission from the Torts Branch to allow McNulty access. She next asked if I had received permission from the Criminal Division. I responded as to both demands that the permission to do so had come from the Chief of Public Affairs, and that I figured that he had checked with the necessary folks before allowing me to coordinate with McNulty. She ended the conversation unquenched in her anger. I think that I now know why. Then within a day or so, I received a letter from Marie Hagen which directed that I account for my dealings with McNulty, Brandenburg, "...and anyone else in connection with these materials." About the same time, our office received a similar letter over the signature of Jeffrey Axelrad, Chief of the Torts Branch (letters attached).

In mid-June of this year, I received a letter from an attorney for the Texas Department of Public Safety (DPS). He later telephoned me. The attorney stated that DPS desired to cease being custodians of the Davidian evidence. I told the attorney that I would help them in any way, since DPS, particularly the Rangers, had done more than what was expected of them. DPS personnel have since explained to me that their agency simply did not have the time or resources to continue to deal with the many issues regarding the evidence, particularly the ever-increasing number of Open Records requests. DPS has felt somewhat slighted by the Department of Justice in this regard since the Department has apparently avoided dealing with Freedom of Information Act requests about the evidence by stating something like, "We don't have the evidence, the Rangers do." This response may be a little disingenuous because the Rangers actually have the evidence as Special Deputy U.S. Marshals. Genuine or not, this manner of response by the Department has caused DPS to be burdened with a large number of requests. DPS then chose to file a motion with U.S. District Judge Walter Smith, Jr., of Waco. The motion sought an order transferring responsibility for the evidence to another agency. Wisely, the Chairman of the DPS Commission asked the Rangers to take stock of the evidence before it was released. As they looked at the task of inventorying and reviewing the

evidence, the Rangers were determined to be particularly attentive to "controverted" evidence. That is, evidence which by claim of McNulty, or others, was meaningful to some alleged misconduct or misrepresentation.

A couple of months ago, Rangers began the task of looking again at the evidence. After some initial work, certain "40 millimeter" evidence became the focus of their inquiry. Because of my relationship with both the Rangers and the case, I was asked by the Rangers to work with them in their effort. This I did. Since I was the one who brought the Rangers into this case at the beginning, I figured that I should help them see it through to the end. Pretty soon, a 40 millimeter shell casing marked "M-118" and a photograph of a grey projectile with a red stripe became very significant. As soon as their significance was even suspected, I notified my U.S. Attorney, in writing, of what was going on. Soon, it was determined that the casing had been fired by the FBI on April 19, 1993, --by their own admission. This admission had been made to a Ranger in late 1993 or early 1994. The Ranger simply did not understand the significance of the casing at that time. The full significance was figured out by the Rangers just in the past couple of weeks. The photo of the projectile mentioned above shows what the Rangers now know is an M-651 pyrotechnic tear gas round. The casing goes with the projectile. As early suspicions of these problems made their way to the media via the DPS Chairman Jim Francis, I was astounded to see the Department's response was that this was "more nonsense." My surprise was based upon the fact that I had been updating my U.S. Attorney for weeks about this evidence. Attached are some of the "e-mails" which I have been able to find having to do with these discussions. Last week, I expressed this frustration to current Public Affairs Chief Myron Marlin (document attached). I am in disbelief that someone in the Department did not advise you of these developments. I hope that you can find out why they did not. In addition to the "e-mails," I sent to my U.S. Attorney, by facsimile, copies of the specifications for the M-651 tear gas round which the Rangers had obtained. Again, this was done by me weeks ago.

As you recall, when Congress investigated the Davidian matter in 1995, I was called as a witness. Once it was determined that I would have to testify, I was kept at a distance from the Department. It was not the Department that brought me to Washington to prepare for the hearing, but the Treasury Department. Although I was treated courteously by Richard Scruggs, I was not assisted by anyone with DOJ in any real way in preparing for my testimony. In fact, I was handled as if I had some strain of intellectual leprosy. A couple of days before the hearing, an AUSA named Zipperstein told me that I needed to write out a statement of my recollection of the events. This, he said, was so that I could have these matters placed into the record in case I was not given the opportunity to have my say on certain matters. An office and computer were provided to me to prepare this statement. For the next several hours, I worked feverishly on my statement. Upon completion, I walked proudly to Mr. Zipperstein's office with statement in hand only to be told that I did not need to do a statement after all. When I asked what had changed and why I would not be allowed to give the statement, Zipperstein told me simply that nothing had changed - he just did not need for me to do the statement. Naively, stupidly, I accepted his response. With the hearing beginning the next day, I made my way down the street to the Treasury Department where Undersecretary Ron Noble, who was neither ashamed of me, nor afraid of what I might say, talked with me about some of the issues which might arise at the hearing. I mention the foregoing about the previous experience because I anticipate the same or worse may occur. In fact, it may have already begun. Last week, a fax which originated with the Department of Justice came to me. The

fax was in three pages. The first was a copy of handwritten notes which had apparently been written by a paralegal who assisted in the Davidian trial preparation. The notes were of an interview of an FBI agent which was probably conducted in 1993. The notes reflect that the agent said that he fired ferret rounds and a "military gas round." An accompanying document is an outline of the witness' testimony which bears the name of the paralegal and my name. This suggests that I was present during the interview. Although I do not specifically recall the interview, I probably was present if the document says that I was. I can certainly tell you that, assuming I heard the entire conversation, the term "military gas round" would not have meant anything to me at the time. The third page of the fax was an FBI report of an agent who heard radio traffic about a military round being fired. It has been suggested to me that these documents were sent to me to "hang over my head," or to say that I'd better look out stirring this matter up, as I may have to explain this paralegal's memo. So long as it is the truth "hanging over my head," I am not afraid. I will not be intimidated by anyone with the Department of Justice. I will assist the Congress or any other body who seeks the truth in this case.

I mentioned above that I think that I understand why Marie Hagen was so upset that I had worked with Mike McNulty in allowing him access to the Davidian evidence. I believe that the three pages faxed to me last week hold the answer. At the top of the typewritten document, someone has written, "...privileged." At the bottom it appears that someone wrote, "DOJ witness do not disclose." It appears that someone was making decisions about whether the plaintiffs in the civil case, or others, should have access to these documents. It is my own hypothesis that the Torts Branch has had these documents for years, and that they decided not to make them available to the plaintiffs. The Torts Branch or some other component also apparently decided not to let you know about these documents. Certainly, as attention focused in the past year on the fire issue, the full import of these documents must have been known to whomever possessed them. I now wonder whether or not you were ever advised that two Deputy U. S. Marshals in Waco were falsely accused of leaking raid information to the media back in 1993. These allegations were completely false, if not malicious. Not only was no action taken against the accusers who were both Deputy Marshals as well, but one of them has since been promoted. Similarly, although two ATF supervisors lied to the Rangers about whether or not they knew the element of surprise had been lost before the raid, representatives of the Department of Justice chose to not prosecute these individuals – and they were rehired with ATF. This sort of non-accountability, as described above, cuts at the credibility of the Department of Justice.

You may recall that in my March 23, 1993, letter I closed by saying "...[I] am willing to accept any consequences..." for writing the letter. There have been some consequences. I will close this letter to you by briefly describing a few. Essentially, since the letter, I have been seen by many as a mutineer. The Waco Division office which I supervise has been given little help to deal with an ever more complex caseload. To deal with the caseload which we produce, the U.S. Probation Office in Waco has gone from a staff of three, to a staff of twenty in the past ten or so years. Our office saw only modest growth from one to three attorneys by 1993, with no real growth over the past six years. For most of the past six years, our office has been comparable in caseload and complexity of cases to that of the Austin office, an office which hosts more than three times as many attorneys and three times the support staff. Although our entire District has yet to prosecute a capital case, my office currently has three federal capital murder cases pending. In fact, we now have ten defendants charged in or in relation to homicide cases. If our office does not deserve resources,

certainly the victims' families do. We also have a couple of 50 ton marijuana cases and a methamphetamine case involving a ton or more pending amongst our current case load of 81 cases against some 156 defendants.

It is a reality of our large government that its department heads cannot learn of every significant event taking place within their purview. If this has happened to you, I hope that this letter can assist you in learning of some of the facts which have been known by individuals under your supervision. In an order issued some years ago, Judge Smith referred to the Davidian case as, "An American tragedy of epic proportion." It was. I hope that the truth may be learned so that the tragedy does not continue.

Sincerely,

William W. Johnston
Assistant U. S. Attorney
Chief, Waco Division
Western District of Texas

FROM

(NED) 4. 16'99 9:17/ST. 9:14/NO. 4860522876 P

U.S. Department of Justice

Office of Public Affairs

Washington, D.C. 20530

November 3, 1998

Mr. Michael McNulty
MGA Entertainment Inc.
1001-A East Harmony Road #353
Fort Collins, CO 80525

Dear Mr. McNulty

I am writing to decline your request that a Justice Department official appear on camera for your documentary. The Waco incident and its aftermath have generated one of the most extensive public records in law enforcement history, including volumes of interviews and testimony, and we would refer you to those public records.

In addition, we have worked over the past several months to provide you with access to even more information and evidence. Assistant U.S. Attorney Bill Johnston has spoken to you dozens of times and provided access to Texas Rangers. Digging through often filthy boxes, they were able to locate evidence of interest to you and answer many of your questions. I understand that other visits may be arranged in the future.

If you need the government's response to any inquiry, we will be glad to provide it in writing. However, because so much of the reporting and analysis of Waco has been so one-sided, distorted, and inaccurate, and because the public record is already so voluminous, we are simply not in a position to offer interviews that can be edited before they are entered into the public record.

Sincerely,

Bert Brandenburg

Bert Brandenburg
Director of Public Affairs

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Marie Louise Hagen
Trial Attorney

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel.: (202) 616-4278
Fax: (202) 616-5200

PJP:MLHagen:mlh
157-74-3487

May 3, 1999

VIA FEDERAL EXPRESS

Bill Johnston, Esq.
Assistant United States Attorney
Western District of Texas
700 University Parks Drive
Waco, Texas 76706

Re: *Andrade, et al. v. Chojnacki, et al.*,
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

Dear Mr. Johnston:

As you know, we recently learned that various individuals have had access to evidence from the Branch Davidian investigation and trial that is stored with the Texas Rangers in Austin and by ATF in Waco, and that these individuals were permitted to take samples of residue from several pieces of this evidence for laboratory study. As a result, the plaintiffs in this action have moved for leave to file evidence obtained by Mr. McNulty and additional briefing on the motions pending before the Court (see attached). It order to prepare for discovery and other matters in connection with the defense of this litigation, we need to document who had access to the evidence, when the access occurred; and under what circumstances.

Please draft a statement or report that describes in detail all conversations you had with Michael McNulty, Bert Brandenberg, and anyone else in connection with these materials, and forward that report to me.

As we have advised Mr. Blagg (see attached letter), any further requests for access to these materials should be referred to me or Jim Touhey, my co-counsel on this matter. I suggest that you discuss the propriety of any further discussions with Mr. McNulty with your counsel, Joe Sher and Nina Pelletier.

Very truly yours,

Marie Louise Hagen

MARIE LOUISE HAGEN by JGT
Trial Attorney
Civil Division, Torts Branch

FROM (WED) 6. 16' 99 9:16/ST. 9:14/NO. 4860522576 P 4
RS 5/4/99

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Jeffrey Axelrad
Director

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel.: (202) 616-4400
Fax: (202) 616-5200

JA:PJP:MLHagen:mlh
157-74-3487

May 3, 1999

VIA FEDERAL EXPRESS

Hon. James W. Blagg
United States Attorney
Western District of Oklahoma
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Re: *Andrade, et al. v. Chojnacki, et al.,*
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

Dear Mr. Blagg:

We recently learned that various individuals, including producer Michael McNulty, have had access to evidence from the Branch Davidian investigation and trial that is stored with the Texas Rangers in Austin and by ATF in Waco. We further understand that Mr. McNulty or someone who accompanied him was permitted to take samples of residue from several pieces of this evidence for laboratory study. Since both the civil and criminal litigation stemming from the events at the Branch Davidian compound are pending, it is improper and unwise to allow access to this evidentiary material without coordination with all the components involved in the litigation. Given the nature of the conspiracy allegations in the civil case, it is important to avoid unrestricted access and tampering with the evidence.

Although attorneys in this office have been in contact with AUSA Bill Johnston, the Texas Rangers, ATF, and the Department's Office of Public Affairs on issues in the case, they were not advised that Mr. McNulty's request for access to the evidence had been approved. It is our understanding that Department attorneys handling the appeal of the criminal case also were not consulted prior to the decision to allow access to the evidence.

It is imperative that the integrity of this evidence be maintained pending the final resolution of this litigation. Joseph C. Wyderko in the Criminal Division agrees with this. Discovery in the civil litigation has been stayed pending resolution of threshold dispositive

motions filed by the defendants. Should any issues remain after the Court rules on these motions, access to tangible evidence should be permitted in accordance with the precepts of civil discovery under the Federal Rules of Civil Procedure.

With respect to the civil suit, any future requests for access to the Branch Davidian evidence should be referred to the attorneys assigned to represent the interests of the United States, Marie Louise Hagen (202-616-4278), or, in her absence, James G. Touhey (202-616-4292).

Thank you for your assistance in this matter. Please do not hesitate to contact me if you wish to discuss this.

Very truly yours,

Jeffrey Axelrad
Director, Torts Branch
Civil Division

cc: Imelda Koett, Esq., Office of Chief Counsel, ATF
Jacqueline F. Brown, Esq., Office of General Counsel, FBI

From: Bill Johnston
To: [redacted]
Date: 8/2/99 8:14pm
Subject: davidian evidence

I spoke with the Jahns who asked that I try to find out if the Judge will allow a little more time for a well thought out dept. response to the evidence motion by DPS. I am working on that right now. I spoke with Ranger Joey Gordon who is close to some answers on the questioned evidence. He is going to update me tomorrow morning in Austin, and I will call you after he tells me what the deal is.

From: Bill Blagg
To: [redacted]
Date: 8/3/99 6:20pm
Subject: Davidians

Bill: As you know, our recommendation on how the evidence should be deposited is currently under review at the highest levels of the Department of Justice. Any decisions concerning any involvement that our office agrees to take or declines to take on the Ranger's investigation should be carefully reviewed by me so that I can pass it upstream. You know of the AG's personal interest in this case and it remains quite strong. Please keep me advised of what is going on the matter at all times. I have been told that back in 93 the supervision of this matter was removed from USA control and placed under the supervision of a Deputy AG, so I inquired yesterday about what my role should be. I was told to stay involved in the matter.

CC: jmurphy, rdurbin, rjahn, ljahn

From: Bill Johnston
To: AFTXW01.PO(rjahn)
Date: 8/19/99 10:16am
Subject: davidian evidence -Reply -Reply

The casing is labelled M-118 and it is said to fire the M-651 tear gas round. I think that they were manufactured in 1969... at least that was the original information that I recall from Joey Gordon.

From: Bill Johnston
To: atxw01.po.bblagg
Date: 8/17/99 5:48pm
Subject: davidian evidence

Although the work has not been totally completed, Ranger Joey Gordon is close to an end in his investigation of the 40mm projectiles and casing which have been in controversy. The evidence thus far as to the 40mm casing shows that it held an M-651 projectile.. The photograph depicting the grey object with the red band is of just such a projectile. The M-651 is a tear gas round which is filled with a "CS-pyrotechnic mixture."

The two black 40mm projectiles are most likely "flash and report" type of rounds. If so, these could be rounds which were fired by the FBI HRT during the seige to drive the occupants of the compound back inside. The rangers hope to have the work on these 40mm items completed next week.

[redacted]

From: Bill Johnston
To: aex10ml.wtgate.MMarlin
Date: 8/26/99 11:03am

There is obviously quite a bit of concern that exists regarding the evidence of pyrotechnic projectiles being found by Texas Rangers. There should be no real surprise that valid questions do exist. The Rangers' inquiry has been no secret to the Dept. For several weeks, I have advised Mr. Blagg, my U.S. Attorney, of developments in their inquiry, including the information that the FBI had acknowledged to the Rangers that they had recieved permission to fire another type of round. A couple of weeks ago, I faxed the specifications on the M-651 round to Mr. Blagg. This is the round which the Rangers said was fired. I have also updated the Jahns repeatedly regarding the Rangers' investigation. The Department has not asked me nor the Rangers for information as to what their information has shown. The Rangers will be glad to discuss their investigation with the Dept. I received by fax today a copy of handwritten notes of a paralegal who assisted in the trial preparation. The notes reflect that she noted that an HRT member discussed shooting a military gas round. The accomanying paperwork reflects that I was present for the interview. I don't recall the interview specifically, and I don't think that the term "military gas round" would have meant anything to me at the time, but the information from that interview has been in the Department's hands for many years. At any rate, I or the Rangers will be glad to answer any questions which the Dept. may have.

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Marie Louise Hagen
Trial Attorney

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel.: (202) 616-4278
Fax: (202) 616-5200

PIP:MLHagen:mlh
157-74-3487

September 2, 1999

MEMORANDUM

To: Donald Remy
Deputy Assistant Attorney General

From: Marie Louise Hagen
Trial Attorney

Re: AUSA Bill Johnston's Allegations Concerning "Withheld" Information in the Branch Davidian Tort Litigation.

This is in response to your invitation to comment on the recent claims made by Assistant United States Attorney Bill Johnston to the Attorney General and the media concerning an alleged withholding of information concerning the use of pyrotechnic devices. Unfortunately, I was advised this afternoon by a reporter for the New Yorker Magazine that I had been named as the person who was attempting to "set up" Mr. Johnston. Because this is patently false, I am providing this information so that the Attorney General and the Department have my account of the events, as best I can recall and document them.

Michael McNulty's Access to Texas Ranger Evidence.

I first learned on Friday, April 30, 1999, that Michael McNulty, a consultant utilized by the plaintiffs in the tort litigation, had been given access to the Branch Davidian evidence held by the Texas Rangers, when we received his declaration attached to a pleading filed by the plaintiffs. Up to that point, we believed that the evidence was secure in the custody of the Rangers, where it would remain until the commencement of discovery in the civil litigation. I reached one of the prosecutors, AUSA LeRoy Jahn at a conference or retreat (which I believe was for all AUSAs in the District). Mrs. Jahn told me that she did not know that Mr. McNulty had been given access to the materials, and advised me to talk with Mr. Johnston, who might be reached at his office. I reached Mr. Johnston at his home on Friday, April 30, and not on a Saturday in June as he states in his letter to the Attorney General (Letter to AG at 2).



Mr. Johnston told me that he allowed Mr. McNulty to access the evidence because he had been ordered to do so by "Washington." When I pressed him, he said that Bert Brandenberg, who had been the Director of Public Affairs, had directed him to give McNulty access to the evidence. I asked whether the Director of Public Affairs had authority to direct an AUSA to release evidence in a pending criminal matter, and Mr. Johnston responded, "I assumed that he had talked to the appropriate people in Washington."

Thereafter, I sent an e-mail to Bert Brandenberg, who was living in Germany, to learn who made the decision to allow Mr. McNulty to have access to the evidence, and why no one had advised the attorneys handling the civil litigation, or, as I subsequently found out, the attorneys handling the appeals in the criminal case. My e-mail is attached at Tab 1. Mr. Brandenberg indicated that he assumed that Mr. Johnston was coordinating with the litigation team. His response is at Tab 2.

I wrote a letter asking Mr. Johnston to detail his contacts with Mr. McNulty. At this point, it was evident that a consultant and an expert witness working for the plaintiffs had had access to the evidence. We received a response from the Civil Chief for the Western District of Texas, John Paniszczyn, who had previously advised my Branch Director, Jeffrey Axelrad, by telephone, that Mr. Johnston had acted "at the direction" of the Attorney General's office. In his written response, Mr. Paniszczyn reiterated Mr. Johnston's position that he had been "directed by Bert Brandenberg . . . to provide access to Mr. Michael McNulty." At the time, this response, coupled with Mr. Johnston's statement on April 30, led me to conclude that there had been a mis-communication between OPA and the US Attorneys Office. Now these statements stand in sharp contrast to Mr. Johnston's public position that he was in favor of and facilitated the disclosure to Mr. McNulty.

I also spoke with one of the Texas Rangers, and learned that not only had Mr. McNulty had access to the evidence, but that he and Mr. Fredrick Whitehurst had taken samples of residue from certain munitions for testing. We later received from plaintiffs a videotape of Mr. McNulty opening sealed evidence bags and handling items in the Rangers' storage locker, and received photographs from the Rangers showing that Mr. McNulty had added his signature to bags he had unsealed in the locker. Thus, in contrast to Mr. Johnston's statement that "[a]t no time did [McNulty] alter or disturb the integrity of any item of evidence," Letter to AG at 2, it appears that evidence that the Torts Branch had thought was secure had in fact been disturbed and altered.

Evidence Pertaining to Military CS Gas Rounds.

Mr. Johnston's claim that evidence concerning "pyrotechnic" rounds has been withheld by attorneys in the Civil Division is mis-informed. In fact, three of the documents we recently located were turned over to Congress, presumably after review by the Department's team that collected, organized, and furnished records to Congress in 1995.

Allegations that the FBI fired "pyrotechnic" rounds into the bunker near the compound first surfaced in the tort litigation in January of 1996, after we had filed motions to dismiss and for summary judgment. With respect to the issue of the fire, we took the position that the evidence adduced at the criminal trial -- particularly the tape recorded voices of the Branch Davidians -- established that they intentionally set the fire. We asked the court to take judicial notice of those facts. In response, plaintiffs made allegations about, among other things, the "pyrotechnic" rounds. Their claim was supported by a declaration by Richard Sherrow, one of their expert witnesses, who contended that "documents obtained from the FBI through the Department of Justice indicate[] that . . . [the HRT] fired at least one 'military' round and referred to this munition as a 'bubblehead.'" We did not respond to the merits of this, or certain other allegations.[1] Instead, we countered with the argument that speculation could not overcome the recorded words of the Branch Davidians who spread the fuel and lit the fires.

When plaintiffs later submitted a March 1997 declaration from Mr. Sherrow, together with news footage that allegedly showed the firing of a military CS gas round into the bunker or pit area, we dismissed it as immaterial, since the firing of a munition into the bunker several hours before the fire could not have been the cause of the fire -- which was the issue at hand. Interestingly, the news report refers to statements made by then-Director of Public Affairs, Carl Stern, in response to the allegations and the footage.

Discovery of Records Regarding Military CS Rounds

The court ruled on the dispositive motions on July 1, 1999, and issued the scheduling order setting trial for October 18, 1999, on July 2. Computer scanning technology of records collected within the Department and the FBI became available to us on July 23, 1999, and our team was trained to use the computer software on August 5, 1999.

An attorney on our trial team, Jim Touhey, was assigned to master the facts pertaining to the claims that the FBI started the fire and blocked egress from the building. After reviewing the various declarations furnished by plaintiffs over the years, on August 19, 1999, Mr. Touhey ran a search for the term "bubblehead" on the computer, and came up with three documents. One of these documents, an internal FBI memorandum was not a record we had had access to prior to getting the computer in late July of 1999. This document is at Tab 3. The notation on the lower left-hand corner says "FBI," which indicates that our document contractor scanned the document at FBI headquarters. The second document, at Tab 4, consists of handwritten notes that were furnished to Congress. This can be determined both by the notation "Cong" in the lower left and

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[1] These include allegations that members of the Delta Force or others entered the compound and placed an explosive charge on top of the concrete room within the compound, and that agents entered the compound on April 17 and could have killed Koresh, but held off on orders of Webster Hubbell.

the bates-number with the "WACO" prefix on the right.[2] The third document, at Tab 5, is entitled "WACMUR F.B.I. H.R.T. INTERVIEW SCHEDULE 11/9/93." On a later search, I also identified a fourth document, the FBI 302 of SA Wayne R. Smith, a portion of which is at Tab 6.

The documents at tabs 4 and 5 appear to be notes taken by the US Attorneys Office in connection with its preparation of the criminal trial. Such documents, although furnished to Congress, would be exempt from discovery in civil litigation because they fall within the Attorney Work Product Privilege.

Notations on US Attorney Records

A day or so after we found the documents, my Branch Director, Mr. Axelrad, requested copies of the pages Mr. Touhey and I identified to take with him to a meeting about these newly-surfaced allegations. I made notations on the pages I gave him for two reasons. First, the pages were taken out of context and I was concerned that they might be released to the public without consideration of any applicable privilege that could be asserted under Rule 26 of the Federal Rules of Civil Procedure. Second, I wanted to highlight the relevant portions for Mr. Axelrad, including information about the source of the documents, and whether they had been furnished to Congress. Accordingly, I made the following handwritten notations:

Tab 4: On the handwritten notes, bates-stamped page WACO 004134, I circled the bates-number and wrote the word "Congress" to indicate that the record had been furnished to Congress, and I drew two almost vertical lines and an asterisk next to the relevant portion of the notes. *See* Tab 4A.

Tab 5: On the excerpt of the printed chart of the AUSA notes, I wrote at the top, "We believe these are US Atty's notes of interviews - privileged." Since only the first page of the document had captions over the columns, I also added captions to two columns: "Witness at criminal trial?" and "AUSA interviewer." I marked off in the margin the relevant portions of the notes, and circled the name "Bill Johnston." At the bottom I drew an arrow to the bates-number and wrote "Bates # to Congress." Finally, along the bottom, I circled the word "Cong" and the numbers placed on the document when it was printed out from our database, and wrote "DOJ internal - do not disclose." *See* Tab 5A.

Tab:6: I made similar notations on the bottom of the FBI 302 regarding our internal numbers, circled the relevant material, and noted at the top that the source was involved in "air surveillance on 4/19/99." *See* Tab 6A.

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[2] The "WAC00-000" number in the lower-right hand corner of each document is the internal number assigned by the contractors when the image was scanned. These numbers are for internal use, only, and were not intended for disclosure to plaintiffs.

It appears that the document about which Mr. Johnston is concerned is the one that is annexed at Tab 5A. My purpose in highlighting Mr. Johnston's name was not, as he appears to believe, to "set him up." Rather, I thought it significant to note that various people who have looked very closely at the events at the Branch Davidian compound over the years have not recognized the significance of this information. Mr. Johnston was prosecuting individuals who had ambushed federal agents on February 28 and may have been involved in setting the fire 51 days later. The firing of one or two military CS rounds at an unoccupied concrete or cinder-block structure with no result had no more legal significance with respect to the issues in the criminal case than it does in the tort case. My point was that -- until recently -- Bill Johnston did not attribute any significance to the information when he was preparing the criminal case, individuals who collected documents for production to Congress in 1995 apparently did not attribute any significance to the references in the documents they produced, I did not attribute any significance to the information in connection with our defense in the tort litigation, and others on the trial team did not attribute any significance to the information. Our focus as litigators, whether civil or criminal, was, as it should be, on the material issues before the court.

From: Marie Hagen
To: .wtciv.wtgate[redacted]
Date: 4/30/99 2:57pm
Subject: DOJ & Waco

Bert --

I got your email address from my friend Jennifer Rivera (I hope you don't mind).

As you may recall, I handle the Branch Davidian litigation. I learned today that AUSA Bill Johnston has, for the past year or so, been giving the producer of "Waco: The Rules of Engagement" access to the physical evidence in the custody of the Texas Rangers in Austin and ATF in San Antonio. I asked who authorized this, and he said he discussed it with you. I asked whether you were authorized to tell Bill to release information from pending criminal and civil matters. He said he just assumed that you had talked to the appropriate people in Washington.

I'm trying to find out who decided to give McNulty (the producer) access to this evidence. Secondarily, I'm trying to determine why no one checked with the attorneys handling the litigation. Any information you have in this regard will be much appreciated.

Thanks for your time -- I hope you're enjoying Germany.

Regards,

Marie Hagen

EXHIBIT 56

From: [redacted]
To: civ05.po(mhagen)
Date: 5/1/99 1:28pm
Subject: Re: DOJ & Waco

Hi Marie:

I recall talking with Bill a couple times. I have to say that I assumed at all times that as a litigator he was coordinating with litigators at Main Justice, or at least operating under agreed-upon guidelines. In fact, I figured in his role he was one of your attorneys in court.

If this has screwed anything up, I truly apologize. It would have been the simplest thing in the world to check in with you -- the type of thing I used to do all the time -- but it just never occurred to me that he wasn't coordinating on his own.

My successor Myron Marlin has all my Waco files (I don't think my conversations with Bill produced much) and would have engaged in any follow-up. In fact, I recall delegating some of this issue to him when I was still there. If you haven't already, it would be worth talking to him.

Again, my apologies for not smelling a possible problem. Let me know if there is anything else I can do.

Bert Brandenburg



FROM (WED) 6. 16' 99 9:16/ST. 9:14 [redacted]

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Marie Louise Hagen
Trial Attorney

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel: [redacted]
Fax: [redacted]

FJP:MLHagen:rdh
157-74-3487

May 3, 1999

VIA FEDERAL EXPRESS

Bill Johnston, Esq.
Assistant United States Attorney
Western District of Texas
700 University Parks Drive
Waco, Texas 76706

Re: *Andrade, et al. v. Chojnacki, et al.*,
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

Dear Mr. Johnston:

As you know, we recently learned that various individuals have had access to evidence from the Branch Davidian investigation and trial that is stored with the Texas Rangers in Austin and by ATF in Waco, and that these individuals were permitted to take samples of residue from several pieces of this evidence for laboratory study. As a result, the plaintiffs in this action have moved for leave to file evidence obtained by Mr. McNulty and additional briefing on the motions pending before the Court (see attached). It order to prepare for discovery and other matters in connection with the defense of this litigation, we need to document who had access to the evidence, when the access occurred, and under what circumstances.

Please draft a statement or report that describes in detail all conversations you had with Michael McNulty, Bert Brandenberg, and anyone else in connection with these materials, and forward that report to me.

As we have advised Mr. Blagg (see attached letter), any further requests for access to these materials should be referred to me or Jim Touhey, my co-counsel on this matter. I suggest that you discuss the propriety of any further discussions with Mr. McNulty with your counsel, Joe Sher and Nina Pelletier.

Very truly yours,

Marie Louise Hagen

MARIE LOUISE HAGEN
Trial Attorney
Civil Division, Torts Branch

EXHIBIT
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FROM (WED) 5. 16' 99 9:16/ST. 9:14/NO. [redacted]

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Jeffrey Axtmad
Director

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel.: [redacted]
Fax:

JA:PJP:MLHagen:cwb
157-74-3487

May 3, 1999

VIA FEDERAL EXPRESS

Hon. James W. Blagg
United States Attorney
Western District of Oklahoma
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Re: *Andrade, et al. v. Chojnacki, et al.*,
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

Dear Mr. Blagg:

We recently learned that various individuals, including producer Michael McNulty, have had access to evidence from the Branch Davidian investigation and trial that is stored with the Texas Rangers in Austin and by ATF in Waco. We further understand that Mr. McNulty or someone who accompanied him was permitted to take samples of residue from several pieces of this evidence for laboratory study. Since both the civil and criminal litigation stemming from the events at the Branch Davidian compound are pending, it is improper and unwise to allow access to this evidentiary material without coordination with all the components involved in the litigation. Given the nature of the conspiracy allegations in the civil case, it is important to avoid unrestricted access and tampering with the evidence.

Although attorneys in this office have been in contact with AUSA Bill Johnston, the Texas Rangers, ATF, and the Department's Office of Public Affairs on issues in the case, they were not advised that Mr. McNulty's request for access to the evidence had been approved. It is our understanding that Department attorneys handling the appeal of the criminal case also were not consulted prior to the decision to allow access to the evidence.

It is imperative that the integrity of this evidence be maintained pending the final resolution of this litigation. Joseph C. Wyderko in the Criminal Division agrees with this. Discovery in the civil litigation has been stayed pending resolution of threshold dispositive

EXHIBIT
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motions filed by the defendants. Should any issues remain after the Court rules on these motions, access to tangible evidence should be permitted in accordance with the precepts of civil discovery under the Federal Rules of Civil Procedure.

With respect to the civil suit, any future requests for access to the Branch Davidian evidence should be referred to the attorneys assigned to represent the interests of the United States, Marie Louise Hagen[redacted], or, in her absence, James G. Touhey [redacted]

Thank you for your assistance in this matter. Please do not hesitate to contact me if you wish to discuss this.

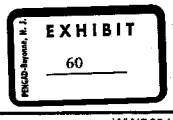
Very truly yours,

Jeffrey Axelrad
Director, Torts Branch
Civil Division

cc: Imelda Koett, Esq., Office of Chief Counsel, ATF
Jacqueline F. Brown, Esq., Office of General Counsel, FBI

From: Bill Johnston
To: [redacted]
Date: 8/2/99 8:14pm
Subject: davidian evidence

I spoke with the Jahns who asked that I try to find out if the Judge will allow a little more time for a well thought out dept. response to the evidence motion by DPS. I am working on that right now. I spoke with Ranger Joey Gordon who is close to some answers on the questioned evidence. He is going to update me tomorrow morning in Austin, and I will call you after he tells me what the deal is.



From: Bill Johnston
To: [redacted]
Date: 8/17/99 5:48pm
Subject: davidian evidence

Although the work has not been totally completed, Ranger Joey Gordon is close to an end in his investigation of the 40mm projectiles and casing which have been in controversy. The evidence thus far as to the 40mm casing shows that it held an M-651 projectile. The photograph depicting the grey object with the red band is of just such a projectile. The M-651 is a tear gas round which is filled with a "CS-pyrotechnic mixture."

The two black 40mm projectiles are most likely "flash and report" type of rounds. If so, these could be rounds which were fired by the FBI HRT during the seige to drive the occupants of the compound back inside. The rangers hope to have the work on these 40mm items completed next week. .....on another matter, I have sent to you by fedex today a death penalty memo. I would appreciate your review of the memo which relates to the foreign travel in aid of murder for hire case involving def's Urick and Young. We enclosed a fedex mailer for transmittal to the Dept. Please call or email if you have any questions.

EXHIBIT
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From: Bill Johnston
To: [redacted](jahn)
Date: 8/19/99 10:16am
Subject: davidian evidence -Reply -Reply

The casing is labelled M-118 and it is said to fire the M-651 tear gas round. I think that they were manufactured in 1969... at least that was the original information that I recall from Joey Gordon.



From: Bill Johnston
To: [redacted]MMarlin
Date: 8/26/99 11:03am

There is obviously quite a bit of concern that exists regarding the evidence of pyrotechnic projectiles being found by Texas Rangers. There should be no real surprise that valid questions do exist. The Rangers' inquiry has been no secret to the Dept. For several weeks, I have advised Mr. Blagg, my U.S. Attorney, of developments in their inquiry, including the information that the FBI had acknowledged to the Rangers that they had recieved permission to fire another type of round. A couple of weeks ago, I faxed the specifications on the M-651 round to Mr. Blagg. This is the round which the Rangers said was fired. I have also updated the Jahns repeatedly regarding the Rangers' investigation. The Department has not asked me nor the Rangers for information as to what their information has shown. The Rangers will be glad to discuss their investigation with the Dept. I received by fax today a copy of handwritten notes of a paralegal who assisted in the trial preparation. The notes reflect that she noted that an HRT member discussed shooting a military gas round. The accomanying paperwork reflects that I was present for the interview. I don't recall the interview specifically, and I don't think that the term "military gas round" would have meant anything to me at the time, but the information from that interview has been in the Department's hands for many years. At any rate, I or the Rangers will be glad to answer any questions which the Dept. may have.



FD- 302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/16/93

DANNY O. COULSON, Special Agent in Charge (SAC), FBI Baltimore Division, Baltimore, Maryland, telephone number [redacted], was informed that he was being interviewed about his role in the matter involving the standoff at the Branch Davidian compound in Waco, Texas, between 2/28/93 and 4/19/93. COULSON was advised that the interview was being conducted by Victor M. Gonzalez, Inspector, FBI Headquarters (FBIHQ), Debra K. Mack, Assistant Inspector, FBIHQ, and ROBERT B. LYON, JR., Department of Justice (DOJ). COULSON thereafter provided the following information:

COULSON advised that his participation in the Waco incident was due to his position as Deputy Assistant Director of the Criminal Investigative Division (CID), FBIHQ, Washington, D. C. He advised he was initially contacted by LARRY A. POTTS, Assistant Director (AD), CID, FBIHQ, on the date of the Waco shootout. Mr. COULSON was contacted at his residence by AD POTTS inasmuch as it was believed that FBI assistance might be required in Waco. Assaults against Federal officers are violations over which COULSON has responsibility within the CID. During initial conversation with AD POTTS, there was a discussion regarding deployment of the FBI's Hostage Rescue Team (HRT). Prior to the Waco shootout with the Bureau of Alcohol, Tobacco and Firearms (BATF), he had no prior knowledge of DAVID KORESH, nor any knowledge of the activities of the Branch Davidians. COULSON had no prior knowledge of any pending or planned ATF operation regarding KORESH's compound.

COULSON advised that the initial responsibilities of the FBI would be to stabilize the crisis situation, establish a dialogue with DAVID KORESH and his followers, and to begin to gather intelligence data regarding KORESH. Initial responsibilities of the HRT would be to establish an interior perimeter to prevent KORESH's escape. It was to be the responsibility of the FBI and the local authorities to establish exterior perimeters to maintain the safety of the media and others who might be present, and to prevent KORESH's comrades or other individuals from

Investigation on 7/13/93 at Washington, D. C. File # 6C-HQ-19157-45

by Inspector Victor M. Gonzalez VMG
SSA Debra K. Mack Date dictated 7/16/93

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FBI0160817



FD-302a (Rev. 11-15-83)

67-HQ-19157-45

Continuation of FD-302 of DANNY O. COULSON , On 7/13/93 , Page 2

entering the proximity of the compound. COULSON advised that conversation was initiated both at FBIHQ and by SAC, San Antonio, to establish dialogue with BATF leadership. The Strategic Information Operations Center (SIOC) was immediately activated. The SIOC was responsible for coordinating responses to SAC, San Antonio, field operational needs and to begin to gather sufficient information and data to brief FBI officials and Departmental officials as needed regarding the incident.

COULSON's responsibilities were to be in charge of the SIOC operation on the 4:00 PM to Midnight shift, and to ensure that the SIOC was properly manned on a 24-hour a day basis. Initially, efforts were made to develop as much information as possible regarding KORESH's philosophy, and that included contacts with the Seventh Day Adventist Church in Maryland regarding KORESH's statements regarding the "Seven Seals."

COULSON advised that the FBI's involvement in the Waco situation was very difficult from the onset. The FBI was assigned to salvage a failed tactical effort. The FBI entered into this operation "backwards." This incident began with a shootout that involved the loss of life and serious injury on the part of law enforcement and similar casualties that were incurred by the Davidians. The FBI was therefore involved in a standoff situation prior to the opportunity to develop intelligence and sources of information that could assist in the peaceful resolution of this matter. Because of the dead and wounded on both sides, emotions were running very high. Additionally, without the benefit of prior knowledge of the planning, the FBI had to mobilize tremendous numbers of resources, both human and physical, at the same time it was attempting to stabilize a very volatile situation. He advised that the FBI's primary policy would be to seek a negotiated settlement and to resort to deadly force or to conduct an assault only as a last resort. COULSON remarked that this was not the first heavily armed cult that the FBI had dealt with, but that it was the first one in which an assault occurred prior to the negotiation process. He related a previous investigation in which the FBI was involved with the Covenant, Sword and Arm of the Lord in Mountain Home, Arkansas. In that matter a great deal of effort went into the intelligence gathering process and was, from its inception, designed to isolate and contain and to negotiate. The subjects in that matter were armed with assault rifles, law rockets, hand grenades, squad type machine guns, and other very sophisticated military equipment. In that

FBI0160818

matter, all of the individuals inside the compound ultimately surrendered peacefully. The BATF was involved in that operation. He further indicated that it was most difficult to establish real trust in a situation that begins with an assault and loss of life.

COULSON indicated that there was a tremendous amount of dialogue between the personnel assigned to Waco and the SIOC command posts. He believes there was a good working relationship between the two entities. He indicated that AD POTTS was basically responsible for the overall operation at FBIHQ and worked the day shift. There was good communication between himself and Mr. POTTS due to the overlapping of their shift times and the numerous conversations that he had with Mr. POTTS telephonically.

COULSON related that the Department of Justice (DOJ) was involved from the very outset in the Waco incident. Acting Attorney General (AG) STUART M. GERSON was present in the command post very early in the operation and was briefed by telephone and in person at FBIHQ by various Headquarters officials. A formal chain-of-command was established wherein E. MICHAEL KAHOE, Section Chief of the Violent Crimes and Major Offenders Section, CID, reported to him. The chain-of-command then went from Mr. POTTS to Mr. GOW to Mr. CLARK and to Director SESSIONS. COULSON indicated that he had numerous conversations with Director SESSIONS, noting that the Director was briefed at the SIOC in the morning and then again late in the afternoon. All Bureau personnel were furnished information throughout the day, and sometimes telephonically throughout the evening. COULSON advised that he had direct and frequent contact with ASAC DICK ROGERS and Supervisor STEVEN MC GAVIN of the HRT. He had a conversation with DICK ROGERS following the arrival of the HRT on site that dealt with the emergency rescue plan.

It is noted that available intelligence indicated extremely well armed individuals inside the compound with both .30 caliber and .50 caliber weapons capability. It was also known that there were many individuals inside, possibly as many as 100, and that the compound was barricaded and reinforced. It was agreed that any approach to the compound would have to be in armored vehicles capable of withstanding .50 caliber and possible law rocket attack. It is the policy of the HRT to develop an emergency assault/rescue plan in the event of homicide or suicide in a

barricaded situation. As a previous Commander of the HRT, he is familiar with hostage rescue tactics and capabilities. ASAC ROGERS and DAD COULSON agreed that if an emergency response were warranted, that the FBI's response would be to use armored vehicles to make openings in the building simultaneous with the insertion of gas. It was hoped that the gas and the use of the armor would act as a diversion and create additional avenues of escape for those who wanted to exit the building. It was understood that no HRT would approach or enter the compound on foot without the protection of armor due to the extraordinary fire power of DAVID KORESH and his followers. It was the intention to seek a negotiated settlement with KORESH and his followers from the onset of the FBI's involvement.

The FBI was very concerned about the safety of all the individuals, particularly the children. An open and active dialogue was maintained between the HRT, the negotiators, and other experts. COULSON indicated that many people reached out to the FBI to offer their assistance, and the FBI sought out the assistance from a variety of sources, to include clergy, behavioralists, former members of the cult, family members, and other individuals. He stated that FBI set out leads, both nationally and internationally, to interview individuals who might be of assistance.

COULSON advised that there were numerous logistic issues that had to be resolved by SIOC personnel in support of the Waco crisis. This involved the deployment of tactically trained Agents, technically trained Agents, hostage negotiators, and other Agent personnel. It was necessary to deploy individuals from the Technical Services Division as it was believed that they would play a major role in this operation. Contact was made with various military components regarding the transportation of Agent and Support personnel, the effective range of various weapons, technical information regarding Bradley fighting vehicles, combat engineer vehicles, Abrams tanks, and other significant issues.

COULSON advised that he and ROGERS discussed a variety of traditional hostage rescue assault options and discounted all of them. The following factors were considered in the rejection of these plans:

1. Loss of the element of surprise.

2. The number and armament of the subjects.

3. The tremendous size of the compound.

4. The construction of the compound that gave it visual observation of the entire area.

5. The flimsy construction of portions of the compound made it impossible to get close to the compound without being fired upon through the walls.

It was believed that any direct operation against the compound would result in tremendous loss of life, both of Agent personnel and on the part of the subjects, it being noted that DAVID KORESH and his followers had shown a resolve to attack and assault Federal officers attempting to serve judicial warrants. Neither COULSON nor ROGERS considered the feasibility to either conduct a Trojan Horse or open air assaults on the compound. It should be noted that the FBI really considered the children to be hostages, but it was believed that even some of the children would take up arms against Agents attempting to rescue them. The FBI's tactical objectives were severely limited due to the resolve of the Davidians, their weaponry, and the compound itself. It should be noted that the Davidians were armed with .50 caliber rifles with a potential range of 3,000 yards.

COULSON advised that SAC, San Antonio, did not have the authority to authorize a deliberate assault on the compound, but could respond with an emergency rescue plan, as outlined above, in the event of homicide or homicide/suicide from within the compound. He indicated that there were numerous conference calls between SAC, San Antonio, and SIOC to resolve issues relating to negotiation strategies, "shrinking perimeter," the installation of lighting equipment, the utilization of armored vehicles, and other significant issues. He indicated that the SAC's responsibility in these types of situations is very difficult. It is necessary to manage large numbers of individuals from various disciplines, and to keep all of their perspectives balanced. SAC, San Antonio, and FBIHQ agreed that the proper approach to this situation was to continue negotiations, and to gradually shrink the perimeter, and to deny the Davidians of

creature comforts in an effort to surrender and leave the compound. After it became apparent to the negotiators and behavioral scientists that KORESH was not going to come out voluntarily under any circumstances, the FBI began to consider the utilization of tear gas (GS Gas). The utilization of the tear gas was intended to be another step in the shrinking of the perimeter at the compound. When the standoff first began, KORESH and his followers became very upset if any vehicle approached their property. As time went on, our armored vehicles cleared obstructions from all around the building, and got up so close to the compound that the vehicles actually touched it. The use of the CS Gas was intended not to be an assault on the compound, but was intended to further deny the Davidians space, and ultimately force them to evacuate the building. The FBI proposed clearing the vehicles from the exterior front of the compound prior to inserting CS Gas. Representatives from the Texas Department of Public Safety objected to the removal of these vehicles inasmuch as they believed that in doing so, they would be denied certain evidentiary material. In an effort to resolve that issue, that portion of the compound was photographed, graphed and gridded so that the vehicles could be returned to their exact position at the scene.

A great deal of discussion took place with regard to the proper method of inserting CS Gas into the compound. The FBI obtained CS dispensers that could be attached to the boom of the Combat Engineering Vehicles (CEVs). The HRT also had the capability to launch CS Gas into the windows of the building using M-79 grenade launchers. It was determined that the initial insertion of gas would be through the aerosol devices attached to the CEVs. One CEV was rigged to insert gas on the ground floor, the other was rigged to insert gas on the second floor level. CS Gas was selected after consultation with experts at the Edgewood Arsenal, particularly Dr. FRED STANLEY. It is the most tested chemical agent in the world, is approved by the Surgeon General, is not harmful to children or infants, and is non-pyrotechnic in the method in which it was to be utilized. It was determined to insert CS Gas in only one area of the compound, that being the white green side of the building. It was only after the Davidians fired upon the CEVs and on other Agent positions that the entire compound was saturated, using both the CEVs and the M-79 grenade launchers fired from the Bradley firing vehicles.

COULSON further advised that BYRON SAGE, Supervisory Senior Resident Agent (SSRA), FBI, who was the Principal Hostage Negotiator, indicated that he did not believe that the FBI had successfully negotiated the release of KORESH's followers. SAGE indicated that it was his belief that KORESH released only those that he no longer wanted in the compound. SAGE reported this to WEBSTER HUBBELL, Associate Attorney General-Designate. COULSON indicated that there was some discussion about putting a fence around the Davidian compound and to starve KORESH out of the compound. This plan was rejected inasmuch as it was noted that there was a significant pecking order inside the compound, and that neither KORESH nor his senior people would ever become hungry or thirsty, that he would deny food and water to his followers but not to himself, and that if it became apparent that children or adults were dying of starvation or dehydration, that KORESH would make that known to the authorities and he would, in turn, be furnished with whatever he needed to sustain life. It was the belief of the behavioral scientists that KORESH had little regard for the safety and well being of his followers, and would utilize them as tools to get what he wanted for himself. Another factor in rejecting this consideration was that the construction of a fence would in actuality not keep DAVID KORESH or his followers from escaping. With their tremendous armament, to include explosives they could easily defeat the fence and tactically engage any guard force that was left in place. The construction of a fence would, therefore, require tremendous devotion of tactical resources in order to contain KORESH and his followers.

COULSON advised that another consideration was the ultimate deterioration of HRT efficiency and effectiveness due to the lengthy period of deployment. He advised that the HRT operators, to include their sniper observers, were required to watch for hours on end through binoculars and rifle scopes in a very tense situation. It should be noted that while FBI snipers observed KORESH, KORESH's followers likewise observed and monitored the HRT operators. During the Waco crisis, there was a request for HRT assistance at a prison riot in Ohio. The HRT was unable, obviously, to respond. The incident in Waco effectively neutralized the HRT'S ability to respond to any other serious hostage situation.

He emphasized that every stage of the process was thoroughly discussed in Waco and FBIHQ, and everything was done

in an effort to save human lives. The FBI had developed information regarding abuse of children, to include KORESH's sexual relations with young girls and the brutal paddling of young children. Given the previous patterns of this type of abuse, there was no reason to believe that these activities ceased when the standoff began. It was also noted that there were abominable sanitary conditions within the compound whereby human waste was deposited in pails and dumped outside the compound itself.

COULSON advised that all of these issues and opinions were brought to the attention of AG JANET RENO, whom, in his view, fully comprehended the issues and asked appropriate pertinent probing questions, and raised serious concerns. He advised that the FBI provided AG RENO all information regarding the Waco incident, including the problems with the children and the limits of the HRT. He advised that AG RENO was informed of the duties and responsibilities of HRT sniper observers and the extremely fatiguing and exhausting efforts that they were undertaking. He stated that military experts were surprised that the FBI had not sustained serious injuries due to the very tense situation, and the necessity to use a large number of armored vehicles at the crisis site.

COULSON advised that there was discussion about the use of noise to fatigue and irritate KORESH and his followers. He had no objection to this tactic since it would lead to sleep deprivation and ultimately fatigue. COULSON indicated that in standoff situations you hope for certain dynamics to occur inside the barricaded premises that would result in decisions to surrender. It may be possible for followers to change the mind or to influence the leader to enter into meaningful dialogue and ultimate surrender. COULSON further advised that the FBI put tape records of the negotiation process with KORESH over the loudspeakers to ensure that all within the compound were aware of the negotiation process. This was done hoping that for KORESH's followers to would decide on their own to leave the compound or to encourage KORESH to allow them to leave.

COULSON advised that he did not know what the FBI could have done differently which would have resulted in a different outcome. He stated that he has re-examined this matter in his own mind, with fellow workers, and other law enforcement personnel, as he has been troubled regarding the final outcome.

He commented, however, that the results ultimately would have been the same because it appeared that KORESH was absolutely committed to that resolution. COULSON indicated that he had always believed that parental instinct was among the strongest of all human instinct, especially in women. He indicated that he was stunned that this instinct of a mother or father to preserve their children did not prevail over KORESH's hold. He believes that in the final hours and minutes, those that wanted to preserve the lives of their children were thwarted by armed intervention. He knows by reading coroners' reports that many were shot, and believes that is the reason that more did not exit the compound.

He added that it was decided to use the armored vehicles to punch holes in the walls and to make escape routes for those inside, particularly the women with the children. When COULSON and others were present in the SIOC and they observed the fires break out, they waited, fully expecting individuals to stream from the doors, windows, and openings that had been created. When it became apparent that few had left, someone stated, "Oh, my God, they're committing suicide." He recalls ANTHONY BETZ, Unit Chief, CID, stating, "That's not suicide, that's homicide."

In response to a question as to why the Fire Department was not on the scene, COULSON advised that the use of fire personnel was considered, but it was determined not to allow them to come anywhere near the compound for fear that they would be fired upon by KORESH and his followers. It is noted that numerous rounds were fired at FBI personnel after insertion of gas. Due to the range of the Davidian weapons, fire fighting apparatus could not be brought into the proximity of the compound. It is further noted that COULSON is aware of the fact that structural fires cannot be fought from the outside. He has previously been involved in tactical situations in which it was necessary to plan for the eventuality of a fire. For example, at the Atlanta prison riot fire hoses were taken inside the prison so that they could be utilized if the inmates started fires. Based on his experience, COULSON was aware that the only way that a fire could be fought at the Davidian compound was from inside, and that would require entry of fire fighting personnel into the building. That option was obviously unavailable.

In response to the questions about the windy weather conditions that existed on April 19, 1993 and its impact on the operation, COULSON stated that he does not believe that the windy conditions were a negative impact. He noted that the tear gas was injected into the building. Due to the fact that many of the windows had previously been knocked out of the building, windy conditions could actually cause the circulation of air inside the building, and thus could increase the effectiveness of the CS Gas. It should be noted that had the HRT created a gas cloud outside the building, the wind would obviously have dissipated it. However, the gas was placed inside the building, and he believes that it was extremely effective and would have had the desired results had the individuals inside been free to leave.

With regard to the fire, he believes that the wind had no real effect regarding the final outcome. It is his professional belief that inasmuch as the fire had been started with various types of accelerants from various locations inside the compound, that the building would have burned to the ground immediately without the intervention of Fire Department personnel. He believes the same result would have occurred had there been no wind, and even had there been rain. COULSON did not recall AG RENO asking him questions about weather conditions. COULSON noted that the HRT has the unique capability of working in smoke environments. Those operators use a bail out system that provides them with air so they can work in smoke filled rooms. He further indicated that the FBI's major concern was the possible use of explosives by KORESH.

COULSON advised that in order to address medical concerns, numerous medical resources were deployed to the scene, to include doctors experienced in traumatic injuries, rescue evacuation capabilities, and pediatric capability. This effort was present just outside the compound area.

COULSON indicated that the Waco briefing papers were prepared for AG RENO by FBI CID personnel, which included GALE R. EVANS, PATRICK FORAN, HOWARD APPLE, DON GLASSER, E. MICHAEL KAHOE and ANTHONY BETZ.

He indicated that he has prepared a memorandum for AD POTTS that includes recommendations with regard to the management of future crisis situations. He indicated that the FBI routinely deploys numerous Agents, to include HRT, hostage negotiators,

behavioral scientists, administrative personnel, intelligence personnel, and tactical operators. The SAC at the crisis site may lack experience with regard to all of these various disciplines. COULSON therefore recommended in his memorandum that eight SACs be selected to receive very specialized training in crisis management at the FBI Academy. He additionally made recommendations regarding the authority of the AD, CID, with regard to deployment of personnel.

COULSON stated that he was not aware of any FBI personnel firing shots during the Waco incident.

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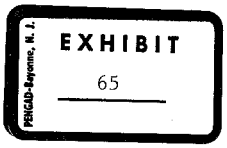
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ISABEL G. ANDRADE, et al. Plaintiffs,	*	C.A. NO. W-96-CA-139
	*	JUDGE WALTER S. SMITH
	*	and consolidated actions:
	*	Holub v. Reno W-96-CA-140
VS.	*	Ferguson v. Reno W-96-CA-141
	*	Brown v. U.S. W-96-CA-142
	*	Riddle v. Reno W-96-CA-143
PHILLIP J. CHOJNACKI, et al. Defendants.	*	Gyarfas v. U.S. W-96-CA-144
	*	Martin v. U.S. W-96-CA-145
	*	Holub v. U.S. W-96-CA-146
	*	Brown v. U.S. W-96-CA-147
	*	Sylvia v. U.S. W-96-CA-373

ORAL and VIDEOTAPED DEPOSITION OF
DANNY O. COULSON
FEBRUARY 22, 2000
VOLUME 1 of 1

ORAL AND VIDEOTAPED DEPOSITION OF DANNY O. COULSON, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 22nd day of February, 2000, from 9:23 a.m. to 5:14 p.m., before Deborah Anne Koole, CSR in and for the State of Texas, reported by machine shorthand, at the



11

William Sessions.

Q. And who was your immediate subordinate?

A. Michael Kahoe.

Q. And after Mr. Kahoe, who did -- who were Mr. Kahoe's direct reports, with respect to Mount Carmel?

A. There were a variety of different individuals. It was such a big case that many people worked on the case reporting. It would be -- essentially, would be -- Unit Chiefs would be the next level down -- Gale Evans, Tony Betz, Howard Apple, to a degree.

Q. What was your contact with Jeff Jamar and Dick Rogers during March of 1993?

MR. SHER: Object to the form. It's compound.

MS. HAGEN: You can answer the question.

A. During March of 1993?

Q. (By Mr. Caddell) Yes, sir.

A. I was the shift commander of the 4:00 to midnight shift at FBI Headquarters. I had periodic contacts with both over the course of the matter.

Q. You reviewed various Operations Plans with respect to bringing the situation at Mount Carmel to

resolution?

A. Yes.

Q. You made comments on those plans?

A. Yes.

Q. Now, as I understand it, Floyd Clarke was three steps up the ladder from you; is that right? I guess there was Larry Potts, Gow --

A. Clarke.

Q. Clarke?

A. Yes, sir.

(Exhibit Coulson FBI 98 was marked.)

Q. (By Mr. Caddell) Let me hand you what's been marked as FBI 98. I'll represent to you that this is an excerpt from the transcript for the Congressional Hearings in 1993, concerning the events

at Mount Carmel. On page seven 77, there is -- This is an excerpt from the statement of Larry Clarke?

A. You mean Larry Potts?

Q. I'm sorry, Floyd Clarke. I apologize.

A. Okay.

Q. Let me direct your attention to the sixth paragraph on page seven 77. And I'll read in the record this statement by Mr. Clarke.

"We also talked about systematically beginning to dismantle the building, using the CEV

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vehicles. That didn't have a very good likelihood because on a number of occasions when we were maneuvering around the building, removing the obstacles, the Davidians would appear in the windows and hold the children up, referred to them as the Kevlar kids. So if we were going to tell them what we were going to do, and we certainly wouldn't start trying to dismantle the building without giving them notice, they would take, we assume that they would take and place the children or others into that

first page, Mr. Bryant of Tennessee states, "Were you aware that in fact they had demolished at least one half of that gymnasium --

A. Wait a minute. Where's this?

Q. -- and in fact accelerated..." -- I'm sorry. It's about three-fifths of the way down the page.

A. On 435?

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Q. Yes, sir. Mr. Bryant of Tennessee --

A. Oh, I see it.

Q. Okay. "Were you aware that in fact they had demolished at least one half of that gymnasium and in fact accelerated the plan?"

Ms. Reno's response: "I did not see the gymnasium. I saw them go to the front door, to the side, but I didn't see the back."

Mr. Coulson, you were in the SIOC on April 19, 1993?

A. Yes.

Q. You did not have a view of the black side

of Mount Carmel on April 19, 1993; did you?

A. No, I did not.

Q. Would you agree that, from the SIOC, you would agree with Attorney General Reno's testimony that you were unable to see, you did not see the gymnasium on that day?

MR. SHER: Asked and answered.

MS. HAGEN: I object to the form of the question. It lacks foundation. You can answer.

A. I did not see the back of the compound on that day, the black side.

Q. (By Mr. Caddell) Now, at the SIOC, did you have the ability to monitor the radio communications

from Mount Carmel?

MS. HAGEN: Object to the form of the question. You can answer it.

A. No.

Q. (By Mr. Caddell) So, you were dependant upon CNN and the telephone? I don't mean to sound flip, but I mean --

A. No.

Q. What were your avenues of information concerning what was transpiring at Mount Carmel on April 19?

A. I had access to the television, to CNN and whatever network was covering it. There was an open line to Waco from the actual command post. I was not in the command post. The command post was in a facility within SIOC. I was not in the command post. I know that they established an open line to Waco, but I wasn't privy to the conversations that came over that line.

Q. Okay. So, you had --

A. Except by relay, on occasion.

Q. So, you had CNN but no telephone, basically? Somebody had a telephone line, but you did not?

MS. HAGEN: I object to the form of

the question. You can answer it.

A. Okay. I had access to phone lines but not

you what's been marked as Exhibit 103. Can you identify that document?

A. I'm not sure what it is. I mean, it's a discussion of a gas option, but I'm not sure what it is.

Q. All right, sir. Do you recognize the handwriting?

A. Not really. No, I don't.

Q. Does it look like on the -- Does it appear that this is a review of a version of the plan or a draft of the Plan of Operations?

MS. HAGEN: Object to the form of the question. You're calling for him to speculate about a document that he just said he doesn't know what it is.

MR. SHER: Join in the objection.

MS. HAGEN: You can answer.

A. I can't tell, from this, if this is a document that was written in preparation of a plan,

whether it was written to use for a briefing, or

whether it's meant for some other purpose. I just can't tell. It's not dated, and it raises different issues with regard to gas and notice. And I can't tell at what point it was prepared or for what purpose it was prepared.

Q. (By Mr. Caddell) All right, sir. Would you recognize the handwriting of Floyd Clarke, do you think?

A. No, I don't believe so.

(Exhibit Coulson FBI 104 was marked.)

Q. (By Mr. Caddell) Let me hand you what's been marked as FBI 104. Do you have any way of identifying that document?

A. (Reviewing Exhibit 104) I'm sorry, do you mind stating your question again.

Q. Do you have any way of identifying that document, the author of that document?

A. No, I don't.

Q. All right, sir. Thank you.

(Exhibit Coulson FBI 105 was marked.)

Q. (By Mr. Caddell) Let me hand you what's been marked as FBI 105. Is the second page of FBI 105 a document that you drafted?

MS. HAGEN: Could I have a copy

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please, Counsel.

MR. CADDELL: Oh, sure, of course.

A. Yes.

Q. (By Mr. Caddell) Is this the document you reviewed yesterday?

A. Yes.

Q. And this, it's characterized as "STIPULATIONS WITH REGARD TO THE USE OF CS". Do you see that?

A. Yes, I do.

Q. When you say stipulation, what does that mean? What did that mean when you used it in 1993?

A. As I recall, it was generated based upon instructions from my superiors, that expressed the concerns of the Attorney General, and these are things that she wanted to be sure would take place.

It was given to me -- I don't recall if I drafted the stipulations -- I'm sorry. I drafted it, but I don't know from what was the source of it, because I never did -- I was never involved in

a briefing with her, except for that one time with the JSOC people, but it was prepared to reflect her concerns and issues that she had raised with regard to the gas plan.

Q. Item 6 states, "IF MASS SUICIDES ARE

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INDICATED, PROCEED WITH THE EMERGENCY RESCUE PLAN AS BRIEFED."

A. Yes, that's correct.

Q. What can you recall about the emergency rescue plan for April 19, 1993?

A. My recollection is that it was the same, that it was formulated on the first of March, after the ATF raid. I think they were identical, as I recall.

Q. And would this have been a written plan?

A. I don't recall if it was written. The first plan was formulated in a conversation between myself and Mr. Rogers, about what we would do in case of a mass suicide or murder-suicide situation. And it was done -- It was done orally. We discussed it

orally, what our options would be, which were very limited. I don't recall, Mr. Caddell, if it was reduced to paper by him or by Headquarters.

Q. Wouldn't it be customary in an operation of this kind, with the necessity to brief members of the team on the aspects of the plan and options depending on developments on the scene, to have a written emergency rescue plan?

A. Not initially, no. It would be very unusual to have it written initially, because the

purp- --

Q. I'm sorry. Go ahead.

MS. HAGEN: Excuse me. You need to leave me time to object to the form of the question.

THE WITNESS: I'm sorry. I'm sorry, I forgot.

MS. HAGEN: It's okay. You can go ahead and finish answering.

Q. (By Mr. Caddell) Go ahead. I didn't mean to cut you off. I was just going to tell you I

didn't mean, and I apologize if my question seemed to limit it to initially. I really meant by April 19, 1993, 51 days later.

A. I think that someplace along the line, the conversation was probably memorialized by the HRT, but I don't have a recollection of that.

Q. All right, sir. What's your recollection of the emergency rescue plan itself, the substantive aspects of it?

MS. HAGEN: Object to the form of the question. Are you talking about what he talked about on March 1, or what, or April 19? You can answer it, but --

Q. (By Mr. Caddell) Go ahead, Mr. Coulson.

A. On the 1st of March, Dick Rogers and I had

a telephone conversation after he arrived and received an assessment at the scene. We had been receiving assessments on what had happened to the ATF when they went there, and the heavy volume of fire, the propensity for violence, the overwhelming

superiority of firepower that agents would face.

It is the pol- -- was the policy then that once the HRT comes on site, they will develop an emergency reaction plan in case of the very worst-case scenario, murder or murder-suicide.

And one of the things -- The first thing they do is establish a perimeter and then come up with an emergency assault plan to conduct a rescue. He and I discussed what would be an appropriate plan.

In the vast majority of situations, a counterterrorist team is charged with going in and rescuing hostages. We both believed, and I know we were correct about this, that given what had happened to the ATF, there was no way we could send agents in, to go inside the building to engage in a rescue operation.

So, we, what we discussed was using the armored vehicles that we would use, we would have on scene, to make openings so people would have a

place to escape; to use flashbangs as diversions and tear gas as another form of diversion to allow the people to come out; but under no circumstances would we allow agents to go inside to try to conduct a hands-on rescue. It was just too dangerous.

Q. When you say allow agents to go inside, you mean go inside on foot, in other words, without --

A. Yes.

Q. -- being inside a tank?

A. There was -- We never discussed the tanks going inside the building. That was never discussed for the emergency rescue plan.

Q. All right, sir. Okay. Obviously, the tanks did go inside the building ultimately?

A. That's correct.

Q. All right, sir. The elements, then, of the emergency rescue plan that you can recall, and this was your initial discussion with Mr. Rogers, involved the use of armored vehicles, flashbangs, armored vehicles to create openings or exits, flashbangs and tear gas, I assume, to both distract people who would want to try and impede escape or try to attack HRT members; and then at the same time flashbangs and tear gas to force the members, the occupants of

25 Mount Carmel outside.

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1 MR. SHER: Object to form.
2 MS. HAGEN: I object to the form of
3 the question. You can answer.
4 A. That's essentially correct, but it was also
5 intended to distract individuals who were bent on
6 murder, for murdering someone. All the things that
7 you enumerated were accurate, but also our concern
8 was if someone is chasing someone down a hall to
9 shoot them as they're trying to escape, then the more
10 diversions and distractions you can put in there, the
11 more confusion you can -- you can generate on the
12 part of the murdering individuals, the greater there
13 is for people to escape in the confusion.
14 Q. (By Mr. Caddell) Now, that scenario would
15 be a variation, to some extent, and a variation
16 primarily because of the use of the armored vehicles,
17 on emergency rescue plans or emergency assault plans
18 that the HRT had devised in other scenarios; correct?
19 MS. HAGEN: I object to the form of

the question. You can answer it.

A. I don't believe that is correct, sir.

Q. (By Mr. Caddell) All right, sir. Well, wouldn't other emergency rescue or assault plans involve entry, involve flashbangs for distraction, and tear gas?

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MS. HAGEN: Object to the form of the question. You can answer it.

A. Yes, they would.

Q. (By Mr. Caddell) And the difference --

A. But this was --

Q. -- here is the entry is with a tank rather than on foot?

MS. HAGEN: Object to the form of the question, and I ask that you let the witness finish his answer. Go ahead.

A. The emergency assault plan for Waco was greatly different from any one I'd ever considered, approved, proposed, or developed through a scenario. I had never anticipated, in the years that I

commanded the team or any other crisis situation, that we would be faced with a situation where it was so dangerous we couldn't even send the agents in. I never anticipated that. This was a case of first impression for me.

So, I think that this emergency assault plan was, to me, greatly different. And we -- Mr. Rogers and I both expressed our frustration over the fact that, if this scenario occurred, that we could not go in and do a rescue, which is the thing the HRT does as part of their

mission, but they would have to stay out and basically hope that making the openings, using the flashbang, the tear gas would create enough confusion inside so that people could escape. So, I think that this plan was different from any one I'd ever considered, proposed, or heard about.

Q. (By Mr. Caddell) Would there have been any aspect of the plan that would have been aimed at eliminating or neutralizing the persons inside? And

by that I mean -- And I mean the hostile forces inside, obviously. I'm not talking about children and I'm not talking about women who were not involved, or anybody else who was not a hostile force. Since you were going to have the agents inside tanks, other than using flashbangs -- Well, first, how were they going to use flashbangs?

MS. HAGEN: I object to the form of the question. You can answer the last one. How were they going to use the flash- --

MR. CADDELL: That's fine. Yeah, let me re-ask the question.

THE WITNESS: Yeah. Which question do I answer?

Q. (By Mr. Caddell) Sure, sure. Under the emergency rescue plan, how were flashbangs to be

introduced into the building?

A. Remote -- There is a shoulder-mounted capability from the M-79 that they had at that time, to allow them to have standoff capability to deliver

A. There are actually four.
Q. Four?
A. Actually, no. There are much more than four. There are five or six.
Q. Okay, okay. Where were you located on April 19, 1993, within SIOC?
A. I was in the main SIOC area, but not in the command post.
Q. And who were you in close proximity to? And I realize we're talking about a period of several hours, so --
A. Mr. Kahoe was out in that main part of the SIOC area. I believe Mr. Evans was. Mr. Betz, probably Mr. Lovin and Mr. Glasser, and various agents and support staff.
Q. Now, at some point, during the day on April 19, 1993, you were able to see, from the television broadcasts from Mount Carmel, the tanks penetrating the building, not with a boom and not just at a window, but, actually, you saw CEV-1 go

fully into the building on the front side; correct?

MS. HAGEN: Object to the form of the question. You can answer it.

A. I don't know if it was CEV-1, CEV-2, C- -- I have no idea of the nomenclature for --

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Q. (By Mr. Caddell) All right, sir.

A. -- the CEV. I did see a tracked vehicle go, penetrate further into the building than I'd seen them earlier.

Q. And we've had testimony that there was some surprise, when that happened, within SIOC, and people made comments and that sort of thing. Who were you with or seated next to, for example, when that CEV went into the building, fully penetrated the building?

A. Mike Kahoe.

Q. Did you say anything, or did Mr. Kahoe say anything at that time?

A. Yes. He said something, and I said something.

Q. What did he say?
A. "Holy shit."
Q. Did he say anything else other than "Holy shit"?
A. That's all I recall.
Q. All right, sir. What did you say?
A. I said, "I hope that's a bad camera angle."
Q. Meaning that you hoped it looked worse on television than it was?
MS. HAGEN: Object to the form of the

question. You can answer it.
A. I had hoped that it didn't penetrate as far as it appeared on television, which is often the case.
Q. (By Mr. Caddell) All right, sir.
(Exhibit Coulson FBI 110 was marked.)
Q. (By Mr. Caddell) Who is Mark Richard?
A. He's departmental attorney. Deputy -- I don't remember his title.
Q. Was he in the SIOC on April 19, 1993?

of the plan, would you agree that what happened on the back side of Mount Carmel, as reflected in Exhibit 127, is a deviation from the plan, as you understood it to be on April 19, 1993?

MS. HAGEN: I object to the form of the question. You can answer it.

A. I don't recall that the plan contemplated this activity.

Q. (By Mr. Caddell) All right, sir. Now, do you recall the plan contemplating the penetration of the tanks, the body of the tanks fully into the building on the front of Mount Carmel on April 19, 1993?

A. No.

Q. And that's why Mr. Kahoe said "Holy shit" and that's why you said "I hope that's a bad camera angle"?

MS. HAGEN: I object to the form of the question. You can answer it.

A. I can't speak for Mr. Kahoe. I can speak for myself, in that my first reaction is, we're going

22 to lose that tank, that the tank could be disabled
23 and trapped inside the building. That was my very
24 first thing when I saw it. And I did -- I was
25 surprised to see the activity.

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1 Q. (By Mr. Caddell) And it was not something
2 that you had contemplated, based on your
3 understanding of the plan, would occur on April 19,
4 1993; correct?
5 A. No, I did not contemplate that.
6 Q. Would you agree with me that the
7 description of what was happening -- You may recall
8 we went over Attorney General Reno's -- one of her
9 instances when she testified before Congress, where
10 she said she was told to go on to her speech because
11 they had anticipated it would be a slow, gradual
12 process.
13 Would you agree with me that what you
14 see in FBI Exhibit 127, certainly on the back side of
15 Mount Carmel, doesn't appear to be a slow, gradual
16 process.

MS. HAGEN: I object to the form of the question. You're asking him to equate apples and oranges here, and I think it's just an inappropriate question. You can answer it, but I -- this line of questioning is just --

MR. CADDELL: Ms. Hagen, if you could just make an objection without --

MS. HAGEN: Well, if you could ask a question --

MR. CADDELL: -- making a speech.

MS. HAGEN: If you could ask a question that made some sense, it would be much easier, but you make the question --

MR. CADDELL: Well, Ms. Hagen, you don't get to make that decision, so why don't you just confine your remarks to making an objection, and we can move on.

MS. HAGEN: You can go ahead and answer the question.

MR. CADDELL: We'll let Judge Smith

(12/31/1995)

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE Date: 08/26/1999

To: Inspection Attn: AD Wiley D. Thompson, III
Inspector H. Ragle, III

From: Inspection Division
Office of Inspections, Room 7825
Contact: Henry E. Ragle, Ext 5322

Approved By: Thompson, Wiley D.
Ragle Henry E.

Drafted By: Jackson, Johnnie E.

Case ID #: 62- (Pending)

Title: UNSUB(S);
REVIEW OF THE USE OF M651 CS CARTRIDGES,
WACO, TEXAS,
04/19/1993

Synopsis: The purpose of this communication is to open a review to resolve discrepancies regarding the utilization of military type tear gas or devices containing a "pyrotechnic mixture" by the FBI during the stand off at the Branch Davidian Compound at Waco, Texas on 04/19/1993.

Details: The FBI determined through a review of a Reuters Limited News Report dated 08/24/1999, that former Deputy Assistant Director (DAD) Danny Coulson had revealed in an interview with the Dallas Morning News that the FBI had fired two M651 CS cartridges capable of causing a fire at the Branch Davidian compound in Waco, Texas, in 1993, just hours before the structure burst into flames, killing 76 people. While Coulson denied the M651 CS cartridges played any role in starting the fire, his statement marked the first time any U.S. government official had publicly contradicted the government's position that Federal Agents did not use any devices during the final day of the siege at Waco that could have sparked the deadly flames.

The Director, as a result of the statements made by former DAD Coulson, ordered a complete review of the events on 04/19/1993 to determine if in fact the FBI utilized any devices which were capable of starting the fire at the Branch Davidian Compound.

It is recommended that this matter be opened and assigned to Inspector Henry E. Ragle to conduct this review.

FBI1141349

FBI

WWC509-0268
CNG295-0268

EXHIBIT
66

To: Inspection From: Inspection Division
Re: 62-, 08/26/1999

LEAD (s):

CC: AD Thompson
Inspector Ragle
UC Corvington
Each Team Leader
Each AIIP

Inspection Division, FBIHQ

At Washington D.C

Will open and assign captioned matter.

Revision 082699.1955

INTERVIEW QUESTIONS
(Waco Review)

1. Official Bureau Name?

2. FBI EOD?

3. Present position (job title and GS level)?

4. Official job title and GS-level on April 19, 1993?

5. What were your assignments/duties/responsibilities on April 19, 1993?

6. Where were you located on April 19, 1993 in relation to the Branch Davidian compound?

7. Who was your immediate on-site supervisor on April 19, 1993?

8. Were you carrying or in possession of any flashbangs, tear gas projectiles, rockets, missiles, or explosive/incendiary devices on April 19, 1993? (including but not limited to "ferret" rounds, military/law enforcement ordnance or "green turtles").

   If yes,

   a. What did you possess (identification of device(s))?

   b. Physical description and quantity of device(s)?

      - Basis of knowledge for interviewee's identification of device(s) (prior training/ experience, etc.)?

   c. Source from which device(s) acquired?

   d. Why were you in possession of the device(s)?

   e. Who authorized/directed you to possess/carry the device(s)?

   f. Method/mode of carrying/possessing the device(s) (e.g., on body, in luggage, in vehicle, etc.)

   g. How did you acquire the device(s) (e.g., Bureau-issued, personally owned, provided by military, etc.)?

h. Did you provide any of the devices in your possession to anyone else on April 19, 1993?, If so, who and why?

i. What was done with any unused device(s) after April 19, 1993? (returned to SWAT inventory, disposed of, etc.)

9. Did you fire, shoot, throw, project or otherwise introduce anything into the Branch Davidian compound on April 19, 1993? (including but not limited to flashbangs, grenades, smoke devices, "ferret" rounds, rockets, missiles, military/law enforcement ordnance, "green turtles," bullets or ammunition).

If yes,

a. What did you introduce?

b. Physical description and quantity of device(s) introduced?

- Basis of interviewee's knowledge for identifying the device(s) (e.g., prior training and/or experience with device(s))?

c. What time did you introduce the item(s)/device(s)?

- Basis for interviewee's time determination?

d. Why did you introduce the device(s)?

- Identity of person(s) who approved/instructed or directed that the device(s) be introduced?

- If the decision to introduce was unilateral, what facts and circumstances led to your decision?

- What was the goal or objective of introducing the device(s)?

- Was any prior plan developed for the use of the device(s) you introduced?

e. Where did you introduce the device(s) (identify specific location in the compound)?

f. How did you introduce the devices (method of delivery, e.g., grenade launcher, shotgun, hand toss, etc.)

g. Were any empty shell casings/projectile housings generated by your use of the device(s)?

If yes,

- What was done with the spent casings?

- How were the spent casings disposed of?

h. Did any of the devices you used misfire or fail to function (i.e., "duds")?

If yes,

- What was done with the misfire(s)/dud(s)?

- How were the misfire(s)/dud(s) disposed of?

i. Identity of other persons who observed/witnessed you introduce the device(s)?

j. Have you previously reported to anyone the fact that you fired, shot or otherwise introduced something into the compound?

- If yes, to whom, why, and when did you report it?

- If no, why have you not previously reported it?

10. Did you know or have you heard that anyone fired, shot, threw, projected or otherwise introduced anything into the Branch Davidian compound on April 19, 1993? (including but not limited to "ferret" rounds, rockets, missiles, military/law enforcement ordnance, smoke grenades,"green turtles," bullets, or ammunition).

If yes,

a. Basis of knowledge (personally observed, was told, overheard etc.)?

b. Identity of person(s) who introduced device(s)?

c. Physical description and quantity of device(s) introduced?

- Basis of interviewee's knowledge for identifying the device(s) (e.g., prior training and/or experience with device(s))?

d. What time were the item(s)/device(s) introduced?

- Basis for interviewee's time determination?

e. Why were the item(s) introduced?

- Identity of person(s) who approved/instructed or directed that the device(s) be introduced?

- Interviewee's understanding of facts and circumstances which led to the decision to introduce the device(s)?

- What was the goal or objective of introducing the device(s)?

- Was any prior plan developed for the use of the device(s) introduced?

f. Where were the device(s) introduced (identify specific location in the compound)?

g. How were the devices introduced? (method of delivery, e.g., grenade launcher, shotgun, hand toss, etc.)

h. Were any empty shell casings/projectile housings generated by the use of the device(s)?

If yes,

- What was done with the spent casings?

- How were the spent casings disposed of?

i. Did any of the devices used misfire or fail to function (i.e., "duds")?

If yes,

- What was done with the misfire(s)/dud(s)?

- How were the misfire(s)/dud(s) disposed of?

j. Identity of other persons who observed/witnessed the introduction of the device(s)?

11. Do you have any reason to believe that a pyrotechnic or incendiary device was introduced into the Davidian compound on April 19, 1999?

Revision 082699.1955

12. You are instructed not to discuss this interview with anyone other than your attorney. Do you understand this instruction?

Sample Sworn Statement

Metropolis, \

August 26, 19

JJJ

I, John J. Jones, having been duly sworn by Assistant Inspector (AI) William W. Wallace, do hereby make the following statement to AI Wallace and Assistant Inspector in Place (AIIP) Samuel S. Smith, whom I know to be Supervisory Special Agents of the Federal Bureau of Investigation (FBI).

I entered on duty with the FBI on October 1, 1979 as a Special Agent. I am presently a Supervisory Special Agent (GS-14) in the Metropolis Division where I supervise a Violent Crimes/Major Offenders Squad (C-17).

I understand this is an administrative inquiry and that it pertains to the use of pyrotechnic/incendiary devices by the FBI in Waco, Texas on April 19, 1993.

I have been advised of my rights and responsibilities in connection with this investigation as set forth on the form captioned "Warning and Assurance To Employee Required to Provide Information" (FD-645), which I have read and signed. I further have been advised of the Director's "Bright Line" standard of professional conduct and I understand that disciplinary penalties up to and including dismissal may be imposed for intentionally providing false information during the course of this inquiry.

On April 19, 1993, I was a Special Agent (GS-13) assigned to Metropolis Division Squad C-17. I was also a Sniper- JJJ

FBI1141364

Metropolis, Virginia

August 26, 1999

JJJ

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Observer on the Metropolis SWAT Team at this time. On April 19, 1993, I was assigned along with other members of the Metropolis SWAT Team to control vehicle access to the Branch Davidian compound on the main road (Calamity Drive) leading into the compound. My job was to check the identification of those seeking access to the compound to ensure that their entrance was authorized. My immediate supervisor that day was SSA Bill B. Bright who was the Metropolis Division SWAT Coordinator. I was stationed along with other members of the Metropolis SWAT Team at the outer perimeter checkpoint which was located approximately two miles south of the compound on Calamity Drive. My shift started at 6:00 A.M. and I remained stationed at this checkpoint until my shift ended at 6:00 P.M. that evening.

I was not carrying nor was I in possession of any flashbangs, tear gas projectiles, rockets, missiles, or explosive/incendiary devices on April 19, 1993 (including "ferret" rounds, military/law enforcement ordnance or "green turtles"). I was armed with my Bureau-issued 9mm handgun and a Bureau issued MP-5 shoulder weapon.

I did not fire, shoot, throw, project or otherwise introduce anything into the Branch Davidian compound on April 19, 1993, including any flashbangs, tear gas projectiles, rockets, missiles, explosive/incendiary devices, "ferret" rounds, military/law enforcement ordnance, "green turtles," bullets or

other ammunition.

I have heard and read that tear gas was introduced into the compound on April 19, 1993 by ferret rounds fired from shotguns by members of the Hostage Rescue Team (HRT). I did not personally observe this and I cannot recall who told me that it occurred. I do not know the identities of the HRT members who reportedly fired the ferret rounds nor do I know the quantity of rounds fired. I read a report about this in the Metropolis newspaper shortly after April 19, 1993, although I cannot presently recall the specific details. I have also seen television news footage which shows tear gas being inserted into the compound using booms attached to military tank-type vehicles. It is my understanding from public news accounts that the tear gas was inserted into the buildings after holes were punched in the building walls by the military vehicles. I have no knowledge and no reason to believe that tear gas was inserted into the compound using pyrotechnic or incendiary devices.

I have been instructed and I understand that I am not to discuss the contents of this statement with anyone other than my attorney.

JJJ I have read this statement consisting of this and three other pages, and it is true and correct.

John J. Jones

Sworn to and subscribed before me this 26th day of August, 1999.

William W. Wallace
Assistant Inspector
Inspection Division

Witness:

Samuel S. Smith
Assistant Inspector in Place
Inspection Division

FBI1141368

FBI

WWC509-0279
CNG295-0279

LEVEL 1 - 60 OF 81 STORIES

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August 25, 1999, Wednesday THIRD EDITION

SECTION: NEWS; Pg. 1A

LENGTH: 1136 words

HEADLINE: FBI to acknowledge use of pyrotechnic devices;
New account on Branch Davidian fire expected

SOURCE: Staff Writer of The Dallas Morning News; Copyright 1999, The Dallas Morning News

BYLINE: Lee Hancock

DATELINE: AUSTIN

BODY:

AUSTIN - The FBI is preparing to acknowledge in a formal statement that its agents fired pyrotechnic tear gas grenades on the last day of the Branch Davidian siege, senior federal law enforcement officials said Tuesday.

The statement would represent a reversal from the federal government's adamant, long-held position that the FBI used no device capable of sparking a fire on the day the Branch Davidian compound burned near Waco.

Earlier this week, former senior FBI official Danny Coulson told The Dallas Morning News that pyrotechnic grenades had been used on April 19, 1993, the day that the compound burned with David Koresh and more than 80 followers inside.

Mr. Coulson's statement was the first time that a former or current federal law enforcement official publicly acknowledged the use of pyrotechnic devices on April 19. The government has long fended off accusations that FBI agents touched off the fire on that day, but Mr. Coulson said the pyrotechnic grenades were not responsible.

Earlier Tuesday, Texas Department of Public Safety Commission Chairman James B. Francis said the Texas Rangers have "overwhelming evidence" supporting Mr. Coulson's statement about the use of pyrotechnic devices.

"There are written reports by Rangers, there is photographic evidence, there is physical evidence, all three of which are problematic," said Mr. Francis.

Later, officials with the U.S. Justice Department began backing away from their long-held assertion that the FBI used no pyrotechnic devices when it launched a tear gas assault to end the 51-day standoff with the Branch Davidians.

"We've seen the reports, and we're trying to get to the bottom of them," said Justice Department spokesman Myron Marlin, declining to comment further.



Senior federal law enforcement officials in Washington said Tuesday night that the FBI was drafting a statement that would confirm that two pyrotechnic devices were used. A spokesperson at FBI headquarters initially told reporters that a statement would be released Tuesday afternoon but later said it had been postponed until Wednesday.

Mr. Coulson, a former assistant deputy director of the FBI and founding commander of the hostage rescue team, told The News this week that he recently learned that two M-651 CS tear gas grenades were fired hours before the compound burned.

Rangers' inquiry

The issue is a major focus of an ongoing inquiry by the Texas Rangers. It is also a key allegation in a federal wrongful death lawsuit in which surviving Branch Davidians and families of the dead have alleged that government wrongdoing and negligence caused the tragedy.

The issue also was a factor in a decision by the state DPS to persuade a federal judge in Waco to take control of all the evidence in the case. U.S. District Judge Walter Smith issued a sweeping order on Aug. 8 requiring federal authorities to turn over all physical evidence, documents, recordings and photographs connected to the Branch Davidian tragedy.

A law enforcement official familiar with the Rangers inquiry said Tuesday that the agency has positively identified a shell casing recovered from near the compound as part of an M-651 CS canister, a 40 mm U.S. military device that releases tear gas with a burning explosive capable of sparking fires.

The official, who spoke on condition of anonymity, said the Rangers also have strong evidence that it was used by the FBI on April 19. The official said the shell casing's markings and distinctive shape are unique to the M-651.

"There is no question of what it is and where it came from," the official said.

That information was among findings shared Tuesday afternoon with two congressional investigators, who flew to Austin for a private briefing on the Rangers inquiry.

"We look forward to getting to the bottom of it," said one investigator, speaking on condition of anonymity. He declined further comment.

Attorney General Janet Reno and other senior Justice Department and FBI officials have repeatedly told congressional committees, federal courts and the public that the federal government used nothing capable of starting a fire on April 19.

But federal law enforcement officials in Washington confirmed Tuesday that FBI agents did use the two grenades on the 19th. They were fired into a construction pit that contained a tunnel entrance leading to the compound. The sources said the devices were fired at 6:07 a.m., just after tanks began spraying tear gas into the compound. The M-651s were used because nonpyrotechnic gas rounds known as "Ferrets" were not adequately penetrating the area, the source said.

Details unclear

Federal authorities said they are still trying to determine who gave permission for members of the FBI's Hostage Rescue Team to use the devices and why their use was not revealed before now.

"Maybe this didn't come up because it was at 6 in the morning six hours before the compound burned, and maybe it was because it was fired away from the compound," the law enforcement official said.

The issue is especially sensitive because of the pending wrongful death lawsuit, which is scheduled to go to trial in Waco in mid-October.

But federal officials said they do not believe the use of the devices will change official conclusions that the Branch Davidians started the deadly fire that ended the standoff.

"I don't think this changes the bottom line, which is the Davidians started the fire. Law enforcement did not," the official said.

An investigation by a panel of independent arson experts concluded that the April 19 fire began simultaneously just after noon in three separate places inside the compound.

FBI bugs intercepted Branch Davidians discussing spreading fuel and planning a blaze for hours before the compound burned. Arson investigators also found evidence that accelerants, ranging from gasoline to charcoal lighter fluid and camp stove fuel had been poured in the compound.

Court and congressional records indicate the arson investigators' conclusion that the FBI's tear gas played no role in the fire was partially based on the FBI's assurance that it used no pyrotechnic devices on April 19.

Troubled by denials

Earlier Tuesday, Mr. Francis said he was troubled that Justice Department officials had initially denied Mr. Coulson's statements about the use of pyrotechnic tear gas.

"I would suggest that Janet Reno get a full briefing of the facts. She's not getting the facts," he said. "I can't understand for the life of me why a senior FBI official's statement was flatly contradicted by the Department of Justice without even checking the facts."

Mr. Francis said the Texas Rangers will soon wrap up their inquiry and are still discussing what to do with it.

"We're in a very awkward spot," he said.

LANGUAGE: ENGLISH

LOAD-DATE: August 31, 1999

LEVEL 1 - 56 OF 81 STORIES

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August 27, 1999, Friday THIRD EDITION

SECTION: NEWS; Pg. 1A

LENGTH: 1176 words

HEADLINE: Reno says FBI had assured her on raid;
She says pyrotechnics not part of plan

SOURCE: Washington Bureau of The Dallas Morning News

BYLINE: G. Robert Hillman

DATELINE: WASHINGTON

BODY:
WASHINGTON - Attorney General Janet Reno, declaring her credibility at stake, said Thursday that the FBI had assured her that no pyrotechnic devices would be used in its final assault on the Branch Davidian compound in 1993.

"I did not want those used. I asked for and received assurances that they were not incendiary," she said, recalling her discussions the week before the final assault near Waco in which more than 80 Branch Davidians died when their compound burned to the ground.

Now that the FBI has admitted that it may have used such devices, Ms. Reno said she is determined to "get to the bottom" of the discrepancy.

"I'm very, very upset," she said at her weekly news conference at the Justice Department.

Ms. Reno, who has repeatedly accepted full responsibility for the FBI's handling of the 51-day siege near Waco, pledged a thorough new investigation.

"I want to pursue it, to get to the bottom, and then make the facts available to everyone," she said.

For six years, however, Ms. Reno and other top officials of the Justice Department and the FBI have insisted that no pyrotechnic devices were used in the final assault for fear of igniting a fire in the flimsy, wooden structure that was the headquarters of the sect.

David Koresh and more than 80 of his followers died in a fire that engulfed the building after federal agents rammed it with tanks and tried to fill it with tear gas. Several surviving Branch Davidians are pursuing a wrongful-death lawsuit, charging the tragedy was caused by government wrongdoing and negligence.

On Thursday, Ms. Reno said she was "very, very troubled" by the new evidence pointing to the use of pyrotechnics by the FBI. But she added, "At this time,



all available indications are that the devices were not directed at the main wooden compound, were discharged several hours before the fire started and were not the cause of the fire."

FBI discussions

In the week before the final assault on April 19, 1993, the attorney general said she had continuing discussions about the kind of tear gas that would be used by the FBI - "whether it was incendiary and whether the devices were."

She said she had been "concerned about the possibility of fire started by such devices" and was assured that no pyrotechnics would be used.

"You try your best to get to the truth, and you sometimes make mistakes," she said.

"Anybody that says they never make mistakes, they never rely on information that proves to be inaccurate - I'd like to meet them."

At the FBI, spokesman John Collingwood confirmed that the attorney general had been concerned about the possibility of a fire erupting in the main wooden building in the Branch Davidian compound. But, he said, investigators conducting the new review would have to "determine exactly what happened."

Ms. Reno said she would be conferring by telephone with FBI Director Louis Freeh, who is on vacation, to determine exactly how the new federal review will be carried out. One option under consideration is the hiring of an outside investigator, perhaps a team of investigators.

"In something like this, you have got to constantly pursue every issue and not give up and not get frustrated until you get to the bottom line, which is the truth," she said.

Ms. Reno said the recent turn of events hasn't been "very good for my credibility." But she vowed to continue as attorney general through the last months of the Clinton administration.

"I take it day by day," she said. "I am here."

Nevertheless, the attorney general was described by a Justice Department official as angry and shaken by the new revelations.

"There is such disbelief that this is out there," said the official, who spoke on the condition of anonymity.

The official said some of the new information may have been available to officials in the FBI's legal office as long as three years ago. But the official could provide few other details.

Wide-ranging probe

Ms. Reno pledged a wide-ranging inquiry that could include new assertions that members of the U.S. Army's elite Delta Force anti-terrorism unit may have participated in the final FBI assault, which would have required presidential approval.

"We will pursue any issue that is in question," the attorney general said.

Some members of Congress who have followed the FBI siege near Waco for the last six years said they were also surprised - and troubled - by the latest news.

"It now appears that new information could potentially shed light on this sad chapter in American history, and I am hopeful that we can find that out and put this issue to rest once and for all," said Rep. Bill McCollum, R-Fla., who was co-chairman of a special joint House committee that investigated the siege.

The chairman of the House Government Reform and Oversight Committee - Rep. Dan Burton, R-Ind. - already has pledged a full-scale investigation. A similar inquiry is expected in the Senate. And Ms. Reno has promised to cooperate.

"I welcome it," she said.

Rep. Chet Edwards, D-Waco, also wants more answers.

"There are two questions that need to be answered," he said. "One, did anyone at the FBI mislead Congress about the use of pyrotechnic devices? Two, did these devices have anything to do with starting the fires at the compound?

"Congress should find the answers to those two questions," he said. "Until then, I will refrain from drawing any conclusions."

Clinton reaction

On Martha's Vineyard, Mass., where President Clinton is vacationing, White House press secretary Joe Lockhart said the president has been following the new developments and "stands with the attorney general in her determination to get all the facts in this case and to make them available to Congress and the public as soon as possible."

The new federal investigations into the FBI standoff with the Branch Davidians follow statements to The Dallas Morning News by former FBI official Danny O. Coulson that agents fired a pair of pyrotechnic tear-gas grenades on the final morning of the siege.

At first, Justice Department officials dismissed Mr. Coulson's statements. But, on Wednesday, the FBI issued a one-page statement acknowledging that it "may have used a very limited number of military-type CS gas canisters."

The FBI said the canisters were used in an attempt to "penetrate the roof of an underground bunker away from the main Branch Davidian compound." But the Justice Department official said Thursday that the canisters bounced off the roof and fell into a nearby field.

Bob Ricks, who was the FBI's chief spokesman in Texas during the 51-day standoff, said he did not know until last week that pyrotechnic devices may have been used by the FBI.

"There was a plan that was approved that went all the way to the attorney general," said Mr. Ricks, now the Oklahoma state public safety director.

"There's just some things that you shouldn't do," he said. "I think it's a divergence from the plan."

Staff writers Lee Hancock and Robert Dodge contributed to this report.

GRAPHIC: PHOTO(S): (Agence France-Presse) "I want to pursue it, to get to the bottom, and then make the facts available to everyone" about the FBI's final assault on the Branch Davidian compound, Attorney General Janet Reno said.

LANGUAGE: ENGLISH

LOAD-DATE: August 28, 1999

U.S. Department of Justice

United States Attorney
Western District of Texas

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Waco, Texas 76706

(254)750-1580
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BY FACSIMILE

August 30, 1999

Honorable Janet Reno
Attorney General of the United States
Washington, D.C.

Dear Madam Attorney General Reno:

As I have watched the responses made by the Department of Justice to the recent Davidian evidence controversy, I have formed the belief that facts may have been kept from you - and quite possibly are being kept from you even now, by components of the Department. Therefore, this letter is written in an attempt to advise you of facts which might allow you to better deal with the issues at hand.

As you recall, shortly after the failed February 28, 1993, raid by ATF, I asked the Texas Rangers to come into the case as an objective agency which could investigate the circumstances of the shootout and present evidence for a possible prosecution. Thankfully, the Rangers agreed. Their job was not to be an easy one, and their work was made more difficult when the FBI altered the crime scene by using armored vehicles to push Davidian vehicles away from the compound. This problem, along with others, caused me to write the letter to you dated March 23, 1993, seeking help with what I termed, "...a crisis within our District... ." You responded shortly thereafter in an attempt, I know, to gain control over a very difficult situation.

In addition to their role as investigators, the Rangers have been the primary custodians of the evidence gathered during the investigation. In 1998, an independent film-maker from Colorado named Mike McNulty began making requests to view the evidence. He contacted the Public Affairs section of the Department of Justice and he contacted me. After we had both received numerous phone calls from McNulty, Bert Brandenburg and I spoke about how to respond to his requests. We both had some reservations about dealing with Mike McNulty, in part, because of his first film, "Waco- Rules of Engagement." I felt at that time that the film was inaccurate, if not irresponsible. However, I expressed to Mr. Brandenburg that to stonewall McNulty tended to lend some credence to his already held belief that the government had something to hide. Because much of the evidence which McNulty sought to view had been in the public domain at trial, and because McNulty was not

EXHIBIT
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a litigant, I believed that some reasonable but limited access should be granted him. Sometime after our discussion, Bert Brandenberg telephoned me to say that I should serve as the Department's contact with McNulty and that if I could get the Rangers to assist in allowing McNulty reasonable access to the evidence, then I should proceed in allowing him access. I have recently been told that Bert Brandenberg now distances himself from that decision and states that it was "Johnston's idea." No matter how he casts it, I am glad that McNulty was allowed to see the evidence.

Following my call to them, the Rangers kindly allowed McNulty to view the evidence. I was present on one occasion when McNulty came to Austin to see the evidence. I did not attend when he came a couple of times later. I know that his visits were closely supervised by the Rangers. At no time did he alter or disturb the integrity of any item of evidence. Following his viewing of the evidence, McNulty sought permission to interview you and me for his film. This request was denied by Bert Brandenberg. In his letter denying the request, Brandenberg discusses the fact that McNulty had been given access to the evidence (letter attached).

Based upon his observation of the evidence, Mike McNulty began to believe that evidence existed that the FBI had fired some sort of 40 millimeter projectile which could have started the fire on April 19, 1993. He has stated to me that in November of 1998, he wrote a letter to the Department of Justice, alleging facts in connection with the 40 millimeter projectiles.

On a Saturday morning in June of 1999, I received a telephone call at my home from DOJ Torts Branch lawyer Marie Hagen. Ms. Hagen was extremely upset with me. She demanded to know whether or not I had allowed Mike McNulty to view the Davidian evidence. I responded that I had. Ms. Hagen asked me what I thought I was doing, and inquired if I had received permission from the Torts Branch to allow McNulty access. She next asked if I had received permission from the Criminal Division. I responded as to both demands that the permission to do so had come from the Chief of Public Affairs, and that I figured that he had checked with the necessary folks before allowing me to coordinate with McNulty. She ended the conversation unquenched in her anger. I think that I now know why. Then within a day or so, I received a letter from Marie Hagen which directed that I account for my dealings with McNulty, Brandenburg, "...and anyone else in connection with these materials." About the same time, our office received a similar letter over the signature of Jeffrey Axelrad, Chief of the Torts Branch (letters attached).

In mid-June of this year, I received a letter from an attorney for the Texas Department of Public Safety (DPS). He later telephoned me. The attorney stated that DPS desired to cease being custodians of the Davidian evidence. I told the attorney that I would help them in any way, since DPS, particularly the Rangers, had done more than what was expected of them. DPS personnel have since explained to me that their agency simply did not have the time or resources to continue to deal with the many issues regarding the evidence, particularly the ever-increasing number of Open Records requests. DPS has felt somewhat slighted by the Department of Justice in this regard since the Department has apparently avoided dealing with Freedom of Information Act requests about the evidence by stating something like, "We don't have the evidence, the Rangers do." This response may be a little disingenuous because the Rangers actually have the evidence as Special Deputy U.S. Marshals. Genuine or not, this manner of response by the Department has caused DPS to be burdened with a large number of requests. DPS then chose to file a motion with U.S. District Judge Walter Smith, Jr., of Waco. The motion sought an order transferring responsibility for the evidence to another agency. Wisely, the Chairman of the DPS Commission asked the Rangers to take stock of the evidence before it was released. As they looked at the task of inventorying and reviewing the

evidence, the Rangers were determined to be particularly attentive to "controverted" evidence. That is, evidence which by claim of McNulty, or others, was meaningful to some alleged misconduct or misrepresentation.

A couple of months ago, Rangers began the task of looking again at the evidence. After some initial work, certain "40 millimeter" evidence became the focus of their inquiry. Because of my relationship with both the Rangers and the case, I was asked by the Rangers to work with them in their effort. This I did. Since I was the one who brought the Rangers into this case at the beginning, I figured that I should help them see it through to the end. Pretty soon, a 40 millimeter shell casing marked "M-118" and a photograph of a grey projectile with a red stripe became very significant. As soon as their significance was even suspected, I notified my U.S. Attorney, in writing, of what was going on. Soon, it was determined that the casing had been fired by the FBI on April 19, 1993, --by their own admission. This admission had been made to a Ranger in late 1993 or early 1994. The Ranger simply did not understand the significance of the casing at that time. The full significance was figured out by the Rangers just in the past couple of weeks. The photo of the projectile mentioned above shows what the Rangers now know is an M-651 pyrotechnic tear gas round. The casing goes with the projectile. As early suspicions of these problems made their way to the media via the DPS Chairman Jim Francis, I was astounded to see the Department's response was that this was "more nonsense." My surprise was based upon the fact that I had been updating my U.S. Attorney for weeks about this evidence. Attached are some of the "e-mails" which I have been able to find having to do with these discussions. Last week, I expressed this frustration to current Public Affairs Chief Myron Marlin (document attached). I am in disbelief that someone in the Department did not advise you of these developments. I hope that you can find out why they did not. In addition to the "e-mails," I sent to my U.S. Attorney, by facsimile, copies of the specifications for the M-651 tear gas round which the Rangers had obtained. Again, this was done by me weeks ago.

As you recall, when Congress investigated the Davidian matter in 1995, I was called as a witness. Once it was determined that I would have to testify, I was kept at a distance from the Department. It was not the Department that brought me to Washington to prepare for the hearing, but the Treasury Department. Although I was treated courteously by Richard Scruggs, I was not assisted by anyone with DOJ in any real way in preparing for my testimony. In fact, I was handled as if I had some strain of intellectual leprosy. A couple of days before the hearing, an AUSA named Zipperstein told me that I needed to write out a statement of my recollection of the events. This, he said, was so that I could have these matters placed into the record in case I was not given the opportunity to have my say on certain matters. An office and computer were provided to me to prepare this statement. For the next several hours, I worked feverishly on my statement. Upon completion, I walked proudly to Mr. Zipperstein's office with statement in hand only to be told that I did not need to do a statement after all. When I asked what had changed and why I would not be allowed to give the statement, Zipperstein told me simply that nothing had changed - he just did not need for me to do the statement. Naively, stupidly, I accepted his response. With the hearing beginning the next day, I made my way down the street to the Treasury Department where Undersecretary Ron Noble, who was neither ashamed of me, nor afraid of what I might say, talked with me about some of the issues which might arise at the hearing. I mention the foregoing about the previous experience because I anticipate the same or worse may occur. In fact, it may have already begun. Last week, a fax which originated with the Department of Justice came to me. The

fax was in three pages. The first was a copy of handwritten notes which had apparently been written by a paralegal who assisted in the Davidian trial preparation. The notes were of an interview of an FBI agent which was probably conducted in 1993. The notes reflect that the agent said that he fired ferret rounds and a "military gas round." An accompanying document is an outline of the witness' testimony which bears the name of the paralegal and my name. This suggests that I was present during the interview. Although I do not specifically recall the interview, I probably was present if the document says that I was. I can certainly tell you that, assuming I heard the entire conversation, the term "military gas round" would not have meant anything to me at the time. The third page of the fax was an FBI report of an agent who heard radio traffic about a military round being fired. It has been suggested to me that these documents were sent to me to "hang over my head," or to say that I'd better look out stirring this matter up, as I may have to explain this paralegal's memo. So long as it is the truth "hanging over my head," I am not afraid. I will not be intimidated by anyone with the Department of Justice. I will assist the Congress or any other body who seeks the truth in this case.

I mentioned above that I think that I understand why Marie Hagen was so upset that I had worked with Mike McNulty in allowing him access to the Davidian evidence. I believe that the three pages faxed to me last week hold the answer. At the top of the typewritten document, someone has written, "...privileged." At the bottom it appears that someone wrote, "DOJ witness do not disclose." It appears that someone was making decisions about whether the plaintiffs in the civil case, or others, should have access to these documents. It is my own hypothesis that the Torts Branch has had these documents for years, and that they decided not to make them available to the plaintiffs. The Torts Branch or some other component also apparently decided not to let you know about these documents. Certainly, as attention focused in the past year on the fire issue, the full import of these documents must have been known to whomever possessed them. I now wonder whether or not you were ever advised that two Deputy U. S. Marshals in Waco were falsely accused of leaking raid information to the media back in 1993. These allegations were completely false, if not malicious. Not only was no action taken against the accusers who were both Deputy Marshals as well, but one of them has since been promoted. Similarly, although two ATF supervisors lied to the Rangers about whether or not they knew the element of surprise had been lost before the raid, representatives of the Department of Justice chose to not prosecute these individuals – and they were rehired with ATF. This sort of non-accountability, as described above, cuts at the credibility of the Department of Justice.

You may recall that in my March 23, 1993, letter I closed by saying "...[I] am willing to accept any consequences..." for writing the letter. There have been some consequences. I will close this letter to you by briefly describing a few. Essentially, since the letter, I have been seen by many as a mutineer. The Waco Division office which I supervise has been given little help to deal with an ever more complex caseload. To deal with the caseload which we produce, the U.S. Probation Office in Waco has gone from a staff of three, to a staff of twenty in the past ten or so years. Our office saw only modest growth from one to three attorneys by 1993, with no real growth over the past six years. For most of the past six years, our office has been comparable in caseload and complexity of cases to that of the Austin office, an office which hosts more than three times as many attorneys and three times the support staff. Although our entire District has yet to prosecute a capital case, my office currently has three federal capital murder cases pending. In fact, we now have ten defendants charged in or in relation to homicide cases. If our office does not deserve resources,

certainly the victims' families do. We also have a couple of 50 ton marijuana cases and a methamphetamine case involving a ton or more pending amongst our current case load of 81 cases against some 156 defendants.

It is a reality of our large government that its department heads cannot learn of every significant event taking place within their purview. If this has happened to you, I hope that this letter can assist you in learning of some of the facts which have been known by individuals under your supervision. In an order issued some years ago, Judge Smith referred to the Davidian case as, "An American tragedy of epic proportion." It was. I hope that the truth may be learned so that the tragedy does not continue.

Sincerely,

William W. Johnston
Assistant U. S. Attorney
Chief, Waco Division
Western District of Texas

SSOCIATE AG OFFICE
WWC020-0283
CNG371-0283

FROM

(NED) C 16 99 9:17/ST. 9:14/NO. 4E60522676 F

U.S. Department of Justice

Office of Public Affairs

Washington, D.C. 20530

November 3, 1998

Mr. Michael McNulty
MGA Entertainment Inc.
1001-A East Harmony Road #353
Fort Collins, CO 80525

Dear Mr. McNulty:

I am writing to decline your request that a Justice Department official appear on camera for your documentary. The Waco incident and its aftermath have generated one of the most extensive public records in law enforcement history, including volumes of interviews and testimony, and we would refer you to those public records.

In addition, we have worked over the past several months to provide you with access to even more information and evidence. Assistant U.S. Attorney Bill Johnston has spoken to you dozens of times and provided access to Texas Rangers. Digging through often filthy boxes, they were able to locate evidence of interest to you and answer many of your questions. I understand that other visits may be arranged in the future.

If you need the government's response to any inquiry, we will be glad to provide it in writing. However, because so much of the reporting and analysis of Waco has been so one-sided, distorted, and inaccurate, and because the public record is already so voluminous, we are simply not in a position to offer interviews that can be edited before they are entered into the public record.

Sincerely,

Bert Brandenburg

Bert Brandenburg
Director of Public Affairs

4 = 25 '=: 16:20 PAGE.002

SSOCIATE AG OFFICE

WWC020-0284

CNG371-0284

FROM (WED) 6. 16 99 9:16/ST 9:14/NO. 4860522676 P 6

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Marie Louise Hagen
Trial Attorney

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel.: (202) 616-4278
Fax: (202) 616-5200

PJP:ML:Hagen:mth
157-74-3487

May 3, 1999

VIA FEDERAL EXPRESS

Bill Johnston, Esq.
Assistant United States Attorney
Western District of Texas
700 University Parks Drive
Waco, Texas 76706

Re: *Andrade, et al. v. Chojnacki, et al.,*
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

Dear Mr. Johnston:

As you know, we recently learned that various individuals have had access to evidence from the Branch Davidian investigation and trial that is stored with the Texas Rangers in Austin and by ATF in Waco, and that these individuals were permitted to take samples of residue from several pieces of this evidence for laboratory study. As a result, the plaintiffs in this action have moved for leave to file evidence obtained by Mr. McNulty and additional briefing on the motions pending before the Court (see attached). It order to prepare for discovery and other matters in connection with the defense of this litigation, we need to document who had access to the evidence, when the access occurred, and under what circumstances.

Please draft a statement or report that describes in detail all conversations you had with Michael McNulty, Bert Brandenberg, and anyone else in connection with these materials, and forward that report to me.

As we have advised Mr. Blagg (see attached letter), any further requests for access to these materials should be referred to me or Jim Touhey, my co-counsel on this matter. I suggest that you discuss the propriety of any further discussions with Mr. McNulty with your counsel, Joe Sher and Nina Pelletier.

Very truly yours,

Marie Louise Hagen

MARIE LOUISE HAGEN by JGT
Trial Attorney
Civil Division, Torts Branch

FROM (WED) 5. 19' 99 9:14/ET. 9:14/NO. 4660522576 P 4
AG 5/4/99

U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

Jeffrey Axelrad
Director

P.O. Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Tel.: (202) 616-4200
Fax: (202) 616-5200

JA:PJP-MLHagen:mlh
157-74-3447

May 3, 1999

VIA FEDERAL EXPRESS

Hon. James W. Blagg
United States Attorney
Western District of Oklahoma
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Re: *Andrade, et al. v. Chojnacki, et al.*,
W.D. Texas Civil Action No. 96 CA 139
and consolidated actions

Dear Mr. Blagg:

We recently learned that various individuals, including producer Michael McNulty, have had access to evidence from the Branch Davidian investigation and trial that is stored with the Texas Rangers in Austin and by ATF in Waco. We further understand that Mr. McNulty or someone who accompanied him was permitted to take samples of residue from several pieces of this evidence for laboratory study. Since both the civil and criminal litigation stemming from the events at the Branch Davidian compound are pending, it is improper and unwise to allow access to this evidentiary material without coordination with all the components involved in the litigation. Given the nature of the conspiracy allegations in the civil case, it is important to avoid unrestricted access and tampering with the evidence.

Although attorneys in this office have been in contact with AUSA Bill Johnston, the Texas Rangers, ATF, and the Department's Office of Public Affairs on issues in the case, they were not advised that Mr. McNulty's request for access to the evidence had been approved. It is our understanding that Department attorneys handling the appeal of the criminal case also were not consulted prior to the decision to allow access to the evidence.

It is imperative that the integrity of this evidence be maintained pending the final resolution of this litigation. Joseph C. Wyderko in the Criminal Division agrees with this. Discovery in the civil litigation has been stayed pending resolution of threshold dispositive

motions filed by the defendants. Should any issues remain after the Court rules on these motions, access to tangible evidence should be permitted in accordance with the precepts of civil discovery under the Federal Rules of Civil Procedure.

With respect to the civil suit, any future requests for access to the Branch Davidian evidence should be referred to the attorneys assigned to represent the interests of the United States, Marie Louise Hagen (202-616-4278), or, in her absence, James G. Touhey (202-616-4292).

Thank you for your assistance in this matter. Please do not hesitate to contact me if you wish to discuss this.

Very truly yours,

Jeffrey Axelrad
Director, Torts Branch
Civil Division

cc: Imelda Koett, Esq., Office of Chief Counsel, ATF
Jacqueline F. Brown, Esq., Office of General Counsel, FBI

From: Bill Johnston
To: atcw01.po.bblagg
Date: 8/2/99 8:14pm
Subject: davidian evidence

I spoke with the Jahns who asked that I try to find out if the Judge will allow a little more time for a well thought out dept. response to the evidence motion by DPS. I am working on that right now. I spoke with Ranger Joey Gordon who is close to some answers on the questioned evidence. He is going to update me tomorrow morning in Austin, and I will call you after he tells me what the deal is.

From: Bill Blagg
To: atxww01.po.bjohnsto
Date: 8/3/99 6:20pm
Subject: Davidians

Bill: As you know, our recommendation on how the evidence should be deposited is currently under review at the highest levels of the Department of Justice. Any decisions concerning any involvement that our office agrees to take or declines to take on the Ranger's investigation should be carefully reviewed by me so that I can pass it upstream. You know of the AG's personal interest in this case and it remains quite strong. Please keep me advised of what is going on the matter at all times. I have been told that back in 93 the supervision of this matter was removed from USA control and placed under the supervision of a Deputy AG, so I inquired yesterday about what my role should be. I was told to stay involved in the matter.

CC: jmurphy, rdurbin, rjahn, ljahn

From: Bill Johnston
To: ATXW01.PO(rjahn)
Date: 8/19/99 10:16am
Subject: davidian evidence -Reply -Reply

The casing is labelled M-118 and it is said to fire the M-651 tear gas round. I think that they were manufactured in 1969... at least that was the original information that I recall from Joey Gordon.

From: Bill Johnston
To: atxw01.po.bblagg
Date: 8/17/99 5:48pm
Subject: davidian evidence

Although the work has not been totally completed, Ranger Joey Gordon is close to an end in his investigation of the 40mm projectiles and casing which have been in controversy. The evidence thus far as to the 40mm casing shows that it held an M-651 projectile. The photograph depicting the grey object with the red band is of just such a projectile. The M-651 is a tear gas round which is filled with a "CS-pyrotechnic mixture."

The two black 40mm projectiles are most likely "flash and report" type of rounds. If so, these could be rounds which were fired by the FBI HRT during the seige to drive the occupants of the compound back inside. The rangers hope to have the work on these 40mm items completed next week.

[redacted]

From: Bill Johnston
To: aex10ml.wtgate.MMarlin
Date: 8/26/99 11:03am

There is obviously quite a bit of concern that exists regarding the evidence of pyrotechnic projectiles being found by Texas Rangers. There should be no real surprise that valid questions do exist. The Rangers' inquiry has been no secret to the Dept. For several weeks, I have advised Mr. Blagg, my U.S. Attorney, of developments in their inquiry, including the information that the FBI had acknowledged to the Rangers that they had recieved permission to fire another type of round. A couple of weeks ago, I faxed the specifications on the M-651 round to Mr. Blagg. This is the round which the Rangers said was fired. I have also updated the Jahns repeatedly regarding the Rangers' investigation. The Department has not asked me nor the Rangers for information as to what their information has shown. The Rangers will be glad to discuss their investigation with the Dept. I received by fax today a copy of handwritten notes of a paralegal who assisted in the trial preparation. The notes reflect that she noted that an HRT member discussed shooting a military gas round. The accomanying paperwork reflects that I was present for the interview. I don't recall the interview specifically, and I don't think that the term "military gas round" would have meant anything to me at the time, but the information from that interview has been in the Department's hands for many years. At any rate, I or the Rangers will be glad to answer any questions which the Dept. may have.

7-1 (Rev. 1-21-91) 7/30 52906

FBI LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

Date: December 6, 1993

To: Sergeant James L. Miller
Texas Rangers, Company "F"
515 Pine Street
Georgetown, Texas 78628

FBI File No. 89B-SA-38851

Lab No. 30517001 S/D TL ZL AS
30517002 S/D/P TL ZL U
30521024 S TL
30803006 S TL
30830032 S TL ZL
30903040 S TL
30903041 S TL ZL
30915010 S TL QF
30929050 S/D TL UI
30923052 S TL
31115011 S/P TL AI
31118041 S TL
31129058 S TL ZL

Reference: Communication dated July 30, 1993

Your No. RF093021

Re: WACMUR
MAJOR CASE #80

Specimens received:

Specimens received August 3, 1993, under communication dated July 30 1993. Laboratory Number 30803006 S/E TL QF ZF:

Q801 Can containing portions of clothing from MC45- MARY JANE BORST (B2692)

Q802 Can containing portions of clothing from MC39 (B2690)

Q803 Can containing portions of clothing from MC35-SHARI DOYLE (B2688)

Q804 Can containing portions of clothing from MC75 (B2697)

1 - FBI, San Antonio, (89B-SA-38851)
1 - U.S. Attorney's Office, Western District of Texas
Post Office Box 828
Waco, Texas 76703

USAWDTX
007-00028

JJC:kjl (4)
Page 1

This Report Is Furnished For Official Use Only (over)

PENCAD-Boyonne, N. J.

EXHIBIT
70

007-00028

Q805	Can containing portions of clothing from MC41-NEAL VAEGA (B2691)
Q806	Can containing portions of clothing from MC63 (B2694)
Q807	Can containing portions of clothing from MC36-DAVID MICHAEL JONES (B2689)
Q808	Can containing portions of clothing from MC71-MICHELE JONES (B2696)
Q809	Can containing portions of clothing from MC64 (B2695)
Q810	Can containing portions of clothing from MC53 (B2693)
Q811	Grenade fragment from MC9 (B2520)
Q812(A-C)	Bag containing bullet, cartridge case and metal snap from MC11 (B2387)
Q813	Bullet fragment from MC77 (B2388)
Q814	Bullet from MC27-DORIS ADINA FAGAN (B2398)
Q815	Bullet from MC25-YVETTE FAGAN (B2611)
Q816	Cartridge case from MC29 (B2437)
Q817	Cartridge case from MC20-JAMES LOYLE RIDDLE (B2602)
Q818	Cartridge case from MC17 (B2601)
Q819	Cartridge case from MC15 (B2470)
Q820	Bullet and nails from MC44 (B2522)
Q821	Bullet and nails from MC44 (B2521)
Q822	Bullet and nails from MC78-JAYDEAN CORNWELL WENDEL (B2436)
	Items from MC35-SHARI E. DOYLE:
Q823-Q824	Primer caps (B2460, B2467)
Q825	Portion of spring (B2463)

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Q826-Q839	Fourteen (14) bags of assorted bullets and bullet fragments (B2453-B2459, B2461-B2462, B2464-B2466, B2468, B2469)
	Items from MC21-STEPHEN HENRY:
Q840-Q846	Seven (7) bags of assorted cartridge cases (B2366-B2368, B2374-B2377)
Q847-Q860	Fourteen (14) bags of assorted bullets (B2369-B2373, B2378-B2386)
Q861-Q863	Three bullets from MC79-PETER HIPSMAN (B2542-B2544)
	Items from MC34-FLORECITA SONOBE:
Q864	Metal pin (B2604)
Q865	Cartridge fragment (B2603)
Q866-Q867	Two cartridge cases (B2605, B2607)
Q868-Q869	Two bullets (B2606, B2608)
	Items from MC2-LIVINGSTONE MALCOLM
Q870	Bullet (B2432)
Q871-Q873	Three cartridge cases (B2433-B2435)
Q874	Grenade fragments (B2610)
Q875	Cartridge case (B2609)
	Items from MC45-MARY JEAN E. BORST:
Q876	Cartridge case (B2526)
Q877-Q880	Four bullets (B2525, B2523, B2524, B2527)
	Items from MC22-PHILLIP HENRY:
Q881-Q883	Three bags of cartridge cases (B2389, B2390, B2393)
Q884-Q886	Three bags of bullets (B2391, B2392, B2394)
	Items from MC32:
Q887	Nine (9) primer caps (B2568)

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Q888-Q889	Two bags containing pieces of metal (B2579, B2566)
Q890-Q903	Fourteen (14) bags of bullets (B2570, B2581, B2582, B2585-B2587, B2589, B2593-B2596, B2598-B2600)
Q904-Q922	Nineteen (19) bags of bullets (B2565, B2567, B2569, B2571-B2578, B2580, B2583, B2584, B2588-B2592, B2597)
	Items from MC42-PABLO COHEN:
Q923-Q935	Thirteen (13) bags of ammunition components (B2411, B2406, B2403, B2415, B2405, B2408, B2410, B2404, B2409, B2414, B2413, B2412, B2407)
	Items from MC64:
Q936-Q944	Nine (9) bags of ammunition components (B2647, B2646, B2648, B2652, B2649, B2651, B2653, B2645, B2650)
Q945-Q963	Nineteen (19) bags of ammunition components (B2656, B2666, B2659, B2663, B2660, B2672, B2668, B2654, B2655, B2667, B2671, B2670, B2664, B2662, B2669, B2658, B2657, B2665, B2661)
Q964-Q987	Twenty-four (24) bags of ammunition components (B2638, B2640, B2642, B2641, B2639, B2643, B2643, B2643, B2643, B2643, B2643, B2644, B2644, B2644, B2644, B2644, B2644, B2644, B2644, B2644, B2644, B2644, B2644, B2644)
	Items from MC72:
Q988	Three (3) shell casings (B2399)
Q989	Two (2) shell casings (B2402)
Q990	Shell casings (B2401)
Q991	Bullets (B2400)
	Items from MC40:
Q992-Q1021	Thirty (30) bags containing ammunition components (B2486, B2472, B2496, B2494, B2491, B2500, B2490, B2478, B2473, B2485, B2488, B2475, B2483, B2476, B2497, B2484, B2499, B2495, B2481, B2474, B2487, B2498, B2477, B2479, B2480, B2492, B2489, B2482, B2471, B2493)

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	Items from MC3-FLOYD LEON HOUTMAN:
Q1022	Ammunition component (B2395)
Q1023	Ammunition component (B2396)
Q1024	Bullet (B2397)
	Items from MC74:
Q1025	Piece of metal (B2612)
Q1026(A-F)	Six bullets (B2613)
Q1027(A-J)	Ten bullets (B2614)
Q1028(A-H)	Eight bullets (B2515)
Q1029	Cartridge cases (B2616)
	Items from MC13:
Q1030-Q1043	Ammunition component (B2528, B2529, B2530, B2531, B2532, B2533, B2534, B2535, B2536, B2537, B2538, B2539, B2540, B2541)
	Items from MC7:
Q1044-Q1059	Ammunition components (B2416, B2417, B2418, B2419, B2420, B2421, B2422, B2423, B2424, B2425, B2426, B2427, B2428, B2429, B2430, B2431)
Q1060	Shell casing (No evidence tag refer to item 8)
	Items from MC18:
Q1061-Q1064	Ammunition components (B2501, B2502, B2503, B2504)
	Items from MC38-REBECCA SAIPAIA:
Q1065-Q1074	Ammunition components (B2555, B2556, B2557, B2558, B2559, B2560, B2561, B2562, B2563, B2564)
	Items from MC54-JULLIETE SANTOYO MARTINEZ:
Q1075-Q1084	Ammunition components (B2546-B2554)

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Items from MC36-DAVID MICHAEL JONES:

Q1085-Q1105 Ammunition components (B2617, B2618, B2619, B2620, B2621, B2622, B2623, B2624, B2625, B2626, B2627, B2628, B2629, B2630, B2631, B2632, B2633, B2634, B2635, B2636, B2637)

Items from MC37-ALDRICK GEORGE BENNETT:

Q1106-Q1119 Ammunition components (B2506, B2507, B2508, B2509, B2510, B2511, B2512, B2513, B2514, B2515, B2516, B2517, B2518, B2519)

Items from MC12-JENNIFER ANDRADE:

Q1120-Q1134 Ammunition components (B2438, B2939, B2440, B2441, B2442, B2443, B2444, B2445, B2446, B2447, B2448, B2449, B2450, B2451, B2452)

Q1135 Can of clothing from MC25-YVETTE FAGAN (B2681)

Q1136 Can of clothing from MC29 (B2680)

Q1137 Can of clothing from MC10-SONIA CAROLINE MURRAY: (B2679)

Q1138 Can of clothing from MC26 (B2674)

Q1139 Can of clothing from MC30-KATHERINE ANDRADE (B2675)

Q1140 Can of clothing from MC7-STEVEN EMIL SCHNEIDER (B2678)

Q1141 Can of clothing from MC2-LIVINGSTONE MALCOLM (B2687)

Q1142 Can of clothing from MC21-STEPHEN HENRY (B2686)

Q1143 Can of clothing from MC11 (B2684)

Q1144 Can of clothing from MC22-PHILLIP HENRY (B2682)

Q1145 Can of clothing from MC11 (B2685)

Q1146 Can of clothing from MC33 (B2683)

Q1147 Can of clothing from MC20-JAMES LOYLE RIDDLE (B2676)

Q1148 Can of clothing from MC16 (B2673)

Q1149 Can of clothing from MC19 (B2677)

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007-00033

Q1150	Bag of assorted ammunition components from MC75 (B2765)
	Items from MC58:
Q1151	Bag of assorted ammunition components (B2719)
Q1152	Bag of bullets (B2721)
Q1153	Bag of assorted ammunition components (B2720)
Q1154	Bag of bullets (B2716)
Q1155	Bag of bullets (B2717)
Q1156	Bag of assorted ammunition components (B2718)
	Items from MC56-ABIGAIL MARTINEZ:
Q1157	Bag of cartridges (B2793)
Q1158	Bag of assorted ammunition components (B2794)
Q1159	Miscellaneous metal fragments and one cartridge case (B2795)
Q1160	Miscellaneous ammunition components (B2797)
Q1161	Bag of ammunition components (B2796)
Q1162	Bag of bullets (B2792)
Q1163	Bag of cartridges (B2791)
	Items from MC55-AUDREY MARTINEZ
Q1164	Nail and bullet (B2729)
Q1165	Bag of ammunition components (B2727)
Q1166	Bag of bullets (B2728)
Q1167	Bag of cartridge cases (B2730)
Q1168	Bag of bullets (B2731)
Q1169	Bag of cartridges (B2732)
	Items from MC39-NOVELLETTE HIPSMAN
Q1170	Cartridge case (B2766)

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Q1171	Cartridge case (B2767)
Q1172	Bullet (B2773)
Q1173	Bag of metal fragments (C2774)
Q1174	Cartridge case (B2771)
Q1175	Cartridge case (B2783)
Q1176	Cartridge case (B2769)
Q1177	Bullet (B2781)
Q1178	Bullet (B2786)
Q1179	Metal fragment (B2784)
Q1180	Cartridge case (B2778)
Q1181	Metal fragment (B2789)
Q1182	Metal fragment (B2779)
Q1183	Bullet (B2782)
Q1184	Cartridge case (B2787)
Q1185	Metal fragment (B2772)
Q1186	Metal fragment (B2785)
Q1187	Metal fragment (B2776)
Q1188	Cartridge case (B2788)
Q1189	Bullet (B2777)
Q1190	Metal fragment (B2790)
Q1191	Bullet (B2770)
Q1192	Metal fragment (B2780)
Q1193	Bullet (B2768)
	Items from MC73:
Q1194	Bag of miscellaneous ammunition components (B2756)
Q1195	Bag of bullets (B2755)

USAWDTX
007-00035

007-00035

	Items from MC71-MICHELE JONES:
Q1196	Metal fragment (B2725)
Q1197	Bag of bullets (B2722)
Q1198	Bag of cartridge cases (B2723)
Q1199	Bullet (B2726)
	Item from MC51-JUDY VIOLET SCHNEIDER:
Q1200	Metal fragment (B2724)
Q1201	Bag of cartridge cases (B2734)
	Item from MC52-JOSEPH ROBERT MARTINEZ:
Q1202	Bag of miscellaneous ammunition components (B2733)
	Item from MC54-JULLIETE SANTOYO MARTINEZ:
Q1203	Metal fragment (B2798)
	Items from MC62:
Q1204(A-H)	Miscellaneous ammunition components (B2757-B2764)
	Items from MC69:
Q1205(A-T)	Miscellaneous ammunition components (B2735-B2754)
	Items from MC53:
Q1206(A-TT)	Miscellaneous ammunition components (B2849, B2803-B2848)
	Items from MC33:
Q1207(A-E)	Miscellanecus ammunition components and magazine (B2864-B2868)
	Items from MC49-WAYNE MARTIN:
Q1208(A-D)	Miscellaneous ammunition components (B2799-B2802)

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	Items from MC47:
Q1209(A-N)	Miscellaneous ammunition components (B2869-B2882)
	Items from MC30-KATHERINE ANDRADE:
Q1210(A-N)	Miscellaneous ammunition components (B2850- B2863)
	Items from MC70:
Q1211	Miscellaneous ammunition components (B2913)
	Items from MC66:
Q1212(A-K)	Miscellaneous ammunition components (B2884-B2894)
Q1213(A-R)	Bag of bullets (B2895-B2912)
	Items from MC61-ROSEMARY MORRISON:
Q1214	Miscellaneous ammunition components (B2924)
	Items from MC67:
Q1215(A-C)	Miscellaneous components (B2949, B2952)
	Items from MC20-JAMES LOYLE RIDDLE:
Q1216(A-B)	Grenade fragments (B2929, B2930)
	Items from MC67:
Q1217(A-B)	Miscellaneous ammunition components (B2937, B2938)
	Items from MC31:
Q1218(A-F)	Miscellaneous ammunition components (B2931- B2936)
	Items from MC8-DAVID KORESH:
Q1219(A-C)	Miscellaneous ammunition components and nail (B2946-B2948)
	Item from MC67:
Q1220	Ammunition components (B2914)
	Item from MC41-NEAL VAEGA:
Q1221	Bullet and two (2) nails (B2923)

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	Item from MC76-PETER BRUCE GENT:
Q1222	Bullet (B2883)
	Items from MC67-4:
Q1223(A-D)	Miscellaneous ammunition component (B2925- B2928)
	Items from MC67-2:
Q1224(A-H)	Miscellaneous ammunition components (B2915- B2922)
	Items from MC65:
Q1225(A-G)	Miscellaneous ammunition components (B2939- B2945)
	Items from MC67:
Q1226	Cartridge case (B2956)
Q1227	Ammunition components (B2955)
	Item from MC21-STEPHEN HENRY:
Q1228	Pistol magazine in nylon magazine holder (B2954)
	Item from MC64:
Q1229	Metal fragment (B2958)
	Items from MC39-NOVELLETTE HIPSMAN:
Q1230-Q1232	One metal band, two loaded M-16/AR-15 magazines (B2960)
	Items from MC53:
Q1233	Shoe and various ammunition components (B2957)
	Items from MC55-AUDREY MARTINEZ:
Q1234-Q1235	Two shoes with portion of foot and various ammunition components (B2953)
K593	Barrel and bolt assembly for M16 rifle (B2959)
K594	Audio tape reel

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K595 Audio tape reel

K596-K610 Fifteen (15) sets of test fire samples (B2701-B2715)

Specimens received August 30, 1993, under communication dated August 25, 1993, Laboratory Number 30830032 S TL ZL:

Q1237 Cartridge case (B160)

Specimens received September 3, 1993, under communication dated August 25, 1993, Laboratory Number 30903040 S TL:

K592 Test fire samples

ALSO SUBMITTED:

Photographic slide

Specimens received under communication dated September 3, 1993, Laboratory Number 30903041 S TL ZL:

Q1238 Numerous photocopies

Specimens received September 15, 1993, under communication dated September 14, 1993, Laboratory Number 30915010 S TL QF:

Resubmission from Laboratory Number 30517002 S/D TL ZL ZJ UF AL UI ZY NC AR QF:

Q282 Extracts

Specimens received under communication dated September 29, 1993, Laboratory Number 30929050 S TL UI:

Q1258-Q1261 Four shoeprint casts (ADPS89)

Specimens received under communication dated September 23, 1993, Laboratory Number 30923052 S TL:

K613-K614 Two sets of test fire samples (B143, B144)

Specimens received November 15, 1993 under communication dated November 15, 1993, Laboratory Number 31115011 S/E TL AI:

Q1262-Q1263 Two video cassette tapes

Specimens personally delivered by Special Agent Steve Casper on November 18, 1993, Laboratory Number 31118041 S TL:

Resubmission from Laboratory Number 30517002 S/D/P TL ZL AU AL:

Q286, Q670

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Specimens received November 29, 1993 under communication dated November 29, 1993, Laboratory Number 31129058 S TL ZL:

ALSO SUBMITTED:

Assorted papers and books

ADMINISTRATIVE:

You should refer to the previous FBI Laboratory reports in this case dated August 4, 1993 and October 4, 1993, for a listing of previously submitted items and the results of prior examinations.

For the information of the Texas Rangers, exhibit number C408, previously listed as an Also Submitted item, has been redesignated Q578(A). Additionally, the following items should be added to the list of Also Submitted items previously noted under Laboratory report dated October 4, 1993 (Laboratory number 30517002):

Four plastic bags(C1920)
Twelve holsters (C1920)
Badge, receipt and assorted papers (C1920)
Box of cartridges (C1963)
Seven ammunition boxes with numerous cartridges (C2010).

In the referenced August report, under Chemistry Results, the Q405 burned first aid kit should be listed as Q401. Specimen Q436 should be amended to reflect as follows:

Q436 and Q436(A) Box of assorted papers and address books (C2182, C245).

In the referenced October report, under the M-16 section, specimen K175 should be listed as K175(and A) rather than K175(A and B) and K166 should be listed as K166(and A). Under the Sound Suppressor section, specimen K432 should be listed as K432(A). In the Also Submitted section, a pry tool that was listed as (C1368) should be listed as (C1386).

In the referenced October report, specimen Q236 should be listed as exhibit number A59 instead of A6. Exhibit number C236 contains two cans that have been designated Q410 and Q410(A).

The designation Q720(D) was not used with any of the submitted evidence.

It is noted that Q453(B) contains fifteen cartridges rather then seventeen.

Unless otherwise noted, all Q and K designations are from Laboratory number 30517002 S TL.

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FIREARMS RESULTS:

Specimen Q87 (30517001) could not be associated with any of the submitted test firings. Based upon General Rifling Characteristics (GRCs) present on Q87, a list of firearms that could have been used to fire Q87 would include those manufactured by Sig Sauer, Ingram and Glock among others.

Specimen Q88 (30517001) is a jacketed bullet from the .30 caliber family that has been fired from a barrel rifled with four grooves, right twist. Based upon the General Rifling Characteristics (GRCs) present on Q88, a list of weapons that could have fired Q88 would include those U.S. Military firearms such as the M-1 Garand, the M-1 carbine, the M-14 and the Galil assault rifle among others.

Specimen Q89 (30517001) is a .223 caliber copper-jacketed bullet that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs present on Q89, a list of firearms that could have been used to fire Q89 would include those manufactured by Ruger (Mini-14) and Norinco among others.

Specimen Q90 (30517001) is a copper jacket fragment that has been fired from a barrel rifled with four grooves, right twist. The caliber of Q90 could not be definitely established.

Specimen Q91 (30517001) is a .223 caliber copper-jacketed bullet that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs present on Q91, a list of firearms that could have fired Q91 would include those manufactured by Colt (AR-15) and Armalite (AR-180) among others.

No conclusion could be made as to whether or not Q91 was fired from the barrels of K10, K11, K39, K94, K356, K361 and K562.

No conclusion could be reached as to whether or not Q89 and Q91 were fired from the same barrel.

No conclusion could be reached as to whether or not Q88 and Q90 were fired from the same barrel.

Specimen Q96 (30517001) is a copper-jacketed bullet with a steel core from the .30 caliber family, which has been fired from a barrel rifled with four grooves, right twist. It was determined that Q96 was not fired from the same barrel as Q88. Based upon the GRCs present on Q96, a list of firearms that could have fired Q96 would include those manufactured in Russia (AK-47 type) and in Finland (Valmet copy of the AK-47) among others.

The Q97 (30517001) fragments have no microscopic marks of value.

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Specimen Q235 is a copper jacket fragment that bears limited microscopic marks of value.

Specimen Q236 is a lead bullet core that bears no microscopic marks of value.

Specimen Q237 is copper jacket fragments and lead core fragments. The lead core fragments bear no microscopic marks of value. The copper jacket fragments bear microscopic marks of limited value.

Specimens Q238 and Q241 are lead fragments that bear no microscopic marks of value.

Specimen Q239 is a copper-jacketed bullet from the .22 caliber family (which includes .223) that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q239, a list of firearms that could have fired Q239 would include those manufactured by Colt (M-16/AR-15), Armalite, Remington, Valmet and the United States among others. No conclusion could be reached as to whether or not Q239 could have been fired from the barrels of K10, K11, K39, K94, K356, K361, K562 (30521024 S TL).

Specimen Q240 is copper jacket fragments that bear very limited microscopic marks of value.

Specimen Q261 is a pillow with the name "DAVID KORESH" written on it. The areas around the two holes in Q261 were microscopically examined and chemically processed for the presence of gunshot residues. Residues consistent with the passage of a bullet were developed on the smaller of the two holes in Q261.

Specimen Q262, Q263, and Q263(A) are pieces of cloth with no holes noted in them. Additionally, Q263(A) has attached to it a .308 Winchester caliber cartridge case of Phillipine manufacture with a firing pin impression present on it.

Specimen Q264 is a fitted sheet with several holes in it. No gunshot residues were developed in the area around these holes.

Specimen Q291 is a KA-Bar knife with the notation "USMC" at the base of the blade.

Specimen Q292 is a bag of assorted 9mm Luger and .223 caliber cartridges of assorted manufacturers.

Specimen Q293 is five bags of 9mm Luger and .223 caliber cartridges of assorted manufacturers.

Specimens Q329 through Q352 are twenty-four .223 caliber cartridge cases of Israeli manufacture that bear firing pin impressions.

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Specimens Q353 through Q364 are twelve .308 Winchester caliber cartridge cases of Federal manufacture that bear firing pin impressions.

It was determined that Q353 through Q356, Q358, Q359 and Q361 were all fired in the same firearm.

It was determined that Q357 and Q360 were fired in the same firearm.

It was determined that Q362 through Q364 were fired in the same firearm.

Specimen Q365 is a .45 Auto caliber cartridge case of Israeli manufacture bearing a firing pin impression.

Specimen 366 is a .45 Auto caliber cartridge case of Brazilian manufacture bearing a firing pin impression.

Specimen Q367 is a .45 Auto caliber cartridge case of Remington manufacture bearing a firing pin impression.

It was determined that Q365 through Q367 were fired in the same firearm.

Specimen Q368 is a .22-250 Remington caliber cartridge case of Remington manufacture bearing a firing pin impression.

Specimens Q369 through Q371 are .223 caliber copper-jacketed bullets that have been fired from a barrel(s) rifled with six grooves, right twist.

It was determined that Q369 and Q370 were fired from the same barrel. No conclusion could be reached whether or not Q371 was fired from the same barrel as Q369 and Q370.

Based upon the GRCs' present on Q369 through Q371 a list of firearms that could have been used to fire these bullets would include those firearms manufactured by Colt(AR-15/M-16), Armalite, Galil, Valmet and the United States.

Specimen Q372 is a bullet jacket fragment that has no microscopic marks of value.

Specimen Q378 is five pieces of shotshell wadding.

Specimen Q381 is a group of assorted pipe joints.

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Specimen Q385 is a copper-jacketed hollow point bullet from the .38 caliber family. Specimen Q385 has been fired from a barrel rifled with six grooves, right twist. A list of firearms that could have been used to fire Q385 would include those manufactured by Ruger, Bryco, Walther, Sig Sauer, Astra, Beretta and Smith and Wesson.

Specimens Q386, Q387, Q392 and Q393 bear no microscopic marks of value.

Specimens Q388 through Q391 are copper jacket fragments that bear some microscopic marks of value.

Specimen Q438 is a cloth vest that contains over one hundred cartridge cases with firing pin impressions. It contains at least three 9mm Luger, five 7.62x39mm, and one hundred and thirty-one .223 caliber cartridge cases of various manufacturers.

The bullet fragment recovered from the Q439 vest had no microscopic marks of value.

Specimen Q453 is a survival vest with the name "DAVID KORESH" on the inside label. Included with Q453 are two ammunition belts (Q453 A and B) and a belt (Q453C) with a pistol holster, dual magazine pouch and a sheath with a KA-Bar knife with the notations "KA-BAR" and "USMC" on it.

Specimen Q475 is a copper jacket fragment that bears no microscopic marks of value.

Specimen Q481 is three drum magazines for a USAS-12 shotgun. One of the magazines contained seventeen 12 gauge shotshells of Remington manufacture.

Specimen Q489 is a bag containing fifty .50 caliber ammunition belt links.

The Q498(A&B) magazines each contained seventeen 9mm Luger cartridges.

Specimens Q575(A&G) are copper-jacketed bullets from the .38 caliber family that have been fired from a barrel(s) rifled with six grooves, right twist. Based upon the GRCs' present on Q535(A,B,G), a list of firearms that could have been used to fire Q535(A,B,G) would include those manufactured by Beretta, Browning and Heckler and Koch among others. Based upon the GRCs' present on Q535(C-F), a list of firearms that could have been used to fire Q535(C-F) would include those manufactured by Heckler and Koch, Browning and Walther among others.

Specimen Q535(H) bears no microscopic marks of value.

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Specimen Q578(A) is a copper bullet jacket from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q578(A), a list of firearms that could have been used to fire this bullet would include those firearms manufactured by Heckler and Koch, Taurus, and Intratec among others. The other jacket fragment of Q578(A) bears no microscopic marks of value.

Specimen Q579 is a box of medical supplies containing two holes that are consistent with the passage of a bullet. The smaller of the two holes indicates that a bullet penetrated both the outer and inner liner of the box, but no fragments of this bullet(s) were recovered from the box. A second larger hole was also noted on this box with no penetration of the inner metal liner. No bullets or bullet fragments were recovered from the interior of the box.

Specimen Q580 is the cover of a pistol box for a Glock, Model 17, semi-automatic pistol with serial number "ABH986". Also in the box cover is a receipt for this firearm from Hewitt Handguns, Hewitt, Texas, dated July 25, 1992, to MICHAEL SCHROEDER, noting that in purchasing this pistol, SCHROEDER traded in another Glock, Model 17, semi-automatic pistol with the serial number "KD805".

Specimen Q581 is twenty assembly bags for a 5.56mm magazine.

The areas around the three holes in specimen Q583 were microscopically examined and chemically processed for the presence of gunshot residues with positive results. These holes are consistent with the passage of a bullet.

Due to a lack of probative value, no examinations were conducted on Q584 and Q584(A).

Specimen Q590 is a cast of a hole that has an approximate diameter of .224 inches but bears no marks of value for comparison purposes.

Specimens Q592, Q593, Q595-Q598 are pieces of lead that bear no microscopic marks of value.

Specimen Q594 is a copper bullet jacket from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q594, a list of firearms that could have been used to fire Q594 would include those manufactured by Ruger, Smith and Wesson, RPB and Sig Sauer among others. Specimen Q594 also has a lead bullet core with no microscopic marks of value.

Specimens Q600, Q604, Q606, Q607, Q612, Q621, Q622, Q625, Q628 and Q655 are copper jacket fragments with no microscopic marks of value.

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Specimens Q603, Q609, Q610, Q617, Q618, Q620, Q623, Q624, Q626 and portions of Q602 and Q605 are pieces of lead that bear no microscopic marks of value.

Specimens Q601 and Q602 are copper bullet jackets from the .38 caliber family that have been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on these two specimens, a list of firearms that could have been used to fire Q601 and Q602 would include those manufactured by Heckler and Koch, Glock and Browning among others.

Specimen Q614 is a copper bullet jacket from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q614, a list of firearms that could have been used to fire Q614 would include those manufactured by Sig Sauer, Smith and Wesson and Glock among others.

Specimen Q616 is a copper jacket fragment that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q616, a list of the firearms that could have been used to fire Q616 would include those manufactured by Heckler and Koch, Walther, Norinco and Browning among others.

Specimen Q635(A) is a copper-jacketed bullet from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q635(A), a list of the firearms which could have been used to fire Q635(A) would include those manufactured by Heckler and Koch, Sig Sauer, Glock and Browning among others.

The rifling of the Q635(B-D) copper jacket fragments could not be determined.

The Q635(E) copper jacket fragments bear no microscopic marks of value.

The Q635(F&G) pieces of lead bear no microscopic marks of value.

Specimens Q639, Q640, Q641 and pieces of Q642 are copper jacket fragments that bear rifling impressions of limited value.

Specimens Q643 and Q644 are primer cups bearing no microscopic marks of value.

Specimen Q645 is a .223 caliber cartridge case of Chinese manufacture bearing a firing pin impression.

Specimen Q646 is a bag containing nine cartridges and one cartridge case of various calibers and manufacturers.

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Specimen Q647 is a piece of metal with a hole in it with an approximate diameter of .455 inches. This hole is consistent with the passage of a bullet.

Specimen Q649 is a piece of metal that has a hole in it that is consistent with the passage of a bullet.

Specimen Q658 is an ammunition can containing dozens of "cooked off" .50 BMG caliber cartridge cases.

Specimen Q659 is a box of numerous styrofoam ammunition holders.

Specimen Q663, Q665, Q666 and Q669 contain thousands of 7.62x39mm cartridges, most of which were of Chinese manufacture.

Specimen Q664 contains hundreds of .45 Auto caliber cartridges of numerous manufacturers.

Specimen Q670 contains two hundred ninety-nine (299) .50 BMG caliber cartridges.

Specimen Q671 contains ten box magazines for 12 gauge shotshells, one drum magazine for 12 gauge shotshells and one belt for 12 gauge shotshells.

Specimen Q691 contains, among other items, ten (10) one hundred round drum magazines for an AK-47 type firearm.

Specimens Q705(A-D) are 9mm Luger cartridge cases of Federal manufacture that contain firing pin impressions. It was determined that Q705(B-D) were fired in K71. No conclusion could be reached as to whether or not Q705(A) was fired in K71.

Specimen Q709(D) is a piece of metal that has a hole in it with an approximate diameter of .464 inches. This hole is consistent with the passage of a bullet.

The exact origin of the holes in the Q709(A-C) pieces of metal could not be positively determined.

The copper jacket fragment lodged in Q720 bears no microscopic marks of value.

The copper jacket fragment lodged in Q723 bears no microscopic marks of value.

The Q725(B) copper jacket fragment bears no microscopic marks of value.

One bullet removed from Q729(A) is a copper-jacketed bullet from the .38 caliber family. It has been fired from a barrel rifled with six grooves, right twist.

Two copper-jacketed bullets, one removed from Q729(A) and one from Q729(C) are from the .38 caliber family and are consistent with having been fired from a barrel with polygonal rifling. No conclusion could be reached as to whether or not these two bullets were fired from the barrel of K446.

The Q756(A) copper-jacketed bullet removed from the Q756 vest is a .223 caliber bullet that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q756(A), a list of the firearms that could have been used to fire this bullet would include those manufactured by Galil, Ruger(Mini-14), Heckler and Koch, and the United States (M-16/AR-15). Specimen Q756(A) could not be further associated with any of the M-16 test specimens.

The bullet removed from Q758 is a copper-jacketed bullet from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q758, a list of the firearms that could have been used to fire Q758 would include those manufactured by Heckler and Koch, Walther, Tanfoglio and Intratec among others.

Specimen Q765 is a .223 caliber cartridge case of United States manufacture that has a firing pin impression.

Specimen Q768 is a .223 caliber copper-jacketed bullet that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q768, a list of firearms that could have been used to fire this bullet would include those manufactured by Armalite(AR-180), Colt(AR-15/M-16) and Heckler and Koch among others.

Specimen Q1235 is a 9mm Luger cartridge case of Federal manufacture and contains a firing pin impression.

Specimen Q1240 is a body bunker that has a hole consistent with the passage of a bullet in the lower left corner. This hole penetrated the front of the bunker but did not penetrate the lining. No bullet fragments were found inside this body bunker.

Specimen Q1252 is a bucket containing four gun cleaning kits, containers of oil, bore cleaner, bore brushes and other miscellaneous items.

Specimen Q1253 is a bucket containing the melted remains of an AR-15 rifle manufactured by SGW with a serial number of "T7802". Additionally, among other various items, this bucket contained the following:

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two M-16\AR-15 barrel removal tools
threaded die and tap set
ten(10) knives of various types.
.45 ACP magazine adapter for an M-16\AR-15
forty-nine(49) M-16 extractors

Specimen K440B could not be further associated with the K307 M-60 machine gun barrel.

The determination of whether or not K454 had been fired since last cleaned could not be positively determined, due to the presence of dirt and debris in the barrel.

TEST FIRING OF RECOVERED OPERATIONAL FIREARMS:

Specimens K271, K285, K289, K402, K403, K420, K442 through K447, K450, K453, K454, K458 and K467 functioned normally when test fired in the Laboratory. These test specimens will be retained in the Laboratory for future comparison purposes.

REMAINING TEST FIRE RESULTS:

No further associations were made between all the submitted ammunition components and the Q202-Q209, K9-K102, K353-K362, K544-K581 (30521024), K592 (30903040), K596-K610 (30803006) and K613-K614 (30923052) test fire samples.

REMAINING CONTAINERS OF AMMUNITION:

The following specimens represent thousands of cartridges, bullets, and cartridge cases, of various calibers and manufacturers, that were recovered from the compound. Most of these specimens contained only "cooked off" cartridges, however, the following groups of cartridge cases, sifted from these items, contain firing pin impressions:

Q292, Q293, Q543 through Q578 and Q591. At the request of Assistant United States Attorney (AUSA) Ray Jahn, no further examination of these items will be conducted, due to the lack of probative value.

The following items were examined and determined to have no further probative value:

Q260, Q286, Q377, Q451, Q524, Q582, Q585, Q599, a portion of Q605, Q608, Q611, Q613, Q615, Q619, Q627, Q629-Q634, Q636-Q638, Q635(H), portions of Q641 and Q642, Q648, Q683, Q720, Q720(A-C), Q720(E), Q721, Q724, Q725, Q725(A), Q728, Q729(B), Q730-Q755(A-F), Q762-Q764, Q766, Q767, Q769, Q770(A-C), and Q771-Q776, Q1228, Q1230, K158(A), K204(A), K208(A),K267(B), K285(B), K330(B), K335(A), K394(A), K405(A), K340(A), K365(A), K370(B), K374(A), K381(A), K384(C), K386(A), K409(B), K411(A), K414(A), K418(A), K440(C-J), K441(A), K443B, K445(B), K446(C), K449(A,C), K450(G,H,I), K454(B), K456(B), K457(H), K464(A,B), K470, K479, K480-K483, K486, K487-K489, K493P.

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The following items were returned without examination per request of AUSA Jahn:

Q266, Q276 through Q287, Q289, Q290, Q294 through Q296, Q394, Q437.

SOUND SUPPRESSORS AND EQUIPMENT:

It was determined that the following submitted items, taken as a representative group, constitute a step-by-step assembly line system for the production of sound suppressors:

1. Uncut metal tubes - Q268 & Q269
2. Cut and threaded metal tubes - K392, K465(A), K429
3. Cut, threaded metal tubes packed with wire mesh - K415(C&D), K382(C&D)

   Note: Mesh packed with tool like Q382(N)

4. Rifle barrels with drilled holes preparatory to attaching the sound suppressor - K432 & K432(B).

Some of the firearms recovered from the compound had a suppressor of this identical type of construction attached to them - K142, K196, K209.

DAVIDIAN COMPOUND FRONT DOOR:

Specimen Q1239 (30517002) is a white metal door with a foam core. Specimen Q1239 contains thirteen (13) holes that are consistent with bullet holes. There are four holes that are consistent with entering the front of the door and nine holes consistent with exiting the front of the door. The four incoming holes have a diameter consistent with the .38 caliber family of bullets (which includes 9mm luger). The nine outgoing holes have a diameter consistent with the .22 caliber family of bullets (which includes .223 caliber).

There is no discernible configuration of holes or impressions present on Q1239 that is consistent with a shotshell pattern.

PERRY BARN SHOOTING:

BULLETS:

Specimens Q210, Q211, Q225, Q230, Q231 are copper-jacketed hollow point bullets from the .38 caliber family (which includes 9mm Luger). They have been fired from a barrel(s) rifled with six grooves, right twist.

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Specimens Q212, Q213, Q215, Q222, Q223, Q227 through Q229 and Q232 are copper-jacketed Hydra-Shok bullets of Federal manufacture from the .38 caliber family. They have been fired from a barrel(s) rifled with six grooves, right twist.

Based upon the GRCs' present on these bullets, a list of firearms that could have been used to fire specimens Q210 through Q213, Q215, Q222, Q223, Q225 and Q227 through Q232 would include those manufactured by Sig Sauer, Smith and Wesson and Glock among others.

Specimens Q214, Q216, Q217, Q219, Q221 and Q224 are copper-jacketed Hydra-Shok bullets of Federal manufacture from the .38 caliber family that have been fired from a barrel(s) rifled with six grooves, right twist.

Specimen Q226 is a copper-jacketed bullet from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist.

Specimen Q234 is a copper-jacketed bullet that has been fired from a barrel rifled with six grooves, right twist.

Specimens Q235 is a copper-jacketed fragment with very limited microscopic marks of value.

Based upon the GRCs' present on these bullets, a list of the firearms that could have been used to fire specimens Q214, Q216, Q217, Q219, Q221, Q224, Q226, Q234 and Q235 would include those firearms manufactured by Heckler and Koch, Browning, Beretta and Walther among others.

It was determined that none of these bullets were fired from the barrel of K446.

Specimens Q218 and Q220 are Hydra-Shok bullet cores with no microscopic marks of value.

Specimen Q233 is a truncated cone copper-jacketed bullet from the .38 caliber family (which includes .380 Auto) that has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs' present on Q233, a list of firearms that could have been used to fire Q233 would include those manufactured by Beretta, Taurus, Browning and SWD among others.

PERRY BARN SHOOTING:

CARTRIDGE CASES AND SHOTSHELLS:

Specimens Q112 and Q113 are 12 gauge shotshells of Winchester manufacture. They were identified as having been fired from specimen K80.

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Specimens Q101 through Q111 and Q143 through Q148 are 9 mm Luger cartridge cases of Hirtenberg(Austrian) manufacture. Specimen Q149 is a 9mm Luger cartridge case of Winchester manufacture. It was determined that specimens Q101 through Q111 and Q143 through Q149 were fired in K446.

Specimens Q117 through Q120, Q131, Q155, Q156, Q188 and Q191 are 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K353.

Specimens Q126 through Q130, Q132 and Q183 are 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K354.

Specimen Q150 is a 9mm Luger cartridge case of Federal manufacture. No conclusion could be reached as to whether or not Q150 was fired in K353, K354 or any of the other known submitted firearms.

Specimens Q140, Q141 and Q197 through Q199 are 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K99.

Specimens Q133 through Q139, Q142, Q194 through Q196 are all 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K355.

Specimens Q121 through Q123, Q157 through Q161, Q187 and Q190 are all 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K40.

Specimens Q124, Q125, Q162 through Q182 and Q270 through Q272 are 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K55.

Specimens Q184 through Q186, Q189, Q192 and Q193 are 9mm Luger cartridge cases of Federal manufacture. It was determined that these cartridge cases were fired in K91.

Specimens Q114 through Q116 and Q151 through Q154 are 9mm Luger cartridge cases of Winchester manufacture. Specimens Q200 and Q201 are 9mm Luger cartridge cases of Remington manufacture. It was determined that these cartridge cases were fired in the firearm represented by Q202 through Q209.

EVIDENCE FROM TARRANT COUNTY MEDICAL EXAMINER'S OFFICE:

Per the instruction of AUSA Jahn, no examinations were conducted on specimens Q801 through Q810 and Q1135 through Q1149 (30803006).

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MICHAEL SCHROEDER:

Specimen Q94 (30517001) is a copper-jacketed Hydra-Shok bullet of Federal manufacture from the .38 caliber family, which has been fired from a barrel rifled with six grooves, right twist.

No conclusion could be reached as to whether or not Q94 was fired from the barrel of K55 or any of the other submitted firearms. Based upon the GRCs present on Q94, a list of firearms that could have been used to fire Q94 would include those manufactured by Heckler and Koch, Beretta and Browning among others.

JAYDEAN WENDEL:

Specimen Q822 (30803006) is a copper-jacketed Hydra-Shok bullet of Federal manufacture from the .38 caliber family which has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs present on Q822, a list of firearms that could have fired Q822 would include those manufactured by Ruger, Walther, Beretta and Smith and Wesson among others.

Specimen Q822(A) is a bullet fragment that has very limited microscopic marks of value.

PHILIP HENRY:

Specimen Q885 (30803006) is a brass-jacketed bullet from the .38 caliber family. Specimen Q885 is most consistent with ammunition manufactured in China by Norinco. This type of ammunition was found in great abundance in the Branch Davidian compound. Specimen Q885 has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs present on Q885, a list of firearms that could have fired Q885 would include those manufactured by Browning, Walther, Heckler and Koch, Sten and Beretta among others.

PETER HIPSMAN:

Specimen Q861 (30803006) is an aluminum-jacketed bullet from the .38 caliber family that has been fired from a barrel rifled with six grooves, right twist.

Specimen Q862 (30803006) is a copper-jacketed bullet from the .38 caliber family, which has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs present on Q861 and Q862, a list of firearms that could have fired Q861 and Q862 would include those manufactured by Glock, SWD, Sig Sauer, Astra, Norinco and Heckler and Koch among others.

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It was determined that Q861 and Q862 were fired from the same barrel.

Specimen Q863 (30803006) is a copper-jacketed bullet from the .38 caliber family, which has been fired from a barrel rifled with six grooves, right twist. Based upon the GRCs present upon Q863, a list of firearms that could have fired this bullet would include those manufactured by Browning, Walther, Heckler and Koch among others.

PETER GENT:

Specimen Q1222 (30803006) is copper-jacketed bullet that has been fired from a barrel rifled with six grooves, right twist. It was determined that Q1222 was fired from the barrel of K606 (30803006).

M.C. DOE #64:

Specimen Q961 (30803006) is a .223 caliber blank cartridge case manufactured by the United States arsenal at Lake City. It bears a firing pin impression with microscopic marks of value. At the request of AUSA Jahn, no further examinations were conducted on Q961 due to a lack of probative value.

AUDREY MARTINEZ:

Specimen Q1235 (30803006) is a 9mm Luger cartridge case of Federal manufacture that contains a firing pin impression with limited microscopic marks of value. No further examination of Q1235 was conducted due to a lack of additional probative value.

The following items, also received from the medical examiners office, were determined to have been burned or exploded by heat (cooked-off) and bear no microscopic marks of value:

CARTRIDGE CASES	BULLETS	METAL FRAGMENTS	MISCELLANEOUS
Q812(A)	Q812(B)	Q813	Q812(C)
Q816	Q814	Q823	Q820
Q817	qQ815	Q824	
Q818	Q820	Q829	Q821
Q819	Q821	Q830	
Q826	Q827	Q831	Q825
Q832	Q828	Q833	Q836
Q840	Q838	Q834	Q878

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Q841	Q847	Q835	Q880
Q842	Q848	Q836	Q887
Q843	Q849	Q837	Q905
Q844	Q850	Q839	Q925
Q845	Q851	Q865	Q929
Q846	Q852	Q878	Q938
Q866	Q853	Q887	Q943
Q867	Q854	Q888	Q964
Q869	Q855	Q889	Q995
Q871	Q856	Q897	Q1000
Q872	Q857	Q900	Q1004
Q873	Q858	Q934	Q1015
Q875	Q859	Q995	Q1051
Q876	Q860	Q998	Q1062
Q881	Q862	Q1001	Q1067
Q882	Q868	Q1008	Q1070
Q883	Q869	Q1009	Q1077(K)
Q886	Q870	Q1011	Q1079(E)
Q890	Q877	Q1017	Q1081
Q891	Q879	Q1021	Q1083
Q892	Q884	Q1025	Q1106
Q893	Q886	Q1039	Q1107
Q894	Q890	Q1045	Q1157
Q895	Q904	Q1046	Q1169
Q896	Q906	Q1047	Q1169
Q898	Q907	Q1048	Q1199
Q899	Q908	Q1049	Q1201
Q901	Q909	Q1050	Q1204(H)
Q902	Q910	Q1052	Q1204(B)
Q903	Q911	Q1053	Q1205(E,K,O)
Q923	Q912	Q1059	Q1206(QQ)
Q924	Q913	Q1063	Q1206(AA,G)
Q926	Q914	Q1064	Q1206(F)
Q927	Q915	Q1066	Q1207(A)
Q928	Q916	Q1073	Q1208(D)

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Q930	Q917	Q1088	Q1210(N)
Q931	Q918	Q1093	Q1210(M)
Q932	Q919	Q1098	Q1211
Q933	Q920	Q1101	Q1212(D)
Q935	Q921	Q1102	Q1213(J)
Q939	Q922	Q1104	Q1216(A,B)
Q940	Q936	Q1108	Q1218(E)
Q941	Q937	Q1109	Q1218(D,E)
Q945	Q942		Q1219(C)
Q946	Q944	Q1114	Q1221
Q947	Q964	Q1118	Q1223(A)
Q948	Q965	Q1119	Q1223
Q949	Q966	Q1123	Q1225(D,F)
Q950	Q967	Q1129	Q1228
Q951	Q968	Q1173	Q1230
Q952	Q969	Q1179	Q1231
Q953	Q970	Q1181	Q1234
Q954	Q971	Q1182	Q1235
Q955	Q972	Q1185	
Q956	Q973	Q1186	
Q957	Q974	Q1187	
Q958	Q975	Q1192	
Q959	Q976	Q1200	
Q960	Q977	Q1203	
Q961	Q978	Q1206(E)	
Q962	Q979	Q1209(G)	
Q963	Q980	Q1225(D)	
Q965	Q981	Q1229	
Q988	Q982	Q1230	
Q989	Q983	Q1231	
Q990	Q984		
Q992	Q985		
Q993	Q986		
Q994	Q987		
Q1002	Q991		

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Q1003	Q996		
Q1005	Q997		
Q1007	Q999		
Q1013	Q1006		
Q1016	Q1010		
Q1018	Q1012		
Q1019	Q1014		
Q1020	Q1024		
Q1022	Q1026-Q1028		
Q1023	Q1029		
Q1026(A-F)	Q1030		
Q1027(A-J)	Q1031		
Q1028(A-H)	Q1034		
Q1029	Q1035		
Q1032	Q1036		
Q1033	Q1037		
Q1060	Q1038		
Q1061	Q1040		
Q1065	Q1041		
Q1071	Q1042		
Q1075(A-H)	Q1043		
Q1077(A-J,L)	Q1044		
Q1080(A&B)	Q1054		
Q1082	Q1055		
Q1089	Q1056		
Q1092	Q1057		
Q1116	Q1058		
Q1122	Q1068		
Q1123	Q1069		
Q1125	Q1072		
Q1126	Q1074		
Q1127	Q1076(A-J)		
Q1131	Q1078(A-K)		
Q1134	Q1079(F-J)		
Q1150	Q1079(A-D)		

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Q1151	Q1081		
Q1153	Q1083		
Q1154	Q1084		
Q1156	Q1085		
Q1160	Q1086		
Q1161	Q1087		
Q1163	Q1090		
Q1165	Q1091		
Q1167	Q1094		
Q1170			
Q1171	Q1095		
Q1174	Q1096-Q1097		
Q1175	Q1099		
Q1176	Q1100		
Q1180	Q1103		
Q1184	Q1105		
Q1188	Q1110		
Q1194	Q1111		
Q1195	Q1112		
Q1196	Q1113		
Q1198	Q1115		
Q1201	Q1117		
Q1202	Q1120		
Q1204(C-E)	Q1121		
Q1205(A,C,L)	Q1124		
Q1205(J,P,Q)	Q1128		
Q1206(T,U,X)	Q1130		
Q1206(C,D,F)	Q1132		
Q1206(GG)	Q1133		
Q1206(Z,BB-DD)	Q1150		
Q1206(NN,PP)	Q1152		
Q1206(N,O,S)	Q1154		
Q1206(H,J-L)	Q1155		
Q1206(JJ-LL)	Q1156		
Q1207(C-D)	Q1158		

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Q1208(A-D)	Q1161		
Q1209(L),(M)	Q1162		
Q1209(A),(E)	Q1164		
Q1209(F),(J)	Q1166		
Q1209(N)	Q1168		
Q1210(A-J)	Q1172		
Q1211	Q1177		
Q1212(A-K)	Q1178		
Q1214	Q1183		
Q1215	Q1189		
Q1216(A&B)	Q1190		
Q1217(A&B)	Q1191		
Q1218(A-E)	Q1193		
Q1219(B)	Q1195		
Q1220	Q1197		
Q1223(A,C)	Q1198		
Q1224(F)	Q1201-Q1202		
Q1224(A-C)	Q1204(A,F,G)		
Q1225(G)	Q1204		
Q1226	Q1205(R-T)		
Q1227	Q1205(M,N)		
Q1233	Q1205(B,D-J)		
Q1234	Q1206(R,V,W)		
Q1235	Q1206(Y,EE)		
	Q1206(M,P,Q)		
	Q1206(A,B,I)		
	Q1206(II,OO)		
	Q1206(WW,AA)		
	Q1206(FF,HH)		
	Q1206(RR-TT)		
	Q1207(A&E)		
	Q1208(A,C)		
	Q1209(H,I,K)		
	Q1209(B-D)		
	Q1210(A-D)		

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	Q1210(L)		
	Q1210(F-I)		
	Q1211		
	Q1213(K-R)		
	Q1213(A-I)		
	Q1215(A-C)		
	Q1217		
	Q1218(B,C)		
	Q1219(A)		
	Q1220		
	Q1221		
	Q1223		
	Q1224(C-E)		
	Q1224(A,B)		
	Q1224(G,H)		
	Q1224(D)		
	Q1225(A-E)		
	Q1226		
	Q1227		
	Q1233		
	Q1234		
	Q1235		

ASSORTED PARTS RECOVERED FROM THE BRANCH DAVIDIAN COMPOUND:

Set forth below is a compendium of assorted firearm parts recovered by the Texas Rangers from the Davidian Compound listed by type and number:

.308 Caliber FN FAL Type Magazines (88): Q429, Q456, Q459, Q460, Q462-Q465, Q469, Q477, Q486(A), Q487, Q488, Q499, Q500, Q510, Q681, Q682, Q693, Q1247, Q1248, Q1249

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.308 Caliber Galil Type Magazines (7): Q486, Q1247, Q238, K238(A)

.308 Caliber Magazine of Unknown Type (58): Q479, Q485, Q501, Q505, Q507, Q657

7.62 x 39mm AK-47 Type Magazines (289): K169(C), K181(A), K260(A), K263(A), K266(A), K287, K295, Q452(A-E), Q456, Q460, Q462, Q463, Q469 Q472, Q476, Q477, Q479, Q483, Q484, Q487, Q488, Q496, Q497, Q501, Q510, Q515 (Drum type), Q525 (Drum type), Q657, Q682, Q690-Q693, Q726 (Drum type), Q1207(A), Q1241(Drum type), Q1243, Q1244, Q1246-Q1248, Q1249, Q1250, Q1251

.223/5.56mm M-16/AR-15 Type Magazines (248): K438, K464, K473, Q452(F), Q456, Q462, Q463, Q465, Q467, Q469, Q472, Q478, Q479, Q486, Q488, Q492, Q495, Q504, Q511, Q517, Q657, Q668, Q682, Q687, Q693, Q1231, Q1242, Q1243, Q1245, Q1247, Q1248, Q1249, Q1250, Q1251, K148, K157, K162, Q293

M-14 Type Magazines (72): Q463, Q479, Q486, Q487, Q503, Q680, Q692, Q693, K330(A)

9mm Magazines of Unknown Type (5): K477, Q456, Q465, Q494, Q508

Magazines of Unknown Type (9): Q473

MP-5 Magazines (11): Q462, Q463, Q479, Q486, Q487, Q511, Q682

.380 Auto Caliber Magazines (3): Q462, Q495, Q699

Sten Gun Type Magazines (108): K440(A), Q456, Q462, Q466, Q468, Q479 Q508, Q511, Q682, Q693, Q1249

Ruger Mini-14 Type Magazines (28): Q456, Q459, Q463, Q464, Q493, Q727, Q1249, K328(A)

9mm Smith & Wesson Magazines (2): Q505

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Sig Sauer P226/P228 Magazines (11): Q464, Q486, Q494, Q507, Q727, K222(B), K445(A)

Beretta Model Type 92 Magazines (61): K370(A), K384(A&B), K409A, K453(A&B), K471, K465, Q293, Q429, Q456, Q464, Q478, Q479, Q486-Q488, Q500, Q504, Q507, Q511, Q657, Q682, Q1242, Q1247

.45 Caliber Magazines (13): Q456, Q459, Q479, Q485, Q486, Q504, Q657, Q682, Q693

Glock Magazines (11): Q452(G&H), Q456, Q498(A&B), K402(A), K403(A), K420(A), K446(A&B), K454(A)

UZI Type Magazines (17): Q456, Q462, Q463, Q508, Q511, Q682, Q687, Q727, Q1249

USAS-12 Type Magazines (16): Q481, Q520, Q531, Q671

Walther PPK Magazines (6): K450(A-F)

AK-74 Type Magazine (1): Q484

GRENDEL (1): K456(A)

.50 Caliber Magazines (4): Q490, K2, K3

.30 Caliber US Carbine Magazines (3): Q494

.22 Caliber Magazines (22): Q494, Q505, Q508, Q727, Q699, K443A, K456

MAGAZINE SPRINGS

M-16/AR-15 Magazine Springs (360): K465, K471, K474, K476, Q457-Q459, Q460, Q461, Q463-Q467, Q469-Q471, Q480, Q482, Q483, Q486, Q488, Q491, Q494, Q497, Q499, Q504, Q508, Q509, Q657, Q679, Q682, Q693, Q1243, Q1245, Q1247, Q1249, Q1253, Q514

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FN FAL .308 Caliber Type Magazine Springs (42): K465, K474, Q457, Q460, Q469, Q470, Q480, Q482, Q488, Q499, Q504, Q506, Q507, Q509, Q1218(F)

AK-47 Magazines Springs (35): K465, K471, K472, Q460, Q469, Q472, Q476, Q480, Q483, Q487, Q488, Q494, Q504, Q657, Q682, Q693

Unknown Magazine Springs (15): K464, K471, Q467, Q469, Q472, Q486, Q507

M-1 Carbine Magazine Springs (6): Q466, Q470, Q486, Q499, Q509

9mm Magazine Springs of Unknown Type (28): K464, K465, K471, K474, Q471, Q476, Q486, Q488, Q499, Q504, Q657, Q1242

.50 Caliber Magazine Springs (3): Q471, Q490

Mini-14 Magazine Spring (1): K465

M-14 Magazine Springs (10): K465, Q469, Q470, Q486, Q657

Glock Magazine Springs (1): K476

FIREARM PARTS/ACCESSORIES:

.22 LR Caliber Conversion Kits (6): K433

Ammunition Boxes, metal (various calibers) (220): Q461, Q465, Q473, Q476, Q516, Q517-Q523, Q526-Q530, Q532-Q535, Q541, Q542, Q656-Q658, Q660-Q662, Q668, Q669, Q672-Q679, Q684-Q686, Q688, Q689, Q694-Q698, Q701-Q703

Ammunition Boxes, Wooden (various calibers) (15): Q663-Q667, Q669, Q670, Q678, Q680, Q681, Q687, Q690-Q692, Q699

Ammunition Boxes, Cardboard (various calibers) (5): Q536-Q540

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Ammunition Buckets with Live Ammunition (various calibers) (4):
Q1254-Q1257

Bolt Carriers (69):

AK-47 (2): K218, K260
M-16 (39): K437, K452, K457, K493
AR-15 (24): K434E, K437(J-K, N-Q, R), K452, K457, K493, K433, K433(F)
MP-5 (2): K440, K463
FAL (1): K452
Unknown (1): K493

Bolts (27):

.22 LR conversion (7): K440, K433 (A-E)
M-11/Nine (1): K440
AK-47 (15): K460, K461, K463, K466
M-16/AR-15 (3): K463, K466, K389
FN FAL (1): K452

Bolt Assemblies (8):

M-11/Nine (3): K462
MAC-10 (1): K462
Shotgun (1): K491
M-16 (2): K174(A), K189(A)
AR-15 (1): K207(A)

Recoil Springs and Guides (7):

Glock (3): Q471, Q486, Q504
Beretta (1): K434
Sig Sauer (2): K434G, K464
M-11/Nine (1): K438

Stripper Clips (29): Q476, Q679, K461, K471, K482, K490

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Hammers (68):

M-16 (18): Q504, K440, Q1253, K145(A), K156(A), K206(A), K460, K469, K471, K473, K490, K588
AR-15 (12): K463, K460, K490, Q1253, Q514, K389
M-11/Nine (4) K460, K463
AK-47 (31): K463, K460
Sig Sauer (2): K464, K475
Beretta (1): K434

Hammer Springs (7):

M16/AR-15 (2): Q499
AK-47 (3): Q499, K463
M-11/Nine (2): Q499

Buffer/Recoil Springs (40):

M-16/AR-15 (36): Q466, Q470, Q471, Q482, Q499, Q504, K319, K389, Q509, Q657, K438, K449, K465, K471, K474, K477, K478
AK-47 (4): Q499

Selector Switches (13):

M-16 (9): K477, K460, K461, K473, Q1253
AR-15 (3): K460, K463, Q1253
Unknown (1): K463

Sears (1):

M-11/Nine: K460

Auto Sears (13):

AK-47 (8): K440, K463, K460
M-16 (4): K473, K477, Q1253
FN PAL (1): K460

Auto Sear Springs (12):

AK-47: Q499, K463, K466, K475

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Disconnects (8):

AK-47 (7): K463, K466, K460
M-16 (1): K460

Trigger/Trigger Mechanisms/Trigger Housings (41):

M-16 (17): Q504, K140(A) K440, K469, K471, K473, K476, K484, K460, Q1253, Q514
AR-15 (6): K461, K463, Q1253
AK-47 (1): K463
H&K (1): K451(A&B)
Sig Sauer (2): K475, K222(A)
MP-5 (2): K451
Sten (2): K451
M-14 (1): K491
M-60 (3): K460
M-11/Nine (3): K460
Smith & Wesson (1): K460
Beretta (1): K460
Shotgun (1): K491

Dust Covers (14):

M-16/AR-15 (10): K460, K461, K471, K473, Q1253, Q514
AK-47 (3): K449, K464, K465
FAL (1): K440.

These lists do not include dozens of other items such as dust covers, extractors, front and rear sights, gun cleaning equipment, extractors, bolt release levers, compensators, .50 caliber belt links and other numerous parts.

Additional items recovered from the compound:

Flash Suppressors: (18)

Q1253, K440, K459, K493, K440

Sound Suppressor:(1)

Q267

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Barrels:

M-16/AR-15 type (5.56mm):

K175, K184, K186, K189

M-16/AR-15 type(9mm):

K142, K432, K432B

M-16/AR-15 type(10mm):

K455

Sten Gun type:

K438, K410(A)

M11/Nine:

K440K

.22 caliber barrel:

K455

FLARE GUN TYPE:

K421(A).

NUMBER RESTORATION RESULTS:

K231:

Examination and processing of K231 partially restored the original obliterated serial number and it was determined to be "**01313". The asterisks represent unrestorable characters.

Additionally, on the left side of the receiver was restored the notation ".308 MATCH". On the right side of the receiver was restored

"Fabrique Nationale Herstal
Made in Belgium
Steyr Seacaucus NJ"

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K260:

Examination and processing of K260 partially restored the original obliterated serial number and it was determined to be "0--*72". The dashes represent unrestorable characters. The asterisk represents most likely a "3".

K261:

Examination and processing of K261 partially restored the original obliterated serial number and it was determined to be "A00-0*64". The dash represents a possible unrestorable character. The asterisk represents most likely a "1".

It should be noted that in the previous Laboratory report dated October 4, 1993, the serial number of this item was listed as "6551". Based upon the above determination, the serial number should read "A00-0164".

K277:

Examination and processing of K277 determined the importer of this firearm to be "SHERWOOD INC."

K278:

Examination and processing of K278 partially restored the original obliterated serial number and it was determined to be "P47-**_51". The first asterisk represents possibly a "2". The second asterisk represents most likely a "4", but a "6" could not be eliminated. The space represents an unrestorable character.

On the side of the K278 receiver was restored the following notation:

"Model AK-47\S
Cal. 7.62x39MM
SEMI-AUTO
KFS Atlanta GA"

Also on the same side of the receiver was restored the notation

"Poly Tech
Bejing China".

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WWC289-0159
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K309:

Examination and processing of K309 determined the manufacturer of this firearm to be "National Postal Meter" company.

K325:

Examination and processing of K325 determined the original obliterated serial number to be "22267".

Additionally the following notation was restored on K325:

"U.S. Rifle
7.62MM M14SA
FED. ORD. INC.
EL MONTE CA".

K338:

Examination and processing of K338 partially restored the original obliterated serial number and it was determined to be "***5241". The first two asterisks represent possibly a "3". The third asterisk represents either a "3" or an "8". Additionally, developed was the notation "I.*.M. CORP". The asterisk represents most likely a "B".

K400:

Examination and processing of K400 partially restored the original obliterated serial number and it was determined to be "BER 1**2022". The first asterisk represents possibly a "7". The second asterisk represents possibly a "7" or a "4".

TOOLMARK RESULTS:

Specimens K4-K8 are buckets containing numerous assorted machine and hand tools, including wrenches, pliers, ratchets, sockets, drill bits, reamers, tappers, drill chucks, and other tools that can be utilized with a lathe.

FUEL CANS OR LANTERN COMPONENTS:

Specimens Q395, Q403 through Q410(A), Q412 through Q415, Q440 through Q450, Q454, Q455, Q512, Q777-Q780, Q780(A) and Q781-Q796 bear no toolmarks of value for identification purposes.

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WWC289-0160
CNG016-0160

Specimen Q402 bears a hole that was produced by a flat-bladed tool such as a screwdriver which left toolmarks of value for identification purposes.

Specimen Q411 bears a triangular-shaped hole that was produced with either a flat-bladed tool or a triangular-shaped tool that left toolmarks of value for identification purposes.

No association could be made between the toolmarks containe on Q402 and Q411 and any of the K494-K543, K589(A) and K590(A) submitted knives and tools.

SHOEPRINT RESULTS:

It was determined that the Q1259 through Q1261 shoe impressions were not made by the K611 or K612 shoes.

Due to the lack of a discernable shoeprint in the Q1258 cast, no examination was conducted with the K611 and K612 shoes.

DOCUMENT RESULTS:

The submitted document evidence has been dried. The charre evidence has not been photographed, all other documents were photographed. Photographs are retained.

Per your instructions, no other examinations are being conducted with the charred specimens.

DNA RESULTS:

It was previously reported that specimens Q276-1 through Q276-4 and Q700 (30517002) were typed as DNA DQ alpha type 4,4. In addition, specimen K582 (30603011) was previously typed as DNA DQ alpha type 2,3.

A DNA DQ alpha type as listed was detected for the following specimen:

Specimen	DNA DQ alpha Type
Q282	4,4

Based on the DNA DQ alpha typing results, the DNA obtained from specimens Q282, Q276-1 through Q276-4 and Q700, which is consistent with originating form the same source, is excluded as originating from the source of specimen K582. These results are available for future comparison purposes.

EXPLOSIVES EXAMINATIONS:

GRENADES

Specimens Q98 (B-68) and Q259 (C-34) (both recovered in Search Zone C), Specimen Q252 (C-1017)(recovered in Search Zone W), and Specimen Q248 (C-1737)(recovered in Search Zone M) are M-21 Practice Hand Grenades modified to be functional as described in the FBI Laboratory Report dated August 4, 1993.

The results of a physical and instrumental examination of material removed from Specimen Q98 (B-68) identified the presence of smokeless powder. The results were compared to a library of commercial re-load smokeless powders maintained in the Chemistry/Toxicology Unit of the FBI Laboratory and found to be consistent both physically and chemically to Hercules Red Dot Smokeless Powder.

Specimens Q314 (C1025), Q314A (C1355), Q315 through Q317 (C1028, C1071, C1875), Q327 (C1136), Q328 (C1146), and Q384 (C1148) contain over 100 modified M-21 Practice Hand Grenade bodies (Pineappl type) which have been tapped (threaded) and plugged but which do not have a main charge or a fuzing system. These grenade bodies have bee exposed to severe heat. An accurate count of the total number of thi type of grenade is not feasible in view of the fact that fragments of similar grenades were also recovered indicating that an unknown numbe exploded.

The results of a chemical and instrumental analyses of residues removed from Specimens Q327 (C1136) and Q328 (C1146) were consistent with the presence of Zinc Oxide. Zinc Oxide can be found as a component of some smoke generation devices.

The grenade bodies from which these samples were taken have been exposed to severe heat.

It is noted that 5/8 inch tapping dies are located in Specimens K5(B) and K5(C) which could be used to tap the threads into the bottom of the M-21 hand grenade body.

Specimens Q314A (C1355), Q317 (C1875), and Q384 (C1148) contain 11 M69 Practice Hand Grenades (baseball type) bodies which exhibit indications of attempted modifications. These grenade bodies have also been exposed to severe heat.

Specimens Q245 (C1373), Q313 (C1880), Q326 (C1114), and Q37 (C663) contain 219 grenade safety pins.

Specimens Q244 (C1375), Q258 (C1060), Q308 (C203), Q309 & Q310 (C1110) and Q311 (C1884) contain 243 grenade safety levers (spoons).

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The grenade safety pins and levers have undergone severe heat.

RIFLE GRENADES

Specimens Q242 (C1359), Q243 (C1352), Q246 (C1069), Q247 (C1068), Q249 (C1067), Q253 (C1065), Q254 (C1061), Q255 (C1062), Q256 (C1063), Q273 (C1366), Q299 (C1064), Q300 (C1066), Q303 (C1803), Q304 (C1561),Q305 (C1142), Q306 (C1883),Q307 (C1881), and Q383 (C1162) are portions of approximately 222 inert M31 Practice Rifle Grenades which have undergone extreme heat.

An accurate count of these Practice Rifle Grenades was not feasible due to the condition of the specimens.

Examination of these specimens failed to reveal any modifications or attempts to modify them.

The firing of M31 Practice Rifle Grenades require the use of an M 64 7.62 mm rifle grenade cartridge used in an M-14 rifle with a flash suppressor.

BOOKS

HOMEMADE SEMTEX by Seymcur Lecker-a how to make Semtex using pentaerythritol tetranitrate (PETN) and cyclotrimethylene trinitramine (RDX) and other chemicals.

HOMEMADE C-4 by Ragmar Benson-a how to make homemade C-4 using ammonium nitrate, nitromethane, and denatured alcohol.

POORMAN'S JAMES BOND by Kurt Saxon-contains chapters on:
- Fully automatic weapons
- Fireworks and Explosives
- Protechny
- Arson by Electronics
- Hand to Hand Combat
- Explosives, Matches, and Fireworks

IMPROVISED MUNITIONS-BLACK BOOK VOLUME I by Desert Publications-a how to make improvised explosives, propellants, mines, grenades, small arms, ammunition and silencers.

IMPROVISED MUNITIONS-BLACK BOOK VOLUME 2 by Desert Publications-a how to make improvised:
- Recoilless launcher
- Shotgun grenade launcher
- Grenade launchers
- Gelled flame fuels
- Flares
- Timers
- Switches

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IMPROVISED MUNITIONS-BLACK BOOK VOLUME 2 by Desert Publications-a how to make various improvised explosives, igniters, incendiaries, delays, etc.

BLACK BOOK COMPANION by Paladin Press-describes various chemicals, explosives, improvised grenades, and improvised detonators.

DEADLY BREW by Paladin Press-describes acids, industrial chemicals, and improvised devices.

CIA FIELD EXPEDIENT METHODS FOR EXPLOSIVE PREPARATIONS by Desert Publications-describes preparation of various explosives from chemicals in the field and laboratory.

BACKYARD ROCKETRY by Bic Farrell-a how to make rockets and how to convert model rockets into explosive missiles.

IMPROVISED LAND MINES by David Harber-contains information on fuzing systems, military mines, improvised mines, claymores, and plastic bonded explosives.

CHEMICALS

The following list are some of the chemicals that can be used in the production of low explosives used in pyrotechnics (fireworks), improvised explosive devices (homemade bombs), or legitimate industrial manufacturing.

Aluminum powder-is frequently added to explosives and propellants in order to improve their efficiency. The aluminum results in a considerable gain in the heat of explosion.

Barium nitrate-a component used in green flame pyrotechnical and ignition mixtures.

Magnesium-a component in powder form used in pyrotechnics, flash photography, and thermite mixtures.

Potassium chlorate-is the principle component of chlorate explosives. It is an important component of primer formulations and pyrotechnical compositions, in particular matchheads.

Potassium Dichromate-used in pyrotechnics, explosives, and safety matches.

Potassium Dihydrogen Phosphate (Potassium Phosphate-monobasic)-used in baking powder, nutrient solutions, yeast foods, and is a lab reagent.

Potassium Nitrate-used as a component in pyrotechnical compositions in explosives and in making Black Powder.

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Potassium Perchlorate-used in pyrotechnics.

Sodium Hydroxide-most important commercial caustic, eighth highest-volume chemical produced in the U.S. Used in chemical manufacture, rayon and cellophane, neutralizing agent in petroleum refining, pulp and paper, aluminum, detergents, soap, textile processing, etc.,lab reagent.

Strontium Nitrate-is used in pyrotechnics as a flame coloring oxidizer for red colored fireworks.

Urea-process with nitric acid to make urea nitrate which can be used as an explosive.

EXPLOSIVE DAMAGE ON TOP OF BUNKER

Damage to the outside top of the concrete roof of the bunker in Search Zone M is consistent with at least two seats of explosions.

Specimens Q321 (C813), Q324 (C952), Q325 (C955), and Q424 (C777) are grenade fragments recovered from the top of this bunker in Search Zone M.

EXPLOSION DURING FIRE

Underneath a concrete slab in Search Zone R is an excavated room approximately 10 feet wide and 47 feet 9 inches long. The entrance to this dug out room is between point 4 and 10 in Search Zone N. During the crime scene investigation approximately 26,000 gallons of water were pumped out of this room.

A review of video tapes recording the fire reveal that at approximately 12:26:26 p.m. (Waco time) an explosion occurred in the area of the entrance to this excavated room.

The results of an Instrumental Analyses of extracts from Specimen Q250 (C255) identified the presence of nitroglycerine (NG). Further examination of the extract using a gas chromatograph with a chemiluminescence detector showed no indication of ethylene glycol dinitrate (EGDN), pentaerythritol tetranitrate (PETN), cyclotrimethylene trinitramine (RDX), trinitrotoluene (TNT), or dinitrotoluene (DNT).

The presence of nitroglycerine may be explained as having originated from a low explosive smokeless powder which can be purchased in bulk or is commonly found in pistol and rifle cartridges

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The results of an instrumental analyses of extracts removed from Specimens Q251 (C263) and Q430 (C2062) showed no detectable levels of nitroglycerine (NG), ethylene glycol dinitrate (EGDN), pentaerythritol tetranitrate (PETN), cyclotrimethylene trinitramine (RDX), trinitrotoluene (TNT), or dinitrotoluene (DNT). The specimens were examined using a gas chromatograph with chemiluminescence detection to screen for the above materials.

The entrance area to the excavated underground room exhibits a severely charred area on the face board of the concrete slab and the soil around the entrance has the appearance of being heaved away from the dugout room entrance. This is consistent with an explosion of low explosives and a fireball venting from this excavated area.

It is the opinion of this examiner that at approximately 12:26:26 p.m. fire/sparks or heat reached an area inside the excavated room where low explosives and other chemicals were stored and an explosion occurred.

MISCELLANEOUS:

Specimen Q301 (C474) is a black canister of unknown origin and use.

Specimen Q302 (C1878) is a gas cylinder approximately 8 inches long similar to the type used in gas camping stoves.

Specimens Q323 (C 1892) and Q318 (C1742) have been subjected to severe heat, however they appear to be identical to Q99 (B60) which is an explosive distraction device manufactured by DEF-TEC Corporation, Rock Creek, Ohio.

Specimen Q373 (C579) is a black plastic fired fuzing system of unknown origin and use.

Specimen Q376 (C1393) contains three CO2 cartridges which have been subjected to severe heat.

Specimen Q422 (C229) appears to be a fragment of a fiber glass and carbon fishing rod which has undergone severe heat.

Specimen Q425 (C1459) contains expended Ferrett tear gas projectiles.

Specimen Q548 are metal cylinders of unknown origin and use.

Specimens Q811 (B2520), Q874 (B2610), Q1045 (B2417), Q1046 (B2418), Q1048 (B2420), Q1049 (B2421), Q1050 (B2422), Q1052 (B2424), Q1053 (B2425), Q1059 (B2431), Q1062 (B2502), Q1216A and (B2929, B2930 are the fragments of exploded Mk2 or M21 hand grenades.

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Specimen Q864 (B2604) is a metal pin of unknown origin and use.

Specimen Q1237 (B160) is a fired U.S. Military 40 mm shell casing which originally contained a CS gas round.

Specimens Q379 (C610) and Q380 (C681) are expended 40 mm tear gas projectiles.

ENCLOSURES:

Two copies of a CNN Headline News video tape of the fire on April 19,1993, recorded on Washington, D.C. time are enclosed.

Two copies each of photographs depicting the items examined by the Explosives Unit of the FBI Laboratory and of the excavated room.

You will be separately advised as to the results of the requested fingerprint examinations.

This report completes the examinations on items submitted under Laboratory numbers 30521024, 30830032, 30903040, 30903041, 30929050, 30915010, 30923052 and 31129058.

You will be separately advised as to the remaining firearms, video enhancement and engineering examinations as well as the disposition of the remaining evidence.

USAEDTX
007-00076

007-00076

U.S. Department of Justice
Civil Division

Washington, D.C. 20530

PJP:JGTouhey
[redacted]

Telephone: [redacted]
Telecopier: [redacted]

September 2, 1999

MEMORANDUM

TO: JGT Jeffrey Axelrad
Director, Torts Branch

FROM: James G. Touhey, Jr.
Trial Attorney
Torts Branch

SUBJECT: FBI Laboratory Report involving Waco

We have located a 49-page FBI Laboratory Report dated December 6, 1993, the last page of which mentions Specimen Q1237, "a fired U.S. Military 40 mm shell casing which originally contained a CS gas round," and Specimens Q379 and Q380, "expended 40 mm tear gas projectiles."

Marie has ascertained that our database contains multiple copies of this document, most of which contain all 49 pages. However, four copies (one from the Congressional production document collection, two from Ned Greenberg's boxes, and one from the United States Attorney's files) do not contain the last page.

Thus, it appears that the page on which mention is made of a shell casing for a military CS round and the expended tear gas projectiles was not produced to Congress. However, it also appears that a 49-page copy of the report was produced to plaintiffs in the Gyarfus production.

EXHIBIT
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For your information, copies of pages 1, 48, and 49, which are the pages that the Aspen Systems representative originally printed out and gave to me are attached at Tab A. A copy of the document produced to Congress (WACO 008344-008391) is attached at Tab B.

FD-302 (Rev. 3-10-82)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/5/93

JANET RENO, Attorney General (AG), U. S. Department of Justice (DOJ), was interviewed at her office, 10th Street and Constitution Avenue, N.W., Washington, D.C., at 2:00 p.m. on August 2, 1993. In addition to Federal Bureau of Investigation (FBI) Special Agents Gonzalez, Allison, and Cousins, also present during the interview was Steven E. Zipperstein, Special Counsel to the Assistant Attorney General, Criminal Division, DOJ, DOJ appointed reviewing official S.G. Edward Dennis, and his associate, Susan DeBusk. Having been apprised as to the identity of the interviewing Special Agents and Special Counsel, General Reno provided the following information:

Prior to her confirmation, she had an informal meeting with the Acting Attorney General, Stuart M. Gerson, at the Florida House in Washington, D.C. During this meeting with Gerson, he made general statements to her about the situation in Waco, Texas. Nothing specific was discussed. Gerson told her that the President had been advised of the plans at that point; the FBI wanted to avoid the use of force and wanted to negotiate. According to Gerson, the President was sympathetic and supportive of that position because of his experience as Governor of Arkansas during an incident at Fort Chafee. Gerson was explicit that the President asked to be advised of any change in strategy. It sounded reasonable to AG Reno. After her confirmation, Gerson remained on at the DOJ for approximately one week to facilitate a smooth transition.

AG Reno was sworn in as Attorney General of the United States on March 12, 1993. She recalls that the first detailed briefing she received on the situation in Waco came during the week following March 12, 1993. She was periodically advised on the situation thereafter. At some point (not specifically recalled) she began to hear concerns about the manner in which things were being handled in Waco. She had not seen the letter to her from AUSA William Johnston before she heard the concerns. Mark Richard or Webb Hubbell had the letter, and she saw it later.

Investigation on 8/2/93 at Washington, D.C. File # 66-HQ-19157-45

by SSA Carol D. Allison, SSA Herbert Cousins, Jr. Inspector Victor M. Gonzalez Date dictated 8/4/93

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

EXHIBIT 72

WACO 002556

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F 66-HQ-19157-45

Continuation of FD-302 of Janet Reno, On 8/2/93, Page 2

AG Reno asked Mark Richard to go to Waco to assess the situation. She relied a great deal on Mark Richard, because Acting Assistant Attorney General John Keeney's wife was gravely ill. Richard suggested that Ray Jahn should lead the prosecutive team. She was told that U.S. Attorney Ronald Ederer could work along those lines, and she relied on Richard's representation that Jahn was a good person for the job. She kept in touch with Richard to make sure things progressed.

During the week of April 9, 1993, AG Reno spoke with Mark Richard and was advised that the FBI would have a proposal. Her first recollection of being briefed on the proposal to use gas was Monday, April 12, 1993. This was the first intensive meeting, and she asked questions relative to the effects of "gassing" children and pregnant women. When the effects of the gas were first described as being very uncomfortable, causing tightening sensations in the chest, she envisioned heart attacks. Webb Hubbell suggested they consult with the military, relative to their expertise.

On Wednesday, April 14, 1993 AG Reno went to a meeting at the FBI. Present at this meeting was a General and Colonel from Delta Force, and Dr. Harry Salem, a medical doctor. Dr. Salem was prepared to respond to her questions relative to the effects of the gas. He was careful and scientific. There have been no laboratory tests performed on children relative to the effects of this gas. Anecdotal evidence was convincing there would be no permanent injury to children. She was told by the military personnel that this gas was used at least annually on soldiers in the U.S. Army during training exercises. Properties of the gas were discussed, including any pyrotechnic qualities. The military personnel made Reno feel more confident with the concept of tear gas, as opposed to the original concept in her mind of "gassing". The military also said a military operation would gas the whole compound at once, not gradually. The law enforcement interest, however, was to go step by step, increase pressure, making it increasingly uncomfortable inside in an effort to drive them out. After discussing the nature of the gas and varied tolerance levels to be expected from the occupants, they were prepared to wait two or three days for everyone to eventually come out. The action was viewed as a gradual, step-by-step process. It was not the intent, from law enforcement, that "This is it, this is D-Day."

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Continuation of FD-302 of Janet Reno, On 8/2/93, Page 3

Once convinced that the gas was non-lethal, and would not cause permanant harm to children, pregnant women, or others, the discussion turned to the Hostage Rescue Team (HRT). One of the representatives from Delta Force raised the issue of pulling out the HRT. It was their opinion that continuing to maintain the HRT in a constant state of readiness was not possible. The military representatives said they would have pulled HRT out by that time, or would do so shortly, in order to re-train. The FBI did not raise the concern about heightened readiness of the HRT before the Delta Force did. The military advised that the HRT had been there too long. AG Reno asked about using Special Weapons and Tactics (SWAT) Teams to take the place of the HRT. The expertise of the HRT and the range and threat posed by the .50 caliber weapons in the compound were described. The distance threatened by this firepower was compared to that from the Capitol to the White House, or approximately 3,000 yards.

Law enforcement on the scene in Waco could not safely maintain a perimeter indefinitely. There was a vast open area surrounding the compound. It was dangerous and impossible to prevent people from wandering in and out. The Branch Davidian Compound was an armed camp; a heavily armed camp, with dangerous people inside who had already killed four federal law enforcement officers. The situation was difficult to control and the area was very difficult to defend. There were extraordinary public safety issues. It was an extraordinary law enforcement situation. Imprisoning those in the compound with walls or wire was deemed impossible. Nothing short of putting an army around the compound could secure the area, and posse comitatus prevented use of the military, i.e. Delta Force, to replace the HRT. Cost was not a factor. The two main points at this meeting were the use of tear gas, and the heightened sensitivity relative to maintaining the security of the perimeter. The Military advisers made two points; they would pull out the HRT, and they would gas the entire compound.

J

Title 18 USC Section 2510 et seq

AG Reno went back to her office and called Ray Jahn regarding Title III monitored conversations within the compound indicating that they may be low, or running out of water. AG Reno directed everyone back to consider the water supply. After this review, the FBI was convinced that David Koresh was rationing water to ensure discipline, but was secretly continuing to replenish the supply. The food and water supply was assessed, and it was believed they had provisions to last a year.

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Continuation of FD-302 of Janet Reno, On 8/2/93, Page 4

All other non-lethal possibilities were considered. The FBI satisfied AG Reno that nothing else non-lethal could do it. The question then became, "Why now?" AG Reno directed Webb Hubbell to call the chief negotiator on the scene to make sure negotiators were satisfied everything had been done that could be done. Hubbell was convinced from his conversation with the negotiator that David Koresh was not coming out. Koresh had not fulfilled any of his promises at that point to do anything he said he would. People were getting tired, negotiators were tired, and tempers were fraying.

AG Reno considered the worst case scenario. She did not think of fire. In her mind, the worst case scenario involved an explosion. Thursday or Friday night, April 15 - 16, 1993, she lay awake and thought, "Oh my God, what if he blows the place up? What if he holds children up in the windows, and threatens to shoot them?" Mass suicide was considered. FBI experts felt that suicide was unlikely, that the possibility was remote. When authorities had earlier cleared the area and moved his car, Koresh showed more concern for his car than he did when a tank bumped into the building. She did not consider his demonstrated rage and threats to law enforcement when his car was moved to be indicative of someone with a suicidal mentality. They also concluded, however, that if David Koresh wanted to blow the place up, he could do it at any time. They could not protect against such a disaster at any time. AG Reno asked about burns, and what could be done in that event. She asked about emergency vehicles, not thinking specifically in terms of fire trucks, but of helicopters and medical evacuation capability. She was advised of the Houston Burn Center, but was also shown the great distances involved; how far away everything was from the remote location of the Davidian Compound.

During the entire week of April 12, 1993, AG Reno considered everything she could imagine. She even asked if they couldn't fly over with some sort of gas that would just put everyone to sleep for a few hours so that officers could go in and pull them all out. She learned, however, that doing so was not a realistic option.

There was a comment made during the week of April 12, 1993, that, "He's [Koresh] beating the babies." AG Reno said, "Wait a minute, actually beating the babies?" She had the clear understanding that there was information since the FBI had taken

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F 66-HQ-19157-45

Continuation of FD-302 of Janet Reno, On 8/2/93, Page 5

over that the Davidians had been beating babies. She heard there were reports that it was continuing. She did not see the video tape that was sent out earlier in March. She did not have any independent recollection of the video tape, did not rely on it, or know about it.

There was no doubt that the children were living in intolerable conditions. She knew there had been sexual abuse of minors, that Koresh was recovering from his wounds and continuing to have sex. Koresh was adding port holes in the building. The sanitation was deteriorating. AG Reno considered the fact that she was looking at possibly a year of them living in horrible circumstances. She considered the fact that they had let the children be sexually abused for 51 days, and wondered if it was better to leave them for a year, which seemed to be the extent of their food and water supply. She considered they could wait, only to walk in later and find them all dead.

On Friday, April 16, 1993, AG Reno was not yet convinced of the timing. The weekend was ruled out because of concern about emergency rooms. The FBI felt they would have to pull out the HRT during that next week. Whether they waited a day, or two days, they would eventually have to rotate them out. AG Reno asked the FBI to prepare a statement and document everything they had told her. She wanted the supporting documentation. In response, she received a large 3-ring binder as a briefing book. She did not read the statement carefully, nor did she read the supporting documentation she was provided. She read only the chronology, gave the rest a cursory review, and satisfied herself that the documentation was there.

On Saturday afternoon, April 17, 1993, AG Reno gave the go ahead for the plan to insert the tear gas. The rules of engagement were discussed and agreed upon. Agents could fire only in the event they were fired upon, to protect themselves or someone else. They discussed the possibility of Koresh putting the children up in the tower. AG Reno gave instructions that if it became clear that children were endangered, i.e. held up at the windows and threatened to be shot, the FBI was to back off. In that event, AG Reno believes her exact words were, " . . . then get the hell out of there. Don't take any risks with the children." It was agreed that once she approved the plan, decisions would be made on the scene. She could stop the action at any time and tell them to leave, but on scene, decisions had

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Continuation of FD-302 of Janet Reno, On 8/2/93, Page 6

to come from law enforcement officers. She did not consider herself in command of the operation. Any such comment would be gratuitous on her part. She could not tell them how to run the operation, what tactics to employ, but she could stop the operation at any time.

On Sunday morning, April 18, 1993, AG Reno discussed the situation with the President. She told the President she had considered every possibility, and had approved the plan to use tear gas. The President was fully briefed, they discussed everything, including his experience at Ft. Chafee. AG Reno stressed the fact that this was not "D-Day."

On Monday morning, April 19, 1993, the action to insert gas commenced around 7:00 a.m., and they immediately heard shots being fired from the compound at the law enforcement officers. AG Reno was impressed that the FBI exercised great restraint, and did not return the gunfire. They were surprised that no one was coming out; that the wind was so strong; that the gas was apparently not effective. They were concerned about the gunfire, and thought people would put children in the tower or were shooting them. They proceeded to gas the whole compound. By 11:00 a.m., AG Reno called the President and described the situation as going well. She was encouraged. It seemed, piece by piece, it was working, and people were coming out. Obviously, that was not the case.

After her public statements on April 19, 1993, concerning evidence of ongoing child abuse, which the former FBI Director contradicted, she carefully read through the documentation previously provided to her, looking for that evidence. She told Mary Incontro later that week that she did not see it there; it was not there. It was so clear in her mind, though, that during the week of April 12, 1993, someone told her that babies were being beaten, because she replied, "You mean actually beaten?" She believed, at the time, there was evidence that it was ongoing.

Thereafter she determined that the briefing material which had been provided to her during the decision making process contained no documentation to support her statements on April 19, 1993, that there was evidence of ongoing child abuse. She wanted the record to reflect that accurately, and therefore corrected

WACO 002561

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Continuation of FD-302 of Janet Reno, On 8/2/93, Page 7

herself when she testified on April 28, 1993, before the House of Representatives Committee On The Judiciary.

AG RENO'S VIEWS IN RETROSPECT

AG Reno believes she was adequately informed, and that the FBI was completely forthcoming. She was impressed with the quality and timeliness of responses to her questions or requests for additional information. When she asked the FBI to seek input from the military, she was impressed that the FBI arranged a face-to-face briefing with the Delta Force leadership only two days later. The FBI did not try to railroad her, rather was respectful, and seemed genuinely appreciative of the hard questions she posed. She did not believe anyone at the FBI deliberately played up the issue of child abuse. In any event, that was only one of many factors she considered in deciding to approve the tear gas plan. The FBI kept an open mind, and no one ever suggested to her that they knew best, or knew it all.

For the future, her question is, "Do we adopt a psychological mode and rely on psychologists and religious experts?" This was a law enforcement operation. It had to be. We were dealing with terribly dangerous people. Psychological and Religious experts were consulted in this situation; it didn't help.

Reflecting upon the initial raid by the Bureau of Alcohol, Tobacco, and Firearms, she said she would do it differently. In the future she suggests gathering opinions independent of law enforcement, and considering them together.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 9/1/93

On 9/1/93, BRUCE LINDSEY, Advisor to PRESIDENT CLINTON and Director of the Office of Presidential Personnel, was interviewed by Assistant Inspector (AI) HERBERT COUSINS, JR., and ROBERT LYON, Assistant Counsel, Office of Professional Responsibility, Department of Justice (DOJ). Also present during the interview was CLIFFORD SLOAN, Associate White House Counsel. LINDSEY was advised of the identity of the above-mentioned individuals, the nature of the interview, and he provided the following information.

After the Bureau of Alcohol, Tobacco and Firearms (BATF) raid on the Branch Davidian Compound (BDC), Waco, Texas, LINDSEY recalls PRESIDENT CLINTON talked to ROGER ALTMAN of the Treasury Department regarding the results of the raid. ALTMAN traveled to Waco, Texas, and when he returned, LINDSEY attended a meeting in White House Counsel BERNARD NUSSBAUM's office. LINDSEY could not recall the specific date of the meeting, but he believes it was either March 2 or March 3, 1993. Present at the meeting were NUSSBAUM, LINDSEY, ALTMAN, and "two other Treasury people." (LINDSEY could not recall their names). LINDSEY advised the status of the BDC siege was discussed during the meeting. After this meeting, LINDSEY followed the BDC siege through the news media.

LINDSEY attended a second meeting in NUSSBAUM's office. LINDSEY advised this meeting could have been either April 14 or April 15, 1993. Present at the meeting were WEBSTER HUBBELL, Associate Attorney General, DOJ, VINCENT FOSTER, former Deputy White House Counsel, and NUSSBAUM. LINDSEY related HUBBELL came to advise the Federal Bureau of Investigation (FBI) made a recommendation to Attorney General (AG) JANET RENO, that would result in the resolution of the BDC siege. The FBI had a plan to insert tear gas into the BDC which could result in a "change of the situation" and HUBBELL wanted to advise the White House. HUBBELL also told the individuals present AG RENO had not made a final decision to approve the plan.

Investigation on 9/1/93 at Washington, D. C. File # 66-HQ-19157-45

by Herbert Cousins, Jr. HC Date dictated 9/6/93

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CNG100-1343

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Continuation of FD-302 of Bruce Lindsey , On 9/1/93 , Page 2

LINDSEY recalls asking why the "FBI had changed their mind." Until that point, the consensus was to negotiate a resolution to the siege. LINDSEY recalls HUBBELL stated the FBI only had one Hostage Rescue Team (HRT) unit and they (FBI) would have to pull the unit back if the siege continued indefinitely. LINDSEY advised HUBBELL also indicated negotiations were not making progress and there was no indications of future progress through negotiations.

LINDSEY advised HUBBELL was told President CLINTON would want to know if the United States military's input regarding the FBI Plan had been obtained. LINDSEY recalls several years ago, when PRESIDENT CLINTON was Governor of the State of Arkansas, there was a similar incident with a survivalist group and the "military was involved."

LINDSEY advised on April 18, 1993, HUBBELL telephonically advised him AG RENO, "after meeting all day," authorized the FBI plan to end the BDC siege. LINDSEY told HUBBELL to tell AG RENO she should contact PRESIDENT CLINTON to advise him of her decision.

LINDSEY related he told PRESIDENT CLINTON AG RENO was prepared to "make a decision on WACO" and that AG RENO would call him (PRESIDENT CLINTON) after she "got done with a meeting." LINDSEY stated later that day (April 18, 1993), AG RENO telephonically contacted the President. LINDSEY was present during the phone call and he (LINDSEY) stated PRESIDENT CLINTON asked AG RENO several questions regarding the safety of the children in the BDC and if the United States military had been consulted. LINDSEY further stated PRESIDENT CLINTON told AG RENO "it is your decision."

LINDSEY advised PRESIDENT CLINTON spoke to AG RENO the afternoon of April 19, 1993, shortly after the fire started at the BDC. LINDSEY stated PRESIDENT CLINTON asked questions about the Branch Davidian children and adults who may have survived the fire.

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Exhibit 74

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/15/93

MARK M RICHARD, Deputy Assistant Attorney General, Criminal Division, Department of Justice (DOJ), Washington, D.C., telephone number 202-514-2333, was advised he was being interviewed in regards to his role in the circumstances surrounding the Branch Davidian Compound in Waco, Texas. RICHARD was advised that this interview was being conducted in conjunction with STEVEN E. ZIPPERSTEIN, Special Counsel to the Assistant Attorney General, Criminal Division, DOJ and the interviewing agents. RICHARD provided the following information.

RICHARD was provided with a list which set forth a chronology of meetings that took place between March 16, 1993 and April 18, 1993. RICHARD advised that JAMES REYNOLDS, Chief, Violent Crimes, Criminal Division, DOJ prepared this list of meetings at RICHARD's direction, utilizing information collected from the individuals involved.

RICHARD advised he became involved with the occurrences at the Branch Davidian Compound on or about March 26, 1993. RICHARD related he was briefed on the status of the incident by REYNOLDS who had been maintaining liaison with JAMES DEATLEY, Assistant United States Attorney (AUSA), San Antonio, Texas. At about the same time, RICHARD recalled that he met with BOB MCNAMARA, U.S. Treasury. Between REYNOLDS and MCNAMARA, RICHARD learned that there were strong indications of tension between the United States Attorney's office in San Antonio and Waco, and between the law enforcement agencies involved. RICHARD related he was also advised that the Attorney General had received a letter from AUSA BILL JOHNSTON in Waco, concerning conflicts in the investigation. RICHARD stated that the Attorney General had conveyed to KEENEY that a review should be made of the situation in Texas. RICHARD advised that he later learned that either the Attorney General or WEBB HUBBELL had received a call, around this same time, from a Congressional figure. This individual had apparently received a call from one of the Texas Rangers, commenting to the effect that the crime scene in Waco was not being treated in an appropriate manner.

RICHARD advised that he, REYNOLDS and MICHAEL KAHOE, Section Chief, Violent Crimes and Major Offenders Section, Criminal Division, FBI, traveled to Waco. RICHARD advised they traveled to Waco in the context that they were there to look at the problems and make whatever recommendations would be appropriate. RICHARD stated it was clear

Investigation on 7/15/93 at Washington, D.C. File # 66-HQ-19157-45

by Inspector Victor M. Gonzalez VMG
SSA Gail M. Seavey GMS Date dictated 7/15/93

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EXHIBIT 75

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Continuation of FD-302 of Mark N Richard, On 7/15/93, Page 2

that the Attorney General felt a strong sense of urgency and therefore, requested that they make a determination of the situation immediately. RICHARD stated that KAHOE accompanied REYNOLDS and himself to Waco, based on the request of LARRY POTTS, Assistant Director, Criminal Division, FBI.

RICHARD related that while in Waco they met with JEFF JAMAR, BOB RICKS and several other individuals at the FBI Command Post. RICHARD related they were given a sense of the terrain surrounding the Compound through a tour of the area around the Compound. They proceeded to meet with AUSA JOHNSTON who was handling the investigation in Waco and with ATF individuals to obtain a sense of where they were coming from. A meeting with the Texas Rangers, specifically DAVID BURNS, resulted in BURNS' stating that the FBI failed to make an effort to coordinate their activities with the Texas Rangers. RICHARD related it was clear that the FBI was concerned with the factors pertaining to the siege while the Texas Rangers and AUSA JOHNSTON were concerned with preserving the crime scene. RICHARD related that the FBI did not appear to be coordinating their actions surrounding the Compound with other agencies and in a sense, were insensitive to the Texas Rangers and ATF, to the point that the Texas Rangers were no longer sending one of their people to the Command Post. As it turned out, RICHARD stated, JAMAR was conversing with DEATLEY and United States Attorney RON EDERER in San Antonio, but this information was not being conveyed to the Texas Rangers, ATF and JOHNSTON. Part of the problem, RICHARD stated was the failure of DEATLEY and EDERER to talk to the Texas Rangers, ATF and JOHNSTON.

RICHARD related that later that day when he, REYNOLDS and KAHOE met with DEATLEY and EDERER, it was brought out that Acting Assistant Attorney General STUART GERSON had related to EDERER that the siege should be resolved with a minimum loss of life and prevention of further bloodshed. EDERER believed the attitude was one that if the FBI stated something must be done, then there was no disagreement. Overall, RICHARD related the tensions were high with the lines drawn between two sides: the FBI and the USA's office in San Antonio on one side and ATF, Texas Rangers and JOHNSTON on the other. RICHARD stated his main concern was putting the prosecutive effort together to ensure a smooth running and successful operation.

RICHARD advised that as a result, the feasibility of removing the case from San Antonio and having a team of AUSA's report directly to the Criminal Division, DOJ was discussed with DEATLEY and EDERER. RICHARD related that both individuals were supportive of the idea and thought this to be an appropriate approach. RICHARD related that the

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names of various personnel were discussed to head up the team of AUSA's, which included JOHNSTON and others in the district, with the final conclusion being made that RAY JAHN would be the most qualified.

RICHARD related that he returned to Washington, D.C. he and REYNOLDS met with the Attorney General on Thursday, April 1, 1993. RICHARD stated he does not recall if HUBBELL attended the meeting. RICHARD related the Attorney General was advised of the situation and the suggestion that a team of AUSA's headed by JAHN be set up. The Attorney General was further advised it was their recommendation that the case be managed from the Criminal Division of DOJ. RICHARD related the Attorney General approved and asked what would be required to institute the arrangement. RICHARD stated he advised that both the FBI and Treasury should be advised and thereafter, met with individuals from both agencies.

RICHARD related that he, REYNOLDS, MCNAMARA and BRAD BUCKLES of ATF flew to Waco on Wednesday, April 7, 1993 to advise the law enforcement agencies of the new team of AUSA's. RICHARD related he met privately with JOHNSTON and telephonically spoke with the Judge in the District, familiarizing them with the changes. A meeting was held with the individuals RICHARD had traveled to Waco with, as well as CLARKE, POTTS and JAMAR who had arrived earlier, BURNS, EDERER, RAY JAHN, LEROY JAHN, JOHNSTON and other individuals. RICHARD stated this meeting discussed that RAY JAHN would be heading up the team of AUSA's in Waco and would be reporting to KEENEY at DOJ in Washington, D.C. It was further discussed that the FBI would maintain resolution of the siege and the Texas Rangers, in coordination with ATF, would handle the investigation concerning the prosecution aspects. RICHARD related that by that time it appeared that the agencies had mended their fences and had begun working toward effective coordination. RICHARD stated that at some point he heard, possibly from CLARKE or POTTS, that the FBI was working on a plan to use tear gas to end the siege.

On Friday, April 9, 1993, RICHARD advised that he and REYNOLDS met with the Attorney General to discuss the results of their trip to Waco. RICHARD related he believes the Attorney General mentioned the idea that the FBI might use tear gas. RICHARD recalled that at some point the Attorney General asked that the medical data on the use of tear gas be reviewed. RICHARD advised that materials concerning this data were delivered to REYNOLDS.

RICHARD related that although unable to recall the exact sequence of events, he recalls various activities examining the adequacy of medical data and reviewing various aspects of the FBI plan

to end the siege. RICHARD stated there was much discussion relating to the nature of the gas and numerous questions back and forth, between and within DOJ and the FBI, about various items of concern. RICHARD related that throughout the ordeal at the Branch Davidian Compound, everyone was asking different questions and attempting to seek alternatives to end the siege.

RICHARD related that during the week of April 12, 1993 numerous conversations and meetings took place. The FBI plan to end the siege was initially one of exploration. RICHARD related he initially articulated the question as to why the siege should be ended at this time and what factors had changed. RICHARD stated that what emerged was the assertion that the Hostage Rescue Team (HRT) was unable to surround the Compound on an indefinite basis and there was the necessity of pulling them back for retraining. RICHARD related there was a serious question of exhaustion and diminution of effectiveness on the part of the HRT, as represented by POTTS, CLARKE and DANNY COULSON. RICHARD stated that they were advised that no one else was qualified to protect the perimeter of the Compound in the manner of the HRT.

RICHARD advised that at HUBBELL's request the chief negotiator in Waco was telephonically spoken to and asked for his assessment. RICHARD stated that after this conversation it appeared clear that DAVID KORESH and the individuals in the Compound were not coming out. In fact, RICHARD stated it was represented that in 51 days, nothing had actually been negotiated. The people that had left the Compound had done so at KORESH's will, either to send a message, or because they were disruptive or disloyal to KORESH.

RICHARD related that due to the Compound having an unlimited supply of water and an extensive supply of food, the feeling was that the individuals in the Compound were in a position to remain there indefinitely, and in fact, had already been there for some time with no incentive to leave. RICHARD related that after speaking to the negotiator, he also supported the ending of the siege.

RICHARD related that the whole idea of the siege on the part of the FBI had been to contain, restrict and control. The FBI was slowly but surely cutting down the size of the Compound without necessarily provoking a response. RICHARD related that the plan to end the siege was consistent with this in that the use of tear gas would be used in a deliberate and controlled manner, by no means meant to provoke. The individuals in the Compound were to believe that there was an alternative and this was not a panic situation, however, maximum

control would be maintained by the FBI. In fact, RICHARD related it was felt that the use of tear gas to end the siege would take several days. RICHARD related that the plan, as he understood it, was to inject the tear gas through the windows, in a somewhat methodical manner.

RICHARD related that he was led to believe and the Attorney General felt the same, that there would be enhanced medical capabilities to meet all needs. RICHARD stated it was further represented, from all documentation, that the tear gas would not cause a fire.

RICHARD related that on Friday, April 16, 1993, he was called to HUBBELL's office where he met with HUBBELL and CARL STERN. HUBBELL advised that the Attorney General had disapproved the FBI plan to end the siege. RICHARD related he was asked by HUBBELL what the reaction of the FBI might be. RICHARD stated he related that the FBI would not be pleased, but would accept it however, may talk in terms of withdrawal. RICHARD related that HUBBELL further asked if RICHARD would like to speak to the Attorney General, but RICHARD advised he had nothing more to tell her then what she already knew. RICHARD recalled that STERN made a comment that going ahead with the plan might be looked down on in the eyes of public and likened it to HUSSEIN.

HUBBELL stated that he was going to contact Director SESSIONS and shortly thereafter, the Director, CLARKE and POTTS arrived. RICHARD related that HUBBELL advised of the Attorney General's disapproval of the plan to end the siege and Director SESSIONS acknowledged he would like to speak to the Attorney General. At that point, RICHARD stated that HUBBELL left the office for a period of approximately ten minutes. HUBBELL returned with the Attorney General and she made no reference to her disapproval of the FBI plan to end the siege. Instead, RICHARD related, she told RICHARD to write up his best justification for taking this action with sources documented as to the assertions made for ending the siege. RICHARD stated that in the next two days, he gathered all information together and prepared a report. RICHARD related that both MARY INCONTRO, Deputy Chief, Violent Crimes, Criminal Division and KAHOE were critical players in assisting in the full report. A draft report was provided to the Attorney General on Saturday evening, discussed and changes made. The final report was provided on Sunday. RICHARD related that the purpose of this report as far as he was aware was to capture what was believed to be the facts at that time, and in turn, justification for whatever conclusions were made to end the siege. RICHARD stated there was both

an annotated and unannotated version made, a copy of which was also sent to JAHN for his input.

RICHARD related that on Monday, April 19,1993, he as well as several others, to include the Attorney General and HUBBELL, went to the FBI Strategic Information Operations Center (SIOC). RICHARD stated that several FBI individuals were there to include Director SESSIONS. RICHARD related that there was an open line of communication with Waco and actual viewing of the events was seen through the CNN screens. RICHARD stated he noted that the tanks were projecting tear gas by punching holes in the house, not injecting the tear gas through the windows, as he understood the original plan to be. RICHARD stated he assumed at the time that this might be attributed to the fact that the tanks were being fired upon and therefore, difficulty on the part of the drivers of the tanks to appropriately manuever the tanks. RICHARD related that in all discussions held concerning the plan to end the siege, it was determined that if agents were in danger, then gas would be injected on more than one front. RICHARD stated it was clear that the agents were being fired upon and the agents were not returning fire. It was further discussed that if the signs were positive, the use of tear gas would be stopped. RICHARD related that at one point a telephone was asked for and attempts made to locate or hook up the telephone. RICHARD recalled the operation continued after the request for the telephone, however, RICHARD related, there was some intelligence that the request for the telephone was simply a delay ploy by KORESH and not a good faith effort. RICHARD stated he at one point asked about the telephone and was advised by CLARKE that they were working on it.

RICHARD stated that he, the Attorney General and HUBBELL left SIOC at sometime that morning due to previous engagements and the anticipation that the process of ending the siege would take days. RICHARD advised that shortly after their return to SIOC, the fire began. RICHARD related that everyone appeared to be in shock at the results of the fire and the unexpected turn of events. RICHARD stated that as directed, he prepared a statement for use by the Attorney General.

RICHARD stated he later prepared the statement utilized by the Attorney General in her Congressional testimony.

ZIPPERSTEIN referred RICHARD to page four of the report prepared the weekend prior to the ending of the siege which referred to the conditions and concern for children in the Compound. RICHARD stated he did not recall specifics, but it was his belief from the

information he had gained, that the sanitary conditions in the Compound were deteriorating. RICHARD advised, however, that other than being aware that there were several minors in the Compound, he had no specific facts that sexual relations had occurred with minors between the period of February 28, 1993 and April 19, 1993. RICHARD advised he was not aware that a case involving KORESH and the sexual molestation of children had been closed by the FBI five days previous to February 28, 1993 due to lack of evidence.

RICHARD stated that throughout the ordeal he recalled several conversations focusing on the deteriorating sanitary conditions and representations made that the conditions were becoming worse. However, RICHARD related that all information was taken into consideration before the plan to end the siege was initiated. Not only was the length of time with no indications that the individuals would leave the Compound an element to go ahead with the plan, but also the poor conditions believed to be existing in the Compound.

RICHARD provided information in the form of various notes, reports and memorandums that he had prepared pertaining to the occurences involving KORESH and the Branch Davidian Compound.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/21/93

William Steele Sessions, Director, Federal Bureau of Investigation, was interviewed at FBI Headquarters (FBIHQ) by Inspector Victor M. Gonzalez, Supervisory Special Agent (SSA) C. Carl Chandler, and Assistant Counsel Robert B. Lyon, Jr., Office of Professional Responsibility, Department of Justice (DOJ), concerning his role in the FBI's involvement in the standoff at the Branch Davidian compound near Waco, Texas, between 2/28/93 and 4/19/93. (Many of Director Sessions' comments during the interview were taken from his personal notes which, he said, he had prepared contemporaneously with those events which occurred during the standoff between 2/28/93 and 3/16/93. After 3/16/93, he saw no need for personal notes because of the "daily reports" which the Bureau prepared).

Director Sessions said he first heard "hints" about the shooting of the Alcohol, Tobacco, and Firearms (ATF) Agents at the compound from televised broadcasts during the afternoon of Sunday, 2/28/93, while at a social engagement with the Canadian Ambassador to the United States. Later, at approximately 3:40 p.m., he received official notice of the matter during a conference telephone call with Deputy Director (DD) Floyd I. Clarke, Associate Deputy Director for Investigations (ADD-I) Douglas W. Gow, and Assistant Director (AD) Larry A. Potts, Criminal Investigative Division. Director Sessions stated that at 5 p.m., he received additional information from Mr. John Collingwood, Director of the FBI's Office of Public Affairs. Subsequently, at 6 p.m., he (Sessions) telephoned Mr. Steve Higgins, Director, ATF, to offer his condolences for the killed and wounded ATF Agents and to offer the assistance of the Bureau. Director Sessions said at 7:30 p.m., he telephoned Mr. Lloyd Bentsen, Secretary of the Treasury, for similar reasons.

Director Sessions stated at some point during the afternoon or early evening of 2/28/93, he learned that the FBI's Hostage Rescue Team (HRT) had been deployed to Waco. It was during this same period that he went to FBIHQ to meet with other Bureau officials at the Strategic Information Operations Center (SIOC).

Investigation on 7/14/93 at Washington, D. C. File # 66-HQ-19157-45

SSA Victor M. Gonzalez, Inspector
by SSA C. Carl Chandler, Assistant Inspector Date dictated 7/16/93

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Continuation of FD-302 of William S. Sessions, On 7/14/93, Page 2

At approximately 7:30 p.m., the Director stated he was joined there by Stuart M. Gerson, Acting Attorney General (AAG). Director Sessions said he did not recall any specific conversation on 2/28/93, with the Acting AG or any other DOJ official on the issue of the FBI's involvement in the matter. He said that he decided to involve the Bureau because it was presumed that everyone, including the Acting AG, agreed that "the FBI would go to Waco."

The following day, 3/1/93, Director Sessions stated he received a telephone call from Mr. John McGoff, at 7:30 a.m., who provided additional details about the situation at the Branch Davidian compound. At 8:25 a.m., he received a briefing at the SIOC on the Waco matter and on the FBI's "TRADEBOMB" investigation, which was also active at the time. As to the Waco matter, Director Sessions recalled, the Bureau official in command there, SAC Jeffrey J. Jamar, had reported that the situation was confused and that the FBI was experiencing radio and "perimeter" problems. He also said, during the SIOC briefing, deployment of the FBI's "Nightstalker" aircraft to Waco was discussed.

At this point the Director referred to his notes. Director Sessions' notes reflected that at 8:50 a.m., the FBI assumed management of the case from ATF, notwithstanding some initial resistance from that agency. The Director stated that in his view, it was essential for the FBI to be "in control of its own fate," or, stated otherwise, to ensure the safety of its Agents' lives. Also, around this time, he had a telephone conversation with President Bill Clinton about the Bureau's proposed strategy for handling the matter. Director Sessions described it as a "waiting strategy" whereby the FBI would negotiate, watch and contain.

At 9:30 a.m., Director Sessions said he reported to AAG Gerson on developments in the Waco matter; 15 minutes later, Mr. Gerson called back to say that the President had approved the proposed strategy. The Director stated he conveyed this to AD Potts, who, he said cautioned that a more direct strategy may be required. According to Director Sessions, it was already clear to the Bureau from settings in the inmate uprisings at the Bureau of Prisons facilities at Oakdale, Louisiana, and Atlanta, Georgia, that the FBI's "local commander" should have a great deal of discretion in handling a particular situation. He said

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Continuation of FD-302 of William S. Sessions, On 7/14/93, Page 3

he agreed with this approach as long as the waiting strategy was adhered to.

From March 1st on, Director Sessions said, he spent a great deal of time in the SIOC being briefed on Waco. He added that Acting AG Gerson was also often present there.

On 3/5/93, the Director said he coordinated with DOJ on a posse comitatus issue, viz. the use by the FBI of Abrams tanks at the compound.

On 3/6/93, he said, David Koresh wanted bodies of Davidian members who died on 2/28/93, removed from the compound.

At about this same time, Director Sessions said, he contacted Mr. Gary Coker, a local lawyer in Waco, to discuss the possibility of using Coker to negotiate with Mr. Koresh. The Director explained that he did this on his own, without consulting anyone, because no one seemed to have "the key to Koresh," and because he (the Director) knew Waco so well himself. He said that in his discussions with Mr. Coker, Coker said that he had represented Mr. Koresh previously (as Vernon Howell), that he was currently representing one of the first women to leave the compound after 2/28/93, and that he would walk into the compound "to pave the way."

Director Sessions recalled that Mr. Coker was confident that Koresh had remorse; that in Coker's view Koresh was "worldly," citing his ownership of a Corvette and a Camaro; that he had come from a broken home; that he was very egotistical; that he had a strong messianic complex; that the Branch Davidians in the compound would do what Koresh told them to do; that he desired lots of television coverage; and, that he needed to have "strong, strong control." The Director stated Mr. Coker also said that Koresh had allegedly said he did not want to go to "the pen." According to Director Sessions, he indicated to Coker that because Koresh had been acquitted in an earlier shooting case, he believed in the fairness of the system. Coker agreed with this assessment, and he and the Director discussed the desirability of someone -- possibly Branch Davidian Wayne Martin, a lawyer in the Mt. Carmel compound -- discussing the fairness issue with Koresh. The Director said that finally, Mr. Coker offered to talk to Mr. Koresh on the telephone and introduce him (Sessions) to Mr. Koresh.

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Continuation of FD-302 of William S. Sessions . On 7/14/93 . Page 4

Director Sessions stated that at 12:15 p.m., on Saturday, 3/6/93, SAC Jamar called him to discuss a search warrant, which he (Sessions) approved. The Director said that later on that Saturday afternoon, AD Potts told him Koresh was pressing for the participation of a media personality, such as Oprah Winfrey, Rush Limbaugh or Larry King, as a negotiator or mediator in the standoff. According to Director Sessions, this "sealed" his decision not to go to Waco himself. He explained that earlier, in an effort to end the FBI-ATF dispute, he and ATF Director Higgins had discussed announcing that they were going to Waco together, that the media would pick up on this announcement and televise it, and that Koresh would see the televised segment. Director Sessions said that once he decided not to go, he contacted Mr. Higgins at about 5 p.m., and advised him. He added that he expected that Director Higgins would follow suit and not go to Waco; however, he subsequently learned that Higgins had done otherwise.

On Sunday, 3/7/93, Director Sessions stated he was advised at about 12:10 p.m., that the FBI had decided to turn off the electricity going into the Mt. Carmel compound and begin broadcasting rock music. He agreed with both measures, which he recalls AD Potts discussing with AAG Gerson. Director Sessions described the decision-making atmosphere as "aerobic" -- everyone was open to ideas.

On the evening of 3/7/93, Director Sessions said AAG Gerson called to say that the President had learned that the FBI was contemplating moving tanks into the area. Director Sessions said both he and Gerson were concerned about the implications of such a show of force. At 9 p.m., Director Sessions said he spoke about this development with Deputy Assistant Director (DAD) Danny Coulson, Criminal Investigative Division, who advised that Koresh had shown hostility and used obscenity in the day's negotiations, which had also been marked by broken promises on his part. At 9:10 a.m., Director Sessions stated he called AD Potts and directed him not to move any of the tanks without his concurrence. The Director said he explained that he was alarmed that television coverage of the movement of the tanks and combat engineering vehicles would portray an FBI policy contrary to the "wait and negotiate" strategy. Director Sessions said that after speaking to AD Potts, he (Sessions) contacted SAC Jamar to ensure that he understood, and then contacted DAD Coulson, for the same reason.

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FBI

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Director Sessions recalled that on the morning of Monday 3/8/93, David Koresh was "angry" at the FBI, and that he had indicated that he would rather sit in prison than rot in the Mt. Carmel compound. The Director said he also remembered discussions of what he described as "the pressures" that could be brought to bear on Koresh, including firing flares; setting up bright lights; the loud sounds broadcast over large speakers; letting him talk; cutting electricity; flooding the house with high-pressure hoses; and, overflights of the compound. The Director said that at 10:15 a.m., AAG Gerson called to say that he had seen tanks around the compound on a televised broadcast. This development, Director Sessions said, confirmed his worst fears.

At 11:15 a.m., on 3/8/93, Director Higgins contacted Director Sessions from Dallas. Director Sessions said he called Higgins back at 11:30 a.m., to tell him that he thought his (Higgins') contemplated trip to Waco was ill-advised. Later that day, the Director said he was involved in discussions in the SIOC about certain behavioral suggestions being made at the time. Also that day, he learned of a leak to the media of his own, by now discarded, plan to travel to Waco with Director Higgins. He said that the source of the disclosure (which he described as a "small-minded leak in a tragic situation") was contemptuous of him.

Director Sessions said that on 3/9/93, DD Clarke and AD Potts informed him that Mr. Coker and Vic Feazell, another Waco attorney, were in the area of the compound taking photographs, and that Koresh seemed more agreeable. Additionally, the use of bright lights, CEVs, and robots were discussed, as was terminating the compound's electricity, and the location of an HRT sniper on one side of the compound. Director Sessions said he had discussions that day with AAG Gerson and SAC Jamar.

The following day, 3/10/93, Director Sessions said he discussed matters involving Branch Davidian Judy Schneider, (who had been wounded on 2/28/93). He said there were also discussions on the use of loudspeakers, building a berm in the area of the compound, and Koresh's halogen lights.

In a SIOC briefing on 3/11/93, the Director said there were references to Branch Davidian Steve Schneider; to Koresh being bedridden with wounds from 2/28/93, and the possibility

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that he (Koresh) was dying. Director Sessions stated further that there were other discussions about making videotapes of women and children who left Mt. Carmel after 2/28/93, to send into the compound for Koresh to view. He also recalled that since Koresh had indicated that he really wanted to get things resolved, things were "looking good" that day. Director Sessions said several additional items were addressed, including material witness warrants. As to any long-range plan, the Director said that it was still inconclusive, and that the policy was still to take it "a day at a time."

Director Sessions said that on 3/14/93, Koresh was preaching; that the Branch Davidian were down to one meal a day; that there was a rumor that there was a dead child in a freezer in the compound; that Branch Davidian Scott Sonobe, who had been injured on 2/28/93, wanted to leave the compound and that Koresh had been critical of him for this; that SAC Jamar had attended a town meeting; and that Sheriff Harwell was being considered as a person to "stop the disruption." Director Sessions stated that on 3/15/93, SSA Byron Sage and Sheriff Harwell met with Branch Davidians Steve Schneider and Wayne Martin. The following day, Director Sessions stated he called Janet Reno, the recently confirmed AG, to ensure that she was "up to speed."

Director Sessions was questioned at length about the Bureau's role in the development of the final plan to end the standoff. He said there had been a great deal of discussion about whether Koresh was ever going to come out of the compound. For example, in discussions with FBI negotiators Koresh had referred repeatedly to Passover (4/6/93), which raised expectations that he would exit the compound on that day. However, the day passed with no action. The Director said, moreover, the Bureau knew that the Branch Davidians had food and water, and Koresh was delaying on the production of his own writings about "the Seven Seals."

Director Sessions said that "Unbeknownst" to him, during the week of 4/12/93, DD Clarke and AD Potts were summoned to DOJ. Upon their return, they advised the Director that the AG had asked them to go to Waco to get a personal assessment of the situation. Director Sessions said he thought it was inappropriate for the AG to direct his people to go to Waco without consulting him, since it made it difficult for himself personally, and for the Bureau command structure.

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Nonetheless, he said, he acquiesced to the AG's request.

The Director said DD Clarke and AD Potts were very intent on their mission to Waco and spoke to many of the people involved. On their return, they first briefed the AG. Director Sessions stated that when he was briefed, it was obvious to him that the Departments' priority was resolution of the matter, and that the President was aware of this. Thereafter, there were discussions about the use of gas. He said that at first there was some disagreement about this option. For example, Director Sessions said he had the idea that the Bureau should start to knock down the left front side of the main house, and then announce to the Branch Davidians what the plan was. Although this idea was discussed at some length, the gas option was discussed more often.

By Thursday, 4/15/93, he said, the gas insertion plan had been developed and appeared to be the final

As to the Bureau's role in briefing AG Reno in the final days, Director Sessions said a briefing book had been provided to her containing the initial plan, which she had rejected at first, apparently because it did not give appropriate consideration to the children involved. After being advised by Associate AG Webster Hubbell that the AG had rejected the plan, Director Sessions stated he asked for a reconsideration. He then met with her and argued again for the gas-insertion option. This time she gave her tentative agreement to the plan, but requested a much more detailed briefing book setting out every proposed step.

Director Sessions said there were discussions during these final meetings about the CS gas, along with general discussions about the possibility of fire in the compound. He added the topic of HRT "fatigue" was also addressed, although it was more along the lines of a need for retraining and revitalization of the team.

Regarding any allegations of child abuse within the compound, Director Sessions said the information flowing from the Branch Davidians themselves showed old patterns of abuse. With respect to the Director's public statement during this period that there was no "new" information about abuse, the Director said he meant that it related to the old information. He

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understood the AG's perception of child abuse in Mt. Carmel to include filth, the presence of weapons, training of the Branch Davidians in the use of weapons, and talk of suicide by those in the compound.

Director Sessions said he considered himself as the person who decided to insert the gas in the first place. He said he is not timid when it comes to making a decision. He added that as Director of the FBI, he would always come to the aid of a sister agency, and he pointed out that in this matter no shots were fired, and no FBI Agent was lost. Director Sessions said there is a mentality in the FBI, which he described as "not unhealthy," that there are very well trained capabilities which can be executed within well defined restraints. He cited the example of the inmate uprising at the Federal penitentiary at Atlanta and the use of Joint Special Operations Command (JSOC) snipers there. His concern there was how to handle a situation where an inmate comes out with a hostage and the hostage's throat was slit; in his view, the inmate should have been shot. In Waco, however, the difference was that the FBI considered each event as a possible provocation which would result in harm to the children. Punching holes in the building, although an aggressive action, was done for a purpose -- it was meant to protect the children by giving them (and their mothers) a way to escape the gas. Regarding the weather on 4/19/93, Director Sessions said that only the people on the scene could have known what the effect of the high winds would be.

Director Sessions stated he received a letter from the Dalai Lama about the FBI's playing of Tibetan chants at the compound during the standoff. The Dalai Lama objected to the playing of the religous chants. The Director said that he replied immediately and ordered that the chants be discontinued.

Director Sessions said there is always a dynamic tension between the FBI Director and the Bureau's executive management, between executive management and the field, and between the field and the Director. In the Waco matter, he said this was a healthy tension. He said he had endless conversations night-after-night during the standoff with the SACs in Waco. He did not care if they found it offensive. Director Sessions said he knew they were disturbed at his going directly to them; however, often he was disturbed at the things they had done. Nonetheless, in his opinion, the overall performance of everyone

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was "just short of magnificent."

The Director stated he had no additional details to provide, the interview was concluded.

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/22/93

MARY INCONTRO, Deputy Chief, Terrorism and Violent Crimes Section, Criminal Division, Department of Justice (DOJ), Washington, D.C., telephone number, 202-514-0849, was advised she was being interviewed in regard to her role in the circumstances surrounding the Branch Davidian Compound in Waco, Texas. INCONTRO was advised of the identity of the interviewing agent and that the interview would be conducted by STEVEN E. ZIPPERSTEIN, Special Counsel to the Assistant Attorney General, Criminal Division, DOJ and the interviewing agent. INCONTRO provided the following information.

INCONTRO was provided with a list which set forth a chronology of meetings occurring between March 26, 1993 and April 18, 1993 and advised she had assisted in gathering this information. INCONTRO related she first became involved with the incidents in Waco on Monday, March 1, 1993. INCONTRO stated she made contact with JIM DEATLEY, Assistant United States Attorney (AUSA) in San Antonio, Texas, at which time support was offered and a request made that DOJ be kept apprised of the situation.

The following Friday, March 5, 1993, INCONTRO stated she spoke with RON EDERER, United States Attorney in San Antonio at which time a discussion was held relating to the handling of individuals leaving the Compound. INCONTRO advised she continued to have sporadic conversations with the prosecutors.

INCONTRO related that approximately two to two and one-half weeks prior to April 19, 1993, she first learned, through JAMES REYNOLDS, Chief, Terrorism and Violent Crimes Section, Criminal Division, DOJ, the possibility of injecting tear gas into the Compound. INCONTRO stated that various studies were brought over to DOJ by the FBI and thereafter, discussed and studied.

INCONTRO related that she was aware that during a previous meeting which she had not attended, the Attorney General raised concerns over the FBI plan to inject tear gas and requested that the military be contacted. INCONTRO stated that on Wednesday, April 14, 1993, she and JOHN KEENEY, Deputy Assistant Attorney General, DOJ, attended a meeting held at the FBI. The meeting, attended by the Attorney General, Director SESSIONS and several other FBI, DOJ and military personnel pertained to the FBI plan to end the

Investigation on 7/22/93 at Washington, D.C. File # F 66-HQ-19157-45

by SSA Gail M. Seavey Date dictated 7/22/93

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WACO 002551

EXHIBIT 77

DOJ FTCA

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siege at the Compound. INCONTRO related that at this meeting the Delta Force Commander outlined his views of the plan and an overall assessment of the plan appeared to be that it had been carefully and wisely reviewed. The military personnel advised that although the plan utilizing a specialized gas was not similar to any type of military attack, it appeared to be carefully constructed and the highest degree of confidence was given to the Hostage Rescue Team. INCONTRO related that DICK RODGERS, Assistant Special Agent in Charge, described the workings of the plan which would be to introduce the tear gas on an incremental basis and provide the individuals in the Compound with every opportunity to leave the Compound safely. Both the Director and the Attorney General voiced concern for achieving the end result with maximum safety. INCONTRO related that FLOYD CLARKE, Deputy Director, FBI made it clear that the goal of the plan was to introduce the tear gas one step at a time, to avoid confusing the people in the Compound and thereby, maintain the impression that the individuals in the Compound were by no means trapped.

INCONTRO advised that at this meeting Dr. HARRY SALEM discussed the effects of tear gas on children and pregnant women. INCONTRO stated that both the Attorney General and WEBB HUBBELL expressed concern over the effect of gas on open wounds should shooting occur and further, that adequate medical personnel be present. INCONTRO related that further discussion was held on how the plan would work and what the overall effects of gas might be. The end result was that there would be no long term damage and everyone appeared to feel confident in that respect. INCONTRO related that based on the prosecutor's viewpoint that evidence should be preserved if at all possible, she raised concern that everything be done to force these individuals out, without severe damage to the building.

Further issues, INCONTRO related, concerned the rules of engagement and the issue of what would occur if the individuals came out shooting or using the children as shields. INCONTRO related that the Attorney General voiced a comment for the reasoning behind the decision to end the siege at this time. RODGERS, as well as others, addressed this matter by advising that every promise DAVID KORESH had made had been broken, that negotiations had broken down, that no one had been released since March 23 and it did not appear that anyone would be, and the possible loss of maximum efficiency on behalf of the Hostage Rescue Team due to the length of time they had been on site. INCONTRO related that the use of a laser tool was discussed, but RODGERS advised that although this had been considered, it was likely to initiate a fire.

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INCONTRO advised that further discussion was also held relating to the deteriorating sanitary conditions in the Compound as learned from individuals who had left. INCONTRO related that information had been gained that the children were exposed to these conditions and that there were no adequate medical personnel inside the Compound.

When the meeting adjourned, INCONTRO advised that she, KEENEY, HUBBELL and the Attorney General met in the Attorney General's office. INCONTRO related that RAY JAHN was contacted in Waco and prosecutive concerns were discussed. INCONTRO stated she recalled that there had been a discussion of conversations which had been overheard through Title III's in the Compound where comments had been made that individuals complained of being thirsty. INCONTRO related that planes flying over the Compound indicated the water tanks were full. INCONTRO stated the Attorney General asked for transcripts of these conversations from the FBI. INCONTRO advised that no resolution or decision came from that meeting.

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Title 18 U.S.C. sec. 2510 et seq.

Late in the day on Friday, April 16, 1993, INCONTRO related she was contacted by MARK RICHARD, Deputy Assistant Attorney General, Criminal Division, DOJ and asked to review search warrants that had been sent by JAHN. INCONTRO related that RICHARD was shortly thereafter called to a meeting by the Attorney General. INCONTRO stated that RICHARD returned to his office with LARRY POTTS, Assistant Director, Criminal Investigative Division, FBI and CLARKE. RICHARD advised that the Attorney General had directed that a statement be prepared which contained all information regarding KORESH, the Compound and options concerning the course of the negotiations. INCONTRO related it was her understanding that this would aide the Attorney General in making her decision as to whether or not the FBI plan to end the siege should proceed. INCONTRO related she also learned from RICHARD that HUBBELL had advised him to the effect that "we were told it wasn't going to happen, but the FBI came over and the Attorney General wanted the statement in order to make a decision."

INCONTRO related that on Saturday, April 17, 1993, she worked in the Strategic Investigative Operations Center (SIOC), FBI with RICHARD, CLARKE, POTTS, Director SESSIONS, and several other FBI individuals. INCONTRO related that a rough draft was made incorporating their knowledge of all the events that had occurred. After the completion of the first draft, INCONTRO stated she worked with several agents, all of whose names could not be recalled, and sought to obtain documents to back up the information in the statement. INCONTRO related that several drafts were written and

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documentation obtained by way of previous statements made from individuals familiar with KORESH and the Compound, medical information, tapes, and various telephone conversations with the individuals in Waco.

INCONTRO related that Saturday evening, when satisfied that all information in the statement could be documented, she, RICHARD, POTTS, CLARKE, HUBBELL and CARL STERN met with the Attorney General. INCONTRO related the Attorney General read the statement, asked questions and discussed the contents. Concerns were again raised as to what would happen if individuals came out carrying children and using weapons. The Attorney General stressed concern over what the FBI response would be and for the safety of the individuals in the Compound. INCONTRO stated it appeared clear that individuals would not arbitrarily be fired upon and children would not be put in danger. INCONTRO related that the decision was made that the plan to end the siege would be initiated on Monday, April 19, 1993. INCONTRO related the draft of the statement was returned to RICHARD and in turn, to her. INCONTRO advised she returned to SIOC where POTTS or COULSON contacted the appropriate individuals in Waco to advise that the plan would proceed. INCONTRO related she contacted JOHN LANCASTER, DOJ in Waco and facsimiled information for his and JAHN's review.

INCONTRO stated that on Sunday, April 18, 1993, she returned to SIOC and finalized the statement as well as ensured, point by point, that the statement was supported by factual documentation. INCONTRO related that at a later date it was pointed out that there was an error in Tab B, number 11, of the briefing book which stated that on 4/17/93 there were references to physical abuse of children by KORESH. INCONTRO stated the date of 4/17/93 was a typographical error and actually there were several statements gathered from interviews of previous Branch Davidian members that the practice of sexual abuse of young girls and the beating of children occurred. INCONTRO related she was aware that no information had actually been obtained which documented the abuse of children in the Compound between the period of February 28, 1993 and April 19, 1993.

INCONTRO stated that at approximately 4:00 p.m. on Sunday, she returned to DOJ and met with REYNOLDS. Contact was made with the prosecutive team in Waco concerning which individuals would be charged as material witnesses and which charged with the shootout that occurred on February 28, 1993. It was further discussed that review of the warrants and complaints should be made by a judge. INCONTRO related that all documentation pertaining to the statement was brought

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over to DOJ by FBI agents and RICHARD provided the final draft to the Attorney General and possibly HUBBELL.

INCONTRO stated she was not in SIOC on Monday, April 19, 1993. INCONTRO related that on Thursday evening, March 22, 1993, a meeting was held in the Attorney General's office which included INCONTRO, RICHARD, REYNOLDS, and the Attorney General. INCONTRO advised the meeting was held to discuss the conflicting reports concerning the sexual abuse of children in the Compound. INCONTRO related that throughout the previous meetings the overall safety of children had been the major issue, not necessarily the specific issue of sexual abuse. INCONTRO stated that as a result of this meeting, she reviewed all documentation and prepared a seven page report entitled "Evidence of Sexual Abuse of Children in the Compound" which sets forth excerpts of information pertaining to this issue.

INCONTRO stated that the day before the Attorney General's Congressional testimony on April 28, 1993, she and RICHARD prepared a statement for the Attorney General. When shown specific wording in the statement concerning the lack of the word "prior" when related to the sexual abuse of children, INCONTRO advised she had completed the first draft of this statement based on the information set forth in the initial statement and briefing book and therefore, had no knowledge as to why this word did not appear in the final copy. INCONTRO stated it was clear in the information she obtained for the briefing book that statements of abuse related to knowledge prior to the February 28, 1993 attack at the Compound.

INCONTRO advised that she was aware that KORESH had made a videotape of the children in the Compound, but had not herself viewed the tape. INCONTRO stated she was further aware, through comments made by the Attorney General, that the Attorney General had been apprised of this tape. When questioned, INCONTRO related she had no knowledge that the FBI had previously closed an investigation pertaining to allegations of sexual abuse and molestation of children against KORESH.

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CHRONOLOGY

Friday, March 26, 1993

Mark Richard met with Bob McNamara and other Treasury officials in Jack Keeney's office concerning their findings on their trip to Waco and concerning their proposed inquiry into ATF's actions on February 28, 1993.

Tuesday, March 30, 1993

Mark Richard and Jim Reynolds, accompanied by FBI Supervisory Special Agent Michael Kahoe, traveled to Waco, Texas, at the direction of the Attorney General to assess the effectiveness of the prosecutive and investigative teams that had been assembled and the interrelation among the various agencies involved.

Mark Richard, Jim Reynolds, and Mike Kahoe met briefly with the FBI leadership at the FBI Command Center in Waco.

Wednesday, March 31, 1993

Mark Richard, Jim Reynolds, and Mike Kahoe met again with the leadership at the FBI Command Center in Waco. Mark Richard and Jim Reynolds met with Dan Hartnett, Deputy Director, ATF.

Mark Richard, Jim Reynolds, and Mike Kahoe viewed the Branch Davidian compound and were briefed by FBI SAC Jeff Jamar concerning logistical reasons why an HRT assault on the compound by foot was logistically impossible.

Mark Richard, Jim Reynolds, and Mike Kahoe met with Bill Johnston, the Assistant U.S. Attorney in charge of the Waco Division, concerning problems of coordination which existed among investigative and prosecutorial personnel.

Mark Richard, Jim Reynolds, and Mike Kahoe met with Ranger Burns, a Texas Rangers captain who is in charge of the Rangers' investigation into the February 28, 1993, shootout at the Branch Davidian compound.

Mark Richard, Jim Reynolds, and Mike Kahoe flew to San Antonio, where they met with U.S. Attorney Ron Ederer and First Assistant Jim DeAtley concerning coordination of the investigation and prosecution relating to the Branch Davidian compound.

Thursday, April 1, 1993

Mark Richard, Jim Reynolds, and Mike Kahoe returned to Washington, D.C. Mark Richard and Jim Reynolds met with the AG and

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Webb Hubbell to report their assessment and propose changes in the prosecutive team and steps for improvement of coordination among the investigative agencies and between the investigators and the prosecutors. The AG approved those proposals.

Mark Richard and Jim Reynolds met with Treasury Department officials, including Bob McNamara, as well as Steve Higgins, Director of the ATF, to discuss the changes being effected and the composition of the prosecutive team and the coordination among investigators and prosecutors.

Friday, April 2, 1993

Mark Richard spoke with the AG concerning Treasury Department reaction to the proposed measures to improve coordination in Waco among investigators and prosecutors and concerning the proposed return to Waco.

Ray Jahn, a senior AUSA in San Antonio, Texas, was designated to head the prosecutive team and assumed his responsibilities in Waco.

Wednesday, April 7, 1993

Mark Richard, Jim Reynolds, Bob McNamara of Treasury, and Brad Buckles of ATF, flew to Waco. Mark Richard chaired a meeting of the leadership officials of agencies involved in the Branch Davidian compound matter. Persons attending the meeting included the Chief Texas Ranger and Capt. Burns; an official of the Texas Department of Public Safety; Dan Conroy and Brad Buckles of ATF; Floyd Clarke, Larry Potts, and Jeff Jamar of the FBI; Ron Ederer, Ray Jahn, Leroy Jahn, and Bill Johnston of the USA's Office; and Mark Richard and Jim Reynolds. The new prosecutive team was announced and the revised lines of communication and coordination were discussed.

Mark Richard and Jim Reynolds met with the prosecutive team, headed by Ray Jahn.

Friday, April 9, 1993

Mark Richard and Jim Reynolds met with the AG to discuss the results of their trip to Waco. The AG mentioned that the FBI had raised the possibility of utilizing tear gas to resolve the standoff at the compound.

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In a telephone call from Ray Jahn, Jim Reynolds was advised that the FBI was discussing a possible action on the compound if David Koresh and his followers did not come out after Passover.[1]

Monday, April 12, 1993

Criminal Division attorney John Lancaster flew to Waco to join the prosecutive team.

Meeting in Jack Keeney's office -- Keeney, Mark Richard, and Jim Reynolds received general briefing from Floyd Clarke and Larry Potts of FBI on proposed plan to introduce CS gas into compound if Koresh did not come out after Passover.

Meeting adjourned to FBI Command Center -- briefing for Attorney General, Webb Hubbell, Jack Keeney, Mark Richard, and Jim Reynolds by FBI Director, Floyd Clarke, Doug Gow, Larry Potts, Tony Betz, and other FBI attendees, John Collingwood (Public Affairs) and Joe Davis (Legal Counsel), on proposed plan.

Meeting afterward in Attorney General's office with AG, Webb Hubbell, Jack Keeney, Mark Richard, and Jim Reynolds to discuss proposal. No decision reached.

Wednesday, April 14, 1993

Meeting in FBI Director's office to brief Attorney General, Webb Hubbell, Jack Keeney, and Mary Incontro on military and medical perspectives related to plan. FBI attendees: Director Sessions, Floyd Clarke, Doug Gow, Larry Potts, Danny Coulson, Dick Rodgers (HRT), and Tony Betz. Military personnel, General Pete Schoomacher and Colonel Jerry Boynkin, former and present commanders of Delta Force, provided their assessment of plan, with Major Scott Wells also in attendance. Dr. Harry Salem, a medical doctor, was present to summarize results of studies of effects of CS gas, including effects on children, pregnant women, and elderly. Options discussed. No decision reached.

Meeting afterward in Attorney General's office with AG, Webb Hubbell, Jack Keeney, and Mary Incontro to discuss plan. Ray Jahn consulted by phone. FBI Director agreed to provide electronic surveillance transcripts to AG of conversations inside compound relating to water supply. Decision pending.

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[1] Approximately two weeks earlier, FBI HQ had provided TVCS some studies on the effects of CS gas.

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Friday, April 16, 1993

Meeting of Mark Richard, Webb Hubbell, and Carl Stern to discuss the status of the decision on the FBI plan.

During this meeting, Director Sessions, Floyd Clarke, and Larry Potts joined the meeting. Subsequently, the AG joined the meeting. Decision discussed. AG requested preparation of a statement describing the situation inside the compound, progress of the negotiations, and merits of the proposal, providing supporting documentation for factual assertions. Statement to be provided to her by Saturday afternoon.

Meeting afterward in Mark Richard's office with Mark Richard, Floyd Clarke, Larry Potts, and Mary Incontro to discuss preparation of statement.

Saturday, April 17, 1993

Preparation of draft statement in FBI Command Center by Mark Richard and Mary Incontro, with FBI Director, Floyd Clarke, Larry Potts, Danny Coulson, Mike Kahoe, and other agents.

Meeting afterward in Attorney General's conference room with AG, Webb Hubbell, Carl Stern, Mark Richard, Mary Incontro, and from the Bureau, Director Sessions, Floyd Clarke, and Larry Potts, to review statement. Rules of engagement discussed. AG approved plan. Plan to be put in effect on Monday, April 19, 1993. HRT to be notified immediately, Treasury and ATF to be notified on Sunday.

Meeting afterward in FBI Command Center with Mark Richard, Mary Incontro, FBI Director Sessions, Floyd Clarke, Doug Gow, Larry Potts, Danny Coulson, Mike Kahoe, and other agents. HRT notified by FBI. Statement faxed to U.S. Attorney's office in Waco for review.

Sunday, April 18, 1992

Statement finalized in FBI Command Center by Mary Incontro, incorporating revisions by AG, Carl Stern, and Ray and Leroy Jahn. Supporting documentation collected by agents, reviewed by Incontro. Statement delivered to Attorney General and Carl Stern by Mark Richard. Final version completed.

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DOJ CSTS

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CNG082-0445

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SECRET 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/12/93

Mr. Webster L. Hubbell, Associate Attorney General (AAG), Department of Justice (DOJ), was interviewed on 8/3/93 by Assistant Inspector (AI) Herbert Cousins, Jr., Inspector Victor M. Gonzalez, and Steven E. Zipperstein, Special Counsel to the Assistant Attorney General of the Criminal Division, DOJ. Also present during the interview were Nancy McFadden, Deputy Associate Attorney General, Edward S. G. Dennis, DOJ appointed reviewing official, and Mr. Dennis' associate, Susan DeBusk. Mr. Hubbell was advised of the identity of the interviewing agents and the nature of the interview. He then provided the following information.

On 3/1/93, one day after the Bureau of Alcohol, Tobacco, and Firearms (BATF) raid on the Branch Davidian Compound (BDC), Waco, Texas, Stuart Gerson, Acting Attorney General, told Hubbell that he (Gerson) authorized the deployment of military vehicles at the BDC.

Gerson took Hubbell over to FBI Headquarters (FBIHQ) around the time Attorney General (AG) Janet Reno was sworn in. It was at that time that Hubbell received his first briefing regarding the BDC siege. Former Director William Sessions and Deputy Director (DD) Floyd Clarke were present during the briefing. The FBI was concerned about perimeter security and safety of law enforcement personnel.

Hubbell does not recall if Gerson spoke to President Clinton at that time. He believes White House Counsel Bernard Nussbaum told Gerson President Clinton wanted to be kept apprised of further developments regarding the BDC siege.

After AG Reno was sworn in as Attorney General, FBI officials including Director Sessions and DD Clarke came over to DOJ and gave AG Reno a briefing on the BDC siege. Hubbell sat in on the briefing and he recalls the FBI officials seemed to be cautious and patient in their handling of the BDC siege. Hubbell recalls sometime after the briefing for AG Reno, she (Reno)

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Investigation on 8/3/93 at Washington, D.C. File # 66-HQ-19157-45

by AI Herbert Cousins, Jr. and Inspector Victor M. Gonzalez HC:mfs Date dictated 8/9/93

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DOJ CSTS WWC182-0005

EXHIBIT 78

CNG065-0005

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received a telephone call from a Congressman (Hubbell could not recall his name). The Congressman told the AG commanders of the Texas Rangers had expressed concerns about the way things were being handled and who was in charge in Waco, Texas. Based on the information furnished by the Congressman, AG Reno sent Mark Richard, Assistant Director (AD) Larry Potts, and DD Clarke to Waco, Texas, to "assess matters" and to report back to her. Richard came back to Washington, D.C., and met with AG Reno and Hubbell. During that meeting, Richard recommended that AG Reno assign Assistant United States Attorney (AUSA) Ray Jahn to head the prosecutive team in Waco. Richard informed AG Reno the Texas Rangers were concerned about the preservation of evidence at the crime scene and who was in charge of the investigation. Based on Richard's recommendation, AG Reno appointed AUSA Jahn to be DOJ's representative and the head of the prosecutive team in Waco.

Hubbell believes he first heard about the FBI plan to introduce tear gas into the BDC during a briefing on 4/12/93 at FBIHQ. Present during this briefing were AG Reno, Jack Keeney, Mark Richard, Jim Reynolds, Director Sessions, DD Clarke, Associate Deputy Director (ADD) Douglas Gow, AD Potts, Unit Chief (UC) Tony Betz, Inspector John Collingwood, and AD Joe Davis, Legal Counsel Division. Hubbell observed a model of the BDC at the briefing and FBI personnel gave AG Reno an overview of the plan to introduce tear gas into the compound. Hubbell recalls that AG Reno asked several questions, including questions regarding the safety of the children in the compound. The AG was told tear gas would not harm the children. She was also told this would be a negotiation tactic and that she needed to make a decision as soon as possible. FBI personnel giving the briefing felt that the pressure had to be increased on the Branch Davidians in order to move the negotiations forward. No decision was made by AG Reno at the conclusion of the briefing.

After an attorney (Hubbell could not recall his name) went into the BDC, Hubbell received a briefing from DD Clarke. The briefing consisted of information resulting from the attorney's visit to the compound. Hubbell could not recall the specifics of the information furnished during the briefing.

Hubbell related after several discussions with AG Reno and other DOJ staff members, AG Reno requested the FBI put in writing all the information provided to her to date. AG Reno also requested that the FBI furnish information from the

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[redacted]

Continuation of FD-302 of Webster L. Hubbell, On 8/9/93, Page 3

United States military and other experts regarding the use of tear gas and other tactical matters.

Sometime between 4/12/93 and 4/14/93, Hubbell asked DD Clarke to arrange a meeting with the United States military representatives to discuss AG Reno's concerns about the FBI plan to introduce tear gas into the BDC.

On 4/14/93, Hubbell attended a briefing in Director Sessions' office. Present at this briefing were AG Reno, Keeney, Mary Incontro, Director Sessions, DD Clarke, ADD Gow, AD Potts, Deputy AD (DAD) Danny Coulson, Hostage Rescue Team (HRT) Assistant Special Agent in Charge (ASAC) Richard Rogers, UC Betz, [redacted] former and present Commanders of Delta Force, United States Army. [redacted] (S) (S) A/H [redacted] United States Army, and Dr. Harry Salem were also in attendance. The military representatives stated that the FBI plan to introduce tear gas into the compound was reasonable and practical. The only aspect of the plan that the military would do differently concerned the timing of the gas insertion. The FBI plan was a nonmilitary law enforcement operation, designed to gradually increase the pressure by incrementally introducing gas at specific locations in the compound. The military representatives explained that if this was a military operation, they would conduct an all-out assault, simultaneously introducing gas in all areas of the compound.

Hubbell recalls the military representatives indicated they believed the FBI plan as presented would work and that after the gas was inserted people in the BDC would come out. One military official also indicated, due to the intensity of the Waco operation, if his troops had been involved, he would have been compelled to pull them back and retrain them before continuing the operation. Hubbell also recalled that Dr. Salem indicated the use of tear gas would not result in injury to the children in the BDC.

Following the military briefing, further alternatives were discussed including pulling HRT out, enlarging the perimeter and using Special Weapons and Tactics (SWAT) teams to replace HRT. Hubbell stated the alternatives mentioned were not feasible due to the following:

[redacted]

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(1) The safety problems posed by the types of weapons in the BDC, including the Davidians' possession of night vision equipment;

(2) The area of the compound did not provide adequate concealment for HRT or SWAT personnel;

(3) FBI personnel indicated the HRT had not reached the point where it would be necessary to remove them from the scene for retraining. However, at some point in the very near future, they would be required to be removed. HRT personnel would not be able to maintain their positions indefinitely;

(4) Perimeter security was difficult to maintain. Despite heavy security, two individuals from the outside were able to bypass security and enter the compound.

The consensus among FBI and military personnel present at this briefing was the longer the Waco operation continued, the greater the chance of injury to agents involved.

Hubbell recalls AG Reno inquired "Why now?" (Why the plan needed to be implemented at that time.) She was told negotiations would not get anyone else out of the compound and that negotiations were at an impasse.

On 4/15/93, AG Reno requested that Hubbell contact lead hostage negotiator, Supervisory Special Agent (SSA) Byron Sage. Based on the AG's request, Hubbell met with Jack Keeney, Mark Richard, DD Clarke and AD Potts at DOJ. Hubbell telephonically contacted SSA Sage at the FBI Command Center in Waco, Texas, and spoke to him for nearly two hours. SSA Sage told Hubbell negotiations with the subjects in the compound were fruitless. SSA Sage also told Hubbell the only people released by David Koresh were older people, people who gave Koresh problems during the time they were in the compound, and children who were not fathered by Koresh. SSA Sage told Hubbell the discussions he had with Koresh about the completion of the seven seals were disingenuous. SSA Sage indicated he (Sage) was convinced the FBI had not gotten anyone out of the compound due to negotiations. SSA Sage also indicated he had never been in any previous hostage situation in which he experienced a total impasse in negotiations. The bottom line was that SSA Sage and the FBI

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negotiators advised that nothing they could do would ever persuade Koresh to release anyone else, or to come out himself.

At that point, Hubbell was convinced the negotiators felt negotiations were not getting anywhere and that something needed to be done. Hubbell provided the information furnished by SSA Sage to the AG.

On 4/16/93, Hubbell met in his office with Director Sessions and DD Clarke. Hubbell informed them that the AG was not prepared to go forward with the plan, but that she had not yet made a final decision. Hubbell asked Director Sessions and DD Clarke if they wanted to meet with the AG. Director Sessions and DD Clarke said yes and AG Reno met with Sessions and Clarke in Hubbell's office. During that meeting, Mark Richard and Carl Stern were also present. AG Reno requested a day-by-day evaluation of the entire situation and she also wanted to make sure that all options had been explored. AG Reno requested the preparation of a statement describing the situation inside the BDC, progress of negotiations, and the merit of the FBI plan. On 4/17/93, Hubbell attended a meeting in AG Reno's conference room. Present during this meeting were AG Reno, Carl Stern, Mark Richard, Mary Incontro, Director Sessions, DD Clarke and AD Potts. AG Reno received the above-mentioned statement which she reviewed briefly. The FBI rules of engagement regarding the BDC siege were discussed, and AG Reno approved the FBI plan to end the siege.

Hubbell recalls seeing a statement prepared by the FBI during this meeting. However, he does not recall if he went through all the documentation until after 4/19/93.

On 4/18/93, Hubbell spoke to the AG in her office. The AG telephonically contacted President Clinton while Hubbell was in her office. AG Reno spoke to the President for approximately 15 minutes.

On 4/19/93, Hubbell went over to FBIHQ Command Center. He was at the Command Center when the fire started at the BDC.

Hubbell wonders after all the discussions about tear gas and the effect on people, why it did not cause the effect on the subjects. He then stated "It may have, I don't know."

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Hubbell stated based on discussions during some of the briefings he attended regarding the status of the children in the BDC, his understanding was that the children were being abused. Hubbell said "I did have an impression that there was child abuse going on." He also said "I had a clear impression there was on-going sexual abuse." Hubbell stated he might have heard about the video tape sent out by Koresh which showed several of the children in the compound. He does not recall seeing the video tape.

After AG Reno made the first statement regarding her belief that there was on-going child abuse in the compound and when she (AG Reno) was preparing to testify before Congress, she requested that Hubbell and other DOJ personnel furnish all information regarding child abuse. Hubbell could find no evidence of child abuse from the period of 2/28/93 through 4/19/93. Hubbell also indicated DOJ could not publicly disclose Title III evidence. Hubbell believed the Title III evidence might have supported his belief that there was on-going sexual abuse of young girls.

Hubbell indicated that the AG and her staff were adequately briefed by the FBI. The AG's decision was based on full and accurate information provided by the FBI.

Hubbell stated the most important part of the matrix was "this was not viewed as an assault, it was being used to increase the pressure." Hubbell concluded by saying "It was clear that we were not dealing with a rational person."

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July 26, 2000

James C. Wilson
Chief Counsel
Congress of the United States
House of Representatives
Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Wilson:

I must apologize for not responding sooner to your invitation to my client, Webster Hubbell, to submit to a voluntary interview. As you know, Mr. Hubbell has submitted to thorough interviews by various government agencies about the standoff at the Branch Davidian Complex in Waco and about many other matters over the past six years. He is, at this point, very anxious to continue with other aspects of his life. Consequently, he respectfully declines your invitation.

Sincerely,

John W. Nields, Jr.



FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/14/93

E. MICHAEL KAHOE, Section Chief, Violent Crimes and Major Offenders Section, Criminal Investigative Division (CID), FBI Headquarters (FBIHQ), telephone number (202) 324-4188, was informed that he was being interviewed about his role in the matter involving the stand-off at the Branch Davidian compound in Waco, Texas between 2/28/93 and 4/19/93. KAHOE was advised that the interview was being conducted by Victor M. Gonzalez, Inspector, Debra K. Mack, Assistant Inspector, FBIHQ, and Mr. Robert B. Lyon, Jr., Department of Justice (DOJ). KAHOE thereafter provided the following information:

KAHOE stated that on 2/28/93, Larry A. Potts, Assistant Director (AD), CID, telephonically contacted him at his parents' residence in [redacted] and informed him that there were several Bureau of Alcohol, Tobacco and Firearms (BATF) Special Agents that had been killed in Waco, Texas. KAHOE stated that during the telephone conversation, he and Potts discussed the prospect of offering the assistance of the FBI's Hostage Rescue Team (HRT) to the BATF. KAHOE stated that he subsequently contacted the BATF regarding their use of the HRT which was accepted by the BATF. He stated that he then spoke with AD Potts by phone, told him of BATF desire to use the HRT, and thereafter proceeded to FBIHQ where other discussions were had with AD Potts regarding the use and management of the HRT at Waco. O-1

KAHOE advised that his responsibilities during this 51-day incident included, but were not limited to, daily briefings with Potts, Director William S. Sessions, and Deputy Director Floyd Clarke; planning operational strategies; obtaining sufficient equipment and appropriate manpower; retaining the services of the Rapid Start employees at FBIHQ for computerization of all data received; and maintaining open and active dialogue with the appropriate DOJ representatives. He stated that he primarily worked with Potts during the days. He was always in FBIHQ by 7:00 a.m. and rarely left before 10:00 or 11:00 p.m. KAHOE advised that there was continuous discussions with the Special Agents in Charge (SACs) assigned to the Waco

Investigation on 7/14/93 at Washington, D.C. File # 66-HQ-19157-45

by Inspector Victor M. Gonzalez
SSA Debra K. Mack Date dictated 7/14/93

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DOJ CSTS

EXHIBIT 80

WWC130-0137

CNG026-0137

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Continuation of FD-302 of E. Michael Kahoe, On 7/14/93, Page 2

command post regarding the numerous strategic and operational needs. Additionally, discussions were held with a myriad of negotiators and experts at the Waco command post and with experts around the country regarding David Koresh. KAHOE informed that Director Sessions and Deputy Director Clarke, FBIHQ, were briefed daily, including weekends, regarding the Waco incident.

KAHOE reiterated that there was continuous active and open dialogue with the appropriate DOJ representatives. He related that Acting Attorney General (AG) Stuart M. Gerson and his assistant, Timothy O'Rourke, DOJ, came to FBIHQ for briefings, and that Potts and Clarke also went to DOJ for briefings. KAHOE stated that soon after her confirmation and swearing-in as the AG, AG Janet Reno came over to FBIHQ for a briefing regarding the Waco incident. He stated that other DOJ representatives that were involved with this matter were Webster L. Hubbell, Associate AG; Mark M Richard, Deputy Assistant AG, Criminal Division; Jim Reynolds, Chief, Violent Crimes Section; and Mary Incontro, Deputy Chief, Terrorism and Violent Crimes Section. KAHOE related that Richard and Incontro spent numerous hours on April 17 and 18, 1993 at FBIHQ preparing the appropriate information for a subsequent briefing and resolution to the Waco incident.

KAHOE advised that his primary role or mission was to prepare briefings regarding the Waco incident. He stated that he was not aware of any information that was sanitized or not presented to AG Reno. KAHOE informed that he assisted in the preparation of the two briefing books, both of which were prepared essentially for AG Reno. He stated that briefing book presented the initial plans for a gas assault and that it was prepared one week prior to the Waco assault. KAHOE stated that the second briefing book was prepared by Incontro with the assistance of the appropriate FBI personnel and with the use of FBI data. He stated that the second briefing book was very extensive and that it was prepared a few days prior to the Waco assault. KAHOE informed it was his understanding that the second briefing book was a written response to the many questions that were raised by AG Reno. He commented that it was accompanied by the documents requisite to substantiate all statements noted in the briefing book.

KAHOE stated that he did not know that April 19, 1993 was going to be the last day but believed that the Waco standoff

might be longer. He related that although the burning of the Branch Davidian compound was considered to be a possibility from the first day, he was still shocked when he realized that the compound was, in fact, burning and that no one was coming out of the compound.

KAHOE informed that an emergency assault plan had been discussed from day one of the Waco incident with Director Sessions, Clarke, Gow, and Potts. KAHOE advised that on the first day that the FBI took charge, a contingency plan regarding mass suicide, fire, and the killing of children was discussed with Richard M. Rogers, Assistant SAC, HRT, and Jeffrey J. Jamar, FBI, SAC, San Antonio Division. He commented that to the best of his recollection this contingency plan, however, was never reduced to writing.

KAHOE advised that he did not personally brief AG Reno but that he was nearby when the briefings were conducted. He stated that Director Sessions, Clarke, Gow, Potts, John E. Collingwood, Inspector-in-Charge, Office of Public and Congressional Affairs, Hubbell, Richard, and Reynolds were present during the briefings. KAHOE related that it was his understanding that AG Reno understood exactly what was going on. He informed that AG Reno asked good and pertinent questions regarding the Waco incident and that she expressed concern for the safety and welfare of the children inside the compound. KAHOE further related that AG Reno was told about the child abuse prior to the Waco assault, that she was aware that this information was being assembled by Incontro and that the child abuse information was obtained by the FBI from the Texas Rangers who, in turn, had received that intelligence from people who had left the compound and from the social service organizations in Waco, Texas.

KAHOE stated that he did not perceive any atypical problems between the tactical and the negotiating units but, in fact, noted that there was actually a balance between the units. He stated that one of the negotiators, an FBI agent, informed FBIHQ that the FBI had not negotiated the release of anyone from the compound, but instead, David Koresh released only those individuals that he wanted out of the compound.

KAHOE further stated that because of the safety and health concerns of the children in the compound, and because of

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Continuation of FD-302 of E. Michael Kahoe , On 7/14/93 , Page 4

the diminishing skills of the HRT (which it was determined, could not be adequately replaced by other SWAT snipers or Delta military personnel), the final decision was made to resolve the Waco situation. An additional factor considered in the decision to terminate the Waco incident were Koresh's letters which were very threatening in nature.

KAHOE informed that he could not think of anything else that the FBI could have been done differently to improve the command and control within the FBI. He also informed that he did not know what could have been done differently to resolve the Waco standoff. KAHOE indicated that all appropriate personnel were briefed timely and that information was received from non-FBI experts to obtain and maintain an objective perspective. Throughout the duration of the crisis, the SIOC proved to be very useful.

KAHOE commented that he went to Waco, Texas, on March 30, 1993, for two days, with Richard and Reynolds.

FILED
AUG 06 1993
CLERK, U.S. DIST. COURT
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA,	*	CRIMINAL NO. W-93-CR-046
	*	
Plaintiff,	*	S U P E R S E D I N G
	*	I N D I C T M E N T
V.	*	
	*	[18 U.S.C. 1117--Conspiracy
KATHRYN SCHROEDER (1)	*	to Murder Federal Officers;
BRAD EUGENE BRANCH (2)	*	18 U.S.C. 1114 and 1111—
KEVIN A. WHITECLIFF (3)	*	Murder of Federal Offi-
CLIVE J. DOYLE (4)	*	cers; 18 U.S.C. 924(c)(1)—
JAIME CASTILLO (5)	*	Possession of a Firearm
LIVINGSTONE FAGAN (6)	*	During the Commission of
PAUL GORDON FATTA (7)	*	a Crime of Violence; 26
WOODROW KENDRICK, also known	*	U.S.C. 5861(d)--Possession
as BOB KENDRICK, (8)	*	of an Unregistered Destruc-
NORMAN WASHINGTON ALLISON, also	*	tive Device; 18 U.S.C.
known as DELROY NASH, (9)	*	371--Conspiracy to Possess
GRAEME LEONARD CRADDOCK, (10)	*	an Unregistered Destructive
RENOS AVRAAM, (11) and	*	Device; 18 U.S.C. 371--
RUTH OTTMAN RIDDLE, (12)	*	Conspiracy to Unlawfully
	*	Manufacture and Possess
Defendants.	*	Machineguns; 18 U.S.C.
	*	922(o) Unlawful Possession
	*	of Machine Guns; 18 U.S.C.
	*	2--Aiding and Abetting]

THE GRAND JURY CHARGES:

COUNT ONE
[18 U.S.C. § 1117]

1. From on or before February, 1992, and continuing thereafter up to and including April 19, 1993, in the Western District of Texas, Defendants,

KATHRYN SCHROEDER
BRAD EUGENE BRANCH
KEVIN A. WHITECLIFF
CLIVE J. DOYLE
JAIME CASTILLO
LIVINGSTONE FAGAN
PAUL GORDON FATTA
WOODROW KENDRICK,
aka BOB KENDRICK
NORMAN WASHINGTON ALLISON,

A true copy of the original I certify.
CHARLES W. VAGNER
Clerk, U. S. District Court
By: _____ Deputy

EXHIBIT
81

89B-SA-38351-990

aka DELROY NASH
GRAEME LEONARD CRADDOCK
RENOS AVRAAM,
and
RUTH OTTMAN RIDDLE,

did knowingly, willfully and unlawfully combine, conspire, confederate, and agree together and with each other, and with persons known and unknown to the Grand Jury, to kill, with malice aforethought during the performance and on account of the performance of their duties, officers and employees of the Bureau of Alcohol, Tobacco and Firearms (hereinafter "ATF"), United States Department of the Treasury, including but not limited to, ATF Special Agents Steven D. Willis, Robert Williams, Conway C. LeBleu, and Todd W. McKeehan, and Agents of the Federal Bureau of Investigation (hereinafter "FBI"), United States Department of Justice, all agencies of the United States as specified in Title 18, United States Code, Section 1114, all in violation of Title 18, United States Code, Section 1117.

MEMBERS OF THE CONSPIRACY

2. At all times pertinent to this indictment, Vernon K. Howell, also known as David Koresh, was a member of and the self-proclaimed prophet for a group of individuals who lived at a location known as the Mt. Carmel Compound, located near Waco, Texas.

3. At all times pertinent to this indictment, Steven Emil Schneider and Douglas Wayne Martin were followers of and advisors to Vernon Howell, also known as David Koresh.

4. At all times pertinent to this indictment Defendants KATHRYN SCHROEDER, BRAD EUGENE BRANCH, KEVIN A. WHITECLIFF, CLIVE J. DOYLE, JAIME CASTILLO, LIVINGSTONE FAGAN, PAUL GORDON FATTA, WOODROW KENDRICK, also known as BOB KENDRICK, NORMAN WASHINGTON ALLISON, also known as DELROY NASH, GRAEME LEONARD CRADDOCK, RENOS AVRAAM, and RUTH OTTMAN RIDDLE, and others were followers of Vernon K. Howell, also known as David Koresh.

SCOPE AND NATURE OF THE CONSPIRACY

5. It was a part of the conspiracy that Vernon K. Howell, also known as David Koresh, would and did advocate and encourage an armed confrontation, which he described as a "war," between his followers and representatives of the United States government. Vernon K. Howell, also known as David Koresh, originally predicted that this "war" would occur in the Nation of Israel and later changed the location to Mt. Carmel Compound, near Waco, Texas.

6. It was a part of the conspiracy that in order to prepare for the "war" with the United States, Vernon K. Howell, also known as David Koresh, would and did establish a unit among his followers which he called the "Mighty Men". Defendants, BRAD EUGENE BRANCH, KEVIN A. WHITECLIFF, CLIVE J. DOYLE, JAIME CASTILLO, LIVINGSTONE FAGAN, PAUL GORDON FATTA, WOODROW KENDRICK, also known as BOB KENDRICK, NORMAN WASHINGTON ALLISON, also known as DELROY NASH, GRAEME LEONARD CRADDOCK, RENOS AVRAAM, and other followers were members of the "Mighty Men."

7. It was a part of the conspiracy that in order to arm his followers for the "war" with the United States, Vernon K. Howell,

also known as David Koresh, would and did direct that a business location called "The Mag Bag" be established near the Mt. Carmel Compound for the purpose, among others, of receiving shipments of paramilitary supplies. The supplies purchased and received at The Mag Bag included: firearms parts (including parts for fully automatic AK-47 and M-16 rifles); thirty (30) round magazines and one hundred (100) round magazines for M-16 and AK-47 rifles; pouches to carry large ammunition magazines; substantial quantities of ammunition of various sizes (including .50 caliber armor piercing ammunition); grenade launcher parts, flare launchers, K-bar fighting knives, night vision equipment, hand grenade hulls, kevlar helmets, bullet proof vests and other similar equipment.

8. It was a part of the conspiracy that Defendants **BRAD EUGENE BRANCH** and **PAUL GORDON FATTA** would and did make the necessary arrangements to obtain The Mag Bag location, which had a mailing address of Route 7, Box 555, Waco, Texas. It was further a part of the conspiracy that Defendant **PAUL GORDON FATTA** would and did acquire a Texas Sales and Use Tax Permit in the name of "The Mag Bag." It was a part of the conspiracy that Defendants **WOODROW KENDRICK**, also known as **BOB KENDRICK**, and **NORMAN ALLISON**, also known as **DELROY NASH**, would and did occupy the premises for the purpose (among others) of receiving paramilitary supplies.

9. It was a part of the conspiracy that Defendants **BRAD EUGENE BRANCH**, **JAIME CASTILLO**, **PAUL GORDON FATTA**, and **WOODROW KENDRICK**, also known as **BOB KENDRICK**, and others would and did acquire and assist in the acquisition of weapons to be used in the

"war" with the United States, including .50 caliber semi-automatic rifles.

10. It was a part of the conspiracy that Defendant PAUL GORDON FATTA and others, would and did assist in converting legally purchased semi-automatic rifles to fully automatic rifles. It was a part of the conspiracy that inert hand grenade shells would be converted to live hand grenades for the purpose of waging "war" against the United States government.

11. It was a part of the conspiracy that on February 28, 1993, after becoming aware of a planned search of the premises of the Mt. Carmel Compound, by agents of the ATF, Vernon K. Howell, also known as David Koresh, would and did instruct his followers to prepare for the arrival of the federal agents. It was a part of the conspiracy that KATHRYN SCHROEDER, BRAD EUGENE BRANCH, KEVIN A. WHITECLIFF, CLIVE J. DOYLE, JAIME CASTILLO, LIVINGSTONE FAGAN, GRAEME LEONARD CRADDOCK, RENOS AVRAAM, RUTH OTTMAN RIDDLE, and others would and did change into camouflage/combat clothing and equipment, gather their pistols and rifles, load magazines, distribute hand grenades, assume ambush positions and engage in other conduct designed to kill and attempt to kill and aid and abet the killing of Agents of the ATF upon their arrival at the Mt. Carmel Compound.

12. It was a part of the conspiracy that on February 28, 1993, after the ambush of ATF agents at the Mt. Carmel Compound by their coconspirator, Defendants NORMAN ALLISON, also known as DELROY NASH, and WOODROW KENDRICK, also known as BOB KENDRICK,

and another person would arm themselves at The Mag Bag and endeavor to forcibly enter the Mt. Carmel Compound to assist their coconspirators.

13. It was a part of the conspiracy that after the initial ambush of the ATF, Defendants KATHRYN SCHROEDER, BRAD EUGENE BRANCH, KEVIN A. WHITECLIFF, CLIVE J. DOYLE, JAIME CASTILLO, LIVINGSTONE FAGAN, GRAEME LEONARD CRADDOCK, RENOS AVRAAM, RUTH OTTMAN RIDDLE, and others would and did forcibly resist and oppose agents of the FBI who were authorized to execute search warrants under the authority of the United States from February 28, 1993, until each of them emerged from the Mt. Carmel Compound.

14. It was a part of the conspiracy that on April 18, 1993, Vernon K. Howell, also known as David Koresh, and Steven Schneider would and did finalize a plan to burn the Mt. Carmel Compound in the event an effort was made to finally end the siege by the FBI. This plan was communicated to other residents of the compound.

15. It was part of the conspiracy that on April 19, 1993, some of the conspirators would and did fire upon tanks and other vehicles manned by FBI agents in an attempt to drive them back from the Mt. Carmel Compound.

16. It was a part of the conspiracy that on April 19, 1993 Vernon K. Howell, also known as David Koresh, would give instructions to spread flammable fuel within the Mt. Carmel Compound upon learning that the FBI was to introduce tear gas into the Compound to end the Siege. It was a part of the conspiracy that an unidentified coconspirator would and did give instructions

at about noon on April 19, 1993, to start the fires within Mt. Carmel.

OVERT ACTS

In furtherance of such agreement and conspiracy and to effect the objects thereof, the Defendants and their conspirators, known and unknown, committed the following overt acts, among others:

1. On August 4, 1992, in the Western District of Texas, Vernon K. Howell, also known as David Koresh, executed documentation covering the purchase of 88 lower receivers for the AR-15 rifle, 16 handguns, and 10 rifles from Hewitt Handguns.

2. On February 28, 1993, in the Western District of Texas, Special Agent Steven D. Willis of the Bureau of Alcohol, Tobacco, and Firearms was shot and killed by conspirators while he was attempting to execute search and arrest warrants.

3. On February 28, 1993, in the Western District of Texas, Special Agent Robert Williams of the Bureau of Alcohol, Tobacco, and Firearms was shot and killed by conspirators while he was attempting to execute search and arrest warrants.

4. On February 28, 1993, in the Western District of Texas, Special Agent Conway C. LeBleu of the Bureau of Alcohol, Tobacco, and Firearms was shot and killed by conspirators while he was attempting to execute search and arrest warrants.

5. On February 28, 1993, in the Western District of Texas, Special Agent Todd W. McKeehan of the Bureau of Alcohol, Tobacco, and Firearms was shot and killed by conspirators while he was attempting to execute search and arrest warrants.

6. On April 19, 1993, in the Western District of Texas, Agents of the Federal Bureau of Investigation were fired upon by conspirators as they endeavored to serve arrest and search warrants.

All in violation of Title 18, United States Code, Section 1117.

COUNT TWO
[18 U.S.C. §§ 1114
1111(a), and 2]

On or about February 28, 1993, in the Western District of Texas, Defendants,

KATHRYN SCHROEDER
BRAD EUGENE BRANCH
KEVIN A. WHITECLIFF
CLIVE J. DOYLE
JAIME CASTILLO
LIVINGSTONE FAGAN
PAUL GORDON FATTA
WOODROW KENDRICK,
aka BOB KENDRICK
NORMAN WASHINGTON ALLISON,
aka DELROY NASH
GRAEME LEONARD CRADDOCK
RENOS AVRAAM,
and
RUTH OTTMAN RIDDLE,

by aiding and abetting unknown principals and each other did knowingly, willfully, and unlawfully kill, with malice aforethought, ATF Special Agents Steven D. Willis, Robert Williams, Conway C. LeBleu, and Todd W. McKeehan, Special Agents of the Bureau of Alcohol, Tobacco and Firearms, while said agents were engaged in the performance of their official duties, by shooting the said Agents with a firearm, in violation of Title 18, United States Code, Sections 1114, 1111(a), and Title 18, United States

Code, Section 2.

COUNT THREE
[18 U.S.C. § 924(c)(1)]

On or about February 28, 1993, in the Western District of Texas, Defendants,

KATHRYN SCHROEDER
BRAD EUGENE BRANCH
KEVIN A. WHITECLIFF
JAIME CASTILLO
CLIVE J. DOYLE
LIVINGSTONE FAGAN
PAUL GORDON FATTA
GRAEME LEONARD CRADDOCK
RENOS AVRAAM
and
RUTH OTTMAN RIDDLE

did knowingly use and carry a firearm during and in relation to the commission of a crime of violence which may be prosecuted in a court of the United States, to-wit: Conspiracy to Murder Officers and Employees of the United States, in violation of Title 18, United States Code, Sections 1117 and 1114, all in violation of Title 18, United States Code, Section 924(c)(1).

COUNT FOUR
[18 U.S.C. §§1114]
1111(a) and 2]

On or about February 28, 1993, in the Western District of Texas, Defendants,

NORMAN WASHINGTON ALLISON, aka
DELROY NASH,
and
WOODROW KENDRICK, aka
BOB KENDRICK,

by aiding and abetting Michael Schroeder, deceased, named as a principal, but not as a defendant herein, did knowingly, willfully,

and unlawfully attempt to kill, with malice aforethought, Charles Meyer, a Special Agent of the Bureau of Alcohol, Tobacco and Firearms, while said agent was engaged in the performance of his official duties, by shooting at Special Agent Charles Meyer with a firearm, in violation of Title 18, United States Code, Sections 1114, 1111(a), and Title 18, United States Code, Section 2.

COUNT FIVE
[18 U.S.C. § 924(c)(1)]

On or about February 28, 1993, in the Western District of Texas, Defendant,

WOODROW KENDRICK, aka
BOB KENDRICK,

did knowingly, willfully and unlawfully use and carry one or more of the following firearms, to-wit:

(1) an RG revolver, model RG 31, .32 caliber, bearing serial number 0194405;

(2) a Beretta pistol, model 92FS 9 mm, bearing serial number BER116248Z,

during and in relation to the commission of a violent crime which may be prosecuted in a court of the United States, namely, attempting to kill a Federal officer, contrary to Title 18, United States Code, Section 1114 and Section 2, and all in violation of Title 18, United States Code, Section 924(c)(1).

COUNT SIX
[18 U.S.C. § 924(c)(1)]

On or about February 28, 1993, in the Western District of Texas, Defendant,

NORMAN WASHINGTON ALLISON, aka
DELROY NASH,

did knowingly, willfully and unlawfully use and carry the following firearm, to-wit: a Jennings .22 caliber pistol, bearing serial number 628835, during and in relation to the commission of a violent crime which may be prosecuted in a court of the United States, namely, attempting to kill a Federal officer, contrary to Title 18, United States Code, Section 1114 and Section 2, and all in violation of Title 18, United States Code, Section 924(c)(1).

COUNT SEVEN
[26 U.S.C. § 5861(d)]

On or about April 19, 1993, in the Western District of Texas, Defendant,

GRAEME LEONARD CRADDOCK

did knowingly and unlawfully possess a firearm, as defined by Section 5845(a), Title 26, United States Code, namely an explosive grenade, being a firearm defined as a destructive device, which firearm was not registered to him in the National Firearm Registration and Transfer Record, in violation of Title 26, United States Code, Sections 5861(d) and 5871.

COUNT EIGHT
[26 U.S.C. § 5861(d)
and 18 U.S.C. § 371]

From on or about February 28, 1993, and continuing thereafter until on or about April 19, 1993, in the Western District of Texas, Defendant,

GRAEME LEONARD CRADDOCK

did knowingly and willfully, combine, conspire, confederate and agree with other persons both known and unknown to the Grand Jury,

to commit an offense against the United States, namely, to unlawfully possess a firearm as defined by Section 5845(a), Title 26, United States Code, to wit: a grenade, without having the said firearm registered to him in the National Firearms Registration and Transfer Record. In furtherance of the said conspiracy and to effect the objects thereof, the following overt act were committed by the Defendant of the Western District of Texas:

1. On April 19, 1993, co-conspirator Vernon Howell, also known as David Koresh, gave GRAEME LEONARD CRADDOCK a grenade;

contrary to Title 26, United States Code, Section 5861(d) and in violation of Title 18, United States Code, Section 371.

COUNT NINE
[18 U.S.C. § 371
(18 U.S.C. § 922(o))]

On or about February 1992, and continuing thereafter until on or about February 1993, in the Western District of Texas, Defendant,

PAUL GORDON FATTA

did intentionally, knowingly and willfully combine, conspire, confederate and agree with other persons to the Grand Jury both known and unknown to commit an offense against the United States, namely, to unlawfully manufacture and possess machineguns, without having the said firearms registered to him in the National Firearms Registration and Transfer Record. In furtherance of the said conspiracy and to effect the objects thereof, the following overt acts were committed by the defendants in the Western District of

Texas:

1. On March 21, 1992, **PAUL GORDON FATTA** purchased a FEG, Model SA85M rifle, 7.62 caliber, Serial No. SL02791;

2. On January 16, 1993, **PAUL GORDON FATTA** purchased a H&K, SP89, pistol, 9 mm, Serial No. 2122147;

contrary to Title 18, United States Code, Section 922(o), and in violation of Title 18, United States Code, Section 371.

COUNT TEN
[18 U.S.C. §§ 2 and 922(o)]

Beginning about February 1992 and continuing thereafter until about February 1993, in the Western District of Texas, Defendant,

PAUL GORDON FATTA

intentionally and knowingly did aid and abet Vernon Howell, also known as David Koresh, in the unlawful possession of machineguns, contrary to Title 18, United States Code, Section 922(o), and in violation of Title 18, United States Code, Section 2.

A TRUE BILL:

FOREPERSON

JAMES H. DeATLEY
ACTING UNITED STATES ATTORNEY

By: W. Ray Jahn
W. Ray Jahn
Assistant U. S. Attorney

CHARLIE

ONE
Green military (INCIND.)
SMOKE

1st target - Bunker
2-3 Ferrets

Shot bunker before compromise
3-3 Ferrets
then military round
then tower
then closest target

Can explain smoke

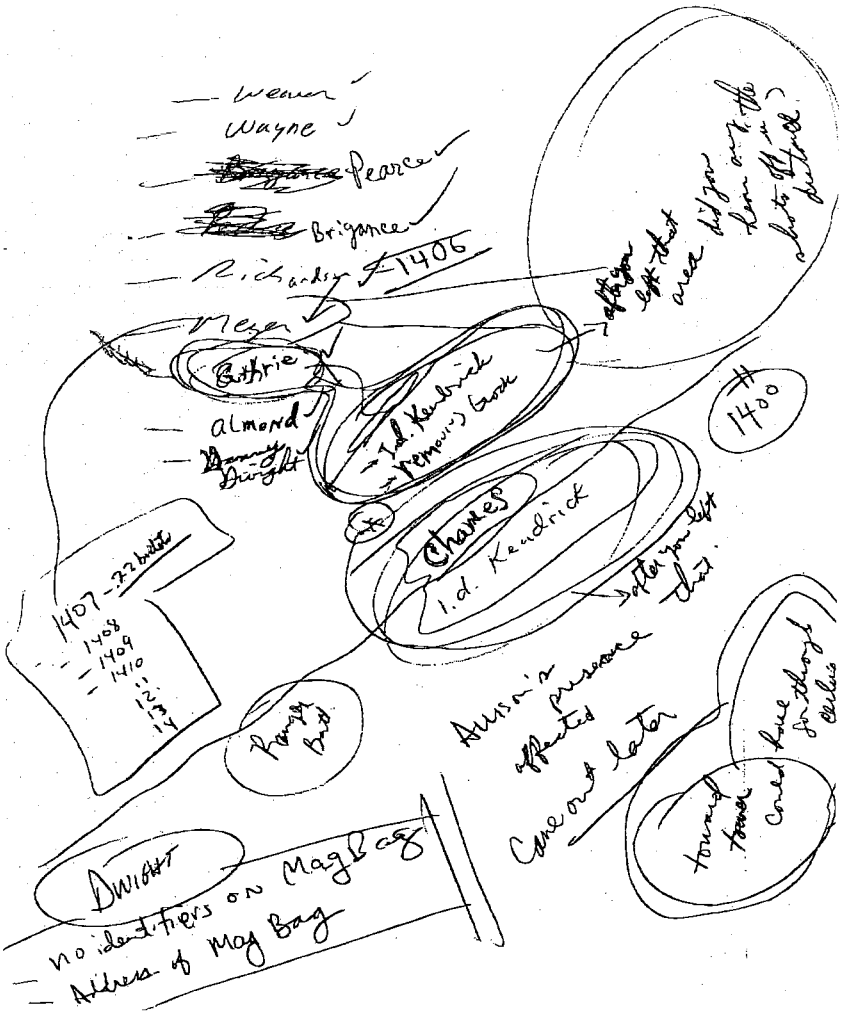
Mohr bw

Bunker's counterpart
misty

Fire started on Bradley
Interwh/Gr.
king position

EXHIBIT
82

09/08/2000 15:39 [redacted] EXECUTIVE SUITES PAGE 04



— Weaver
— Wayne
— ~~Brigance~~ Pearce
— ~~[illegible]~~ Brigance
— Richardson #1406
— Meyer
— Guthrie
— Almond
— ~~Danny~~ Dwight

— I.d. Kendrick
— removing Grock

— after you left that area did you hear any of the shots off in the distance

#1400

Charles
I.d. Kendrick
— after you left that

1407 — 22 bullets
— 1408
— 1409
— 1410
— 11
— 12
— 13
— 14

Ranger Bat

Aussin's presence affected

Came out later

toward tower
Could have gone through cerlus

Dwight
— no identifiers on Mag Bag
— Address of Mag Bag

09/08/2000 15:39 [redacted] EXECUTIVE SUITES PAGE 03

DO NOT MENTION BOB

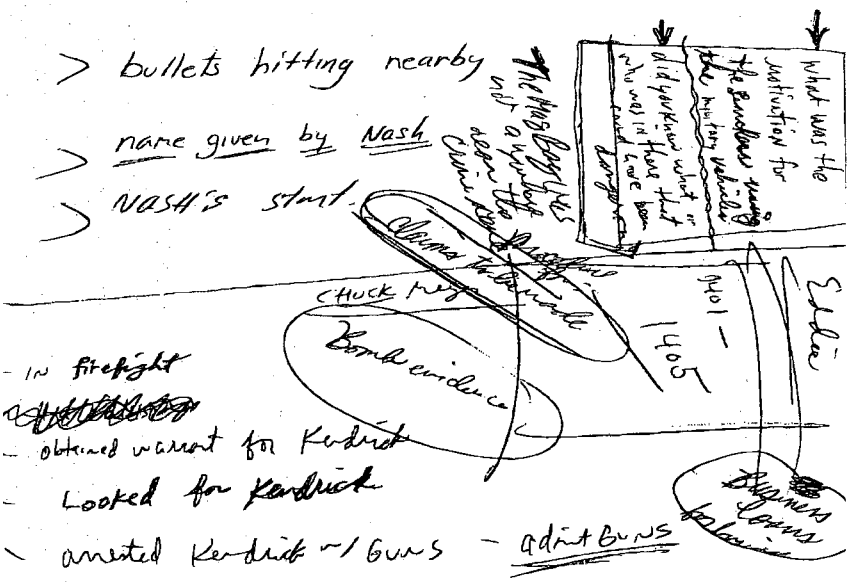
Jimmy Briggman

> SEE schroeder what has.

> bullets hitting nearby

> name given by Nash

> NASH'S story



- IN firefight
- [redacted]
- obtained warrant for Kendrick
- Looked for Kendrick
- arrested Kendrick w/ GUNS - admit GUNS

From: Richard Durbin
To: bblagg,jmurphy
Date: 9/8/99 4:47pm
Subject: Brady Review

In reviewing the most recent fax from David Margolis, 25 pages, dated September 7, 1999, there appear to be two areas of concern:

1. The area of LeRoy Jahn's notes, noted in the handwritten cover memo, including a reference to "pyrotechnic." I spoke with LeRoy about the meaning of the notes this afternoon, and she explains that the notes of an interview of ASAC Steve McGavin refer to discussions had on April 19, 1993, about efforts to obtain additional quantities of tear gas. The notes indicate: "Discussed # Ferrets left (already made ferret run)
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Although this information does not appear to be Brady, it is based on Ms. Jahn's interpretation of her notes, and I would be inclined to disclose and let defendants file a motion if they think they have a basis to let the matter be answered on the record.

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I would be inclined to make Brady disclosure due to reference of flashbangs being shot and recognition that it was without authorization.



USAOEDTX
130-01606

130-01606

From: Richard Durbin
To: bblagg,jmurphy
Date: 9/8/99 4:47pm
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USAOTX
130-01606

USAO EASTERN DISTRICT OF TX

EXHIBIT
84

WWC289-0883
CNG016-0883

From: Bill Blagg
To: rdurbin
Date: 9/8/99 8:33pm
Subject: Brady Review -Reply

Richard: I have briefly reviewed and concur with your feelings on the subject. I will review more carefully at first available time for final decision but am inclined, as you to send as potential Brady and explain it at any hearing on the matter.

CC: jmurphy

USAWDTX
130-01605

130-01605

Memorandum

FAXED BY JRG DATE 9/9/99

Subj	Date
Davidian Brady Review	September 9, 1999

To	From
David Margolis Associate Deputy Attorney General	Richard L. Durbin, Jr. Chief, Criminal Division

Reviewing materials faxed from your office on September 7 and September 8, I noticed several matters that should be called to your attention.

First, on the attached page from the HRT Interview Schedule (identified as "Document 2" in your September 7 fax), the entry under notes for the interview of Tom Rowen, apparently conducted by Bill "Johnson" (sic) and Reneau Longoria, indicates: "SHOT FLASHBANGS AT PEOPLE COMMING OUTSIDE W/O AUTHORIZATION." According to those notes, Tom Rowen was in a tank driven by Mike [Sacket]. This plainly contradicts the assertion on page 3 of the Feb. 15, 1996, Memo from FBI Office of General Counsel (faxed to us on Sept. 8) that "While flashbang diversion devices were utilized on a few occasions during the 51 day operation, none were deployed on April 19, 1993."

Second, in the same notebox for witness Rowen, there is the assertion, "TOM HAS SOMEONE LEANING OUT AND SHOTING AT HIM HE RETURNS FERRETS." This notation is not entirely clear, but may contradict another assertion in the memo from FBI Office of General Counsel at page 3, that "Approximately 380 ferret rounds were fired into the Branch Davidian compound, not at Branch Davidians."

Third, the notes pertaining to the interview of HRT member Dave Corderman, apparently conducted by Bill Johnston and paralegal Longoria, make reference to "1 MILITARY" round, and further describe it as a "GREY BUBBLEHEAD W/GREEN BASE." This appears to conflict with another assertion on page 3 of the memo from FBI Office of General Counsel that "No HRT personnel have any knowledge of the term 'bubblehead.'"

We are continuing to conduct our *Brady* review of materials we receive from your office. We are awaiting clarification on the status of recusal before we begin searching through the trial materials in our custody for further *Brady* information and for compliance with the Congressional subpoena. We have not yet furnished the above materials to counsel for the Davidian defendants, but are inclined to make disclose of those and the other pages to allow full litigation of any issues.

USAUDTX 130-01599

130-01599

ECHO TEAM		BILL JOHNSON AND RENEAU LONGORIA		
ED DAER	11/9		4/19 ED & BOB IN M-60 FOX HOLE BY BUS	NO
JEFF EASTER	11/9		4/19 JEFF AND DOMINICK ON S-2 SAW	NO
BOB HICKEY	11/9		-THINKS 50 CAL WAS USED JUST AFTER FIRE STARTED & HEARS FIRE OVER HEAD -SAYS CHARLIES' UNSUCESSFUL ATTEMPT TO PUT GAS IN THE BUNKER=SMOKE IN BIG LIE FILM -WHEN FIRE STARTED THEY WERE UP CLOSE W/ ENGINE OFF & HEARD SHOOTING INSIDE IN A DISTINCT RYTHM THOUGHT THEY WERE SHOOTING EACH OTHER -BOB HEARS A ROUND OVER HIS HEAD LARGER THAN A 300-POSS 50 CAL	NO
DAVE VENTURI	11/9			NO
B.V. #4				
TOM ROWEN	11/9	BILL JOHNSON AND RENEAU LONGORIA	-MIKE TOM & JOE IN TANK[MIKE DROVE-TOM SHOT-JOE TC & SPOTER] -SAW PORT HOLES -CLOSE AS 20 YARDS IN BRADLEY -GUY DRESSED AS GIRL DUMPING WASTE INTO POND-DEAD GUY -SHOT FLASHBANGS AT PEOPLE COMMING OUTSIDE W/O AUTHORIZATION -SAW SCHNIEDER & 2 OTHERS & PICKED UP LETTER DURING SMOKE CAN INCID -TOM HAS SOMEONE LEANING OUT AND SHOTING AT HIM HE RETURNS FERRETS ONLY BACK AND FORTH POPPING/FLASHE -HEARS CRACKING OVERHEAD WHILE AT BLACK WHITE CORNER	YES
MIKE SACKET	11/9		-BLACK D-1 FIRST TO SEE FIRE ALSO SAW FIRE FROM GD-1[JOE SAW FLASH B-D-1] -GOOD ON FIRE PROORSSION ON BLACK -RECIEVING FIRE DURING THIS TIME -SAW HANDGUN, GASMASK ETC FROM CRADDOCK	NO

USAUDTX
130-01600

09 07 99 TUE 17:12 FAX 015

130-01600

SEP-05-1999 14:35 DEPT OF JUSTICE 202[redacted] P.15/23

MCGEE	11/9				YES
GREEN SIDE					
CHARLIE TEAM					
DAVE CORDERMAN	11/9		BILL JOHNSON AND RENEAU LONGORIA	-51 DAYS FLASH BANGED IF CAME OUT NOTHING WAS PICKED UP -FERRET SHOOTER ON 19TH S-2 BRADLY -SMOKE ON FILM CAME FROM ATTEMPT TO PENETRATE BUNKER W/ 1 MILITARY AND 2 FERRET ROUNDS -MILITARY WAS GREY BUBBLEHEAD W/GREEN BASE -DAVE FIRES 3 ROUNDS INTO KITCHEN AND LESS THAN 30 SEC LATER SEES SMOK	NO UNLESS REBUTTLE
RICK INTELLINI	11/9			-TANK COMMANDER-DESCRIBES COMPROMISE -SAW BARRACADES BOXES AND MATTRES	NO
DAVE MOHR	11/9			-LOADER ON 19TH	NO
PULLANO	11/10			-DRIVER ON 19TH -HEARS GUNFIRE DURING THE TIME THE GUY WAS ON THE ROOF-SEES AVRAAM -GOOD DESCRIP OF FIRE FROM THAT PT -GOOD ON BUNKER INC. W/OPENING OFBACK AND SHOOTING AT ANGLE -BEST DESCRIP OF MISTY RESCUE(1ST SEE STANDING IN A DAZE 20-30 FT FROM BLDG ALSO TIES IN LOOKING FOR MAN WITH A GUN-OUTSIDE THE WIRE-CRADDOCK COULD BE SAME MAN IF HE STAYED INSIDE WIRE HELPS ARREST CRADDOCK -HE ASKS AND CRADDOCK TELLS HIM HOW HHHE GOT THERE	MAYBE REBUTTLE
SCOTT WARREN	11/9			-SAW BARREL AND SCOPE OF 50 CAL -RIFLE COVER ON 19TH -HEARS GUBFIRE WHEN FIRE STARTS-BACK OPEN FROM INSIDE	NO
WHITE/GREEN CORNER					
HOTEL TEAM					
CRAIG					
SHELLENBERGER					
WHITE SIDE					
CHARLIE TEAM					
HARRIS	11/9				NO
WALDEN	11/9				NO

USAWDTX
130-01601

09 07 99 TUE 17:12 FAX 017

130-01601

TO: OFFICE OF GENERAL COUNSEL From: CIRG
Re: 244-39 SUB CC, 02/15/1996

into the Branch Davidian compound was limited due to the ventilation of the building. The ATV gun battle with resultant bullet holes and broken windows, and escape routes created by the CEVs greatly reduced the effect and concentration of the CS. In addition, a particularly strong wind was blowing that day causing a good portion of the CS to be blown out of the building. The amount of CS used was well within the manufacturer's formula used to determine the amount to introduce into the compound. The amount of CS used never came near a lethal concentration. (Note: ASAC Anthony Betz, Baltimore Division, has knowledge concerning the formula for concentration levels of CS used in Waco.

TACTICAL CONSIDERATIONS

Page 5, paragraph 2

Shortly after the operation commenced on 4/19/93, the HRT (Charlie Team) determined, after two (2) or three (3) ferret rounds, that they were unable to penetrate the underground shelter roof which was their first target. Charlie Team then requested to use 40mm military CS rounds in an effort to penetrate the roof. Charlie Team was granted authority to fire the military CS rounds. A total of two (2) or three (3) rounds were fired at the underground shelter roof. These rounds hit the roof, bounced off and landed in the open field well behind the main structure. This occurred shortly after 6:00 am. These were the only military rounds utilized. In fact, the military CS rounds were prohibited from being fired into the main structure due to their potential for causing a fire. No HRT personnel have any knowledge of the term "bubblehead."

Page 6, paragraphs 1 & 2

Approximately 380 ferret rounds were fired into the Branch Davidian compound, not at Branch Davidians. No attempts were made nor was consideration ever given to penetrate the top of the four-story tower.

While flashbang diversion devices were utilized on a few occasions during the 51 day operation, none were deployed on April 19, 1993. The Nico projectible flashbangs utilized earlier are claimed by the manufacturer to have no fire potential.

Page 8, paragraph 3

USAWDTX
130-01602

130-01602

TRANSMISSION REPORT

:US ATTY WDTX (SEP 09 '99 08:39AM)

DATE	START TIME	REMOTE TERMINAL IDENTIFICATION	MODE	TIME	RESULTS	TOTAL PAGES	DEPT. CODE	FILE NO.
SEP 09	08:36AM	202 [redacted]	G3EST	02'20"	OK	04		

USAWDTX
130-01603

130-01603

From: Richard Durbin
To: bblagg,jmurphy
Date: 9/8/99 4:47pm
Subject: Brady Review

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USAOEDTX
130-01606

130-01606

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CC: jmurphy

USAWDTX
130-01605

7/0/11

According to LeRoy -
page 3 of notes.

Houston SWAT brought the wrong ferrets -
Houston brought military tape - there were
40 that were not issued -

witness was explaining that during search for
additional tear gas - Houston SWAT brought
rounds incompatible w/ the plan -

USAWDTX
130-01604

130-01604

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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
HAROLD E. FORD, JR., TENNESSEE
JANICE D. SCHAKOWSKY, ILLINOIS

BERNARD SANDERS, VERMONT,
INDEPENDENT

September 12, 2000

VIA FACSIMILE [redacted]

Gerald H. Goldstein, Esquire
Goldstein, Goldstein and Hilley
310 South St. Mary's Street
Tower Life Building
29th Floor
San Antonio, Texas 78205

Re: Mr. and Mrs. Ray and LeRoy Jahn

Dear Mr. Goldstein:

Mr. Goldstein, thank you again for speaking with me this afternoon. As I stated, the House of Representatives' Committee on Government Reform is conducting an investigation regarding the events surrounding the tragedy at the Branch Davidian compound located near Waco, Texas. Your clients, Mr. and Mrs. Ray and LeRoy Jahn, may possess information relevant to the Committee's inquiry. The Committee, therefore requests that they make themselves available for interview with Committee staff.

As I understand our conversation, you intend to speak with your clients regarding the Committee's request. You believe, however, that it is not likely that they will cooperate.

Please feel free to contact me as soon as possible with a final answer. As you requested, I enclose the Committee's web site address which is: http://www.house.gov/reform. Please also feel free to contact me if you have any questions or comments.

Sincerely yours,

André D. Hollis
Senior Counsel



ELI GOLDSTEIN
(1910-1998)
GERALD H. GOLDSTEIN
LICENSED IN TEXAS AND COLORADO
VAN G. HILLEY
PATRICK T. PERANTEAU
CYNTHIA HUJAR ORR
ANNE MORE BURNHAM

LAW OFFICES
GOLDSTEIN, GOLDSTEIN AND HILLEY
29TH FLOOR TOWER LIFE BUILDING
310 S. ST. MARY'S STREET
SAN ANTONIO, TEXAS 78205-3199

AREA CODE 210
TELEPHONE 226-1463

AREA CODE 210
TELEFAX 226-8367

September 21, 2000

Mr. Andre D. Hollis
Senior Counsel
Congress of the United States
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: ***Ray and LeRoy Jahn***

Dear Mr. Hollis:

Please be advised that I am in receipt of your letter dated September 12, 2000, which per our previous telephone conversation requests an interview with my above named clients regarding the Branch Davidian investigation and trial.

In that regard, please understand that I did not mean from my discussions with you to leave you with the impression that it was "not likely that [my clients] will cooperate" with the House Committee's investigation. In fact, if you have any specific matters you would like to take up with them through counsel, I would encourage you to recontact me at any time.

However, in light of the numerous previous interviews my clients have already given to various government investigators, agencies, Commissions and Congress; and particularly in light of the misunderstandings which have been voiced on prior occasions, I have advised my clients that it would appear to serve no interest and would add little, if any, information to the vast pool of interviews and testimony already provided.

Again, I enjoyed visiting with you on the telephone earlier this month, and would be more than happy to receive further inquiries from you on behalf of my clients at any time.

Sincerely,

Gerald H. Goldstein
For GOLDSTEIN, GOLDSTEIN & HILLEY

GHG/dd



LEVEL 1 - 54 OF 81 STORIES

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The Dallas Morning News

August 31, 1999, Tuesday THIRD EDITION

SECTION: NEWS; Pg. 1A

LENGTH: 1368 words

HEADLINE: Waco prosecutor warns Reno evidence possibly withheld;
Notations about file on pyrotechnics use raised his concerns

SOURCE: Staff Writer of The Dallas Morning News

BYLINE: Lee Hancock

BODY:

A Waco federal prosecutor wrote Attorney General Janet Reno on Monday to warn that "individuals or components within the Department of Justice" may have long withheld evidence from her and the public about the FBI's use of pyrotechnic grenades on the day the Branch Davidian compound burned.

Assistant U.S. Attorney Bill Johnston said he felt compelled to warn Ms. Reno after he was given a 5-year-old document that discusses the use of "military gas" by the FBI on April 19, 1993. He said he was concerned because the document, a three-page set of notes detailing an interview with members of the FBI's hostage rescue team, included handwritten notations suggesting that it be kept from anyone outside the department's legal staff.

"There are handwritten notes on the documents discussing whether or not they should be disclosed, and, obviously, they have not been," said Mr. Johnston, the federal prosecutor involved longest in the Branch Davidian investigation.

"There was discussion about whether they should be turned over," he said. "Obviously, the decision was made somewhere in Washington that they were not to be."

Asked about the matter late Monday, Justice Department spokesman Myron Marlin said: "I wouldn't comment except to say that the attorney general received assurances that pyrotechnic tear-gas devices would not be used and were not used. And she has pledged to get to the bottom of this."

Mr. Johnston said he was presented with a copy of the document last week after officials divulged that the FBI had, in fact, used pyrotechnic tear gas on April 19.

A former senior FBI official told The Dallas Morning News that he had learned that two M651 CS tear-gas grenades had been fired at an area adjacent to the compound by members of the FBI's hostage rescue team. The official has maintained that use of the grenades had nothing to do with the fire that consumed the compound.



The issue has sparked a House committee investigation and also prompted angry congressional demands for an independent investigation of the FBI because Ms. Reno and other senior FBI and Justice Department officials have long maintained that nothing capable of sparking a fire was used by the government on April 19.

The compound burned that day with Branch Davidian leader David Koresh and more than 80 followers inside. The fire erupted about six hours after the FBI began using tanks and tear gas to try to force an end to a 51-day standoff.

Subpoenas issued

On Monday, the House Government Reform Committee issued subpoenas for Mr. Johnston and the Texas Rangers ordering them to present all their records concerning the use of pyrotechnic tear gas by the FBI.

The subpoenas ordered the prosecutor and the Rangers to appear on Sept. 7 in Washington.

Mr. Johnston has been assisting the Rangers since late June in an ongoing inquiry to identify questioned evidence that has been in the possession of the Texas Department of Public Safety since the Branch Davidian standoff.

The use of pyrotechnic devices on April 19 is a key issue in a pending wrongful-death lawsuit filed by surviving Branch Davidians and families of those who died.

The lawsuit contends that the government's negligence or deliberate actions caused the 1993 tragedy.

"One of the key issues in this case is who started the fire," said Joe Phillips of Houston, one of the lead lawyers for the Branch Davidians.

"Here the government is sitting on a piece of evidence that would guarantee that we could get the issue heard by a jury.

"If the lawyers in this case knew about that information and, in the face of our evidence showing pyrotechnics were used, just sat on this and continued to insist to the judge that no pyrotechnics were used, that's fraud on the court," Mr. Phillips said. "That's something that we were entitled to and should have been given access to long ago."

"About to choke'

Tim Evans, a Fort Worth attorney who defended one of the Branch Davidians in the 1994 criminal trial arising from the Waco standoff, expressed outrage Monday that the document seen by Mr. Johnston was never disclosed by federal prosecutors.

"The credibility of the federal agents was extremely important to the government's case in many issues, not just this. This succession of lies would have destroyed their credibility," Mr. Evans said. "Their lies have infected this case like maggots. Yet incredibly they still want us to pick out the maggots and swallow the rest of their story. I think America is about to choke."

Mr. Johnston said he has been ordered not to discuss the specific wording of the document or the handwritten notes. The notes apparently were added after the document was prepared.

The document was written by a paralegal working for the U.S. attorney's office in preparation for the 1994 federal prosecution of surviving Branch Davidians.

The paralegal was interviewing members of the FBI's hostage rescue team, which was involved in the final assault on the Branch Davidian compound.

Mr. Johnston said the document indicates that he may have been present during the interviews. He said he did not recall the interviews and said the term "military gas" did not register with him.

"If that document says I was there, then I was there. While I don't recall it, I can say the term "military gas round' meant little or nothing to me, because I am unfamiliar with military ordnance," he said.

"I'll bet that the attorney general would like to have known about these documents long before now, and my letter is an attempt to bring these and other facts to her attention."

Federal officials in Washington who spoke on condition of anonymity confirmed Monday that the 1993 notes surfaced last week along with a 1996 FBI legal memo.

The officials said the memo was written by the FBI's general counsel's office after civil Justice Department lawyers notified them about the 1993 notes and also asked about allegations being raised by the Branch Davidians' lawyers about the use of pyrotechnic devices by the FBI.

FBI officials questioned members of the hostage rescue team and then prepared a memo stating that two military gas grenades had been launched about 6 a.m on April 19, six hours before the compound burned, one federal official said.

Matter of wording

The officials said that no one involved in preparing the memo realized that the term "military gas" appeared to be shorthand for pyrotechnic tear-gas grenades. Ordnance experts say all CS tear-gas grenades used by the U.S. military are pyrotechnic devices.

The federal officials said that the notes referring to the use of military gas were among thousands of Justice Department documents subpoenaed for 1995 House hearings on the Branch Davidian standoff. One federal official noted that the military jargon used in the note was probably unfamiliar to and overlooked by congressional investigators.

Another federal official familiar with the document said it may have been marked with nondisclosure warnings because of an agreement made with Congress prior to the 1995 hearing.

"Its release would violate the privacy act, because it included the names of specific individuals," the federal officials said.

A spokesman for the House Government Reform Committee said Monday that the panel, which held the 1995 hearing, knew nothing about the documents in question.

"We intend to get them, and we will get to the bottom of this," said committee spokesman Mark Corallo.

Mr. Johnston acknowledged that his letter to Ms. Reno may open him to criticism but said he felt he needed to ensure that the attorney general was personally aware of the documents.

"There's been significance given to these documents in the last few years because of the civil suit. Whether or not these documents have been or should have been given to plaintiffs and criminal defense attorneys is an issue that the department is going to have to answer," he said.

"I am very concerned," Mr. Johnston said. "I would rather not discuss the details of my letter to the AG, but I can certainly tell you that I'm very concerned that information which should've been made known to her and to the public has not been."

LANGUAGE: ENGLISH

LOAD-DATE: September 2, 1999

1ST STORY of Level 1 printed in FULL format.

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September 1, 2000, Friday, Final Edition

SECTION: A SECTION; Pg. A01

LENGTH: 1435 words

HEADLINE: Waco Whistleblower Faces Indictment; Prosecutor Sparked Danforth Probe

BYLINE: David A. Vise , Washington Post Staff Writer

BODY:

The whistleblower who sparked a probe into whether the federal government was responsible for the deaths of 74 Branch Davidians near Waco, Tex., has been notified he faces criminal charges after acknowledging he withheld notes from special counsel John C. Danforth's investigators and misled a federal grand jury about the papers.

Prosecutors have told former assistant U.S. attorney William Johnston they will seek to indict him on charges of perjury, obstruction of justice, making false statements and obstructing a congressional investigation unless he agrees to a plea bargain.

Though he acknowledges withholding three pages of notes he feared would be used to smear him, Johnston, 41, asserted that he did not commit a crime and will not plead guilty to a felony, which would cause him to lose his law license in Texas.

If Danforth's prosecutors follow through on their threat to indict Johnston, it would mark the first and only criminal prosecution to come out of the $ 12 million probe, which began a year ago with Johnston's disclosure of evidence that FBI agents had used incendiary tear-gas projectiles during the 1993 raid in Texas.

It also would stand in sharp contrast to the former senator's decision not to indict several other people who committed wrongdoing, including a junior FBI lawyer who misled investigators.

What makes Johnston's case different, sources familiar with it said, is that he triggered the Danforth probe and then did not cooperate fully with investigators, drawing the ire of front-line prosecutors working on the case.

Danforth's "treatment of Bill is completely the opposite of the way he treated other people who misstepped during the course of this investigation," said Michael Kennedy, Johnston's lawyer. "The only distinction I can see between Bill's mistakes and the mistakes of other people is that he is a whistleblower who caused a tremendous amount of embarrassment."

Danforth, his staff and Justice Department officials all declined to comment on any aspect of the pending indictment.



The Washington Post, September 1, 2000

On Aug. 31, 1999, Johnston wrote a letter to Attorney General Janet Reno, contending that FBI agents had fired potentially incendiary devices at the Branch Davidian compound before it went up in flames during the now infamous FBI raid of April 19, 1993.

Johnston contended in a written statement to The Washington Post that he sent the letter directly to Reno after notifying his immediate superiors, to no avail, that the attorney general and other senior law enforcement officials were misleading the public and Congress with statements that no potentially flammable devices had been used.

Johnston discovered the incendiary projectiles after allowing documentary filmmaker Mike McNulty to search through evidence of the raid kept in a Waco storage room. Texas law enforcement officials who examined the tear-gas canisters confirmed that they had the potential to catch fire.

Johnston's letter to Reno caused a huge controversy when it became public because it raised the possibility that the FBI may have been responsible for starting the blaze, as some relatives of the dead and FBI critics had long claimed.

In fact, Danforth's probe determined last month that the FBI did not cause the fire, and a jury in a civil lawsuit brought by families of the dead also found in favor of the FBI. Danforth also concluded that there was no "massive cover-up" by the government of the use of potentially flammable devices.

Since 1993, Johnston has been a critic of the FBI's handling of the Waco siege. He wrote Reno on March 23, 1993, for example, to complain that FBI agents had "altered the crime scene" where four law enforcement agents were shot and killed by pushing Branch Davidian vehicles away from the compound.

Johnston admits that he withheld from Danforth's investigators several pages of notes he took in 1993 because he feared they would be used by adversaries inside the Justice Department to damage his reputation by making it appear he had covered up the FBI's use of flammable devices.

Johnston's notes included the word "pyrotechnic" and the abbreviation "incind," which Kennedy said stood for "incendiary."

Johnston said he took the notes as he prepared the ultimately successful case against Branch Davidians who had shot and killed the four Bureau of Alcohol, Tobacco and Firearms agents in February 1993, two months before FBI agents stormed the compound and ended the 51-day siege at Waco.

Johnston did not recognize the significance of those words at the time because he was focused on his prosecution, Kennedy said. Other government officials have acknowledged, at congressional hearings and elsewhere, learning long before 1999 about incendiary tear-gas rounds being fired, without recognizing the importance of that information at the time.

Johnston said he did not recall taking the notes he intentionally failed to turn over. He also claimed he has been subjected to intimidation tactics, including an anonymous fax to him from the U.S. Attorney's Office in San Antonio of notes showing that he had attended a 1993 meeting at which an FBI agent referred to the use of "military rounds." In fact, Kennedy said, Johnston did

not attend the meeting.

"The implied threat was clear," Johnston said. "I had better keep quiet about the incendiary ammo or else someone was planning to make it look as though I had concealed its use myself."

Kennedy also acknowledged that when Johnston was questioned before a grand jury and privately by Danforth's prosecutors, Johnston was not truthful about withholding the notes. Johnston also concedes that "I was at times less than candid with their inquest."

After 17 years as a prosecutor, Johnston resigned as the senior U.S. attorney in Waco last February after becoming a pariah for "breaking the code of silence," Kennedy said.

Kennedy claimed the real reason Johnston is being singled out by Danforth--while an FBI lawyer and several others who committed similar errors are not--is that he spoke out.

"It is ironic that Danforth sees the major [problem] is the public's loss of confidence in government as a result of people saying government did a lot of bad things," Kennedy said. "Danforth blames the media, filmmakers with dark theories and whistleblowers. These are the people in his mind who are the real culprits, because they have created public cynicism about government."

When he released his Waco report last month, Danforth said, "Although the government did nothing evil on April 19, 1993, the failure of some of its employees to fully and openly disclose to the American people the use of pyrotechnic devices undermined public confidence in government and caused real damage to our country."

Danforth has told Congress that he has nearly completed his work as special counsel and has no intention of bringing criminal charges against a junior FBI attorney who misled investigators because it would be like "hitting a gnat with a sledgehammer."

In his written statement, Johnston said that over the past year, prosecutors working for Danforth have attempted to "coerce" him into pleading guilty.

"The Danforth people will . . . need to account for their own actions, specifically for the climate of deceit, intimidation, vindictiveness and scant regard for constitutional rights in which their supposed search for truth has been conducted.

"Mr. Danforth's prosecutors and investigators have lied to me, made me false promises, cursed me with profanity and threatened to throw me in jail. [Danforth prosecutor] James Martin told my law partner in Waco that my 'life is over.' Not my career, mind you; my life."

Kennedy said he did not believe Danforth was aware of the hardball tactics allegedly employed by his prosecutors.

U.S. District Judge Walter Smith Jr., who presided over the criminal and civil Waco trials, recently attempted unsuccessfully to contact Danforth to intervene on behalf of Johnston, who is highly regarded by the defense bar and

other legal officials in Waco.

After being rebuffed by prosecutors working for the former senator, Smith responded by ordering the postal inspectors conducting the probe for Danforth out of the offices they occupied in his Waco courthouse.

Kennedy said prosecutors sent him a letter Wednesday outlining the scope of the pending indictment. He also said his client had not been offered the chance to plead guilty to a lesser misdemeanor charge that would not lead to revocation of his law license.

"They are going to indict," Kennedy said. "The only question is when."

LANGUAGE: ENGLISH

LOAD-DATE: September 01, 2000

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Bill Johnston Assistant US Attorney, 700 South University Parks Drive, Waco, Texas 76706

You are hereby commanded to produce the things identified on the attached schedule before the Full Committee on Government Reform of the House of Representatives of the United States, of which the Hon. Dan Burton is chairman, by producing such things in Room 2157 of the Rayburn House Ofc. Building, in the city of Washington, on September 7, 1999, at the hour of 5:00 PM

To Kim Reed or the US Marshals!

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 30th day of August, 19 99

Dan Burton
Chairman.

Attest:

Jeff Trandahl
Clerk.

EXHIBIT 91

SCHEDULE A

Subpoena Duces Tecum
Government Reform and Oversight Committee
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Please Serve:
Bill Johnston
Assistant United States Attorney
700 South University Parks Drive
Waco, Texas 76706

The Committee hereby subpoenas certain records. If you have any questions, please contact Chief Investigative Counsel James C. Wilson at (202) 225-5074.

Definitions and Instructions

1. For the purposes of this subpoena, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, drawings, computer entries, computer printouts, computer tapes, external and internal correspondence, diagrams, diaries, documents, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

2. For purposes of this subpoena, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including, but not limited to, records concerning the preparation of other records.

3. This subpoena calls for the production of records, documents and compilations of data and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which

you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the subpoena includes all records to the present.

4. The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

5. No records, documents, data or information called for by this subpoena shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

6. If you have knowledge that any subpoenaed record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

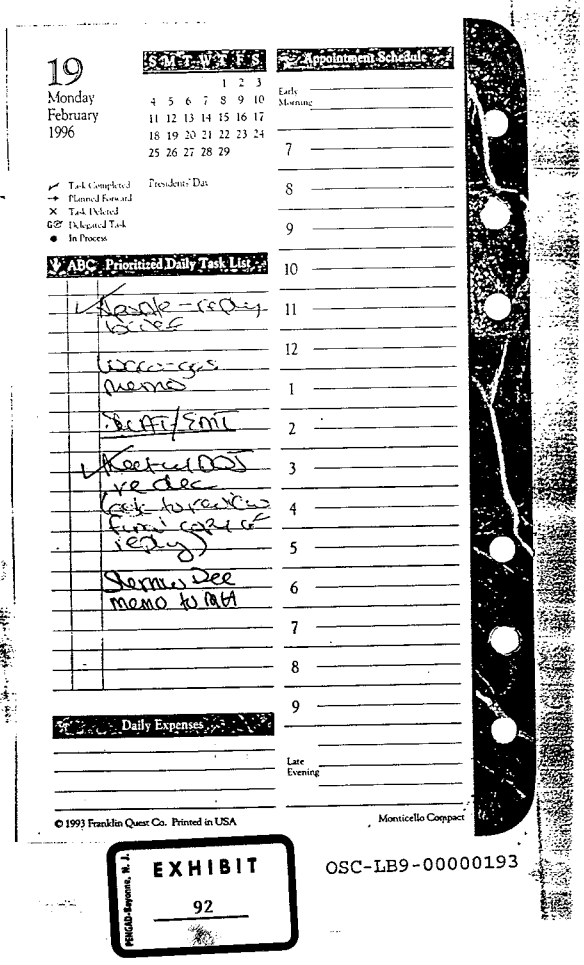
7. When invoking a privilege as to any responsive record, document, data or information as a ground for withholding such record, document, data or information, list each record, document, compilation of data or information by date, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege.

8. This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

9. Please provide a printed and, where possible, an electronic version of records. Electronic information may be stored on 3 1/2 inch diskettes in ASCII format. In addition, please provide an additional copy of all records provided for the Committee's Minority Staff.

Subpoenaed Items

Please provide the Committee with all records relating to CS pyrotechnic tear gas rounds employed at the Waco standoff.



19
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Task Completed
Planned Forward
Task Deleted
Delegated Task
In Process

Presidents' Day

ABC Prioritized Daily Task List

Appointment Schedule

Early Morning
7
8
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12
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3
4
5
6
7
8
9
Late Evening

Daily Expenses

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EXHIBIT
92

OSC-LB9-00000193

Mr. H. M. Shapiro 2/12/96

V. G. Buckles

MATTERS OF INTEREST
CIVIL LITIGATION UNIT I
WEEK OF: 2/5/96 - 2/9/96

VANESSA STEWART, Individually and as Parent and Natural Guardian of TERRY MARK RICH and ALICIA D. SMITH v. UNITED STATES OF AMERICA (SECOND CIRCUIT) (BROWN)

The Second Circuit has recently issued the following scheduling order: 02/09/96 status conference with court's clerk; 02/23/96 record must be filed; 03/01/96 appellant's brief and joint appendix due; 04/01/96 appellee's brief due; oral arguments to be heard as early as the week of 04/22/96.

WACO UPDATE (BUCKLES/BROWN)

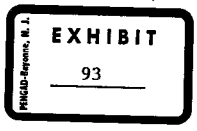
ANDRADE, et al. v. CHOJANCKI, et al.

and consolidated actions:
HOLUB v. RENO, FERGUSON v. RENO, BROWN v. U.S., RIDDLE v. RENO, GYARFAS v. RENO, and MARTIN v. U.S.
(U.S.D.C. S.D. TEXAS -- HOUSTON DIVISION)

The United States' reply to plaintiffs' opposition to our motion to dismiss and/or for summary judgment is due to be filed 02/16/96. We are assisting DOJ in responding to (1) the declaration of RICHARD L. SHERROW regarding the possible cause of the fire (he opines that the fire was started when a CEV made contact with the southeast tower causing a lantern to tip over onto combustible material); and, (2) plaintiffs' claim that the

1 - Mr. Kelley, Room 7427
1 - Mr. Maddock, Room 7159
1 - Mr. Parkinson, Room 7435
1 - Ms. Osofsky, Room 7159
1 - Mr. Bowman, Room 7358
1 - Mr. Moschella, Room 7358
1 - Mr. Andersen, Room 7326
1 - Mr. Blake, Room 7927
1 - Ms. Buckles, Room 7937
1 - Mr. Cignoli, Room 5448
1 - Mr. P. Kelley, Room 7338
1 - Mr. Schofield, Quantico
1 - Mr. Schroeder, NP 300
1 - Mr. Williams, Room 7947
1 - Ms. Zall, Room 7955
1 - Mr. F. Campbell, Room 7435
1 - Mrs. Sauer, Room 7427
1 - CLU I, Room 7937

VGB:tb (19)



(CONTINUED-OVER)

Matters of Interest
Civil Litigation Unit I
2/5/96 - 2/12/96

FBI violated its own internal regulations. [redacted]

LEDA O'BRIEN v. UNITED STATES DEPARTMENT OF JUSTICE, ET AL. (U.S.D.C., D.Ariz.) (JENSEN)

The plaintiff claimed the SAC along with a number of other defendants used illegal surveillance techniques in order to harass her and take over her life. This lawsuit was dismissed and the plaintiff was sanctioned. Plaintiff appealed the dismissal. On 1/25/96, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's decision.

PATRICIA MCGEE WATSON AS ADMINISTRATRIX OF THE ESTATE OF BRUCE EVERT WATSON, JR., AND EMAYA CHRISTINA WATSON, BY AND THROUGH HER NEXT FRIEND AND COURT APPOINTED GUARDIAN, PATRICIA MCGEE WATSON, v. UNITED STATES OF AMERICA AND DANNY A. SCOTT (U.S.D.C., N. Ga.) (JENSEN)

This lawsuit involves a civil action against the United States and a Special Agent (SA) as a result of the SA allegedly driving under the influence of alcohol. Although the Assistant United States Attorney (AUSA) and the plaintiff's attorney have discussed settlement possibilities, both parties have proceeded with discovery. On 1/18/96 and 1/19/96, four Federal Bureau of Investigation employees were deposed. The Chief Division Counsel from the Atlanta Division and AUSA attended the depositions. Civil Litigation Unit I (CLU I) will obtain a copy of the transcript for each deposition. CLU I will continue to monitor the case and the discovery process.

TERRENCE R. WEBB v. UNITED STATES OF AMERICA, FEDERAL BUREAU OF INVESTIGATION AND THE ATTORNEY GENERAL OF THE UNITED STATES (U.S.D.C., E.D. Va.) (JENSEN)

This lawsuit arises out of a forfeiture action in which the plaintiff's property was forfeited pursuant to Title 21, United States Code, Section 881, the Controlled Substance Act. The plaintiff claimed in his complaint that the forfeiture was improper since he was not "charged with or convicted of any violation of the Controlled Substance Act." With the assistance

OSC-OGC3-00000946

of CLU I, a motion to dismiss was filed in lieu of an answer by the United States Attorney's Office. The motion was granted on 1/3/96.

KENNETH GREGORY WILSON v. UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, EDWARD [sic] COGSWELL, STEVEN [sic] J. JOBE AND WILLIAM SCHROEDER, jointly and severally (U.S.D.C., E.D. Mich.) (JENSEN)

This matter arises out of a seizure and forfeiture of an automobile. The property was sold before the plaintiff's request for reconsideration was reviewed. Although the plaintiff received the proceeds from the sale of his property, he alleged that the defendants' actions violated the Fifth Amendment to the Constitution. CLU I assisted the AUSA with the preparation of a motion to dismiss. On 1/18/95, the motion to dismiss was granted.

CLIFFORD LEON HOUSTON V. CITY OF KINGSTON, TENNESSEE, et al. (U.S.D.C., E.D. TENN.) (COOPERSTEIN)

The District Court dismissed this Bivens action and claim for equitable relief on statute of limitations grounds. (Tennessee limits Bivens suits to one year.) Plaintiff had complained in 1993 of alleged civil rights violations by local police when they searched his home and arrested him. The Knoxville Division investigated, and after conferral with the Civil Rights Division of DOJ, determined that there was little basis for a claim. HOUSTON went ahead to sue the local police in federal court anyway, and won a judgment of only $150 for his effort. HOUSTON filed the present action against the FBI, claiming conspiracy in the purported failure to investigate the original civil rights complaint, and in the alleged introduction of a bag of marijuana at trial of HOUSTON's civil action against the local police.

CDC SAM ALLEN advises that HOUSTON has filed a Notice of Appeal of the dismissal to the Sixth Circuit. The Court of Appeals is expected to summarily affirm on motion.

Matters of Interest
Civil Litigation Unit I
2/5/96 - 2/12/96

BANK BRUSSELS LAMBERT, ET AL. v. CREDIT LYONNAIS (SUISSE) S.A., ET AL. (U.S.D.C., S.D.N.Y.) (IVASHKIV)

On 10/20/95, Magistrate Judge JAMES FRANCIS granted defendant Credit Lyonnais (Suisse) S.A. ("CLS") leave to serve subpoenas for the production of documents on the DOJ and the FBI. The court order directed the DOJ and the FBI to comply with the subpoenas. CLS requested materials gathered during the investigation and prosecution of ROY WILLIAM HARRIS, V.J. DISPENZA, and AROCHEM INTERNATIONAL, LTD. in United States v. Harris, No. 92 Cr. 455, brought in the United States District Court for the Southern District of New York.

Pursuant to the request of AUSA ELAINE WOOD, CDRU compiled two Privilege Logs on the documents located in FBIHQ files, and the FD-302s obtained from SA ED STROZ based on his review of documents in the FBI's New York file. AUSA MARIA HORN recently forwarded additional FBI documents located in the United States Attorney's Office. The documents will be reviewed, and the privilege logs will be supplemented, if necessary.

OSC-OGC3-00000948

Mr. H. M. Shapiro 11/12/96

V. G. Buckles

MATTERS OF INTEREST
CIVIL LITIGATION UNIT I
WEEK OF: 11/4/96 - 11/8/96

WILLIAM HARDMAN v. DEPUTY U.S. MARSHAL (SCHWARTZ)
JOHN REGHI, ET AL.
(U.S.D.C., E.D. MICH.)

This Bivens action arises out an attempt by Detroit's Alliance Fugitive Task Force to execute an arrest warrant. SA KEVIN TYUS, along with several Deputy U.S. Marshals and Detroit Police officers, went to plaintiff's residence based on information that the subject of a local warrant -- plaintiff's girlfriend's nephew -- resided and was present at the residence. According to plaintiff, the Task Force members forced their way into his residence and assaulted him. He claims to have been knocked unconscious during the assault, and to have suffered a fractured nose, lacerations to the face, and other abrasions. Trial is presently scheduled for 12/16/96.

On 11/5/96, a motion for summary judgment was filed on behalf of SA TYUS and the other federal defendants. The motion contends that there is no evidence that SA TYUS participated in any use of force against plaintiff and that SA TYUS was not in a position to prevent the use of force (if any was used) by the other officers. The motion also contends that SA TYUS did not make the decision to force entry into the house, and did not participate in forcing entry. Furthermore, the motion contends that SA TYUS (and the other officers) are entitled to qualified

1 - Mr. Kelley, Room 7427
1 - Mr. Maddock, Room 7159
1 - Mr. Parkinson, Room 7435
1 - Ms. Osofsky, Room 7159
1 - Mr. Bowman, Room 7975
1 - Mr. Andersen, Room 7326
1 - Mr. Blake, Room 7927
1 - Ms. Buckles, Room 7937
1 - Mr. Cignoli, Room 5448
1 - Mr. P. Kelley, Room 7338
1 - Mr. Schofield, Quantico
1 - Mr. Schroeder, NP 300
1 - ELU I, Room 7947
1 - Ms. Zall, Room 7955
1 - Mr. F. Campbell, Room 7435
1 - Mr. Fedarcyk, Room 7975
1 - Mrs. Sauer, Room 7427
1 - CLU I, Room 7937

VGB:tbh (19)



OSC-OGC3-00000983

immunity in connection with the forced entry since they had reasonable grounds for believing that the fugitive resided and was present at the residence.

Unfortunately, this latter contention is undermined by the deposition testimony of a neighbor, who now claims that she told SA TYUS that the fugitive did not reside at the subject residence. SA TYUS' contemporaneous notes reflect that on the day of the incident, the neighbor told SA TYUS that the fugitive did reside there. The AUSA anticipates that this and other factual disputes will probably result in the denial of the summary judgment motion.

ROBERT E. JOYCE v. JAMES CRAWFORD, POLICE OFFICER COLEMAN, JAMES FARMER, STEVEN HYMAN, JANET RENO (JENSEN)
(U.S.D.C., D. MASS.)

Plaintiff was involved in an armored car robbery with five other suspects. Even though the plaintiff pled guilty to the crime, he filed a lawsuit against the federal and state officials involved with his apprehension. The plaintiff claimed the defendants conspired to get him addicted to the drugs in order to motivate him to rob the armored car. The complaint was dismissed. Subsequently, the plaintiff appealed the dismissal. Civil Litigation Unit I will continue to monitor the appeal.

INSLAW, INC. ET AL. v. UNITED STATES (JENSEN)
(CT. CL.)

In this lawsuit, the plaintiffs allege that the Department of Justice (DOJ) misused the plaintiff's computer software by providing it to the Federal Bureau of Investigation (FBI). On 11/6/95, the judge held a status conference. During this conference, the judge denied the plaintiffs' request to move the software from FBI Headquarters (HQ) to the plaintiffs' facility. The experts, however, are permitted to visit FBIHQ as many times necessary to complete their examination. The judge indicated that the examination should be completed by 12/16/96. In spite of accusations by the plaintiffs that the FBI has not provided a "friendly" environment for the experts, the judge expressed appreciation for the FBI's willingness to cooperate. Civil Litigation Unit I will continue to work with DOJ regarding this matter.

OSC-OGC3-00000984

Matters of Interest
Civil Litigation Unit I
11/4/96 - 11/8/96

STEVEN GRAY v. UNITED STATES OF AMERICA (JENSEN)
AND CERTAIN UNNAMED AGENTS OF THE FBI
(U.S.D.C. W.D. Tenn.)

The cause of action concerns the plaintiff's allegations of negligence and assault and battery. Plaintiff was shot when he reached for his weapon after he was ordered to freeze during the arrest. The matter was set for trial on 6/17/96, but the plaintiff has requested a continuance. A status conference was held on 10/15/96. The trial has been rescheduled, and it is set to start on 12/17/96. Civil Litigation Unit I will continue to assist the Assistant United States Attorney prepare for trial.

WILSON T. TYLER, ET AL. v. (IVASHKIV)
UNITED STATES
(U.S.D.C., W.D. MI)

Plaintiff Wilson T. Tyler attended a demonstration entitled "Dances With Safes" which was sponsored by the National Independent Bank Equipment and Systems Association (NIBESA). The purpose of the demonstration was to illustrate the various types of bullet resistant glass. FBI Special Agent (SA) Robert O'Shea, from the New York Field Office, was the liaison with NIBESA and he travelled out to Las Vegas for the demonstration. He requested that NIBESA purchase an insurance policy to cover possible injuries during the demonstration because splashback can occur from rounds striking metal and glass targets.

The FBI Las Vegas Field Office (FO) made arrangements for the event to be held at the Metro Police Range near Las Vegas, Nevada. Another FBI SA, Bruce Yarborough, the Principle Firearms Instructor from the Las Vegas FO, was the person designated to shoot at the glass. In addition to the glass, there were steel safes and ATM machines at the shooting range. FBI SA Yarborough used his own 30-06 rifle during the demonstration. He also provided rifle ammunition which included military armor piercing rounds, commercial 30-06 ammunition manufactured by Eldorado Cartridge Company, and the commercial ammunition that was all copper 180 grain Barnes "X" bullets.

FBI SA Yarborough took his position at the range and fired two rounds of armor piercing ammunition from the 30-06 rifle at the one-half inch steel cabinet. He went to the cabinet, opened the door and pointed out that one of the rounds went through the door and the second round penetrated into the door. He walked over to the spectator area because there was a commotion there. FBI SA O'Shea was assisting an injured

OSC-OGC3-00000985

spectator. FBI SA Yarborough noticed the bleeding from plaintiff Tyler's shin from splashback. After this, he continued with the shooting demonstration. After he discharged a third round of fire, FBI SA Yarborough suffered a splashback wound to his own leg.

The Shooting Incident Review Group (SIRG) was highly critical of both SA O'Shea and SA Yarborough. The SIRG recommended that SA O'Shea receive a letter of censure for his failure to provide appropriate safety oversight during the shooting incident. The SIRG recommended that SA Yarborough receive a letter of censure for his violation of standard firearm safety procedures, his neglect to obtain concurrence from the Special Agent in Charge for his participation in the demonstration, and his use of extremely poor judgment since he continued the demonstration after the first injury. The SIRG also recommended his decertification as a firearms instructor. It is believed that SA Yarborough subsequently was suspended for five days because of this incident. Plaintiffs seek $5,000,000 in damages for personal injuries.

WACO UPDATE (BUCKLES/BROWN)

ANDRADE, et al. v. CHOJANCKI, et al.

and consolidated actions:

HOLUB v. RENO
FERGUSON v. RENO
BROWN v. U.S. (BROWN I)
RIDDLE v. RENO
GYARFAS v. U.S.
MARTIN v. U.S.
HOLUB v. U.S.
BROWN v. U.S. (BROWN II)
(U.S.D.C. W.D. TEXAS -- WACO DIVISION)

We assisted DOJ in preparing the United States' reply to the Andrade plaintiffs' response to the motions to dismiss and for summary judgment as to the second consolidated complaint and the Brown declarations of purported experts EDWARD ALLARD and RICHARD SHERROW. The United States contends that plaintiffs still have not shown that the U.S. has waived sovereign immunity for claims arising out of the investigation into the Davidians' illegal activities, the planning of the operation to serve the search and arrest warrants, and the efforts to end the stand-off peacefully. Nor have plaintiffs shown the existence of a genuine issue of material fact as to claims arising out of the shoot-out

or the fire. In their latest round of amended complaints, the Andrade plaintiffs argued that a recent Texas case establishes that their decedents had a "special relation" with the United States which gave rise to a duty of care. The United States responded that the FBI's actions in surrounding the compound and restricting the Davidians' movements did not make the U.S. the Davidians' "landlord" so as to create a special relationship.

Plaintiffs also claimed that the declaration of RICHARD SHERROW, who speculates as to the meaning of various "hot spots" on the FLIR video, created a genuine issue of material fact. DOJ argued that the SHERROW interpretation of the FLIR tapes cannot reasonably dispute the statements of the Branch Davidians [heard on the audio tapes] as they set fire to the compound killing themselves and their fellow Davidians. Plaintiffs also argued that FBI agents fired weapons into the compound during the tear gas operation and that ALLARD found evidence of this on the FLIR tape. The United States contended that this evidence is speculative at best and is insufficient to create a genuine issue of material fact.

The United States also filed a reply to plaintiffs' opposition memorandum concerning the effect of United States v. Branch on the pending motions for summary judgment. The reply contends that there can be no genuine issue as to who fired the first shots since the Fifth Circuit held that no reasonable fact-finder could conclude that ATF agents shot first at the Branch Davidians on 02/28/93.

CONGRESSIONAL RELEASE OF DOCUMENTS

The AG's office requested that we review the AG's draft letter to the Subcommittees regarding its proposed release of documents. The draft incorporated our comments about FBI documents almost verbatim. The draft also explained that the AG was not objecting to the release of the documents in the spirit of full disclosure regarding the events at Waco but the AG noted the chilling effect production of deliberative documents like the FBI's briefing book could have on the ability of high ranking governmental officials to seek and obtain candid advice in situations such as these. The documents were scheduled for release 11/04/96 as an appendix to the Subcommittees report.

Exhibit 95

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Recommended Investigative Steps in Waco Inquiry

1) obtain and correlate all chronologies from all relevant parties and agencies. Check with Deputy Assistant Attorney General Mark Richard, FBI Assistant Director Larry Potts, and Waco on-sight supervisors. Complete chronology needed from first call to FBI to FBI's clearing of crime scene. Chronology should include all activities on site, all meetings and briefings in WDC, etc.

S/A COUSINS

2) develop full witness list with addresses and telephone numbers. Determine from all reports of interviews who has been interviewed and who needs to be interviewed. Create and maintain a "Witness file" for each individual which includes all reports prepared by that individual, reports of interviews, grand jury transcripts, etc. This includes all law enforcement, military, civilian, and material witnesses.

S/A BEVERLY / SCHENCK

3) develop list of all experts who either prepared reports during the siege (ie, psychologists, etc) or are preparing reports now (ie, arson, medical examiners, etc). Get copies of all reports and create and maintain "expert witness" files.

S/A SCHENCK

4) obtain or create full listing of all physical evidence, including audiotapes (T III and consensual), videotapes, correspondence, crime scene evidence, etc. obtain copies of all audiotapes, videotapes, transcripts, correspondence, etc. and maintain in evidence files.

S/A Weich Proctor

5) obtain, and periodically update, copies of all legal filings including search warrants, arrest warrants, affidavits, T III applications, complaints, indictments, motions, responses, orders, etc. Maintain a "legal filings" file.

S/A O'Brien

6. develop and maintain a chronological "media" file with as many newspaper, magazines, and televised news articles as is possible.

S/A O'Brien

7) develop and maintain a "Congressional" file with all Congressional requests for information and all response. This also includes transcripts, where available, of all hearings.

S/A SCHENCK

EXHIBIT 96

8) develop listing, and photographs if possible, of al "special" equipment used on the scene. This includes specialized weapons, vehicles, surveillance devices, etc. It should also include who was responsible for or utilized this equipment.
S/A Monty

9) obtain copies of all still photographs and place in chronological order, if possible.
S/A Monty

10) obtain copies of all briefing materials prepared for or utilized by FBI and/or DOJ officials in Waco, Washington, D.C., and any other relevant locations.
S/A Beverly

Meeting At DOJ - (MR Scruggs' Office) 5/19/93

R. Scruggs
B. Lyon (OPR DOJ
Insp. Gonzaley
H. Cousins.

MR Scruggs advised he contacted AUSA JOHNS re question #5. MR Scruggs stated we should limit #5 to the following:

1. Search warrants, 2. Affidavits' Support of Search warrants, 3. T III applications, 4. Complaints and Indictments.

Meeting re selection of Experts changed to 5/20/93 at 10:45 AM Per MR Hayman's Secretary

MR Gonzaley discussed the Washington Post article re this inquiry. The article addressed some questions regarding the Independence of the Inspection Staff in conducting the inquiry. Gonzaley gave Scruggs examples of other inquiries ~~that~~ that FBI conduct with independence despite controversies

FBI0890094

FBI

EXHIBIT
97

PENGAD-Bayonne, N. J.

WWC509-0427
CNG295-0427

66-HQ-19157-45
INTERVIEW QUESTIONS/INSTRUCTIONS

In conducting interviews in this matter AIs should ensure that the following questions are addressed as set out by position and/or agency category. It is recognized that the duties and responsibilities for individuals in these categories may vary widely in many instances limiting the amount of pertinent information which they are able to provide. In some instances the interview FD-302 may report only the person's duties and responsibilities, dates of deployment and a statement that he/she has no first hand knowledge of events at the Branch Davidian complex. A lengthy interview will generally not be necessary except in those instances where the person has first hand knowledge of hostile activity at the Branch Davidian compound, witnessed activity at that location on 4/19/93, was involved in the command and control aspect of the investigation or had direct contact with persons inside the Branch Davidian compound.

It is noted that some of the persons to be interviewed were previously interviewed as to the events of 4/19/93 at the Branch Davidian compound. In re-interviewing these persons the interview should not include the events of 4/19/93.

AIR OPS
FIXES WING OPS
HELICOPTER OPS

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound prior to April 19, 1993?

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

5. As a part of your duties did you monitor any communications from the Branch Davidian compound, take aerial photographs, make audio or video recordings and/or maintain flight or activity logs. If so, what was the disposition of this material and any reports generated by you.

FBI0240169

FBI

EXHIBIT
98

ATF ANALYSTS

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound ?

4. What type of information did you analyze and to whom did you provide your analysis.

5. As part of your duties and responsibilities did you have contact with civilian witnesses to events at the Branch Davidian compound or with civilian consultants.

ATF LIAISON

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

FAA

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

BOMB DATA

No interview necessary as all personnel arrived after 4/19. Obtain copies of any subsequent reports.

FBI0240171

FBI

INTERVIEW QUESTIONS/INSTRUCTIONS

In conducting interviews in this matter AIs should ensure that the following questions are addressed as set out by position and/or agency category. It is recognized that the duties and responsibilities for individuals in these categories may vary widely in many instances limiting the amount of pertinent information which they are able to provide. In some instances the interview FD-302 may report only the person's duties and responsibilities, dates of deployment and a statement that he/she has no first hand knowledge of events at the Branch Davidian complex. A lengthy interview will generally not be necessary except in those instances where the person has first hand knowledge of hostile activity at the Branch Davidian compound, witnessed activity at that location on 4/19/93, was involved in the command and control aspect of the investigation or had direct contact with persons inside the Branch Davidian compound.

It is noted that some of the persons to be interviewed were previously interviewed as to the events of 4/19/93 at the Branch Davidian compound. In re-interviewing these persons the interview should not include the events of 4/19/93.

AIR OPS
FIXED WING OPS
HELICOPTER OPS

1. What were your duties and responsibilities in support of the WACMJR investigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound prior to April 19, 1993?

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

5. As a part of your duties did you monitor any communications from the Branch Davidian compound, take aerial photographs, make audio or video recordings and/or maintain flight or activity logs. If so, what was the disposition of this material and any reports generated by you.

FBI

ELSUR

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

ERT

Obtain reports - no interview necessary

FORWARD CP LIAISON

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

HRT

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

FBI0240172

HRT PILOTS
HRT HELICOPTER OPS

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

5. As a part of your duties did you monitor any communications from the Branch Davidian compound, take aerial photographs, make audio or video recordings and/or maintain flight or activity logs. If so, what was the disposition of this material and any reports generated by you.

HRT LIAISON

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

HRT TOC
INTEL/OPS

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. Did you exercise any decision making authority in either strategy or negotiations with the Branch Davidians.

5. If appropriate, comment on any problems with personnel resources, logistics, command and control, assistance from outside agencies, etc. Make suggestions which could enhance performance in future operations of a similar nature.

LATENT FINGERPRINTS

No interview necessary as not present prior to 4/19

LIAISON
TEXAS RANGERS

1. What were your duties and responsibilities in support of the WACMUR investigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound. (after day 1)

4. If appropriate comment on the effectiveness of the liaison between your agency and the Waco command center. Make suggestions which could enhance liaison in future operations of a similar nature.

MEDIA

1. What were your duties and responsibilities in support of the WACMUR investigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound. (after day 1)

MILITARY LIAISON

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound. (after day 1)

MONITORS

1. What were your duties and responsibilities in support of the WACMUR investigation

2. Did you travel to the Waco, Tx area and if so what dates were you present there?

3. Were you responsible for keeping monitoring logs.

4. How were log entries made by you identified.

5. Who did you report to.

6. How was urgent, priority and/or time sensitive information reported to the on-scene commanders.

7. Were there ever any problems in reporting this time of information in a timely manner or any other information flow problems.

8. Were you the affiant on any T-III or other affidavits

NEGOTIATORS
NEGOTIATION TEAM

1. What were your duties and responsibilities in support of the WACMUR investigation

2. Did you travel to the Waco, Tx area and if so what dates were you present there?

3. Did you have direct contact with anyone inside the Branch Davidian compound?

FBI

4. Did you have direct contact with civilian hostage negotiation experts or consultants.

5. Was there ever any information flow problems in providing pertinent information to the on-scene commander and/or other decision makers in the command post.

6. Were there ever significant disagreements between the negotiators and/or between the negotiators and the command post decision makers as to strategy for dealing with the Branch Davidians.

7. Were there ever significant disagreements among the negotiators in interpreting the statements of the Branch Davidians.

8. What was the procedure for and were there any significant problems maintaining the negotiator's log.

NIGHTSTALKER PILOTS

1. What were your duties and responsibilities in support of the WACMUR investigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

5. As a part of your duties did you monitor any communications from the Branch Davidian compound, take aerial photographs, make audio or video recordings and/or maintain flight or activity logs. If so, what was the disposition of this material and any reports generated by you.

6. Who was the custodian of any audio and/or video tapes made during your flights.

PHOTOGRAPHERS

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

FBI

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

SAS

No interviews necessary as all personnel arrived after 4/19 and their actions will be the subject of SAS reports.

SWAT

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

SWAT SNIPER (if deployed as sniper)

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

5. Do you have first hand knowledge of the activities at the Branch Davidian Compound on April 19, 1993?

6. Did you deploy in a sniper role on April 19, 1993 or before at the Branch Davidian complex.

7. Did you maintain a log.

8. As a sniper what did you understand to be the rules of engagement concerning hostile targets?

9. At anytime during your deployment did you have what you believed to be a clear shot at David Koresh?

10. Were you ever consulted re attempting to disable the water pump at the Branch Davidian complex using rifle fire?

SWBT

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

TECH OPS

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

3. During your assignment at Waco, did you witness or do you otherwise have first hand knowledge of activities at the Branch Davidian compound.

4. If appropriate, comment on any problems with availability of equipment, personnel resources, logistics, command and control, assistance from outside agencies, etc. Make suggestions as to procedures and/or equipment and technology which could enhance performance in future operations of a similar nature.

HQ/OPS PERSONNEL

1. What were your duties and responsibilities in support of the WACMUR invesigation.

2. Did you travel to the Waco, Tx. area and if so what dates were you present there?

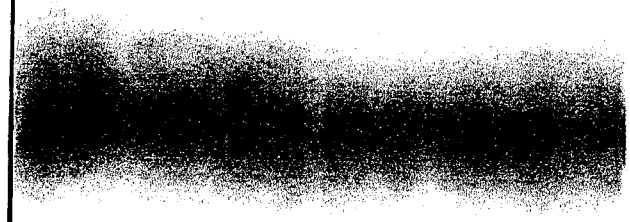
3. Who did you report to for you assignments

Herb Cousins
Ext. 5005

1- [redacted] SD [redacted] Dr. Dietz

FBI0240178

4. Did you experience any significant problems in passing or receiving information pertinent to your assignment.



FBIO240179

FBI

WWC429-2022
CNG287-2022

TALKING POINTS FOR DIRECTOR SESSIONS'
BRIEFING OF ATTORNEY GENERAL RENO
4/12/93

- On the morning of 2/28/93, Bureau of Alcohol, Tobacco and Firearms (BATF) Special Agents attempted to effect the arrest of Vernon Howell, aka David Koresh, and the search of his property. During the execution of these warrants, a gun battle ensued and by 12:00 p.m., 2/28/93, four BATF Agents had been killed and 16 were wounded.

- On the afternoon of 2/28/93, BATF officials requested the deployment of the FBI's Hostage Rescue Team (HRT) to Waco. It was further agreed by the Department of Treasury that upon a full deployment of the HRT, the FBI would take complete charge of all negotiations and tactics at the compound.

- An advance complement from the HRT was dispatched on the afternoon of 2/28/93, and the entire HRT arrived in Waco on the afternoon of 3/1/93. On 3/3/93, the HRT assumed control of the perimeter and the FBI took complete command of negotiations and tactics.

- Negotiations have been continuous since that time and a total of 36 people have been released. There have been 21 children and 15 adults released, and approximately 95 people remain inside. This is made up of 38 men, 40 women, and 17 children.

- All of our options have been thoroughly discussed and analyzed by my SACs on-scene, the HRT Commander, and my Headquarters staff. Last week, Deputy Director Floyd Clarke and Assistant Director Larry Potts traveled to Waco to view the scene first-hand and held exhaustive discussions with the on-site commanders.

- As a result of last week's discussions and my subsequent review here at Headquarters, an operational plan has been developed.

- I have approved this plan which is designed to secure the surrender/arrest of all adult occupants of the compound and to provide maximum security for those children who remain in the compound.

- This is not an assault plan but rather a plan which makes living conditions inside the compound so difficult that resolution of this situation is most probable.

I am now going to ask that Deputy Director Clarke and Assistant Director Potts brief you on the current situation in Waco and the plan that we have developed, and I would request your careful consideration and approval of this plan.



9/20/93 - Scruggs, SZ, RL

Mtg w/ Margolis, Mark Richard, Carl Stern, Cynthia Monaco, Rod Rosenstein

1. SZ - Objects to meeting, b/c Richard & Stern are precipient witnesses.

2. MMR - "Report does an injustice to the AG and the FBI."

3. SZ - Objects again - that kind of conjunct is not supposed to occur in this process.

4. MMR - ~~FB~~ FBI's strategy was to minimize confrontation + control escalation in minimal way, even if that meant prejudicing the prosecutions. FBI's presentations were very controlled, what was done was done pursuant to a very careful strategy.

Info. flow coming to AG - this was not a Rambo proposal - It was well documented, well measured, w/ great emphasis on public safety.

The first draft makes it seem as if this was a Rambo-type operation, and that the FBI was "whacked w/ dissension." [Carl Stern's term].

NY AVE
DOJ FTCA

EXHIBIT
100



WAC093-0024 F
WWC075-1046

5. MMR - In fairness to the AG, what was presented to the AG by the FBI, dissension ~~to~~ didn't come through. Make it given that AG decided things based on facts that were not there.

6. MMR - What isn't there is spin from FBI, and HM's complaint about inability to maintain the perimeter

7. Stern - FBI's concern about perimeter security needs to be emphasized. This was a ~~[illegible]~~ constant theme of the Bureau that should be emphasized.

8. SZ - MMR's comments about fairness to AG have chilling effect on SZ.

9. Stern - 1pm conversation in car - factual errors -

10. Stern - Coherence - bureau about prophetics not weaved in together - can't tell which shrinks we believed and which we didn't - Needs to be drawn together. -

11. Stern - Whole-themes missing from report -
· Perimeter Security
· FBI wanted to shrink perimeter every day

[illegible] - · Inclusively to keep HRT deployed for long time, need to pull them back and retrain.

Stern - Major events not in the report -

- April 19 - Three holes punched in the walls on 4/19 - Wasn't done w/ permission from D.C. - No reference to punching holes in the wall.

  No discussion of inserting boom deeper into the building ~~[illegible]~~ because of the wind.

- Thrown in mtgs w/ AG - Risk of doing nothing exceeded risk of doing something.

  Risks of doing nothing -

  - Perimeter security

  - Beats

- Other items that concern Carl:

  - Quoting Koresh & Schneider as saying that no one else would come out if music weren't turned off.

  - 4/19 FBI announcement -- If there was some ulterior or psychological purpose to the text of the announcement, say so. - Point out the announcement is consistent w/ the intended scope of

the operation, i.e. it would last a few more hours, as long as 24-48 hours.

fem: Delta Force - Still classified - Present + Past Co's - classified.

S/A McGee should not be mentioned by name. (or any HRT people).

Sfcm - Other info.

1. Firefighting efforts -
   - Discussed in SitC
   - Fire plan shown to AG in briefing book - bullet remarks for station prep.
   - Add stuff from original ops. plan.

2. But Carl says he saw a fire plan

PRIVILEGED

U

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XXX 8 XXX

XXX 6 XXX

XXX 7 XXX

14 April 93

(U) SUPPORT TO WACO, TEXAS (U). This EXSUM is self-initiated. The Department of Justice (DOJ) requested by name, XXXX 1 XXXXXXXXXXX (ADC, 1st CAV DIV) and XXXX 2 XXXXXX XX 10 XX to meet with the Attorney General today to discuss DOJ operations at Waco, TX. Since these individuals have extensive special operations experience and have previously worked with the FBI, DOJ asked them to review the FBI's tactical contingency plans. OSD (Executive Secretariat) approved the request and DOJ is providing transportation. PROVIDE MEMO ____

XXXX 3 XXXXXXX/DAMO-ODS/71096.

APPROVED BY XXXXXX 4 XXXXXXXXXX

APPROVED FOR FORWARDING
FOR CSA/VCSA EXSUM SUMMARY
YES: XXX 5 XXXX
NO:

U

~~SECRET~~

XXX 9 XXX

PRIVILEGED

D-01

EXHIBIT
101

Z 0033619 (U)

U

~~SECRET~~ XX2XX

HORITY FOR ACCESS TO
XX3XX INFORMAT
[illegible] LIMITED DISTRIBUTI

Command Involvement in WACO

(U)
DESCRIPTION: ~~(S~~/FP) USSOCOM provided support to FBI/BATF both prior to and during, in support of activities at WACO. This support included:

(U)
~~(S)~~ 25-27 Feb 93, - ODA 381 RSU team (C/3/3 RD SFGA) conducts medical and communications training for BATF. Provide range supervision for zero, KD, pistol and submachinegun ranges. Assists in MOUT site modification. Mission was MTT in support of CINCFOR/JTF-6 CD requirement. RSU team did not plan nor critique BATF plan for compound assault.

(U)
~~(S~~/FP) 2 Mar - 19 Apr 93, - 1 x XX4XX deploys to WACO as observer to glean lessons learned for possible future XX5XX operations.

(U)
~~(S~~/FP) 30 Mar - 19 Apr 93, - XX6XX deploy with seismic sensor system at the request of FBI.

(U)
~~(S~~/FP) 13 Apr 93, CDR XX7XX attended FBI Final Brief to US Attorney General XX1XX at FBI request. CDR XX8XX did not comment on soundness of plan. He was asked one question reference the effectiveness of tear gas, to which he responded that tear gas is effective.

(U)
- ~~(S~~/FP) XX9XX Deployments on 2 Mar and 30 Mar 93 were approved by the Joint Staff.

(U)
- ~~(S~~/FP) CDR XX10XX attended FBI briefing on 13 April after discussions between USCINCSOC and CJCS on the morning of 13 April.

FUNDS: Funding for RSU MTT support was provided by CINCFOR/JTF-6 under CD funding program. Funding for XX11XX support is still being resolved.

ISSUES/CONCERNS:

(U)
- ~~(S~~/FP) [redacted]

(U)
RECOMMENDATION: ~~(S)~~ The USSOCOM position for providing support to law enforcement agencies is to continue to support when tasked, but ensure full USSOCOM staffing of all requests to ensure observance of law and policy.

XX14XX

U

CLASSIFIED BY [illegible] ~~SECRET~~

Z 0041496 (U)

SPECIAL HANDLING REQUIRED
NOT RELEASABLE TO FOREIGN
[illegible]

3

U U xx10xxx

~~SECRET~~ ~~SECRET~~ [redacted]

SUBJECT: SOF Assistance (U)

1. (U) The Policy and Missions of OASD(SO/LIC) did not directly participate in the decision process regarding provision of military support for the Waco incident. CT personnel and the DASD (P&M) were aware that requests for assistance were coming and assisted in directing them into proper channels. To the best of our knowledge, the full involvement of special operations forces is as described in paragraph 2 below.

2. (U) Special operations forces were involved in providing assistance to the Waco incident in 5 ways as summarized below:

(a) SF soldiers from the 3rd Special Forces Group provided training to agents of the Bureau of Alcohol, Tobacco, and Firearms. Training was provided at the request of JTF-6. Details of the training are unknown to this office; training is believed to have occurred in the latter part of February, 1993.

(b) One xxx5xx operator was on scene as an observer with the FBI HRT. Exact period of time is unknown.

(c) Two xx6xx technicians were on scene for liaison with HRT technical personnel. These two personnel were on scene to advise FBI personnel in the use of xx7xx equipment loaned to the FBI. They did not operate the equipment. Exact period of time unknown.

(d) Loan of xx8xx equipment - thermal imaging and video equipment - to the FBI for site surveillance. The two xx9xx technicians were there to advise in the use of this gear.

(e) DOJ requested a review of the FBI tactical plan by military personnel of the FBI's choosing. The HRT commander contacted xxx1xxx , both of whom were authorized to meet with DOJ officials to offer their observations, but not to approve or disapprove the plan. This was done.

3. (U) USCINCSOC xxx2xxx mentioned the support described in (b), (c), (d) and (e) above in unclassified testimony to the SASC on April 21, 1993. Of course, the unit name was not used and personnel were classified as SOF. Additionally, the Attorney General xx3xx referred to the support described in (c) above in testimony before the House Judiciary Committee on April 28, 1993. During the testimony she inadvertently XXX3AXXX the two officers involved. Additionally the support described in (a) above, to include the names of the soldiers involved, is apparently fairly common knowledge as evidenced by names and details appearing in correspondence from Treasury Department, Gannett News Service, and the HAC S&I Team.

Prepared by: xx 4xxx OASD(SO/LIC), P&M, ext. 3-2896
12 July 1995

U

~~SECRET~~ xx12xx

U

~~SECRET~~ [redacted]

xx11xx

Z 0035388 (U)

~~SECRET~~ (U)

PRIVILEGED

INFORMATION PAPER

MOSO-SOD

14 July 1995

SUBJECT: Army Special Operations XX7XX Support to Federal Law Enforcement Agencies During Waco, TX Incident (U)

1. (U) PURPOSE: To provide the Secretary of the Army background information on the support Army XX8XX provided to the Bureau of Alcohol, Tobacco, and Firearms (BATF) and the Federal Bureau of Investigation (FBI) during the crisis in Waco, Texas.

2. (U) DISCUSSION: In addition to Active and Reserve Army Component support to the BATF and FBI, Army Special Operations Forces were involved in the following actions:

a. (U) ~~(STF)~~ On 3 March 1993, the Joint Staff requested CINCSOC send a XX3XX representative to Waco as an observer. CINCSOC approved request and the FBI Hostage Rescue Team concurred. The XX4XX representative reported to and was under the charge of the FBI Special Agent in Charge, and observed operations to determine lessons learned for future XX5XX operations.

b. (U) ~~(STF)~~ On 19 March 1993, at the request of the FBI, CINCSOC loaned a remote OP and Night Observation Package and two technical operators in support of operations in Waco. The requested remote OP and Night Observation Package was a XX6XX remote optical camera capability. The technical operators were to demonstrate proper use of the equipment and remain available to the Hostage Rescue Team in the Tactical Operations Center for technical training assistance only. Army SOF personnel did not provide tactical advice nor did they provide any direct technical support to law enforcement operations.

c. (U) The above support by Army Special Operations Forces was coordinated through the Joint Staff and OSD/SO-LIC. A deployment order was issued by the Joint Staff and coordinated with HQDA on 3 March 1993, for the observer deployment and again on 19 March 1993 for the deployment of equipment and technicians.

MOSO-SOD/71700

CLASSIFIED BY: MULTIPLE SOURCES
DECLASSIFY ON: OADR

XX1XX

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~~SECRET~~ (U) xxx2xxx

Z 0036114 (U)

01 02 031525Z MAR 93 PP PP SSSS BBBBB S0J3-S

USCINCSOC MACDILL AFB FL//S0J3-S//
JOINT STAFF WASH DC//
CDR XIAX FT BRAGG NC//
FBI WASH DC//
INFO USSOCOM MO WASH DC//

CINC
DCINC/CS
DCS XX1XX
POLAD XX2XX

U
~~SECRET~~ SPECAT [redacted] (C)

~~SECRET~~

XX6XX MESSAGE (U)

DELIVER DURING NORMAL DUTY HOURS. TO XX7XX FPSCO ONLY

MSGID/GENADMIN/S0J3-S FEB 93//

AMPN/SUBJ: OBSERVATION OF OPERATIONS IN WACO TEXAS (U)

RMKS/1. (U) ~~(S~~/FP) USSOCOM AUTHORIZED XX8XX TO SEND A REPRESENTATIVE TO WACO TEXAS AS AN OBSERVER OF CURRENT OPERATIONS BEING CONDUCTED BY THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS. THE X9X REPRESENTATIVE WILL REPORT TO AND BE UNDER THE CHARGE OF THE FBI SPECIAL AGENT IN CHARGE. THE HOSTAGE RESCUE TEAM IS AWARE AND CONCURS WITH A XX10XX OBSERVER BEING ON THE SCENE.

2. (U) ~~(S~~/FP) THE PRIMARY REASON FOR XX11XX TO OBSERVE OPERATIONS IS TO GLEAN LESSONS LEARNED FOR POSSIBLE FUTURE XX12XX OPERATIONS. INFORMATION OF THIS DEPLOYMENT OF THE X13X OBSERVER WAS PASSED TO JCS

XX3XX , MAJ, USA

2213, 2 MAR 93

CLASSIFIED BY USCINCSOC
DECLASSIFY ON OADR

XX4XX

56 Com Return Original to AG-CM
AG-CM Return Original to XX5XX

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~~SECRET~~ SECRET ~~SPECAT~~
U
Z 0041511 (U)

67 357 1159

02 02 PP PP SSSS BBBBB S0J3-S

J3-S0J/CT ON 2 MAR 93.

3. (U) POC THIS ACTION IS MAJ XX 1 XX , S0J3-SG, DSN/STU III

7%8-2213.//

XX 3 XX MESSAGE (U) // U

DECL/OADR// ~~SECRET~~

XX 2 XX

Z 0041512 (U)

U

~~SECRET~~ ~~SPECAT~~

U

PRIORITY * ~~S E C R E T~~ XX 4 XX * DATE: 1/07/91
*** ~~S P E C A T~~ / *** TIME: 1851

DTG: P 192230Z MAR 93 ACTION:
FROM: CJCS WASHINGTON DC INFO:
TO: USCINCSOC MACDILL AFB FL
INFO: SECDEF WASHINGTON DC

HODA WASHINGTON DC

XX 5 XX

XX 6 XX

U FBI WASHINGTON DC
~~S E C R E T~~ SPECAT [redacted] (C)
XX 7 XX MESSAGE (U)
DELIVER IMMEDIATELY TO XX 8 XX FPCO ONLY
AMPN/THIS MESSAGE CONTAINS INFORMATION CONCERNING EXTREMELY SENSITIVE US MILITARY OPERATIONS WHICH WILL BE DISCUSSED AND DISSEMINATED ONLY ON AN ABSOLUTE NEED-TO-KNOW BASIS. ALL INFORMATION ASSOCIATED WITH THIS OPERATION MUST BE KEPT WITHIN THE
XX 9 XX FOCAL POINT COMMUNICATIONS CHANNELS UNTIL RELEASED BY
HE JOINT STAFF.//
SGID/SYS.RRM/CJCS//
AMPN/SUBJ: FBI REQUEST FOR ASSISTANCE (U)//
REF/A/LTR/FBI/17MAR93/-/NOTAL//
AMPN/REQUEST FOR DOD ASSISTANCE (U)//
RMKS/1. (S/PG) IRT REF A THE SECDEF HAS APPROVED THE LOAN OF A REMOTE OP AND NIGHT OBSERVATION PACKAGE AND TWO TECHNICAL OPERATORS TO THE FBI IN SUPPORT OF ONGOING FBI OPERATIONS IN WACO, TEXAS.
2. (U) ~~XX~~ 10 X THE REQUESTED REMOTE OP AND NIGHT OBSERVATION PACKAGE IS A XX 13 XX REMOTE OPTICAL CAMERA CAPABILITY. IAW DODD 5525.5. DOD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICALS, 15 JAN 86, PROVIDE THE FBI WITH THE REQUESTED EQUIPMENT AND TWO TECHNICAL OPERATORS. THE EQUIPMENT WILL BE USED FOR DEFENSIVE PURPOSES ONLY (TO PROTECT THE LIVES OF LAW ENFORCEMENT PERSONNEL). THE TWO TECHNICAL OPERATORS WILL DEMONSTRATE PROPER USE OF THE EQUIPMENT AND REMAIN AVAILABLE TO THE HOSTAGE RESCUE TEAM TACTICAL OPERATIONS CENTER FOR TECHNICAL ASSISTANCE. THEY WILL NOT PROVIDE TACTICAL ADVICE NOR WILL THEY PROVIDE ANY DIRECT TECHNICAL SUPPORT TO LAW ENFORCEMENT OPERATIONS.
3. (U) UNDER PROVISIONS OF THE ECONOMY ACT, USSOCOM WILL BE

CORB REVIEW:
OPERATIONS XX 1 XX
INTELLIGENCE
FINANCE PAGE 1
LEGAL XX 2 XX
DEP DIR
DIRECTOR XX 3 XX

PRIORITY *** ~~S P E C A T~~ / X 11 X
* ~~S E C R E T~~
LN 24831 *** ~~S P E C A T~~ / X 12 X
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Z 0041508(U)

31 374

PRIORITY *** ~~S P E C A T~~ / XX3XX *** PAGE 2
* U ~~S E C R E T~~ *
'LN 24831 *** ~~S P E C A T~~ / XX4XX ***

REIMBURSED FOR THE USE OF THE EQUIPMENT AND ASSOCIATED COSTS. THE FBI WILL PAY PER DIEM AND ALL OTHER IDENTIFIABLE DIRECT AND INDIRECT COSTS. FBI POINT OF CONTACT TO COORDINATE LOAN OF EQUIPMENT AND FOR REIMBURSEMENT INSTRUCTIONS IS SPECIAL AGENT XX1XX AT FBI HQ (202) 324-6700.
4. (U) THE DURATION FOR THIS SUPPORT HAS NOT BEEN DETERMINED.
5. (U) JOINT STAFF POC IS XX2XX . DSN/STU III 225-8122.//
AMPN/ XX5XX MESSAGE (U)//
OECL/OADR//
RUEKJCS6264 0781841

PRIORITY *** ~~S P E C A T~~ / XX6XX *** PAGE 2
* ~~S E C R E T~~ *
.LN 24831 *** ~~S P E C A T~~ / XX7XX ***
U

Z 0041509 (U)

MSG CAG226 *** ~~SPECAT~~ / XX2XX ***
* ~~SECRET~~ U * DATE: 089
IMMEDIATE *** ~~SPECAT~~ / XX3XX *** TIME: 1547

DTG: O 301455Z MAR 93 ACTION:
FROM: CJCS WASHINGTON DC INFO:
TO: USCINCSOC MACDILL AFB FL
INFO: SECDEF WASHINGTON DC

HQDA WASHINGTON DC

XX4XX

XX5XX

FBI WASHINGTON DC
S E C R E T SPECAT [redacted] (C)
XX6XX MESSAGE (U)
DELIVER IMMEDIATELY TO XX7XX FPCD ONLY
AMPN/THIS MESSAGE CONTAINS INFORMATION CONCERNING EXTREMELY SENSITIVE US MILITARY OPERATIONS WHICH WILL BE DISCUSSED AND DISSEMINATED ONLY ON AN ABSOLUTE NEED-TO-KNOW BASIS. ALL INFORMATION ASSOCIATED WITH THIS OPERATION MUST BE KEPT WITHIN THE
XX8XX FOCAL POINT COMMUNICATIONS CHANNELS UNTIL RELEASED BY THE JOINT STAFF.//
MSGID/SYS.RRM/CJCS//
AMPN/SUBJ: FBI REQUEST FOR ASSISTANCE (U)//
REF/A/LTR/FBI/27MAR93/-/NOTAL//
AMPN/REQUEST FOR DOD ASSISTANCE (U)//
REF/B/MSG/CJCS/192230ZMAR93//
AMPN/FBI REQUEST FOR ASSISTANCE (U)//
RMKS/1. ~~(S)~~X9X SECDEF APPROVES THE LOAN OF A MILITARY ID SENSOR SYSTEM TO THE FBI IN SUPPORT OF ONGOING FBI OPERATIONS IN WACO, TEXAS AS PER REF A.
2. ~~(S)~~X10X THE REQUESTED ID SENSOR SYSTEM IS A XX13XX SEISMIC SENSOR SYSTEM THAT COMPLEMENTS THE SUPPORT APPROVED BY REF B. IAW DODD 5525.5, DOD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICALS, 15 JAN 86, PROVIDE THE FBI WITH THE REQUESTED EQUIPMENT.
3. (U) UNDER PROVISIONS OF THE ECONOMY ACT, USSOCOM WILL BE REIMBURSED FOR THE USE OF THE EQUIPMENT AND ASSOCIATED COSTS. THE FBI WILL PAY ALL IDENTIFIABLE DIRECT AND INDIRECT COSTS. FBI POINT OF CONTACT TO COORDINATE LOAN OF EQUIPMENT AND FOR REIMBURSEMENT INSTRUCTIONS IS SPECIAL AGENT XX1XX AT FBI HQ (202) 324-6700.

IMMEDIATE *** ~~SPECAT~~ / XX11XX *** PAGE 1
* ~~SECRET~~ *
MLN 9721 *** ~~SPECAT~~ / XX12XX ***
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Z 0041506 (U)

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IMMEDIATE *** ~~S P E C A T~~ / XX2XX *** PAGE 2
* ~~S E C R E T~~ *
MLN 9721 *** ~~S P E C A T~~ / XX3XX ***

4. (U) THE DURATION FOR THIS SUPPORT HAS NOT BEEN DETERMINED.
5. (U) JOINT STAFF POC IS XXX1XXX + DSN/STU III 225-8122'//
AHPN/ XX4XX MESSAGE (U)// — —
DECL/OADR//
RUEKJCS9669 0891541

IMMEDIATE *** ~~S P E C A~~T / XX5XX *** PAGE 2
* ~~S E C R E T~~ *
MLN 9721 *** ~~S P E C A T~~ / XX6XX ***

U

Z 00 41507 (U)

USCINCSOC MACDILL AFB FL//SOJ3-S//

U
~~SECRET~~

CDR XX5XXFT BRAGG NC//

INFO SECDEF WASH DC//

JOINT STAFF WASH DC//

FBI WASH DC//

XX6XX FT BRAGG NC//

U
~~S E C R E T~~ SPECAT [redacted] (C)

XX7XX MESSAGE (U)

DELIVER DURING NORMAL DUTY HOURS TO XX8XX FPSCO ONLY

AMPN/SUBJ: FBI REQUEST FOR ASSISTANCE//

REF/A/MSG/CJCS/301455ZMAR 93//

AMPN/FBI REQUEST FOR ASSISTANCE//

REF/B/LTR/FBI/27MAR93/NOTAL//

AMPN/REQUEST FOR DOD ASSISTANCE//

REF/C/MSG/CJCS/192230ZMAR93//

AMPN/FBI REQUEST FOR ASSISTANCE//

RMKS/1. (U) ~~(S~~/FP) TAKE REF A FOR ACTION. NOTIFY THIS HQ'S WHEN REQUESTED EQUIPMENT IS IN WACO. INSURE ASSOCIATED COSTS ARE PROVIDED TO FBI FOR REIMBURSEMENT IAW ECONOMY ACT.

2. (U) POC THIS HQ'S IS XX1XX , SOJ3-SG, DSN/STU

TOT: 089
1924

XX2XX , SOJ3-SG, 2213

Classified by J3-SOD

Declassify on OADR

30 MAR 93

XX3XX

XX4XX JR., LT COL, USAF, SOJ3-SA

(U) ~~SECRET SPECAT~~

U
~~SECRET~~

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Z 0041510 (U)

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xxxDxxx

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~~SECRET~~

THE UNDER SECRETARY OF DEFENSE PRIVILEGED
WASHINGTON, D. C. 20301-2000

POLICY

23 April 1993
EXECUTIVE SUMMARY / COVER BRIEF

MEMORANDUM FOR SECRETARY OF DEFENSE
DEPUTY SECRETARY OF DEFENSE

THROUGH: UNDER SECRETARY OF DEFENSE (POLICY)

FROM: XX 1 XX , DUSD(SP)

SUBJECT: DoD Support in the Waco Situation

PURPOSE: INFORMATION -- (U) To provide the SecDef with information of support provided by DoD to Federal law enforcement agencies in connection with the Waco situation (U)

DISCUSSION: (U) The SecDef requested information on the support provided by DoD to Federal law enforcement agencies in connection with the Branch Davidian stand-off in Waco.

U
~~(S)~~ All support provided was under the aegis of the Secretary of the Army acting as your Executive Agent for military support to law enforcement agencies. The attached fact sheet, prepared by the Army's Director for Military Support, details the support provided, to include the special operations support (paragraph f., page 3 of the attachment).

(U) We will provide additional details in any area you may wish.

Attachment:
a/s

XX 2 XX

XX 3 XX has seen _____
him a copy.

XX 4 XX

XX 5 XX

Prepared and reviewed by:
DUSD(SP)

PRIVILEGED 0004

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~~SECRET~~

xxx7xxxx

Z 0030706 (U)

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U ~~SECRET~~ PRIVILEGED

XX I XX

DAMO-ODS
20 April 93

SUBJECT: Army Support to Federal Law Enforcement Agencies in Waco, Texas -- INFORMATION MEMORANDUM (U)

1. (U) Purpose. To provide information concerning the Waco standoff.

2. (U) Facts.

a. (U) In the aftermath of the February 28, 1993, confrontation between Bureau of Alcohol, Tobacco, and Firearms (BATF) agents and cult members in Waco, Texas, Federal law enforcement agencies requested Department of Defense equipment support. The support furnished by DoD/Army was non-operational and was approved by OSD and/or Army Secretariat and has been provided by both the Active and Reserve components.

(1) (U) Active component support included:

(a) (U) two utility helicopters (UH-1);

(b) (U) two main battle tanks (OSD Approved)

(c) (U) two support vehicles for the main battle tanks (one High Mobility Multi-wheeled Vehicle (HMMWV) and one 2 1/2 ton truck);

(d) (U) three CH-47s and three UH-1s, with crews, and five doctors on standby for medical emergencies (from Fort Hood)

(e) (U) four medical personnel from the Uniformed Services University of the Health Sciences (OSD Approved)

(f) (U) miscellaneous night vision goggles, mine detectors, tents, generators, light sets, cots, and sandbags;

(g) (U) and approximately 23 additional soldiers in liaison and maintenance roles -- (All active component personnel were briefed on the legal restrictions on direct law enforcement support).

(2) (U) Reserve Component support provided by the Texas Army National Guard included:

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Z 0030707 (U)

(a) (U) ten Bradleys (M2A1 Infantry Fighting Vehicles);

(b) (U) five Combat Engineer Vehicles (M728 Combat Engineer Vehicles);

(c) (U) 12 High Mobility Multi-Wheeled Vehicles (HMMWVs);

(d) (U) and two utility cargo trucks.

(3) (U) Additional state (Title 32) operational support consisted of one fual truck, two buses, one van, three 1 1/2 ton trailers, two utility helicopters (UH-60s) on stand-by, and miscellaneous tents, body armor, and night vision goggles. Approximately 15 Army National Guard personnel were filling liaison, maintenance, and other support roles.

b. (U) Combat vehicles were loaned without operable weapons systems and with Army markings obscured. The vehicles were being piloted/driven by FBI and BATF personnel. The FBI and BATF crews for the main battle tanks, infantry fighting vehicles, and combat engineer vehicles were trained by Army personnel prior to the loan of the equipment. The FBI crews for the utility helicopters were already trained and certified to Army standards.

c. (U) All support furnished is reimbursable under the provisions of the Economy Act and has been provided in accordance with DODD 5525.5, DoD Cooperation with Civilian Law Enforcement Officials, January 15, 1986.

d. (U) Time Sequence:

(1) (U) 1000/28 February -- BATF attempts to arrest David Koresh at compound in Waco, Texas

(2) (U) 1730/28 February -- Initial BATF and FBI requests for DoD support

(3) (U) 28 Feb-14 April -- FBI gradually requests wide variety of DoD support to resolve situation

(4) (U) 14 April -- DoD Personnel attend DOJ briefing at FBI (Details at classified Encl)

(5) (U) 18 April -- DOJ/FBI Plan approved and DoD advised of plan

(6) (U) 0600/19 April -- FBI operation in Waco commences

xxx1xxx

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e. (U) Summary of FBI Operation.

(1) (U) FBI operation involved the controlled use of CS gas dispensed from the boom head of ARNG combat engineer vehicles operated by FBI agents

(2) (U) Approximately six hours into the operation Davidian cult members apparently set fire to the compound, quickly razing the entire structure in less than an hour.

(3) (U) Preliminary reports indicate 9 cult members escaped from the burning compound and were either taken into custody or were transported to medical treatment facilities.

(4) (U) No law enforcement personnel or military personnel were reportedly injured. A final report of casualties is not yet available

f. (U) ~~(S)~~ Special Operations Military Support to Waco (OSD Approved).

(1) (U) ~~(S)~~ DoD supplied the FBI with one xx3xx mobile ground based satellite down-link jamming system. The system was used to prevent reception of satellite broadcast new transmissions onto the compound.

(2) (U) ~~(S)~~ xx4xx : provided one observer and two technical liaison personnel (with optical observation equipment) for the FBI Hostage Rescue Team, Tactical Operations Center (HRT TOC). Additional HRT TOC observers include two British Special Air Service personnel.

(3) (U) ~~(S)~~ DOJ requested, by name, [redacted] (ADC, 1st CAV DIV)| and [redacted] xx3xxx to meet with the Attorney General on 14 April 93 to discuss DOJ Operations at Waco, Texas. Since these two individuals have extensive special operations experience and previously worked with the FBI, DOJ asked them to review the FBI tactical contingency plans. DoD personnel did not officially endorse the FBI tactical plan.

[redacted] DAMO-ODS/74331

APPROVED BY_____

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~~SECRET~~

xxx2xxx

Z 0030709 (U)

~~SECRET~~

DEPARTMENT OF THE ARMY
[redacted]
FORT BRAGG, NORTH CAROLINA 28307-5000

REPLY TO ATTENTION OF:
[redacted]

13 May 1993

MEMORANDUM FOR Commander, U.S. Army Special Operations Command, Fort Bragg, NC 28307-5200

SUBJECT: Meeting With Members of the FBI and the Department of Justice Reference the Incident in Waco, Texas ~~(U)~~

1. ~~(S)~~ Sir, the following is a synopsis of the meeting on 14 April 1993 in the Federal Bureau of Investigation (FBI) Director's Conference Room. The meeting began at approximately 1530. Attendees were as follows:

U.S. Army	FBI
BG [redacted]	Director [redacted]
COL [redacted]	Deputy Director [redacted]
An 04 from DCSOPS	Special Agent [redacted]
Unknown Scientist	Special Agent [redacted]
(Expert on CS)	Special Agent [redacted]
	(HRT Commander)

DEPARTMENT OF JUSTICE

Honorable [redacted] (Attorney General)
[redacted]
Two UI persons

2. ~~(S)~~ The meeting began with an explanation by the scientist on the effects of CS on humans. He referred to experiments over the years with both humans and animals. His assessment was that CS was nonlethal and presented very little physical threat to the Branch Davidian occupants. The Attorney General and others from the Department of Justice asked a variety of questions on the effects of CS and the potential hazards. They were assured by both the FBI and the scientist that the risks of serious injury associated with CS were low. Attorney General [redacted] then asked both [redacted] and me to give an assessment of the effects of CS. Our assessment was as follows:

a. (U) Some people would panic; Quote: "mothers may run off and leave infants."

b. (U) Some would continue to function by using expedient techniques to overcome the effects; e.g., use of a wet cloth on the face.

CLASSIFIED BY: [redacted]
DECLASSIFY ON: OADR

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102

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[redacted]
SUBJECT: Meeting with Members of the FBI and the Department of Justice Reference the Incident in Waco, Texas ~~(S)~~

c. (U) Even with protective masks, eventually the facility would become untenable (inhabitants would have to eat and drink at some point).

d. (U) In summary, we assessed that if the objective of the FBI was to make the building uninhabitable, then CS would accomplish that. We stated that it was our belief that if enough CS was inserted, eventually the inhabitants would not be able to remain inside.

3. ~~(S)~~ It was obvious that Attorney General [redacted] had already been briefed on the concept of the operation. Special Agent [redacted] gave a brief summary of his plan using a series of enlarged photographs of the compound and a model made of cardboard and wood. The FBI saw this as an arrest situation and not a hostage barricade. Their goal was to force the compound inhabitants out of the building so they could be arrested. [redacted] stated to Attorney General [redacted] that his primary concern was for the safety of the FBI agents and other law enforcement officers. Their view was that this was not an assault. The stated intent was to incrementally "gas" the compound for up to 48 hours. After 48 hours, the next step would be to use an armored platform with a blade to start removing the front of the building.

4. ~~(S)~~ Attorney General [redacted] then asked for our assessment of the plan. We collectively made the following points:

a. ~~(S)~~ This was not a military operation and could not be assessed as such. We explained that the situation was not one that we had ever encountered and that the Rules of Engagement for the FBI were substantially different than for a military operation. [redacted] stated, "we can't grade your paper," as a way of explaining our position.

b. ~~(S)~~ If it was a military operation, we would focus on the leadership. [redacted]

c. (S) Consideration should be given to inserting CS into the [redacted] Deputy

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[redacted]
SUBJECT: Meeting with Members of the FBI and the Department of Justice Reference the Incident in Waco, Texas ~~(S)~~

Director [redacted] stated that that was the HRT's desired approach as well but that the FBI leadership preferred the incremental method.

d. ~~(S)~~ The principles of surprise, speed, and violence of action were essential to any operation. [redacted] stated that momentum should be maintained and that ground gained should not be relinquished.

5. ~~(S)~~ The final issue discussed was timing. Attorney General Reno asked simply, "Why now." The FBI's response was:

a. ~~(S)~~ There is no reason to believe that Koresh has any intention of coming out voluntarily.

b. ~~(S)~~ There are indicators that children are suffering abuse.

c. ~~(S)~~ The effects of a prolonged stand-off on the HRT were not an overriding issue, but something that must be considered.

6. ~~(S)~~ My final comments were that I believed that the HRT should consider pulling their people off the target for a short period to retrain and polish some of the perishable skills. I made it clear that I was not encouraging an immediate execution of the operation. My exact words were, "I don't have a dog in that fight." My comments were focused on the necessity to maintain the perishable skills in order to be ready if an approval came at some point. The FBI response was that the HRT agents were, in fact, training in the Waco area on some makeshift facilities. They were strongly opposed to leaving the target.

7. ~~(S)~~ Other points that surfaced during the discussion were the size of the HRT in Waco (54 personnel) and the availability of similar units. It was explained that the HRT was unique and that only the military had a similar capability. There was no discussion on the use of the military.

8. ~~(S)~~ It is also important to note that [redacted] was involved in Waco in a supporting role. Initially, [redacted] was offered an opportunity to observe the incident. With JCS approval, an observer deployed to the scene on 21 March 1993. The HRT subsequently asked for and received technical support on 19 March 1993, in the form of day and night video cameras and remote video observation devices. Two technicians took the equipment to Waco and remained there throughout the 51 day standoff. They maintained the equipment and advised the FBI on tactical employment. There was no tactical advice requested and none

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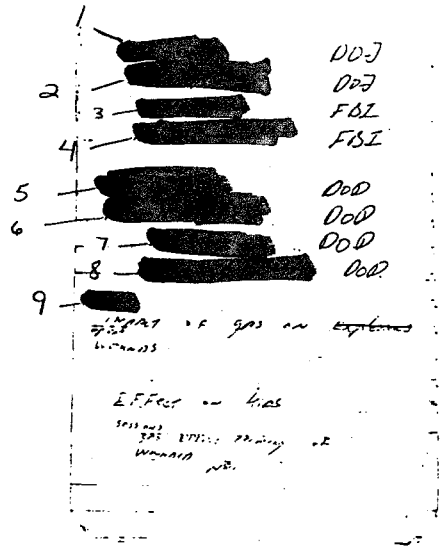
[redacted]

SUBJECT: Meeting with Members of the FBI and the Department of Justice Reference the Incident in Waco, Texas ~~(S)~~

given at any time. The FBI was very understanding about the rules under which the [redacted] personnel were operating. During the assault, the three [redacted] operators observed from the HRT forward command post and were cautioned not to video the operation. Prior to deployment all [redacted] operators were advised as to the legal restrictions on the nature and scope of assistance they could provide to the FBI and other law enforcement agencies. Their activities fell well within these boundaries. All support to the HRT was approved by the Joint Chiefs of Staff.

9. ~~(S)~~ Finally, the plan which was executed at Waco was an FBI plan which neither [redacted] nor I helped prepare. At the same time, I did believe that they had a reasonable chance of accomplishing their objective of forcing the occupants out of the building. Their approach was substantially different than anything that I have encountered. They were not assaulting the compound and they were not there to rescue anyone. This was surprising to me, but certainly not something of which I am critical. It is simply a different way of looking at the situation. I did not believe that the FBI and the Attorney General were trying to force us to support or defend the plan. It was my belief that they simply wanted any observations that we felt comfortable providing.

[redacted]



1 [redacted] DOJ
2 [redacted] DOJ
3 [redacted] FBI
4 [redacted] FBI
5 [redacted] DOD
6 [redacted] DOD
7 [redacted] DOD
8 [redacted] DOD
9 [redacted]

IMPACT OF GAS ON ~~explosives~~ WOUNDS

EFFECT ON KIDS

SESSIONS
GAS EFFECT [illegible] OF WOUNDED [illegible]

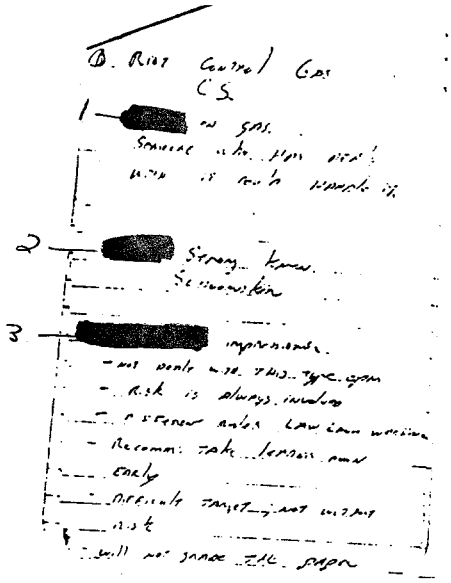
(1)

CCT

EXHIBIT
103

PENGAD-Bayonne, N. J.

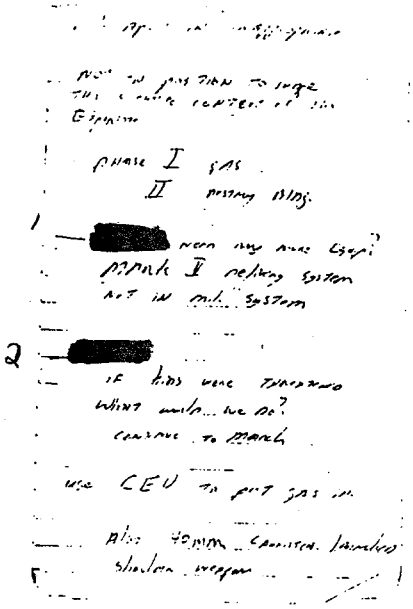
Z 0003945



C26

[illegible]

Not in position to judge
the [illegible] content of the
Expansion



phase I gas
II nestroy bldg.

1 [redacted] need any more [illegible]?
mark II relieving system
not in mil. system

2 [redacted]
if bldg were threatened
what would we do?
continue to march

use CEU to put gas in

Also 40mm [illegible] launched
shoulder weapon

(3)

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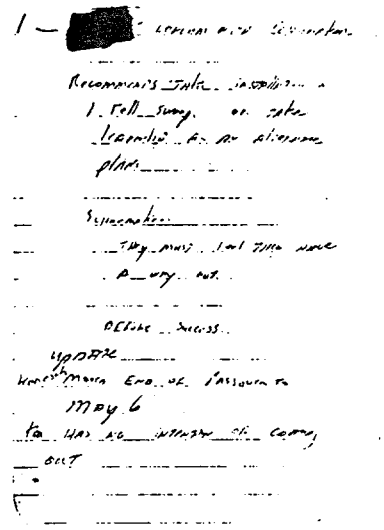
1 — [redacted] [illegible]

Recommends [illegible]

1. Fell [illegible] or take



[illegible] as an alternate

plan

Supervision

They must feel [illegible]

a way out.

Define success.

Update

[illegible] End of Passover to

May 6

[illegible] has no intention of coming

out

C 27

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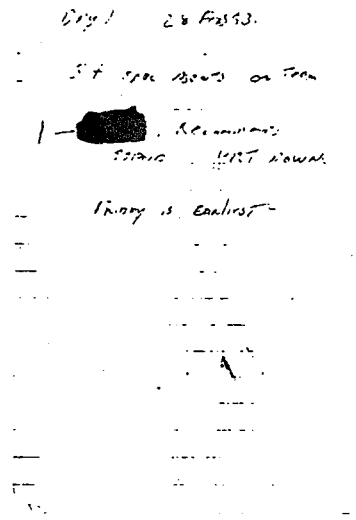
Dig 1 28 Feb 53.

5 + spec agents on Team



1 — [redacted] . Recommend
[illegible] . [illegible] [illegible]

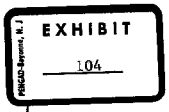
Priority is Earliest

6

C 27

Z 0003949

EXHIBIT 104



Chronology

- 13 April 1993 1300 hrs contacted by [redacted] and [redacted] who explained scenario.
- ~~Tony~~ We were asked to brief [redacted] 3 and FBI about CS, either that evening or next
- 4 [redacted] (FBI) called and said that a car would be sent to pick me up.
- Spent the afternoon with [redacted] 4A and [redacted] 4B of my staff assembling and reviewing the information on CS.
- Contacted 5 [redacted] (medical Command) certified pediatrician. He returned my call after 2300 hrs and we reviewed the information together.
- ~~14 April~~ 6 [redacted] (FBI) and local FBI agent 7 [redacted] informed me I would be picked up 1030 hrs on 14 April 93.
- Notified 7A [redacted], acting Director of what was going on and advised to help, asked if he could do anything to expedite.
- 14 April 0800 hrs 7B [redacted] 7C [redacted], 7D [redacted] and I prepared a potential briefing which was not used.
- 14 April meeting postponed ~~until~~ until 1500 hrs
- 8 [redacted] and Director Session asked much of the questions which pertained to safety in children and pregnant women.
- 8A [redacted] (Hostage Resc. Team) [illegible] briefing

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(2)

• Meeting broke up after 1900 hrs.

• 15 April AM. Advised [redacted] 1 of the meeting 2 proceedings and he apparently briefed [redacted] 3 [redacted] told me to expect a call from [redacted] which did not come.

• 15 April – Prepared Fact Sheet on CS 5

• 15 April – called for appointment with [redacted].

• 16 April 1000 hrs briefed [redacted] 6.

• 16 April briefed PRO [redacted] and provided a fact sheet re CS.

(Message # 135: 3184 bytes, New)
Date: Mon, 26 Apr 93 16:09:56 EDT
From: 1 [redacted] <- 2
To: [redacted] 4 13 April 93
cc:
Subject: Meeting at FBI Headquarters
Resent-Date: Mon, 26 Apr 93 16:09:59 EDT
Resent-From: [redacted] 5
Resent-To: 6

CHIEF, LIFE SCIENCES DEPARTMENT SENDS

- List of attendees previously provided.

- Questions asked pertained to safety of CS with particular emphasis on children and pregnant females.

- Responses based on documentation from the available scientific literature.

- First prepared in 1928.
- Developed in 1950's as potent and extremely safe riot control agent.
- Thoroughly tested in animals and man and widely used around world.
- No reports of human lethality.
- Highly irritating to mucous membranes, (i.e., eyes, nose, throat and stomach).
- May cause vomiting and diarrhea.
- Also causes skin irritation and stinging.
- Moisture enhances the irritation.
- Exposure causes individual to seek fresh air.
- Some or all of the above may occur.
- Accepted by Army as standard riot control agent.

- The above was all concurred by the military and HRT members who had first hand experience with CS.
- Epidemiological studies reported in literature showed no age difference from young and old including infants. (4)
- Specific case of 4 month old infant exposed in closed space for 2-3 hours survived after 28 day hospitalization for pneumonia.
- Exposure of animals suffering from pneumonia did not appear to be worsened following high concentrations of CS.
- Experimental studies did not appear to affect healing of wounds.
- Exposures of open wounds might increase irritation but did not affect healing.
- Epidemiological studies reported did not show an increase in abortions, stillbirths or congenital abnormalities.
- These reports confirmed in animal studies showing no adverse effects related to age and reproduction.
- People with respiratory disease (asthma, bronchitis) showed on CS exposure exacerbated effects which returned to pre-riot control status.
- No increase in frequency of respiratory attacks of asthma or bronchitis following exposure.
- No evidence of mutagenicity, teratogenicity observed in animals.
- National Cancer Institute conducted 2 year lifetime inhalation studies in both rats and mice and found no evidence of carcinogenicity.
- CS is also a skin sensitizer.
- Stressed that some or all of the irritant properties may occur and that probability of serious effects are low.
- However, people have different sensitivities and may not react as expected.

7- Briefed [redacted] on Friday, 15 April 1993.
8- Briefed [redacted] (PAO) on Friday, 15 April 1993 and provided Fact Sheet on CS.
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Z 0013114

Date: Wed, 10 May 95 10:06:29 EDT
From: [redacted]
To: [redacted]
cc: [redacted]
Subject: Request for Review and Information from FBI
Message-ID: <9505101006.aa00502@cbdcom.apgea.army.mil>

[redacted] SENDS:

I would like to inform you of a FBI inquiry to review/comment on "Report and Recommendations Concerning the Handling of Incidents Such As the Branch Davidian Standoff in Waco Texas". It is our understanding that this informtion is to prepare Attorney General [redacted] for a Congressional Briefing. Information released was approved by Acting Director, Research and Technology and provided by the undersigned to the FBI this morning.

Any questions/concerns please contact me at 53034/2337.

[redacted]
Chief Scientist
for Life Sciences
Research and Technology

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Z 0013115

CS, Riot Control Agent
FACT SHEET

CS, a riot control agent, in appropriate concentrations causes a rapid disablement. The effects persist for a little longer than the exposure period. Chemically, it is ortho-chlorobenzal-malononitrile which was first prepared in 1928. It was developed in the 1950's as a potent and extremely safe riot control agent. Riot control agents are also known as lacrimators, harassing agents, incapacitating agents and tear gas.

On exposure the effects immediately perceived, which are self limiting, include intense irritation of the eyes, causing crying or temporary blindness, irritation of the mucus membranes of the nose, trachea or lungs causing coughing, sneezing, tightness of the chest and difficulty in breathing. Irritation of the throat and stomach may induce vomiting and diarrhea. It also causes skin irritation and stinging which worsens if the skin is moist. Exposure to CS may cause some or all of the above.

Persons exposed to CS should move to fresh air, face the wind and should not rub their eyes. They may shower as necessary.

This chemical has been thoroughly tested in its development as a riot control agent analogous to the testing of a new drug. In spite of its extensive use around the world, it has never been implicated in any human deaths.

Epidemiological studies revealed that in healthy individuals of all ages (young and aged), no cases of illness attributable to CS were found among infants (even those exposed by accident) and in old age. Statistics did not demonstrate any increase in abortions, stillbirths or congenital abnormalities. These results were confirmed in animal studies which showed no adverse effects related to age, or reproduction.

Epidemiological studies also showed that the affect of CS on people with respiratory diseases such as chronic bronchitis and asthma, had exacerbated effects which returned to their pre-riot control status. No increase in frequency or respiratory attacks were observed.

07/07/98 [redacted]

Z 0023557

Tolerance to CS may develop from repeated exposures at low concentrations, but no cumulative or systemic injuries follow long exposures at low concentrations.

Both humans and animals have been subjected to extensive investigation. There is a wide safety margin between the lowest concentration that is effective in disabling rioters and the concentration that could cause life-threatening harm to the exposed. There is virtually no evidence that CS poses a mutagenic or carcinogenic hazard. There are no reports of death from CS exposure, as there have been for other riot control agents. Thousands of men have been exposed to CS in the course of military training, with few after-effects.

Epidemiological investigations were unable to locate anyone exposed to CS during riot control who suffered important after-effects, except for temporary worsening of chronic bronchitis or asthma.

CS has one lasting effect: In addition to being a primary skin irritant capable of causing first- and second-degree burns, it is a skin sensitizer; once exposed to CS, many develop allergic reactions on later contact. This is a problem particularly for industrial workers who are in contact with CS daily.

07/07/95 15:07 [redacted] AMCP +++ SAPA-NR 005

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THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-2500

SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT

January 23, 1996

Honorable XX 1 XX
Chairman
Subcommittee on National Security, International
Affairs, and Criminal Justice
Committee on Government Reform and Oversight
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

During my testimony before the House hearings into the Waco siege, you asked me to provide to the Joint Committee more detailed information about Department of Defense support to the Bureau of Alcohol, Tobacco, and Firearms and the Federal Bureau of Investigation.

The enclosed matrix provides the information you requested.

Sincerely,

XX 2 XX

XX 3 XX

Enclosure:
As stated

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SOURCE DATED: 30 AUG 95

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ARMY SUPPORT FOR WACO

SUPPORT	REQUEST DATE	REQUEST SOURCE	APPROVED/DATE	COST	REIMB?	WHY NOT?
MOUT Site, Ft. Hood, TX	22 Jan	BATF	CDR, JTF-6	4 Feb		No	§1004(b)(4)*
Training Assistance	3 Feb	Operation Alliance for BATF	CDR, JTF-6	17 Feb	5,610.00	No	Waived: §1004(b)(5); 10 U.S.C. 377
Ranges & Training Areas, Ft. Hood, TX	3 Feb	Operation Alliance for BATF	Normal Opns, Cdr, III Corps/ Ft. Hood	3 Feb		No	§1004(b)(4)
Ten Bradley Fighting Vehicles & Two UH-1 Helicopters	1 Mar	FBI (superseded BATF request of 28 Feb)	Acting Asst. Sec. Army (Installations, Logistics & Environment) (ASA(IL&E)	1 Mar			See Texas National Guard summary below
Two M1 Tanks	5 Mar	FBI	OSD	7 Mar	0.00	No	Not used.
M1 Training	6 Mar	FBI	Acting ASA(IL&E)	7 Mar			Included in "miscellaneous costs," below.

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ARMY SUPPORT FOR WACO

SUPPORT	DATE	REQUEST SOURCE	APPROVED	DATE	COST	REIMB?	WHY NOT?
Three Unmanned Ground Vehicles	7 Mar	FBI	OSD	7 Mar			Data not available
Two Combat Engineer Vehicles	7 Mar	FBI	Acting ASA(IL&E)	7 Mar			See Texas National Guard summary below
40mm/M203 Range; 100 rounds practice ammo; 50 rounds illumination	11 Mar	FBI	Acting ASA(IL&E)	11 Mar	5065.00	Yes	Figure equals total cost of ammunition
Two Additional CEVs and one M88 Tank Retriever	15 Mar	FBI	OSD	16 Mar			See Texas National Guard summary below

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ARMY SUPPORT FOR WACO

SUPPORT	DATE	REQUEST SOURCE	APPROVED	DATE	COST	REIMB	WHY NOT?
Two PSS-11 Mine Detectors & Training	17 Mar	FBI	Acting ASA(IL&E)	18 Mar		No	None captured. Cost would have been for batteries only. Commercial batteries will work. User might have supplied own batteries.
UH-1 support (medevac)	23 Mar	FBI	Acting ASA(IL&E))	23 Mar	7075.00	Yes	
Two 2-1/2-ton trucks; Twelve M1009 Commercial Utility Cargo Vehicles	25 Mar	BATF	Acting ASA(IL&E)	25 Mar			See Texas National Guard summary below
Emergency Medical Support (on call)	31 Mar	FBI	Local commander	1 Apr		No	On call: no indications service ever used.
One 15-KW Generator	3 Apr	FBI	Local commander	When requested	1,866.00	Yes	Cost is for fuel consumed.

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ARMY SUPPORT FOR WACO

SUPPORT	DATE	REQUESTED BY	APPROVED BY	DATE	COST	REIMB (Y/N)	NOTE
Remote Observation Post (OP) & Night Observation Package	17 Mar	FBI	OSD (SecDef)	19 Mar	0.00	No	
Two operators to provide technical support for use of Remote OP & Night Observation Package	17 Mar	FBI	OSD (SecDef)	19 Mar	10,792.00	No	Reimbursement not requested.

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SOURCE DATED: 30 AUG 95

ARMY SUPPORT FOR WACO

MISCELLANEOUS ARMY COST REIMBURSED BY BATF SUPPORT

SUPPORT	COST
a. Temporary duty costs for support personnel and cost to lease vehicles to transport them.	16,135.18
b. Recovery vehicles, cellular phones, sand bags, and night vision goggles.	10,816.70
c. Support vehicles (Heavy Equipment Transports, wreckers, M998)	14,873.30
Total	**41,825.18**

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TEXAS NATIONAL GUARD SUPPORT FOR WACO

I. Support funded from counterdrug (CD) funds for Governor's state plan (32 U.S.C. 112)	
a. Personnel (pay, per diem, and travel)	102,301.00
b. Fuel and telephone expenses	2,405.00
c. Aircraft operation	11,152.00
d. Damage to aircraft	13,948.00
Total CD-funded (unreimbursed) support	**129,806.00**

II. Support to BATF and FBI--reimbursed	BATF	FBI	
a. Maintenance (parts and labor)	6,857.61	174,313.13	
b. Meals, Ready-to-eat (MREs)	15,589.86	3,379.62	
c. Diesel fuel	1,425.20	7,370.30	
d. Equipment	5,022.14	24,323.16	
Subtotal	**28,894.81**	**198,636.29**	
Total reimbursement from FBI and BATF			**227,531.10**

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ARMY SUPPORT FOR WACO

SUPPORT	DATE	REQUEST SOURCE	APPROVED	DATE	COST	REIMB?	WHY/NOTE
Cots, gas masks, & one GP medium tent	6 Apr	FBI	Local commander	When requested			See "miscellaneous" chart below.
One GP small tent	13 Apr	FBI	Local commander	13 Apr			See "miscellaneous" chart below.
Protective masks (fifteen each, M17 & M24)	13 Apr	FBI	Local commander	When requested			See "miscellaneous" chart below.
Concertina wire (80 rolls), 200 pickets, & six picket drivers	9 Apr	FBI	Local commander	9 Apr	2,975.80	Yes	
Three CH-47 helicopters (on call)	13 Apr	FBI	Local commander	13 Apr	12,900.00	Yes	
Five physicians (on call)	15 Apr	FBI	Acting ASA(IL&E)	16 Apr			See "miscellaneous" chart below.

* Section 1004, National Defense Authorization Act for Fiscal Year 1991, as amended (Pub. L. No. 101-510).

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UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SERVICES SUPPORT FOR WACO

SUPPORT	REQUEST DATE	REQUEST SOURCE	APPROVED	APPROVED DATE	COST REIMB	WHY NOT?	
Medical Support	28 Feb	FBI	Per USUHS-FBI Hostage Rescue Team Memorandum of Understanding (MOU)	28 Feb	See remarks	Yes	USUHS provided 133 man-days of support to the FBI Hostage Rescue Team. Under the MOU, all TDY vouchers are submitted directly to the FBI for payment. Additionally, FBI paid for expendable medical supplies, again pursuant to procedures under the MOU.

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AIR FORCE SUPPORT FOR WACO

SUPPORT	DATE	REQUESTED SOURCE	APPROVED	DATE	COST	REIMB?	WHY NOT?
Electronic Jammers & Equipment Operators	3 Mar	FBI	Dep USD(SP)	3 Mar	32,500.00	Pending	Request for reimbursement not submitted until late 1995. (Costs include transportation, per diem, housing, maintenance/repairs. Jammers operated 10-17 Mar)

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MAR-11-1993 11:18 FROM FBI OPERATIONS CTR. TO [redacted] P.03

25 FBI

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

March 11, 1993

TO: Office of the Secretary of Defense
Executive Secretariat, The Pentagon
Attn: [redacted]

FROM: [redacted] Assistant Director
Criminal Investigative Division

SUBJECT: WACHUR MC 80
REQUEST FOR ASSISTANCE FROM
THE DEPARTMENT OF DEFENSE

Reference: Telephone call on 3/11/93 from [redacted], FBIHQ, Strategic Information Operation Center (SIOC), (202) 324-6700, and [redacted]

In support of this mission, the FBI requests the use of a 40mm/203 range on Ft. Hood, Texas, with appropriate range personnel to operate the range. The Department of Defense is also requested to provide 100 rounds of 40mm/203 practice ammunition and 50 illumination rounds. This ammunition is to be transferred to the possession of the FBI.

This is an immediate need request, availability and time limit coordination is to be handled with [redacted], SIOC, (202) 324-6700.

The FBI recognizes the Economy Act requirements for reimbursement of Department of Defense from the use of this equipment.

All billing for this request should be directed to: FBI, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20535, Attn: Assistant Director, Division 3, MC 80 support.

TOTAL P.03

EXHIBIT 106

Z 0022040

DAMO-ODL 11 Mar 93

MEMORANDUM FOR RECORD

SUBJECT: FBI Request for 40mm Grenade Launcher Training

1. On 11 March 93, FBI [redacted] (FBI HQ/202-324-6700) contacted this office telephonically and requested Army provide refresher training on an expedited basis for HRT personnel in use of 40mm grenade launchers. Training is in support of federal law enforcement operations in Waco, Texas. Training is scheduled for 111300 (CST) March 93, at 40mm range at Fort Hood. FBI agents will use there own weapons but require 100 rounds of training/ practice ammunition and 50 rounds of illumination ammunition Army personnel will operate range facility for FBI.

2. Training will be provided under the provisions of the Economy Act with all direct and indirect costs reimbursable.

3. Coordinated training request with OSAGC ([redacted], ASA(ILE) [redacted], DALO-ODS [redacted], FORSCOM [redacted] and OSD-EB (LTC Boevers). At 111205 Mar 93, the Acting ASA(ILE), [redacted], approved the request for training support to the FBI.

[redacted]
LTC, GS
Action Officer

This has been passed to Ft Hood.

[redacted] 03-11-93 12:31PM P001 #11

DAMO-ODS 11 Mar 93

MEMORANDUM FOR RECORD

SUBJECT: FBI Request for 40mm Granade Launcher Training

1. On 11 March 93, FBI [redacted] (FBI HQ/202-324-6700) contacted this office telephonically and requested Army provide refresher training on an expedited basis for HRT personnel in use of 40mm grenade launchers. Training is in support of federal law enforcement operations in Waco, Texas. Training is scheduled for ~~111900~~ 121900 (CST) March 93, at 40mm range at Fort Hood. FBI agents will use there own weapons but require 100 rounds of training/practice ammunition and 50 rounds of illumination ammunition. Army personnel will operate range facility for FBI.

2. Training will be provided under the provisions of the Economy Act with all direct and indirect costs reimbursable.

3. Coordinated training request with OSAGC (Sara Merck), ASA(IL&E) ([redacted]), DALO-ODS ([redacted]), FORSCOM ([redacted]) and O&D-ES ([redacted]). At 111205 Mar 93, the Acting ASA(IL&E), [redacted], approved the request for training support to the FBI.

[redacted]
LTC, GS
Action Officer

* FBI authorized to depart range w/any portion of unfired ammunition. Coordinated w/ Army General Counsel ([redacted]). 121300 Mar 93 fax

* Change to 200 TP Rounds. Approved by ASA IL&E [redacted] 120800 Mar 93 (Admistrative Change)

D-1822

R-98X [redacted] 03-12-93 03:05PM P001 #16

DAMO-ODS 11 Mar 93

MEMORANDUM FOR RECORD

SUBJECT: FBI Request for 40mm Grenade Launcher Training

1. On 11 March 93, FBI [redacted] (FBI HQ/202-324-6700) contacted this office telephonically and requested Army provide refresher training on an expedited basis for HRT personnel in use of 40mm grenade launchers. Training is in support of federal law enforcement operations in Waco, Texas. Training is scheduled for 111300 (CST) March 93, at 40mm range at Fort Hood. FBI agents will use there own weapons but require 100 rounds of training/ practice ammunition and 50 rounds of illumination ammunition Army personnel will operate range facility for FBI.

2. Training will be provided under the provisions of the Economy Act with all direct and indirect costs reimbursable.

3. Coordinated training request with OSAGC [redacted], ASA(IL&E) [redacted], DALO-ODS ([redacted], FORSCOM [redacted]) and OSD-ES [redacted]. At 111205 Mar 93, the Acting ASA(IL&E), [redacted] approved the request for training support by the FBI.

[redacted]
LTC, GS
Action Officer

MFR: Per conversation with [redacted] DA DOMS, at 121410Z Mar 93, authorization has been increased to 200 rounds training practice and 50 rounds illumination.

[redacted]
GS-12
Watch Officer
Forscom Ops Center

D-712

R-96X [redacted] 03-11-93 12:31PM P001 #11

2

Log re Waco.

11 MAR 93:

1320: Called [redacted] at FORSCOM watch. No new info.

1330: [redacted] called back; range is available, but (IAW [redacted] now FBI requires 200 vice 100 40mm TP rounds. Told him I'd check if OK to plus up ammo allocation while he gets me data re range (availability of ammo, open/close time, # pax on range, etc.) Told him that it seems to me that as DA agreed to provide range/ammo, request for more ammo doesn't violate principle/shouldn't be showstopper.

1345: Left msg with [redacted]'s sec'y.

1450: Called FORSCOM watch; spoke w watch NCO; they're still tracking with Ft Hood.

1515: [redacted] III Corps G3 Opns, needs [redacted] to send MFR for reimbursement purposes that reflects III Corps is providing 2 helos to FBI. (Other support has been validated in previous MFRs)

1545: Got NGB data from [redacted] on Army watch (70218). Confirmed why data from NGB shows NO NG/SAD in Texas -- counting by $ source IAW [redacted] says there is no change from Thursday's slide/data. Told [redacted] [TAB 1]

1555: [redacted] needs data for CSA, will stop by for copy of MFR re FBI and 40mm trng and read me phone log.

1600: Called FORSCOM, spoke w [redacted], he'll call Ft Hood and call me "right back."

1605: [redacted] is still not in. His sec'y will leave 2nd msg.

1610: [redacted] called back. Ft Hood is working it, range and GIs are available, FBI is at range to train, holdup is paper problem at ASP, not a showstopper. Ft Hood expects to train today. [redacted] will confirm accurate count for req't for ammo, # pax on range, anticipated open/close time. He'll call us or watch [redacted] goes off shift at 1930, will brief his successor).

1630: Told [redacted] at CSA's weekly summary "no change" to data she sent to us for review. Reviewed text w COL T [TAB 2]

1635: [redacted] called back: real count of ammo is 100 TP and 50 Illum -- no change from original request.

1635: [redacted] called back -- told him disregard, FBI 40mm request as seen by him earlier remains in effect.

1640: [redacted] called again, range is scheduled for 0900 Central

D-1857

C/O

Friday, 12th. Advised [redacted] (27). [redacted] (26) said no need for Exsum yet, he'll tell MG H that they'll train tomorrow and we'll provide Exsum with details of trng after the trng.

1715: [redacted] (32) called -- expect 8-10 FBI on the range tomorrow. Advised [redacted] (26) and [redacted] (27)

12 MAR 93

0550: Spoke w [redacted] (57) at FORSCOM watch -- nothing to report, no change in pax/equipment.

0600: Advised [redacted] (20) to pass to [redacted] (27) for his 0630 briefing.

0800: [redacted] (21) asked for an additional 150 TP for 40mm. Advised COL T.

0815: Called [redacted] (20) at FORSCOM; asked him to research w III Corps the availability/impact of ammo plus-up.

[redacted] (26) [redacted] (2) ? Who's in charge WACO/TX?

FORSCOM OPERATIONS CENTER

☐ RECORD OF TELEPHONE CALLS ☐ RECORD OF ACTIONS

FROM (HQ) HQ DA DOMS	TO (HQ) FORSCOM
INITIATED BY [redacted] DSN 227-4331	RECEIVED BY [redacted] (2)
DATE/TIME GROUP (ZULU) 111550Z MAR 93	

INCIDENT/MESSAGE

FBI wants to use Range at FT Hood for 40mm Training, for Thursday, 1300 CST.
- Soldiers to run range
- 100 rds 40mm TP and Illumination

Needs to know if FORSCOM can and wants to support. They do not want to force it down anyone's throat.

ACTION 111555Z - (4) III Corps, [redacted] (3) They are checking, too many unknowns to answer
111600Z - [redacted], This is a normal support mission, OK if FT Hood can do it.
111605Z - (5) [redacted] SJA: courtesy call to him for info. He has no problems
111612Z - to III Corps, (6) [redacted] He advised they are still checking, (7) [redacted] out of office to check. Told him we have no problem with the mission if they can do it. If not, call us back with a recommendation.
111617Z - passed info to [redacted] (8) DA DOMS. (9)
111728Z - Received MFR [redacted] DA DOMS Copy Provided [redacted] (10) (11) (12) and faxed to III Corps.
111845Z - (13) [redacted] will notify the J3.
112045Z - (14) [redacted] called and said that the FBI only wants 100 EDS now and it [redacted] approximately 2 Hrs before all coordinations are made.
112210Z - From [redacted] (15) III Corps - Range will go Friday, 0900 CST

VOICE (NOT) AUTHENTICATED	ACTION ELEMENT OVER
JOURNAL ☐ YES ☐ NO ENTRY	ACTION OFFICER

FCJ3 FORM 1342, 1 MAR 89

FORSCOM OPERATIONS CENTER DAILY ACTION LOG

☐ RECORD OF TELEPHONE CALLS ☐ RECORD OF ACTIONS

FROM (HQ) HQ DA DOMS	TO (HQ) FORSCOM
INITIATED BY [redacted] DSN 227-4331	RECEIVED BY [redacted] (2)
DATE/TIME GROUP (ZULU) 121323Z MAR93	

INCIDENT/MESSAGE

- FBI has come in with request for 150 additional TP rounds for 40mm Tng.
- Request has not been approved yet. Before approval given, need statement of impact on FT Hood if approved.

available/not available
Impact on Troops at FT Hood

(3)

ACTION

121325Z - Passed to FT Hood, [redacted]. Told him need expeditious answer, also discussed with [redacted]. (4)

121335Z - (4) Briefed [redacted] J3 TNG SPT AMMO (7075). (6)

121355Z - Conference call (5) [redacted] III Corps, [redacted] DA DOMS (7) [redacted] advised III Corps GNO [illegible] Tng [illegible] 100 additional TP rounds. No firm answer yet on impact on FT Hood if they provide additional ammo. Also, FBI may not show for Tng Today. WX too bad to fly, having difficulty getting cars to transport agents (8) to FT Hood. FT Hood feels like troops are being jerked around. set up range yesterday, today and now may have to on Saturday. Per [redacted] (9) range should be operated to accommodate FT Hood. Then call.

121410Z - from [redacted] (10) DA DOMS - to make record of increase in authorization, put MFR on bottom of initial document, reference conversation, and increase to 100 rds TP and 50 round illumination. Date of range: operation to be FT Hood call.

VOICE (NOT) AUTHENTICATED	ACTION ELEMENT
JOURNAL ☐ YES ☐ NO ENTRY	ACTION OFFICER

FCJ3 FORM 1342, 1 MAR 89

(9)

15 March 93

(U) STATUS OF ARMY SUPPORT TO THE FBI AND BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (BATF) IN WACO, TEXAS (U). This EXSUM is self-initiated. Military support continues, as law enforcement agencies report litte change in the situation in Waco, Texas. Additional support provided to Federal agencies over the weekend includes training for the FBI on use of 40mm grenade launchers on 12 March 93, at Fort Hood [approved by Acting ASA(IL&E)], and the loan of 30 protective masks and two xenon search lights by the Texas ARNG.

(1) [redacted] DAMO-ODS/74331

(2) APPROVED BY [redacted]

APPROVED FOR FORWARDING
[illegible] EXSUM SUMMARY

(3) [redacted] 17/3

REVIEWED BY DCSOPS

C12

0000319

ADJUTANT GENERAL'S DEPARTMENT
Post Office Box 5218
Austin, Texas 78763-5218
512-465-5001

AGTX-CD (500-2) 29 April 1993

MEMORANDUM THRU

The Adjutant General of Texas, Attn: AGTX-OT (LTC Cottle),
PO Box 5218, Austin, Texas 78763-5218

The Adjutant General of Texas, ATTN: AGTX-A (MG Turk),
PO Box 5218, Austin, Texas 78763-5218

FOR Chief, National Guard Bureau, Attn: NGB-CD, The Pentagon,
Washington, D. C. 20310-2500

SUBJECT: After Action Report of Texas National Guard Counterdrug Support in Waco, Texas

1. GENERAL

a. This narrative will provide explanation and clarification of the support provided by the Military Forces of Texas to the Bureau of Alcohol, Tobacco and Firearms (ATF) and the Federal Bureau of Investigation (FBI) prior to, during, and after OPERATION TROJAN HORSE and a subsequent Hostage Rescue Mission in the vicinity of Waco, Texas. The format and verbiage selected for this presentation is intended to make this product understandable to both military and civil audiences. The purpose of this document is to provide fact in an objective manner. Texas National Guard (TXNG) support to law enforcement will be explained; debate over law enforcement actions beyond this support will be avoided.

b. Inclusive dates were: 11 December 1992 - 27 April 1993

c. Scope of Operation:

(1) The initial Texas National Guard objective was to provide quiet, honest, and professional counterdrug support in assisting ATF in an ongoing firearms and drug case in central Texas. This was done in accordance with National Guard Regulation (NGR) 500-2 and provided support from the following Office of the Secretary of Defense approved National Guard counterdrug missions:

EXHIBIT
107

AGTX-CD 0SE0000
SUBJECT: After Action Report of Texas National Guard Counterdrug Support in Waco, Texas

Mission #3	Surface Transportation Support
Mission #4	Aerial Reconnaissance
Mission #5	Aerial Surveillance
Mission #6	Aerial Transportation Support
Mission #11	Coordination, Liaison, and Management
Mission #13	Film Processing for Photo Reconnaissance
Mission #14	Administrative, Information, ADP, Logistics, and Maintenance Support
Mission #16	Aerial Interdiction Support

* ATF was loaned certain TXNG equipment authorized under NGR 500-2, Chapter 3, para 3-1, to meet their mission requirements in OPERATION TROJAN HORSE (serving the warrant).

(2) Exigent circumstance encountered during the initial ATF mission prompted both ATF and FBI to request certain TXNG equipment and supplies to meet their new mission requirements. Loans of such items is covered under Army Regulation (AR) 700-131. Strict adherence to said regulation was the order of the day.

(3) In addition to Texas National Guard Counterdrug support personnel, military members from the following Texas National Guard units provided support to both OPERATION TROJAN HORSE and the subsequent FBI Hostage Rescue Mission:

HQ, STARC
TROOP COMMAND
49TH ARMORED DIVISION

(4) The vast majority of TXNG personnel funding for this operation was accomplished by using congressional monies authorized under 32 USC 112. Fiscal year 1993 funds had been provided to the Governor of Texas for use authorized by Article 1, Section 8, Clause 16, U. S. Constitution for this purpose. The totals listed below include mandays, to reflect the efforts of TXNG staff members and support personnel who provided assistance in addition to performing their traditional and ongoing TXNG roles.

NUMBER OF MANDAYS	TOTAL PERSONNEL, PER DIEM & TRAVEL COSTS
896	$102,301

AGTX-CD
SUBJECT: After Action Report of Texas National Guard Counterdrug Support in Waco, Texas

* Approximately 14% of the mandays were officers.

2. OPERATIONAL SUPPORT

Texas National Guard support provided the Bureau of Alcohol, Tobacco, & Firearms and the Federal Bureau of Investigation can best be portrayed in the following phasic manner:

(1) Initial Planning and Coordination
(11 December 1992 - 27 February 1993)

An initial ATF inquiry seeking information on the availability of TXNG aerial photography to support an ongoing ATF investigation was received on 11 December 1992. This initial inquiry led to a series of requests from ATF and Operation Alliance seeking support for an upcoming ATF mission. The requests asked for aerial photography, aerial thermal imagery, and general operational support. A coordination meeting was held in ATF Headquarters, Houston, Texas on 4 February 1993. This meeting was attended by ATF & TXNG Counterdrug Command Group representatives.

(2) Support to OPERATION TROJAN HORSE
Serving the Warrant
(11 December 1992 - 28 February 1993)

Aerial photography missions requested by ATF were flown on 6 January and 3, 18, & 25 February 1993 by the Texas National Guard Counterdrug UC-26. On 14 January 1993 aerial photographs were taken by RF4-C aircraft from the Alabama National Guard. Additional aerial photography and infra-red video was requested by ATF and provided by the Texas National Guard UC-26 on 6 February 1993. A mission request with final general operational support needs was received on 24 February 1993 and the initial TXNG support package was dispatched to Fort Hood, Texas and Texas State Technical College (TSTC), Waco, Texas. All participating TXNG Counterdrug personnel attended training rehearsals and mission briefings 25 - 27 February 1993. All involved TXNG Counterdrug support personnel were in attendance of the final mission briefing at 1900 hours on 27 February 1993. On 28 February 1993 all TXNG support personnel reported to TSTC at 0800 hours. Certain TXNG ground support personnel staged at ATF assembly area, and TXNG aircrews prepared their aircraft for the mission. Final positions for TXNG Counterdrug ground support

personnel was 600 - 700 meters from the Branch Davidian site. The TXNG Counterdrug aircraft final position was 300 - 450 meters north of the Branch Davidian site. Texas National Guard aircraft arrived at their predetermined operational position simultaneously with the arrival of ATF personnel at the Branch Davidian site. All three aircraft received gunfire while slowing to hover at their final position. All aircraft turned North, away from the Branch Davidian site, and departed the area.

* The TXNG Counterdrug Task Force Commander was onboard one of the TXNG aircraft. His charge was to insure no existing regulation or law was violated in the provision of TXNG support to this law enforcement action.

* No one on board TXNG aircraft was injured.

* Damage encountered by TXNG aircraft amounted to $ 13,948.

* No TXNG personnel onboard the TXNG aircraft were armed.

* Nothing, but videotape was shot from the TXNG aircraft on 28 February 1993!!!

(3) Hostage Rescue Mission
(28 February 1993 - 19 April 1993)

Initiation of hostile activities between ATF and the Branch Davidians resulted in a myriad of actions affecting Texas National Guard Counterdrug Support to both ATF initially, and later the FBI. These actions include but are not limited to:

* The Adjutant General of Texas (TAG) and the Adjutant General's Department (AGTX) primary staff notified of situation.

* National Guard Bureau (NGB) Emergency Operation Center (EOC) notified of situation.

* Establishment of Texas National Guard EOC in Austin, Texas to coordinate with NGB EOC in Washington, D. C. on a 24-hour basis.

* Office of the Governor informed of situation.

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* Requests were received from ATF for Bradley fighting vehicles, night vision equipment, fuel, field rations, and personal protective equipment.

* TXNG aviation safety personnel inspected and evaluated damage to TXNG aircraft.

* Bradley fighting vehicles were transported from Gatesville, Texas to Waco, Texas.

* ATF agents were trained to operate said vehicles.

* Bradley fighting vehicles, combat engineer vehicles, personal protective equipment, field rations, fuel and drivers training was requested by the FBI.

* Requested vehicles were transported to Waco, Texas.

* FBI agents were provided vehicle driver's training.

* Loan agreements were initiated for tracked vehicles between ATF, FBI, and Texas National Guard. Vehicles were released to the agencies.

* Reimbursement agreements were initiated and expendable supplies were issued to the Federal agencies.

* Daily vehicle maintenance, fueling, and support schedules were established and maintained.

* A TXNG counterdrug representative was dispatched to NGB to explain and provide information to an NGB Focal Group.

* Numerous situational requests for equipment, logistics, training facilities and general support were received, staffed, and either provided or passed to other agencies.

* An equipment recovery plan was prepared, staffed, and coordinated.

* Daily situation reports were provided to authorized audiences.

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(4) Recovery Plan Implementation
(20 - 27 April 1993)

Upon cessation of hostile activities between federal agencies and Branch Davidians, the Texas National Guard equipment recovery plan was activated. The objective of the recovery plan was to insure all TXNG equipment was accounted for, recovered, and that all losses, damages, and destruction were identified. Full cooperation with all supported agencies was evident. Activities involved in the recovery plan included:

* Members of the Adjutant General's USPFO and Command Logistics Office were dispatched to assist TXNG Counterdrug personnel and Law Enforcement Agencies (LEA) in the action.

* TXNG property was recovered and inspected.

* Reimbursement documents for consumables were jointly prepared and agreed upon between TXNG and federal agencies.

* Reimbursement documents for damage, loss, or repair to TXNG equipment were prepared and agreed upon by TXNG and federal agencies.

* TXNG equipment was returned to TXNG, cleaned, and transported to lending TXNG units.

3. ADMINISTRATION

a. Public Affairs. As per NGR 500-2, para 2-10(a), the supported LEAs released and controlled information regarding TXNG support of the operation. The TXNG Public Affairs Office (PAO) coordinated with the Governor of Texas' Press Secretary. Thirty-nine (39) requests from media or agency representatives were received reference this operation or TXNG Counterdrug Support in general.

b. Personnel Actions. Publication of orders and travel related expenses were monitored and controlled by the TXNG Counterdrug Command Group.

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c. Morale and Discipline. The morale of TXNG support personnel remained high throughout the entire operation. A sense of camaraderie and purpose was evident.

d. Casualties/Injuries. NONE!

4. TXNG LOGISTICS/SERVICE SUPPORT

a. The following TXNG equipment was operated, flown by, or maintained by Texas National Guard personnel at some period in support of OPERATION TROJAN HORSE and the subsequent Hostage Rescue Mission:

UC-26 Aircraft	Fuel Trucks
OH-58 Helicopters	2 1/2 Ton Trucks
UH-60 Helicopters	Water Trailers
Utility Vehicles	Armored Personnel Carrier
Buses	Transport Trailers
Photographic Equipment	Power Generators

b. The following TXNG supplies and equipment were loaned to, provided to, purchased by, or maintained for federal agencies at some period during OPERATION TROJAN HORSE and the subsequent Hostage Rescue Mission:

Bradley Fighting Vehicles	Military Utility Vehicles
Combat Engineer Vehicles	1/4 Ton Jeeps
Ammunition Trailers	Search Lights
Tracked Recovery Vehicle	Field Rations
Protective Masks	Night Vision Equipment
Military Helmets	Flak Vests
Canteens	Tentage
Light Sets	Litters
Weapon Slings	Ammunition Magazines
Sandbags	Tables/Chairs
Wet Weather Gear	

***THE DAILY MAINTENANCE AND REPAIR OF THE LOANED TXNG TRACKED VEHICLES TO FEDERAL AGENCIES WAS CRUCIAL TO THE MISSION AT HAND. THE PROFESSIONALISM AND RAPPORT DEVELOPED AND DISPLAYED BETWEEN TXNG MAINTENANCE PERSONNEL AND FEDERAL AGENTS INVOLVED IN THIS MONUMENTAL TASK, WAS PHENOMENAL!!!!!!**

*Coordination and communications requirements were greatly enhanced by the use of cellular phones (secure and non-secure)

provided to the TXNG Counterdrug Program by Central Procurement actions at the National Guard Bureau Level.

5. TEXAS NATIONAL GUARD COSTS

a. The following costs were funded with existing FY93 TXNG Counterdrug funds supplied Texas for the purpose of supporting LEAs in such operations.

(1)	Personnel (Pay, Travel, & Per Diem)	$ 102,301
(2)	Ground Transportation (Fuel)	410
(3)	Telephone (Landline & Cellular)	1,995
(4)	Fixed Wing Aircraft (UC-26)	8,032
(5)	Rotary Wing Aircraft (UH-60 & OH-58)	3,120
(6)	Damage to Aircraft (UH-60 & OH-58)	13,948
(7)	Total Costs Incurred	$ 129,806

b. Federal LEAs have agreed to reimburse the TXNG for consumables and loss, damage, or repair to TXNG equipment.

$ 205,752

6. PROBLEM AREAS AND RECOMMENDATIONS

a. General Considering the magnitude, severity, and scope of this particular support mission, few, if any, major problems were encountered. Personalities, vanities, and opinions did surface to near problematic degrees, but this can be attributed to stressed and sleepless, but concerned personnel.

b. Public Affairs

(1) Problem: A law enforcement representative on three occasions presented information at daily press briefings that did not accurately portray specific military mission aspects or the specific military organization of an individual.

(2) Discussion: Para 2-10 a., NGR 500-2, directs that the supported law enforcement agency will assume the lead and make determinations as to what information will be released to the press. In this particular operation, both Title 10 and Title 32 forces were supporting law enforcement. The magnitude of information necessary for the law enforcement briefer to absorb was monumental. It is quite understandable, that in one case, a National Guardsman was reported injured; actually it was a Title 10 soldier. This caused a bit of consternation throughout the National Guard community. The misinformation was readily

corrected through existing lines of communications between the Texas National Guard, the Office of the Governor of Texas, and the National Guard Bureau. Other misquotes were noted, but caused no immediate chagrin and don't appear at this time to be significant.

(3) Recommendation: Do not change NGR 500-2, Para. 2-10 a., this paragraph wisely allows for a single source of media release and prevents possible operational security problems.

7. CONCLUSION

There exists in NGR 500-2 a phrase, and that phrase is "EXIGENT CIRCUMSTANCE". It is a phrase difficult to define, but generally presents a condition that is an unforeseen, unavoidable, and omnipresent. The regulation states, "Exigent circumstances are situations in which immediate action is necessary to protect police officers, Guard personnel, and other persons from injury; to prevent the loss or destruction of evidence..."

What began as traditional Texas National Guard Counterdrug support to a federal law enforcement agency resulted in just such a condition. All previous Texas National Guard Counterdrug support situations had fallen within and been addressed by existing regulation and law.

Events in Waco tested and validated the Texas National Guard's ability to react to "EXIGENT CIRCUMSTANCE." The integrity, common sense, and ingenuity demonstrated by TXNG personnel and supported law enforcement agencies resulted in timely and necessary actions.

Existing regulation should and will be examined in wake of the previous mentioned events. REACTIVE REGULATION "shouldn't" be implemented to stifle, reduce, or hamper National Guard Counterdrug support that has to this point been performed in a fashion that is legally, ethically, and tactically correct in accordance with existing guidance, regulation, and law.

[redacted]
LTC, TXANG
Task Force Commander

DAN BURTON, INDIANA,
CHAIRMAN
BENJAMIN A. GILMAN, NEW YORK
CONSTANCE A. MORELLA, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. MCHUGH, NEW YORK
STEPHEN HORN, CALIFORNIA
JOHN L. MICA, FLORIDA
THOMAS M. DAVIS III, VIRGINIA
DAVID M. MCINTOSH, INDIANA
MARK E. SOUDER, INDIANA
JOE SCARBOROUGH, FLORIDA
STEVEN C. LATOURETTE, OHIO
MARSHALL "MARK" SANFORD, SOUTH CAROLINA
BOB BARR, GEORGIA
DAN MILLER, FLORIDA
ASA HUTCHINSON, ARKANSAS
LEE TERRY, NEBRASKA
JUDY BIGGERT, ILLINOIS
GREG WALDEN, OREGON
DOUG OSE, CALIFORNIA
PAUL RYAN, WISCONSIN
HELEN CHENOWETH, IDAHO
DAVID VITTER, LOUISIANA

ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
TTY (202) 225–6852

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER
TOM LANTOS, CALIFORNIA
ROBERT E. WISE, Jr., WEST VIRGINIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
PATSY T. MINK, HAWAII
CAROLYN B. KALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
CHAKA FATTAH, PENNSYLVANIA
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
ROD R. BLAGOJEVICH, ILLINOIS
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
HAROLD E. FORD, Jr., TENNESSEE
JANICE D. SCHAKOWSKY, ILLINOIS

BERNARD SANDERS, VERMONT,
INDEPENDENT

November 16, 1999

Honorable William Cohen
Secretary of Defense
Department of Defense
The Pentagon
Washington, DC 20301

Dear Mr. Secretary:

It has been over six years since the tragic ending of the standoff at the Branch Davidian Compound at Waco, Texas. This event and its aftermath represent a most unfortunate chapter in the history of the Bureau of Alcohol, Tobacco, and Firearms (BATF) and the Federal Bureau of Investigation (FBI). The day after the Waco siege ended in a horrendous conflagration, the President directed the Departments of Justice and Treasury to undertake a "...vigorous and thorough investigation to discover what happened and why, and whether anything could have been done differently...." These investigations should have included a thorough assessment and discussion of the military's involvement in support of BATF and FBI operations. However, both investigations devote very little discussion to this important topic.

In 1995 the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, and the Subcommittee on Crime of the Committee on the Judiciary conducted joint hearings into the Waco incident. The Committee on Government Reform and Oversight and the Committee on the Judiciary published their report on the joint investigation on August 2, 1996. On page 30 of the report ("V. Military Involvement in the Government Operations at Waco"), it states "...U.S. Military involvement is one of the least explored and most misunderstood elements of the events that took place near Waco, TX in 1993...." That unfortunate misunderstanding continues to this day in the minds of the American people, and is exacerbated with each new revelation or allegation inferring greater military involvement at Waco.

What is most troubling at this point in time is that there does not exist a complete and definitive document of record outlining the military's involvement during the entire Waco incident. Furthermore, records available to the Committee do not indicate whether DOD ever initiated its own comprehensive internal review and assessment of military involvement in this significant event.



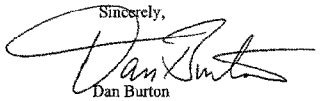
During the 1995 joint hearings, Honorable H. Allen Holmes, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, was one of the DOD witnesses. During his testimony, he offered to provide a complete listing of DOD equipment and material provided to both the BATF and the FBI during the Waco incident. On January 23, 1996, Secretary Holmes forwarded a letter purporting to outline the DOD equipment and material provided. I have recently been provided a copy of the Government Accounting Office's (GAO) *Report to the Secretary of Defense, the Attorney General, and the Secretary of the Treasury, DEPARTMENT OF DEFENSE Military Assistance Provided at Branch Davidian Incident, August 1999*. There are discrepancies between the GAO report and the earlier report provided by Secretary Holmes, most notably the absence of any mention within Secretary Holmes' list of the support provided by the Alabama Air National Guard to the BATF early in the Waco operation. No two reports from any source provided to the Committee on Government Reform regarding the military's involvement at Waco seem to be consistent in detail.

The critical first step to understanding the military's involvement during the Waco incident is to obtain a complete and accurate listing of the military units and personnel from any branch of the of the Armed Forces - Active Duty, National Guard or Reserve - who were engaged in any manner, means, or method of support to the BATF and FBI at Waco; the dates, locations and descriptions of the duties and responsibilities of military members providing that support; and a complete listing and description of the equipment and material, to include all munitions, supplied to the BATF and the FBI for their use during the Waco incident.

The Committee on Government Reform has never been provided a definitive single source document from DOD cataloging in detail the military personnel, equipment, and material involved in the Waco incident. DOD is the only entity that possesses that information and only DOD can produce such a comprehensive document of record. The Committee on Government Reform and the American people should not have to engage in a documentary shell game to understand once and for all exactly what their military forces did in support of federal law enforcement operations at Waco. I request that the Committee on Government Reform be provided in writing the information described in the preceding paragraph not later than December 2, 1999.

If there are any questions concerning this request please contact Mr. Thomas G. Bowman, Senior Counsel, Committee on Government Reform, at (202) 225-5074.

Sincerely,



Dan Burton
Chairman

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

06 DEC 1999

The Honorable Dan Burton
Chairman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Burton:

Thank you for your letter of November 16, 1999 to Secretary Cohen requesting information regarding the support provided by DoD to federal law enforcement agencies in support of the law enforcement operation in 1993 at the Branch Davidian compound in Waco, Texas. My office, in conjunction with the Office of the Assistant Secretary of Defense for Legislative Affairs, is working with other DoD components to respond to congressional inquiries regarding this matter.

We have now had discussions with your staff about how we can best respond to the Committee's various requests, including those of your letter of November 16. I believe we have identified a satisfactory way to meet all your concerns.

With regard to the document production, all documents relating to DoD's support of the 1993 law enforcement operation at the Branch Davidian compound are currently available for the Committee to review. We will promptly provide the Committee with copies of any documents requested. As your staff has agreed, we will redact the names of military personnel from these documents in order to protect the privacy and security of military personnel involved. The names of the military personnel will be provided separately to the Committee on coded sheets so that the Committee can determine where the names appear on the documents. Your Committee agreed to this same procedure in 1995.

With regard to interviews, we are providing your staff with lists of the DoD personnel who have been interviewed by the Office of Special Counsel (OSC), some of whom are presently employed by DOD and others of whom have retired or separated from the military or civilian employment. At the Committee's request, we will make arrangements for the Committee to interview active duty military personnel or current DoD civilian employees. We will also make every effort to arrange for interviews with individuals that are no longer on active duty or are no longer employed by DoD.

EXHIBIT
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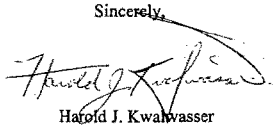
Finally, with regard to your November 16 letter, we will also work with you and your staff to provide such further information as the Committee may require about the equipment, personnel, and other material provided to the federal law enforcement agencies. As you know, following the hearings on the Branch Davidian incident in 1995, DoD provided a matrix outlining the support provided by the Army, Air Force, Uniformed Services University of the Health Sciences, and the Texas National Guard. Subsequently, GAO initiated a study of the reimbursements to DoD from the Bureau of Alcohol, Tobacco, and Firearms and Federal Bureau of Investigation (FBI) for the military support provided. This report contained a detailed listing of the support provided by all DoD entities. While there are minor discrepancies between the matrix we created following the 1995 hearings and the GAO report, we believe that these documents provide a generally accurate picture of the support DoD provided to the federal law enforcement agencies. Furthermore, as you are aware, the OSC has asked DoD and other federal agencies to refrain from substantive discussions with all relevant employees until OSC has spoken with them. This greatly complicates our ability to provide the additional information you are seeking, and to confirm its accuracy, at the present time.

To provide the Committee with any additional information it may require, we would suggest focusing initially on the role of the Special Forces personnel who were present at Waco during the law enforcement operation to observe or provide technical support to the FBI. The OSC has already interviewed five of the ten Special Forces personnel who were present at Waco, and we anticipate that the remainder will be interviewed soon. Following the completion of those interviews, we should be in a position to provide the Committee with a description of the Special Forces' role. With respect to other aspects of DoD's support to the law enforcement operations at Waco, we would suggest that we meet with you or your staff to provide an overview of the documents bearing on this issue. If your staff can then identify areas of particular interest to the Committee, we will seek to respond promptly to any requests for additional information, subject to coordination with the OSC.

With respect to your requests for information about the activities of the Texas and Alabama National Guards, we would suggest that those request be directed to state authorities since these Guard units were in a state, not federal, capacity during the events at Waco. Although in 1995 we forwarded to Congress documents provided by the Texas and Alabama National Guards concerning the support they provided to federal law enforcement agencies, we are not in a position to provide the comprehensive information the Committee has requested about their activities, which would require interviews with numerous Guard personnel who are not federal employees. Such information should be requested from the appropriate state officials.

If you or your staff would like to discuss these matters further, please do not hesitate to call me at 703-697-2714.

Sincerely,



Harold J. Kwalwasser
Deputy General Counsel (Legal Counsel)

cc: The Honorable Henry A. Waxman, Ranking Member

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D. C. 20301-1600

GENERAL COUNSEL

~~SECRET~~ [redacted]

16 DEC 1999

The Honorable Dan Burton
Chairman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Burton:

We are enclosing herewith attachments with information requested in your letter of November 16, 1999, which you recently discussed with Deputy Secretary of Defense Hamre.

These attachments are in the form of lists derived from information that has been previously made available to your Committee. As we have explained, some of this information is preliminary in nature, and subject to amendment in the future upon completion of our interviews with Department personnel. Nonetheless, based on the information currently available to us, we believe that these attachments provide an accurate description of the level of support provided by DoD to federal law enforcement agencies at Waco. We will provide you with updates as additional information becomes available.

The attachments are as follows:

Attachment 1 is a listing of active duty military personnel and civilian Defense Department employees who appear to have been involved in various aspects of DoD's support of law enforcement operations at Waco; many of these individuals were never present at Waco, but assisted with training and other functions elsewhere. Where known, the attachment also includes a brief description of the activities undertaken by these people. Also included on the list are individuals whose names appear on documents that lead us to believe they may have had some involvement in DoD's support to law enforcement, but the nature of whose involvement, if any, is currently uncertain. Because Attachment 1 contains classified information, as well as information affecting the privacy of individual service members, it should not be reproduced or further disseminated.

~~SECRET~~ [redacted]
(when memo is separated from attachments it is unclassified)

EXHIBIT
110

~~SECRET~~ - [redacted]

Attachment 2 is a listing of equipment and material provided by DoD in support of law enforcement operations at Waco.

Attachment 3 addresses the munitions provided to federal law enforcement agencies in support of law enforcement operations at Waco.

Your letter points out that there are discrepancies between the information provided to Chairman Zelliff in 1996 and the General Accounting Office report concerning Defense Department assistance to law enforcement operations at Waco which was issued earlier this year. Although we have not yet been able to resolve these discrepancies, we note that they are generally minor. We believe that the two documents are fundamentally consistent and provide an accurate picture of the nature and scope of the Defense Department's support to law enforcement operations at Waco.

We have not addressed the support provided by the National Guard. As you note, the Alabama Air National Guard assisted the Bureau of Alcohol, Tobacco and Firearms (BATF) early in the law enforcement operations. The Texas National Guard also assisted the BATF, and continued to provide assistance to the FBI during March and April, 1993. Because these Guard units were acting in a state, not federal, capacity, we suggest that you direct any requests for information about these activities to the state authorities responsible for them.

As the Deputy Secretary made clear in his telephone call, we would be pleased to provide you with a briefing that could clarify the information presented in the attachments and explain how we are proceeding with our inquiries in light of the activities of the Office of Special Counsel.

Sincerely,

Douglas A. Dworkin
Acting General Counsel

Attachment:
As stated

~~SECRET~~ [redacted]
(when memo is separated from attachments it is unclassified)

ATTACHMENT 1

~~SECRET~~ --[redacted]

RESPONSE TO REQUEST FROM COMMITTEE ON GOVERNMENT REFORM
December 16, 1999

Defense Department Support of Law Enforcement Operations
at Waco, February-April 1993

PERSONNEL[1]

(U) UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES
Bethesda, MD

Description: Provided Medical Support

(U) Present on April 19, 1993

[redacted], U.S. Army, Medical Corps (M.C.), Uniformed Services University of the Health Sciences (USUHS),
[redacted], U.S. Army, M.C., Brooke Army Medical Center,
[redacted], U.S Air Force, M.C., Wilford Hall Medical Center,
[redacted], U.S. Army, M.C., Darnell Army Community Hospital,
[redacted]
[redacted], U.S. Army, M.C., USUHS,
[redacted], U.S. Public Health Service, USUHS;
[redacted], U.S. Naval Reserve, USUHS,
[redacted], U.S. Air Force, M.C., Malcolm Grow Medical Center
[redacted], U.S. Army, M.C., Brooke Army Medical
[redacted], USUHS
[redacted], U.S. Army,
[redacted], U.S. Army, M.C., Darnell Army Community Hospital
[redacted], U.S. Army, M.C., Darnell Army Community Hospital
[redacted], U.S. Army, M.C., Darnell Army Community Hospital
[redacted], U.S. Army, M.C., Darnell Army Community Hospital

1 Ranks or employment positions held in 1993, unless otherwise noted.

Derived from: Multiple Sources
Declassify on: X1.5

~~SECRET~~ --[redacted]

(U) Present At Other Times

[redacted] USUHS
U.S. Airforce, Madigan Army Medical Center
U.S. Army, Madigan Army Medical Center
U.S. Air Force, Wilford Hall Medical Center
U.S. Army Reserves, USUHS
U.S. Navy, Naval Medical Center-San Diego
U.S. Army, Madigan Army Medical Center
U.S. Army, Brooke Army Medical Center
U.S. Army, Madigan Army Medical Center

(U) UNMANNED GROUND VEHICLE JOINT PROGRAM OFFICE
Redstone Arsenal, Huntsville Alabama

Description: Provided reconnaissance vehicles

[redacted] U.S. Army
Civilian, Instructor at Fort Belvoir, Virginia.
Aviation Missile Command
Contractor, Robotic Systems Technology
Contractor, Robotic Systems Technology

(U) ARMY SPECIAL OPERATIONS COMMAND
Various Army Installations

(U) Attended Meeting with [redacted] on April 14, 1993[2]

[redacted]

(U) Provided Training To BATF

[redacted]

(S) Observed Operation and Provided Technical Support

[redacted]

[2] Ranks are current as of Dec 1999

(U) Staff Judge Advocates

[redacted]

ARMY ACTIVE DUTY
Various Army Installations

Description: Provided training, equipment, and material to BATF and FBI

(U) FORSCOM/III Corps/ Ft. Hood Leadership

[redacted] Commander in Chief, FORSCOM
Commanding General, III Corps & Fort Hood
U.S. Army, Chief of Staff, III Corps, Fort Hood, TX
Director of Operations, FORSCOM
Commanding General, 1st Cavalry Div.
Assistant Chief of Staff, G-3 (Operations), III Corps, Fort Hood, Texas

(U) Other Fort Hood Staff

[redacted] Action Officer, G3, III Corps
Staff Judge Advocate, Ft. Hood
Public Affairs Officer

(U) Waco Liaison Officers

[redacted]

(U) Medical Evacuation Support -- 507th Medical Company (Air Ambulance), Fort Hood, Texas

Aircraft #355 -- Transported one burn patient from the medical area outside the Branch Davidian compound to Parkland Memorial Hospital in Dallas, Texas. Returned from Dallas with 5 ATF agents and was released.

Pilot in Command: [redacted]
Pilot: [redacted]
Crew Chief: [redacted]
Medic: [redacted]

Aircraft # 689 -- Sent to medical area outside the Branch Davidian compound; remained on standby until released.

Pilot in Command: [redacted]
Pilot: [redacted]
Crew Chief: [redacted]
Medic: [redacted]

Aircraft # 307 -- Remained on standby throughout 19 Apr 93. Never employed.

Pilot in Command: [redacted]
Pilot: [redacted]
Crew Chief: [redacted]

~~SECRET~~//[redacted]

Medic: [redacted]

(U) 1st Cavalry Division

3rd Battalion, 67th Armored Regiment (3-67 AR)

LTC [redacted] 3rd Battalion, 67 Armored Regiment

Headquarters and Headquarters Company, 3-67 AR BN:

[redacted]

A Company, 3-67 AR BN:

[redacted]

B Company, 3-67 AR BN:

[redacted]

C Company, 3-67 AR BN:

[redacted]

[redacted]

D Company, 3-67 AR BN:

[redacted]

(U) 6th Cavalry Brigade[3]:

Units:

2-158th Aviation Regiment
175th Command Aviation Company
6 Company, 2-158th Aviation Regiment

[redacted]

[3]No information is currently available about the particular units to which these individuals were assigned. Some of these individuals also appear elsewhere in this list.

[redacted]

(U) Participated in Loan of M1A1 Tank[4]

[redacted]

[4]Some of these individuals also appear elsewhere in this list.

(U) Coordinated 40 mm Ammunition Training for the FBI at Fort Hood

[redacted] FORSCOM Operations Center
DOMS Action Officer.
DOMS Action Officer.
Action Officer, ASA (IL&E).
Acting ASA (IL&E).
Army General Counsel Action Officer.
ASA (IL&E) Action Officer.
DALO-ODS Action Officer.
OSD Executive Secretariat Action Officer.
DOMS Action Officer (Involved with request for 10 CS Pellets)

(U) Coordinated Training for BATF at Fort Hood

[redacted] Commander JTF-6
Action Officer at JTF-6.
J3/J5 at JTF-6.
Action Officer at JTF-6.
Action Officer at JTF-6
(USMC), Staff Judge Advocate for JTF-6
JTF-6 Liaison Officer to Operation Alliance
Office of the FORSCOM Staff Judge Advocate
(USMC), FORSCOM Counterdrug Division
FORSCOM Counterdrug Division
FORSCOM Counterdrug Division
FORSCOM
DOMS Action Officer (Repeat Entry)
Regional Logistic Support Office, El Paso, Texas
ASA (IL&E) Action Officer
OSD Executive Secretary

[redacted] FORSCOM
FORSCOM.

(U) Commanders Present During Law Enforcement Operation

Commander, 553rd Corps Support Battalion: [redacted]
Commander, 664th Ordnance Company: [redacted]
Commander, 1st Medical Group: [redacted]
Commander, 36th Medical Battalion: [redacted]
Commander, 57th Medical Company (Air Ambulance): [redacted]

(U) Present at April 14, 1993 Meeting At With: [redacted]

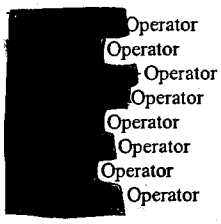
[redacted] Chief Life Sciences Dept., U.S. Army, Edgewood Research, Development and Engineering Center.
[redacted]

(U) Provided Assistance to Texas Rangers Investigation
[redacted] DoD Industrial Operations Command, Rock Island Arsenal

(S) **AIR FORCE MATERIAL COMMAND**
Edwards AFB

Description: Jamming Equipment Suppport

[redacted] Team Chief
Team Chief
Logistics
Truck Driver
Truck Driver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UNCLASSIFIED

ATTACHMENT 2

RESPONSE TO REQUEST FROM COMMITTEE ON GOVERNMENT REFORM
December 16, 1999

Defense Department Support of Law Enforcement Operations
at Waco, February-April 1993

EQUIPMENT AND MATERIAL

EQUIPMENT

3 UH-1 Helicopters*
3 CH-47 Helicopters
C-141 Airlift Transport of FBI Hostage Rescue Team and Equipment**

2 M1A1 Tanks
8 M988s
2 5 Ton Trucks
1 2.5 Ton Truck
14 Heavy Equipment Transports
Miscellaneous Vehicles (M1009, M818, M819)**

3 Unmanned Ground Vehicles
Remote Observation Posts**
Night Observation Package (Seismic Sensor and Thermal Imager)**
Electronic Jamming Equipment***

---

* Includes replacement aircraft
** Exact numbers of some items cannot be determined from existing documentation.
***Mobile ground based satellite jamming system. Further description of this system requires higher security classification.

UNCLASSIFIED

MATERIAL**

Night Vision Goggles
Concertina Wire
Picket Drivers
Pickets
Generators
Generator Fuel
Chemical Lights
Sandbags
Cellular Phone Charges
MREs
Cots
Tents
Lighting
PSS-11 Mine Detectors
Protective/Gas Masks

** Exact numbers of some items cannot be determined from existing documentation.

UNCLASSIFIED

ATTACHMENT 3

RESPONSE TO REQUEST FROM COMMITTEE ON GOVERNMENT REFORM
December 16, 1999

Defense Department Support of Law Enforcement Operations
at Waco, February-April 1993

MUNITIONS

PROVIDED DURING TRAINING ON RANGE[1]
Fort Hood, Texas

200 40 mm Training/Practice rounds

50 Illumination rounds

[1]In addition to the listed items, the GAO report issued in August, 1999, indicates that 250 high-explosive rounds were also provided to the FBI. The Defense Department has not yet been able to confirm this information.

DAN BURTON, INDIANA
CHAIRMAN
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STEVEN C. LATOURETTE, OHIO
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DAVID VITTER, LOUISIANA

ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
TTY (202) 225–6852

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
ROBERT E. WISE, JR., WEST VIRGINIA
MAJOR R. OWENS, NEW YORK
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DISTRICT OF COLUMBIA
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DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
HAROLD E. FORD, JR., TENNESSEE
JANICE D. SCHAKOWSKY, ILLINOIS

BERNARD SANDERS, VERMONT,
INDEPENDENT

January 20, 2000

Honorable William Cohen
Secretary of Defense
Department of Defense
The Pentagon
Washington, DC 20301

Dear Mr. Secretary:

On November 16, 1999, I wrote to you regarding military support provided to federal law enforcement agencies for their operations in 1993 at the Branch Davidian compound in Waco, Texas. I requested a complete and accurate listing of the military units and personnel from any branch of the of the Armed Forces - Active Duty, National Guard or Reserve - who were engaged in any manner, means, or method of support to the BATF and FBI at Waco; the dates, locations and descriptions of the duties and responsibilities of military members providing that support; and a complete list and description of the equipment and material, to include all munitions, supplied to the BATF and the FBI for their use during the Waco incident.

On December 16, 1999, Mr. Douglas Dworkin, Acting General Counsel, responded to my letter and provided responsive material. However, there was no discussion of the support provided by the Texas and Alabama National Guard in Mr. Dworkin's letter. It was suggested that the Committee communicate with appropriate state officials from Texas and Alabama for an accounting of support their National Guard personnel provided. The rationale was that the National Guard personnel were acting in a state, not federal, capacity during the Waco events. As such, state officials should provide the accounting.

Although I do understand this position, the Honorable H. Allen Holmes, Assistant Secretary of Defense (Special Operations and Low Intensity Conflict) testified as DOD's senior representative during the 1995 hearings and offered to provide a complete accounting of DOD support provided to both the BATF and FBI during the Waco incident. There were no qualifications discussed regarding which military branch or component support would be provided, and the Committee does not accept any being imposed at this time. Additionally, the funds used to support the National Guard personnel involved at Waco were congressionally appropriated Federal funds. If there is a need to query The Adjutants General or other state officials from Texas and Alabama,



the Committee believes DOD has the responsibility to obtain the information and provide it to the Committee.

Consequently, I am renewing my request for an accounting of the support provided by the Texas and Alabama National Guard to augment the information DOD has already provided. The Committee expects to receive this information on or before February 2, 2000.

Sincerely,

Dan Burton
Chairman

cc: Honorable Henry A. Waxman
Ranking Member

Honorable John Hamre
Deputy Secretary of Defense

DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

FEB 15 2000

The Honorable Dan Burton
Chairman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Burton:

Thank you for your letter of January 20. The Department of Defense is committed to providing Congress a complete record of its activities with respect to the Waco incident. Over the past two months, we have worked cooperatively with your staff to arrange interviews with present and former DoD personnel and have provided briefings and equipment demonstrations to them. We have also made our collection of classified and unclassified documents available for review. We are committed to supporting your investigation.

We are not, however, able legally or practically to provide the specific information you have requested for the National Guard. National Guard units are not actually part of the Department of Defense. Congress has designated them as "part of the organized militia of the several States." With limited exceptions, National Guard personnel are under the command and control of their state Governors unless they are called into active duty in their status as members of the National Guard of the United States, a reserve component of the United States Armed Forces. The Texas and Alabama National Guard units involved at Waco were operating in a state, not federal, status. Consequently, the Department of Defense has no direct control over their relevant documents or individuals with first hand knowledge of the National Guard's activities.

In 1995, Assistant Secretary of Defense Holmes was able to provide information relating to the activities of National Guard units at Waco. I think we have provided this information to your Committee, but we would be happy to do so again. The appropriate state officials will have to provide the additional information you are seeking about the conduct of their National Guard personnel.

The Texas and Alabama Adjutant Generals have been advised of your inquiry and have designated points of contact: LTC Billy M. Reimer, Texas National Guard Judge Advocate



(512-465-5057) and LTC Bryan E. Morgan, Alabama National Guard Judge Advocate (334-271-7471). I understand that you are also in direct contact with the offices of the Texas and Alabama Adjutant Generals. If it would be helpful, we would be willing to arrange for the Adjutant Generals or their representatives to provide a briefing to the Committee. Please have your staff contact our Office of Legislative Affairs if we can be of assistance in this regard.

Sincerely,

John J. Hamre

DAN BURTON, INDIANA
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JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
HAROLD E. FORD, JR., TENNESSEE
JANICE D. SCHAKOWSKY, ILLINOIS

BERNARD SANDERS, VERMONT
INDEPENDENT

February 8, 2000

Major General Daniel James, III, ANG
The Adjutant General
P.O. Box 5218
Austin, TX 78763-5218

Dear General James:

In 1995 the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, and the Subcommittee on Crime of the Committee on the Judiciary, conducted joint hearings into the Waco incident. The Committee on Government Reform and Oversight and the Committee on the Judiciary published their report on the joint investigation on August 2, 1996. On page 30 of the report ("V. Military Involvement in the Government Operations at Waco"), it states "...U.S. Military involvement is one of the least explored and most misunderstood elements of the events that took place near Waco, TX in 1993...." That unfortunate misunderstanding continues to this day in the minds of the American people, and is exacerbated with each new revelation or allegation inferring greater military involvement at Waco.

To date, the Committee has never been provided a definitive single source document cataloging in detail the military personnel, equipment, and material involved in the Waco incident. Assuming that the Department of Defense (DOD) would be the entity possessing that information, I recently requested such a comprehensive document from them. I was informed that because National Guard personnel provided support in their Title 32 status ("state capacity"), DOD did not compile accurate information regarding the involvement of National Guard personnel and equipment, and the Committee's request should be directed to appropriate state authorities.

The Committee on Government Reform and the American people need to understand once and for all exactly what their military forces did in support of federal law enforcement operations at Waco. To achieve that goal, I request that you provide the Committee the following information not later than February 25, 2000:

1. A complete list of Texas National Guard personnel who were involved in support of law enforcement operations at Waco; dates of their involvement; and a brief description of their duties.



2. A complete list and description of Texas National Guard equipment and material involved in support of the operations at Waco, to include any munitions provided to the FBI or ATF.

Additionally, I request to be informed if DOD officials, or other Congressional or Administration officials, have ever requested the same or similar information from the Texas National Guard since the events at Waco ended in April 1993. If they have, I further request to know who made the request; when it was made; and to be provided copies of any documents or correspondence given in response to those requests.

I want to thank you in advance for your timely assistance in this matter. If there are any questions concerning this request please contact Mr. Thomas G. Bowman, Senior Counsel, Committee on Government Reform, at (202) 225-5074.

Sincerely,

Dan Burton

Dan Burton
Chairman

Cc: Honorable Henry A. Waxman
Ranking Member

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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

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MINORITY (202) 225-5051
TTY (202) 225-6852

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BERNARD SANDERS, VERMONT
INDEPENDENT

February 8, 2000

Major General Willie A. Alexander, ARNG
The Adjutant General
P.O. Box 3711
Montgomery, AL 36109-0711

Dear General Alexander:

In 1995 the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, and the Subcommittee on Crime of the Committee on the Judiciary, conducted joint hearings into the Waco incident. The Committee on Government Reform and Oversight and the Committee on the Judiciary published their report on the joint investigation on August 2, 1996. On page 30 of the report ("V. Military Involvement in the Government Operations at Waco"), it states "...U.S. Military involvement is one of the least explored and most misunderstood elements of the events that took place near Waco, TX in 1993...." That unfortunate misunderstanding continues to this day in the minds of the American people, and is exacerbated with each new revelation or allegation inferring greater military involvement at Waco.

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Additionally, I request to be informed if DOD officials, or other Congressional or Administration officials, have ever requested the same or similar information from the Alabama National Guard since the events at Waco ended in April 1993. If they have, I further request to know who made the request; when it was made; and to be provided copies of any documents or correspondence given in response to those requests.

I want to thank you in advance for your timely assistance in this matter. If there are any questions concerning this request please contact Mr. Thomas G. Bowman, Senior Counsel, Committee on Government Reform, at (202) 225-5074.

Sincerely,

Dan Burton

Dan Burton
Chairman

Cc: Honorable Henry A. Waxman
Ranking Member

ALABAMA AIR NATIONAL GUARD
HEADQUARTERS, 117TH AIR REFUELING WING (AMC)
BIRMINGHAM, ALABAMA

13 September 2000

MEMORANDUM FOR: Mr. Tom Bowman

FROM: 117ARW/JAG
5401 East Lake Blvd
Birmingham, AL 35217-3595

SUBJECT: Waco-Related Flight Information

As per your request, I have researched the available flight records and re-interviewed flying personnel regarding mission related activities conducted by this unit over the skies of Waco, Texas, on January 14, 1993 and the months that followed.

Again, the effort to reconstruct individual involvement in what can be categorized as routine flight activities for our unit seven years ago is speculative at best. At the time that the missions were performed, they were ordinary mission-related activities with no indication of any future significance to our members.

The available flight records have been used to identify particular dates that mission-related flying activities were performed, however, the specifics of any particular mission were not documented in the existing records. Rather, reliance must be made on the memory of the individual member(s) who performed the mission(s). Consequently, some of the information presented below is subject to being erroneous simply because of the inherently unreliable nature of human recall.

Additionally, [redacted] flew at least one mission. [redacted] retired from the Air National Guard three years ago. When he retired, [redacted] took his records with him. Consequently, any information contained in those records was unavailable for review during the local investigation of this matter. Moreover, [redacted] flew perhaps two of the missions. [redacted] was killed in a plane crash in May of this year and was unavailable to comment on his involvement in the missions as identified.

As I stated to you on the telephone, none of the identified flying personnel interviewed in this latest round could recall being involved in a mission over Texas on January 14, 1993. Indeed, the available flight records indicate that the only identified member who flew a mission of any kind on January 14, 1993, was then [redacted] has since been promoted to the rank of Lt. Col.

Although [redacted] recalled that he participated in two missions over Waco, Texas, he could only recall the January 31, 1993, date with any specificity at all. [redacted] sited the fact that January 31, 1993, was "Super Bowl Sunday" as the only reason he could recall the mission with any particularity. Even though he was unsure, [redacted]

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indicated that it was possible that he flew a mission over Waco, Texas, on January 14, 1993. However, he had no independent recall of the date of his other Waco-related mission.

Regarding the actual dates that this unit conducted flying missions over Waco, Texas, the available information supports activity on the following dates: January 31, 1993, March 4, 1993, perhaps April 7, 1993 and January 14, 1993. After discussing the matter with [redacted], it does not appear that January 29, 1993, was a date on which a Waco related mission was flown by members of the former 117 Tactical Reconnaissance Wing.

Should this response generate any other Waco-related questions that could be answered at this level, you are invited to contact me through MSgt Judy Holland at commercial number (205) 714-2202.

MICHAEL W. SANDERSON, Lt Col, AL ANG
Staff Judge Advocate

ALABAMA
STATE MILITARY DEPARTMENT
P.O. BOX 3711
MONTGOMERY, AL 36109-0711

February 17, 2000

Office of The Adjutant General

Honorable Dan Burton
Chairman, Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Response to your February 8, 2000 request

Dear Chairman Burton:

In response to your above correspondence, I provide the following:

1. *A complete list of Alabama National Guard personnel who were involved in support of law enforcement operations at Waco; dates of their involvement; and a brief description of their duties.*

15 Alabama Air National Guard members from the 117th Tactical Reconnaissance Wing located in Birmingham, AL (and 1 Texas Air National Guard Member) participated in 4 medium to high altitude reconnaissance photo missions in camera-equipped RF-4C aircraft over the vicinity of Mt. Carmel during the period of January 1993 to 19 Apr 1993. One of the missions may have consisted of two legs. These were routine training missions. In 1994, the 117th Tactical Reconnaissance Wing converted to the 117th Air Refueling Wing. All training records for the period prior to this were transferred with the aircraft to Arizona and other areas. Present records do not indicate the dates and times of the 4 missions, nor can we determine which pilots and crew flew which flights. (See attached memo dated 12 Sep 99 from LTC Sanderson.) A complete list of personnel and a brief description of their duties follows:

a. [redacted], ALANG (RET), Commander

b. [redacted], ALANG (RET) Vice-commander/communications with Texas Counterdrug

c. [redacted], 117 ARW/CC, Pilot

d. [redacted], 117 ARW, Navigator

e. [redacted], 117 ARW, Photo Processing Interpretation Facility/commander

f. [redacted], 117 ARW, Support of flying

g. [redacted], 117 ARW, Pilot

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h. [redacted], 117 ARW, Navigator

i. [redacted], 117 ARW, Navigator, Navigator

j. [redacted], 117 ARW, Pilot

k. [redacted] "Texas ANG", Liaison Texas ANG Counterdurg Section

l. [redacted], 117 ARW, Imagery preparation

m. [redacted], 117 ARW, Imagery Preparation

n. [redacted], 117 ARW, Imagery Preparation

o. [redacted], 117 ARW, Imagery Preparation

p. [redacted], 117 ARW, Imagery Preparation

2. *A complete list and description of Alabama National Guard equipment and material involved in support of the operations at Waco, to include any munitions provided to the FBI or ATF.*

There are no records to indicate that Alabama Army National Guard equipment and material was involved in support of the operations at Waco.

Alabama Air National Guard equipment consisted of the camera-equipped RF-4C aircraft used on the 4 missions. Film developing equipment located in Birmingham, AL and Austin, TX was also used.

3. *Have DOD officials or other Congressional or Administrative officials ever requested the above or similar information from the Alabama National Guard since the events at Waco ended in April 1993? Who requested and when was the request made? (Provide copies of any document or correspondence given)*

No DOD officials or other Congressional or Administrative officials ever requested the above or similar information. The attached was forwarded to Mr. James C. Hise, Chief Counsel, NGB-JA, on 12 Sep 99 in response to civil discovery in Waco Litigation *Andrade, et. al. v. Choinacki, et.al.* (US District Court, W.D. Texas) (Attachment #1)

4. The information supplied in this letter is based on a review of all documents within the control of this headquarters and the interviews of appropriate personnel. We have been directed by the Department of Defense in accordance Senator Danforth's directives to not interview other agencies or individuals regarding the operation at Waco. All of the AL-JA available records reviewed indicate that during the time frame of the operation at Waco, all our vehicles and equipment were accounted for and that none were in the vicinity of Waco.

5. One soldier in this command has stated that within the past 3 to 4 years he saw on a

program some pictures or tapes purportedly on the operation at Waco which he thought showed an armored vehicle he believed belonged to the Alabama Army National Guard. The soldier was extensively questioned. He was unable to identify the TV show, the network or channel the TV show was on, the specific timeframe in which he saw it, the terrain or the setting of the film, or any specific vehicle numbers. The statement made by this soldier is attached. (Attachment #2) The attached statement is inconsistent with all of the other information gathered by this command. Moreover, the statement is not supported by any facts discovered by this headquarters.

Willie A. Alexander

WILLIE A. ALEXANDER
Major General, AL NG
The Adjutant General

Enclosures

ALABAMA
STATE MILITARY DEPARTMENT
Office of the Adjutant General
P. O. Box 3711
Montgomery, Alabama 36109-0711

AL-JA (27-40) 12 Sep 1999

MEMORANDUM FOR Mr. [redacted], Chief Counsel NGB-JA (Attn. [redacted])

SUBJECT: Response to Civil Discovery Requests in Waco Litigation, Andrade, et. al. v. Choinacki, et. al. (US District Court, W.D. Texas) – Waco Memo #2

1. Attached is the response to Waco Memo #2 and the previous response to Waco Memo #1 – corrected for spelling of "aerial".

2. All documents are unclassified.

3. Persons Conducting Search	locations searched	custodian	dates of search
[redacted]	117th ARW B'ham	[redacted]	9 – 14 Sept 99
[redacted]	SMO – AL ARNG	[redacted]	9 – 14 Sept 99

4. POC is the undersigned at DSN 363-7471, commercial (334) 271-7471.

BRYAN E. MORGAN
LTC, JA, AL ARNG
Staff Judge Advocate

Cf:
Ted Hosp, Esquire, Governor's Office

ALABAMA
STATE MILITARY DEPARTMENT
Office of the Adjutant General
P. O. Box 3711
Montgomery, Alabama 36109-0711

AL-JA (27-40) 12 Sep 1999

MEMORANDUM FOR Mr. James C. Hise, Chief Counsel NGB-JA (Attn. LTC Scaturo)

SUBJECT: Response to Civil Discovery Requests in Waco Litigation, Andrade, et. al. v. Choinacki, et. al. (US District Court, W.D. Texas)

1. Attached are the names of 16 Alabama Air National Guard members who are aware of and participated in a duty status in some respect with aerial reconnaissance flights over the vicinity of Mt. Carmel during February 1993 – April 19, 1993. Major Johnny Kelly was the counterdrug contact for the 117th Tactical Reconnaissance Wing during the period in question and is being contacted concerning his role, if any, in this operation. No Alabama Air National Guard member in a duty status is known to have been in the vicinity of Mt. Carmel on April 19, 1993.

2. No evidence exists of Alabama Army National Guard personnel in a duty status being present at Mt. Carmel on April 19, 1993. The presence of a CEV (Combat Engineer Vehicle) or M-88 tank retriever with an Alabama Army National Guard bumper number is presently being investigated.

3. POC is the undersigned at DSN 363-7471, commercial (334) 271-7471.

BRYAN E. MORGAN
LTC, JA, AL ARNG
Staff Judge Advocate

Encls

Cf:
Ted Hosp, Esquire, Governor's Office

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Alabama Army National Guard

3. Counter Drug Certification

4. Combat Engineer Vehicle (CEV) / M-88 Response

[redacted]ALANG (RET)
[redacted], ALANG (RET)
[redacted] 117 ARW/CC
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], TEXAS ANG
[redacted], 117 ARW
[redacted], 117 ARW
[redacted], 117 ARW
[redacted] 117 ARW
[redacted], 117 ARW

ALABAMA AIR NATIONAL GUARD
HEADQUARTERS, 117TH AIR REFUELING WING (AMC)
BIRMINGHAM, ALABAMA 35217-3595

September 12, 1999

MEMORANDUM FOR The Adjutant General
Alabama National Guard

FROM: 117ARW/JA
5401 East Lake Blvd
Birmingham, AL 35217-3595

SUBJECT: Response to Civil Discovery Requests in Waco Litigation;
Andrade, et. al. v. Choinacki, et. al. (US District Court, W.D. Texas)

1. Before 1994, the 117 Tactical Reconnaissance Wing (TRW) of the Alabama Air National Guard was based in Birmingham, Alabama. The 117 TRW was a flying unit whose primary mission was aerial reconnaissance. The unit accomplished its mission through the employment of camera-equipped RF-4C aircraft.

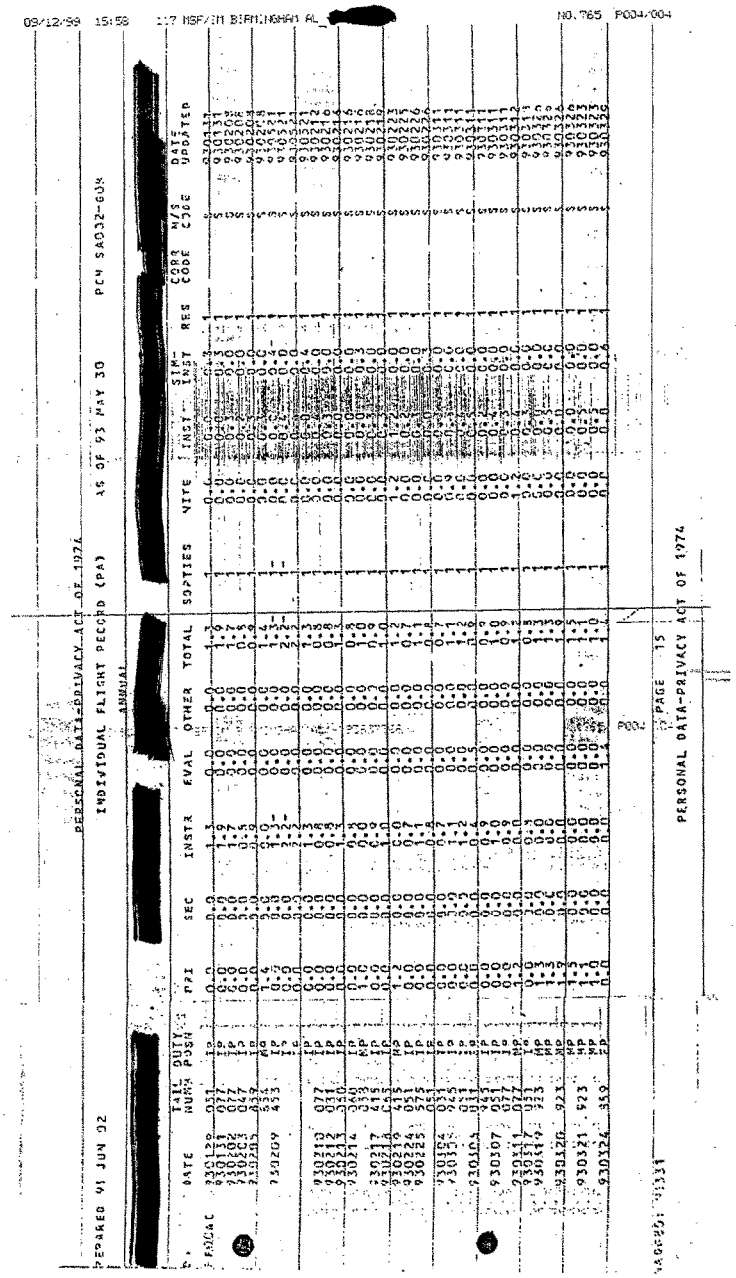
2. In January of 1993, the 117 TRW was tasked by the Texas Counter Drug Agency to perform aerial reconnaissance over the state of Texas. The photographic mission was of geographic coordinates near Waco, Texas. The location was described only as a compound. The tasking required medium and high altitude photo imagery of the compound and surrounding area. A total of three or four sorties were flown during the mission. Since the mission was photographic in nature, the 117 TRW mission did not include the use of any ordinance, munition or projectile at any time. 117 TRW involvement in this mission did not extend beyond March 1993.

3. Once the photographs were taken, the film products were returned to the Photo Processing Interpretation Facility (PPIF) at the Alabama Air National Guard Base in Birmingham, Alabama, for developing and processing. After the photographs were developed and processed, all of the products, including negatives, prints, charts, maps and reports, were given to the Texas Counter Drug liaison at Kelly Air Force Base, Texas.

4. As the 117 TRW unit mission changed from aerial reconnaissance to air refueling in 1994, the 117th transitioned from the RF-4C aircraft to the KC-135 aircraft. The unit became the 117 Air Refueling Wing, (ARW). During that transition, all of the substantive records related to the Counter Drug missions were destroyed. With the possible exception of the flight records and the orders requesting aerial reconnaissance support, the Alabama Air National Guard records of the Waco mission were included in that process.

5. POC for the Alabama Air National Guard involvement in this matter is the undersigned at DSN 778-2202 or commercially at (205) 714-2202.

MICHAEL W. SANDERSON, Lt Col, AL ANG
Staff Judge Advocate



PERSONAL DATA-PRIVACY ACT OF 1974

PREPARED 93 DEC 22 INDIVIDUAL FLIGHT RECORD (PA) AS OF 93 DEC 22 PCN SA002-608

PCS

[redacted]

MOS	DATE	TAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	N/S CODE	DATE UPDATED
REQUIC	930107	415	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3A		S	930108
		034	MW	1.4	0.0	0.0	0.0	0.0	1.4	1	0.0	0.0	0.0	3B		S	930108
	930114	575	MW	2.3	0.0	0.0	0.0	0.0	2.3	1	0.0	0.0	0.0	1		S	930126
			MW	1.9	0.0	0.0	0.0	0.0	1.9	1	0.0	0.0	0.0	1		S	930126
	930121	945	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3A		S	930126
		923	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3B		S	930126
	930122	065	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	3A		S	930126
	930128	047	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3B		S	930129
		060	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3A		S	930129
	930131	077	MW	1.9	0.0	0.0	0.0	0.0	1.9	1	0.0	0.0	0.0	1		S	930131
	930202	077	MW	1.7	0.0	0.0	0.0	0.0	1.7	1	0.0	0.0	0.0	1		S	930208
	930204	400	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3B		S	930208
		041	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3A		S	930208
	930205	060	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3A		S	930208
	930206	575	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	2		S	930208
	930210	077	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3A		S	930212
	930212	833	MW	1.4	0.0	0.0	0.0	0.0	1.4	1	0.0	0.0	0.0	1		S	930216
	930217	077	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	1		S	930223
	930219	077	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	930223
	930220	031	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	1		S	930224
	930225	575	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	3A		S	930226
	930226	415	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3A		S	930228
	930305	077	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	3A		S	930311
		031	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3B		S	930311
	930319	965	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3N		S	930323
		031	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3N		S	930323
	930326	057	MW	0.7	0.0	0.0	0.0	0.0	0.7	1	0.0	0.0	0.0	2A		S	930329
	930409	060	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	2A		S	930413
	930414	833	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3A		S	930416
	930416	077	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	2B		S	930419
	930417	833	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	2		S	930419
			MW	1.5	0.0	0.0	0.0	0.0	1.5	1	0.0	0.0	0.0	2		S	930419
	930428	833	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3A		S	930430
	930430	060	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3A		S	930430
		900	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3B		S	930430
	930513	077	MW	0.4	0.0	0.0	0.0	0.0	0.4	1	0.0	0.0	0.0	3A		S	930514
	930514	900	MW	1.3	0.0	0.0	0.0	0.0	1.3	1	0.3	0.0	0.0	2B		S	930517

COUNTERDRUG CERTIFICATION

IN RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

[redacted], Counterdrug Operations Officer, spoke with the State Ammunition Manager, [redacted], on 10 Sep 99 about the transfer of 40mm ammunition from Alabama to Texas. [redacted] stated that Alabama had not transferred any 40mm ammunition to Texas and that it was impossible for the Alabama National Guard to transfer 40mm ammunition to Texas due to storage limitations and regulatory requirements. [redacted] stated that 40mm ammunition must be drawn from an active military organization the day prior to the starting of firing and returned the day after firing has ended.

IN RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

On 9 Sep 99, [redacted] spoke with [redacted] the State Aviation Officer during the time of the incident in Waco, about helicopter support to Texas for this operation. [redacted] stated that no helicopters, aviation equipment, or aviation personnel were involved in this operation.

IN RESPONSE TO REQUEST FOR PRODUCTION NO. 74:

During 9 Sep 99 an extensive search was conducted by the Plans, Operations, and Military Support Branch of their files to identify any documents pertaining to this operation. No documentation was found in their files dealing with this operation.

During 9-10 Sep 99 the Counterdrug Office conducted a thorough search through their operational and administrative files to identify any documentation for this operation. No documentation was found in these files. In accordance with NGR 500-2 and other applicable regulations all Counterdrug military files are destroyed after a period of 2 years.

[redacted]
Lt Col, AL ANG
Counterdrug Coordinator

CEV / M-88 AL ARNG AT MT. CARMEL 1993

IN RESPONSE TO REQUEST FOR PRODUCTION NO. 59:

A search of AL ARNG records fails to reveal any document that would indicate that a AL ARNG vehicle was present at the incident in Waco, Texas.

If your office has a bumper number or any other specific information that would identify such a vehicle please provide such so that a further search can be conducted.

Statement

A number of years ago (3 or 4) I was watching a program about the Waco incident on TV at home. In this program I saw a M-1 tank. I am about 60-70% sure that this tank's bumper number was an A Co 2/152 bumper number. The reason that this stuck in my mind was that from 1988 to 1990 I was the commander of this company in the Alabama Army National Guard. I do not know the TV program nor am I sure of the exact time frame. About 6 months ago, I had a conversation with [redacted] SJA AL ARNG, where I relayed this story about the bumper number. On 8 Feb 2000, I again mentioned this story about an M-1 tank at the HQ staff meeting. I have no additional evidence to substantialte the accuracy of this story.

[redacted]
IG, AL ARNG

Date: 17 Feb 00

PERSONAL DATA-PRIVACY ACT OF 1974

PREPARED 93 DEC 22 — INDIVIDUAL FLIGHT RECORD (PA) — AS OF 93 DEC 22 [redacted]

[redacted] PCS [redacted]

MDS	DATE	TAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	N/S CODE	DATE UPDATED
RF004C	930107	415	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3A		S	930108
		034	MW	1.4	0.0	0.0	0.0	0.0	1.4	1	0.0	0.0	0.0	3B		S	930108
	930114	575	MW	2.3	0.0	0.0	0.0	0.0	2.3	1	0.0	0.0	0.0	1		S	930126
			MW	1.9	0.0	0.0	0.0	0.0	1.9	1	0.0	0.0	0.0	1		S	930126
	930121	945	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3A		S	930126
		925	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3B		S	930126
	930122	065	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	3A		S	930126
	930128	047	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3B		S	930129
		060	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3A		S	930129
	930131	077	MW	1.9	0.0	0.0	0.0	0.0	1.9	1	0.0	0.0	0.0	1		S	930131
	930202	077	MW	1.7	0.0	0.0	0.0	0.0	1.7	1	0.0	0.0	0.0	1		S	930208
	930204	400	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3B		S	930208
		041	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3A		S	930208
	930205	060	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3A		S	930208
	930206	575	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	2		S	930208
	930210	077	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3A		S	930212
	930212	833	MW	1.4	0.0	0.0	0.0	0.0	1.4	1	0.0	0.0	0.0	1		S	930216
	930217	077	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	1		S	930223
	930219	077	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	930223
	930220	031	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	1		S	930224
	930225	575	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	3A		S	930226
	930226	415	MW	1.6	0.0	0.0	0.0	0.0	1.6	1	0.0	0.0	0.0	3A		S	930228
	930305	377	MW	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	3A		S	930311
		031	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3B		S	930311
	930319	945	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3N		S	930323
		031	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	3N		S	930323
	930326	057	MW	0.7	0.0	0.0	0.0	0.0	0.7	1	0.0	0.0	0.0	2A		S	930329
	930409	060	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	2A		S	930413
	930414	833	MW	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	3A		S	930416
	930416	077	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	2B		S	930419
	930417	833	MW	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.0	2		S	930419
			MW	1.5	0.0	0.0	0.0	0.0	1.5	1	0.0	0.0	0.0	2		S	930419
	930428	833	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3A		S	930430
	930430	060	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3A		S	930430
		900	MW	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	3B		S	930430
	930513	077	MW	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.0	3A		S	930514
	930514	900	MW	1.5	0.0	0.0	0.0	0.0	1.5	1	0.3	0.0	0.0	2B		S	930517

[redacted]

PERSONAL DATA-PRIVACY ACT OF 1974

PERSONAL DATA-PRIVACY ACT OF 1974

PREPARED 93 JUN 02 INDIVIDUAL FLIGHT RECORD (PA) AS OF 93 MAY 30 [redacted]

ANNUAL

[redacted]

MDS	DATE	TAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	M/S CODE	DATE UPDATED
FF004C	930129	051	IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.0	0.3	1		S	930131
	930131	077	IP	0.0	0.0	1.9	0.0	0.0	1.9	1	0.0	0.0	0.3	1		S	930131
	930202	077	IP	0.0	0.0	1.7	0.0	0.0	1.7	1	0.0	0.3	0.0	1		S	930208
	930203	047	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.2	0.0	1		S	930208
	930205	859	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930208
		854	MP	1.4	0.0	0.0	0.0	0.0	1.4	1	0.0	0.3	0.0	1		S	930208
	930209	453	IP	0.0	0.0	1.3-	0.0	0.0	1.3-	1-	0.0	0.0	0.4-	1		S	930521
			IP	0.0	0.0	2.2-	0.0	0.0	2.2-	1-	0.0	0.4-	0.0	1		S	930521
			IP	0.0	0.0	2.2	0.0	0.0	2.2	1	0.0	0.4	0.0	1		S	930521
			IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.0	0.4	1		S	930321
	930210	077	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.4	0.0	1		S	930212
	930212	031	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930216
	930213	360	IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.0	0.0	1		S	930216
	930214	360	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	930216
		058	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.3	1		S	930218
	930217	415	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930218
	930218	065	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.3	0.0	1		S	930219
	930219	415	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	1.2	1.2	0.0	1		S	930223
	930224	951	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.2	0.0	1		S	930225
	930225	575	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.3	0.0	1		S	930226
		051	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	930226
	930304	031	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.3	0.0	1		S	930311
	930305	945	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.3	0.0	1		S	930311
		051	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.4	0.0	1		S	930311
	930305	031	EP	0.0	0.0	0.4	0.0	0.0	0.4	1	0.0	0.0	0.0	1		S	930311
		945	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.5	0.0	1		S	930311
	930307	051	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.2	0.0	1		S	930311
		077	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.4	0.0	1		S	930311
	930311	077	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	1.2	0.4	0.0	1		S	930312
	930317	051	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930318
	930319	923	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.0	0.0	1		S	930326
			MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.5	0.0	1		S	930326
	930320	923	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.0	0.0	1		S	930326
			MP	1.5	0.0	0.0	0.0	0.0	1.5	1	0.0	0.0	0.0	1		S	930326
	930321	923	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.5	0.0	1		S	930323
			MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.5	0.0	1		S	930323
	930324	359	EP	0.0	0.0	0.0	1.1	0.0	1.1	1	0.0	0.0	0.6	1		S	930329

[redacted]

PERSONAL DATA-PRIVACY ACT OF 1974

PERSONAL DATA-PRIVACY ACT OF 1974

PREPARED 93 JUN 02 INDIVIDUAL FLIGHT RECORD (PA) AS OF 93 MAY 30 [redacted]

ANNUAL

[redacted]

MDS	DATE	FAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	N/S CODE	DATE UPDATED
3F004C	921121	884	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	3A		S	921125
	921124	933	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.1	3B		S	921125
	921205	945	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.2	3A		S	921207
	921210	867	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.5	0.0	3B		S	921211
			MP	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.5	0.0	3A		S	921211
	921212	884	MP	0.7	0.0	0.0	0.0	0.0	0.7	1	0.0	0.2	0.0	2		S	921215
		415	MP	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.2	2		S	921215
	921213	065	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.4	0.0	2		S	921215
		354	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.3	0.0	2		S	921215
	930106	923	MP	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.3	0.0	3A		S	930108
	930110	051	MP	0.7	0.0	0.0	0.0	0.0	0.7	1	0.0	0.0	0.2	2		S	930112
	930115	884	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	1.0	0.8	0.0	1		S	930126
	930117	884	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.2	3A		S	930126
			MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.2	3B		S	930126
	930123	400	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.2	0.0	3A		S	930126
	930128	933	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.3	0.0	1		S	930129
	930131	034	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.2	0.0	3A		S	930131
	930203	334	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.2	3A		S	930208
	930206	065	EP	0.0	0.0	0.0	0.9	0.0	0.9	1	0.0	0.3	0.0	2		S	930208
	930207	931	EP	0.0	0.0	0.0	0.8	0.0	0.8	1	0.0	0.2	0.0	2		S	930208
	930213	077	IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.4	0.0	3A		S	930214
	930220	965	IP	1.5	0.0	0.0	0.0	0.0	1.5	1	0.0	0.8	0.0	3A		S	930224
	930221	401	IP	0.0	0.0	0.9	3.0	0.0	0.9	1	0.0	0.3	0.0	3B		S	930224
	930226	923	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	1.1	0.0	0.3	3A		S	930228
	930307	867	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.2	3A		S	930311
		401	EP	0.0	0.0	0.9	0.0	0.0	0.8	1	0.0	0.3	0.0	3B		S	930311
	930311	365	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	1.0	0.4	0.0	3A		S	930312
	930318	923	EP	0.0	0.0	0.0	1.4	0.0	1.4	1	0.0	0.0	0.0	2		S	930319
	930401	923	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.3	0.0	3A		S	930407
	930403	365	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.0	0.2	3A		S	930407
	930404	035	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.3	0.0	3A		S	930407
	930407	041	EP	0.0	0.0	0.0	1.2	0.0	1.2	1	0.0	0.0	0.0	3A		S	930409
	930409	854	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.3	0.0	3A		S	930413
			IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.5	0.5	0.0	3B		S	930413
	930415	859	IP	0.0	0.0	1.4	0.0	0.0	1.4	1	0.0	0.4	0.0	2		S	930416
	930418	051	IP	1.9	0.0	0.0	0.0	0.0	1.9	1	0.0	0.7	0.0	2		S	930427
	930424	047	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.8	0.0	2		S	930427

[redacted]

PREPARED 93 OCT 29 INDIVIDUAL FLIGHT RECORD (PA) AS OF 93 OCT 29 [redacted]

ANNUAL

[redacted]

MDS	DATE	TAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	N/S CODE	DATE UPDATED
P E004C	930318	400	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.2	0.0	1		S	930323
	930320	400	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.2	0.0	1		S	930323
	930321	400	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.1	0.0	1		S	930323
			IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.2	0.0	1		S	930323
	930325	060	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.3	0.0	1		S	930329
		575	EP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	1		S	930329
	930326	051	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.2	0.0	1		S	930329
	930331	859	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930331
	930401	833	IP	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.4	0.0	1		S	930407
	930402	854	IP	0.0	0.0	1.5	0.0	0.0	1.5	1	0.0	0.6	0.0	1		S	930407
			IP	0.0	0.0	1.8	0.0	0.0	1.8	1	0.0	0.8	0.0	1		S	930407
	930403	041	IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.0	0.0	1		S	930407
		833	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.2	0.0	1		S	930407
	930404	058	IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.6	0.0	1		S	930407
	930408	575	IP	0.0	0.0	1.4	0.0	0.0	1.4	1	0.0	0.4	0.0	1		S	930409
	930414	401	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.3	0.0	1		S	930416
	930415	401	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.5	0.0	1		S	930416
	930416	041	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930419
	930417	077	MP	1.6	0.0	0.0	0.0	0.0	1.6	1	0.0	0.2	0.0	1		S	930419
	930418	833	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	2		S	930419
	930421	041	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.0	1		S	930427
			IP	0.0	0.0	1.0-	0.0	0.0	1.0-	1-	0.0	0.0	0.0	1		S	930430
	930422	041	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.0	1		S	930506
	930423	367	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.0	0.0	1		S	930427
	930424	051	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	930427
	930425	051	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.0	0.0	1		S	930427
	930429	400	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.0	1		S	930430
		047	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.0	1		S	930430
	930430	031	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.2	0.3	0.0	1		S	930430
			MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.4	0.0	1		S	930506
	930501	031	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.4	0.0	1		S	930506
			MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.1	0.0	1		S	930506
	930502	031	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.2	0.0	1		S	930506
			MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.2	0.0	1		S	930506
	930505	060	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	930507
	930513	057	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930514
	930514	400	MP	1.5	0.0	0.0	0.0	0.0	1.5	1	0.0	0.0	0.0	1		S	930520

[redacted]

PREPARED 93 JUN 02 INDIVIDUAL FLIGHT RECORD (PA) AS OF 93 MAY 30 [redacted]

ANNUAL

[redacted]

MDS	DATE	TAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	N/S CODE	DATE UPDATED
P0046	930325	051	EP	0.0	0.0	0.0	1.1	0.0	1.1	1	0.0	0.5	0.0	1		S	930329
	930326	057	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.5	0.0	1		S	930329
	930406	859	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930407
	930407	057	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.0	0.3	1		S	930409
	930408	077	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930409
		057	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930409
	930409	077	MP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.0	1		S	930413
	930414	051	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930416
	930415	900	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.0	0.3	1		S	930416
			IP	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930416
	930416	884	EP	0.0	0.0	0.0	1.5	0.0	1.5	1	0.0	0.0	0.6	1		S	930419
	930417	047	MP	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.2	0.0	1		S	930419
	930418	031	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.0	0.0	1		S	930427
	930421	401	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.3	0.0	1		S	930427
	930423	900	MP	0.9	0.0	0.0	0.0	0.0	0.9	1	0.0	0.0	0.3	1		S	930430
	930426	900	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.0	0.3	1		S	930430
	930427	900	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.0	0.3	1		S	930430
	930428	031	IP	0.0	0.0	2.1	0.0	0.0	2.1	2	0.0	0.0	0.3	1		S	930430
	930429	401	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.0	0.3	1		S	930430
	930430	965	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.3	0.0	1		S	930430
			MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	0.0	0.0	1		S	930430
	930502	965	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.3	0.0	1		S	930506
	930506	958	EP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.3	1		S	930507
	930507	933	EP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.3	1		S	930507
	930513	031	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.3	1		S	930514
		400	EP	0.0	0.0	0.0	1.3	0.0	1.3	1	0.0	0.4	0.0	1		S	930514
	930514	057	EP	0.0	0.0	0.0	0.9	0.0	0.9	1	0.0	0.0	0.3	1		S	930514
	930518	455	IP	0.0	0.0	4.2	0.0	0.0	4.2	1	0.0	1.0	0.0	1		S	930521
	930519	453	IP	0.0	0.0	2.0	0.0	0.0	2.0	1	0.0	0.0	0.0	1		S	930521
	930520	453	IP	0.0	0.0	1.3	0.0	0.0	1.3	1	0.0	0.0	0.4	1		S	930521
			IP	0.0	0.0	2.2	0.0	0.0	2.2	1	0.0	0.4	0.0	1		S	930521
	930522	060	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.2	0.0	1		S	930525
	930523	031	EP	0.0	0.0	0.0	0.9	0.0	0.9	1	0.0	0.3	0.0	1		S	930525
		058	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.0	0.2	1		S	930525
	930526	833	MP	1.2	0.0	0.0	0.0	0.0	1.2	1	0.0	0.4	0.0	1		S	930528
	930527	745	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.2	0.0	1		S	930528
	930528	955	MP	0.7	0.0	0.0	0.0	0.0	0.7	1	0.0	0.4	0.0	1		S	930528

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PREPARED 93 OCT 29 INDIVIDUAL FLIGHT RECORD (PA) AS OF 93 OCT 29 [redacted]

ANNUAL

[redacted] ANG [redacted]

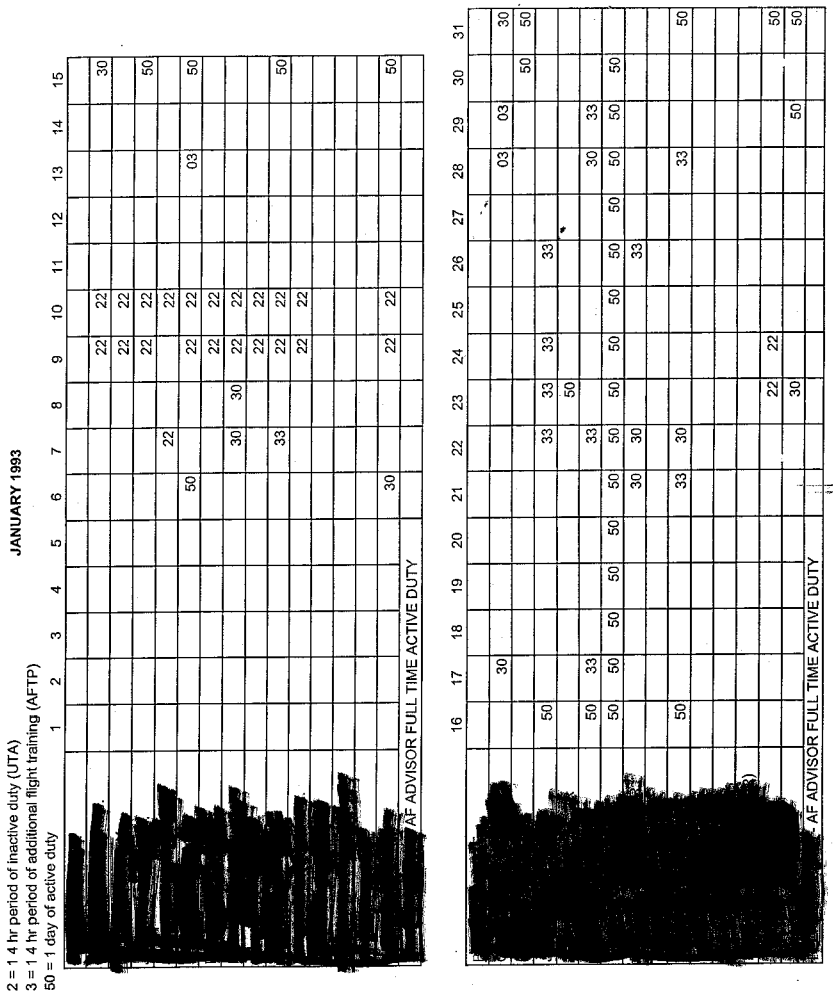
MDS	DATE	TAIL NUMB	DUTY POSN	PRI	SEC	INSTR	EVAL	OTHER	TOTAL	SORTIES	NITE	INST	SIM-INST	RES	CORR CODE	N/S CODE	DATE UPDATED
RF004C	921105	065	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	921106
	921107	884	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	921109
	921108	047	IP	0.0	0.0	0.7	0.0	0.0	0.7	1	0.0	0.0	0.0	1		S	921110
			IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.0	0.3	1		S	921110
	921113	833	EP	0.0	0.0	0.0	1.0	0.0	1.0	1	0.0	0.0	0.0	1		S	921119
	921119	055	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.0	0.0	1		S	921120
	921120	047	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.2	0.0	1		S	921125
	921121	065	EP	0.0	0.0	0.0	1.2	0.0	1.2	1	0.0	0.0	0.6	1		S	921125
	921203	945	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.0	1		S	921208
	921204	884	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.3	0.5	0.0	1		S	921207
	921206	884	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.6	0.0	1		S	921207
	921209	065	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.6	0.0	1		S	921210
	921210	945	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.5	0.0	1		S	921211
	921223	884	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.0	0.0	1		S	921229
	921230	033	MP	1.7	0.0	0.0	0.0	0.0	1.7	2	0.0	0.5	0.0	1		S	921231
	921231	057	MP	4.0	0.0	0.0	0.0	0.0	4.0	2	0.0	1.0	0.0	1		S	921231
	930106	051	MP	1.0	0.0	0.0	0.0	0.0	1.0	1	0.0	0.0	0.0	1		S	930108
	930108	884	MP	1.3	0.0	0.0	0.0	0.0	1.3	1	0.0	1.1	0.0	1		S	930111
			EP	0.0	0.0	0.0	1.3	0.0	1.3	1	0.0	0.0	0.0	1		S	930111
	930115	859	EP	0.0	0.0	0.0	1.1	0.0	1.1	1	0.0	0.3	0.0	1		S	930126
	930123	060	IP	0.0	0.0	1.4	0.0	0.0	1.4	1	0.0	0.2	0.0	38		S	930126
			EP	0.0	0.0	0.6	0.6	0.0	1.2	1	0.0	0.3	0.0	1		S	930126
	930124	359	EP	0.0	0.0	0.0	2.1	0.0	2.1	2	0.0	0.5	0.0	1		S	930126
	930127	051	IP	1.1	0.0	0.0	0.0	0.0	1.1	1	0.0	0.0	0.8	1		S	930129
	930128	047	IP	0.0	0.0	1.0	0.0	0.0	1.0	1	0.0	0.3	0.0	1		S	930129
	930129	575	IP	0.0	0.0	1.1	0.0	0.0	1.1	1	0.0	0.3	0.0	1		S	930131
	930203	945	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930208
	930207	060	IP	0.0	0.0	0.8	0.0	0.0	0.8	1	0.0	0.0	0.3	1		S	930208
	930210	859	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.2	0.0	1		S	930212
	930218	575	MP	0.5	0.0	0.0	0.0	0.0	0.5	1	0.0	0.2	0.0	1		S	930219
	930219	060	IP	0.7	0.0	0.0	0.0	0.0	0.7	1	0.0	0.3	0.0	1		S	930223
	930220	833	IP	0.0	0.0	1.2	0.0	0.0	1.2	1	0.0	0.4	0.0	1		S	930224
		041	IP	0.0	0.0	1.5	0.0	0.0	1.5	1	0.0	0.5	0.0	1		S	930224
	930221	041	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.3	0.0	1		S	930224
	930226	415	IP	0.0	0.0	1.6	0.0	0.0	1.6	1	0.0	0.6	0.0	1		S	930228
	930304	055	IP	0.0	0.0	0.9	0.0	0.0	0.9	1	0.0	0.4	0.0	1		S	930311
	930310	060	IP	0.8	0.0	0.0	0.0	0.0	0.8	1	0.0	0.0	0.3	1		S	930311

[redacted]

16 February 2000

I CERTIFY THAT THE ATTACHED PAGES ARE TRUE AND ACCURATE FOR THE INDIVIDUALS LISTED ABOVE.

[redacted]
Pay Services Supervisor


2 = 1 4 hr period of inactive duty (UTA)
3 = 1 4 hr period of additional flight training (AFTP)
50 = 1 day of active duty
JANUARY 1993
AF ADVISOR FULL TIME ACTIVE DUTY
AF ADVISOR FULL TIME ACTIVE DUTY

2 = 1 4 hr period of inactive duty day
3 = 1 4 hr period of additional flight training (AFTP)
50 = 1 day of active duty

FEBRUARY 1993

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
BROWN, JAMES F.															
CHRISTMAN, DENNIS J.						22	22								
DREW, GEOFFREY						22	22								
JAMES, CLIFFORD N.		33				22	22								50
JERNIGAN, JERRY K. JR													22	22	
KELLEY, JOHNNY L.									22		22				
KLIMKO, BENJAMIN R.						50	50						50	50	
POCOPANNI, PAUL A. JR						22	22								
POSEY, CLYDE J. II													22	22	
SHANNON, JOHN M.	50	50		33	03	22	22			03	03	50			50
WASHBURN, WILLIAM H.						22	22						50	50	50
MUSE, GREG H. (AGR)															
PITTMAN, BIFFLE O. (AGR)															
TRULL, DOUGLAS			3			22	22						50	50	
WHALEY, HAROLD E.													3		
FELICE, FRANCIS - AF ADVISOR FULL TIME ACTIVE DUTY															

	16	17	18	19	20	21	22	23	24	25	26	27	28
BROWN, JAMES F.													
CHRISTMAN, DENNIS J.			30			30					50	50	50
DREW, GEOFFREY												50	50
JAMES, CLIFFORD N.	50	50	50	50	50	50							
JERNIGAN, JERRY K. JR	50	50	50	50	50								
KELLEY, JOHNNY L.		03	50						03	33	50		
KLIMKO, BENJAMIN R.					22	22						50	50
POCOPANNI, PAUL A. JR													
POSEY, CLYDE J. II													50
SHANNON, JOHN M.	50	50	50	50	50					03	30		
WASHBURN, WILLIAM H.	50	50	50	50	50	50	50	50	50	50	50	50	
MUSE, GREG H. (AGR)													
PITTMAN, BIFFLE O. (AGR)													
TRULL, DOUGLAS	50	50	50	50	50								
WHALEY, HAROLD E.					30	33					30		
FELICE, FRANCIS - AF ADVISOR FULL TIME ACTIVE DUTY													

2 = 1 4 hr period of inactive duty day
3 = 1 4 hr period of additional flight training (AFTP)
50 = 1 day of active duty

MARCH 1993

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
BROWN, JAMES F.															
CHRISTMAN, DENNIS J.															
DREW, GEOFFREY	50					50	50	50							
JAMES, CLIFFORD N.											03				
JERNIGAN, JERRY K. JR					50	50	50								
KELLEY, JOHNNY L.										50	50	50			
KLIMKO, BENJAMIN R.	50					50	50								
POCOPANNI, PAUL A. JR				50	03										
POSEY, CLYDE J. II															
SHANNON, JOHN M.					33										
WASHBURN, WILLIAM H.					50	50	50								
MUSE, GREG H. (AGR)															
PITTMAN, BIFFLE O. (AGR)															
TRULL, DOUGLAS						22	22						50	50	50
WHALEY, HAROLD E.			3				33				30				
FELICE, FRANCIS - AF ADVISOR FULL TIME ACTIVE DUTY															

	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
BROWN, JAMES F.		22	22					22	22	22	22					
CHRISTMAN, DENNIS J.	22	22							30					30	30	
DREW, GEOFFREY												22	22			
JAMES, CLIFFORD N.								22		22						
JERNIGAN, JERRY K. JR					22	22										
KELLEY, JOHNNY L.		50	50	50					50	50	50					50
KLIMKO, BENJAMIN R.					22	22						50				
POCOPANNI, PAUL A. JR			50		03	33										
POSEY, CLYDE J. II					22	22						50				
SHANNON, JOHN M.											22					
WASHBURN, WILLIAM H.												22	22			
MUSE, GREG H. (AGR)																
PITTMAN, BIFFLE O. (AGR)																
TRULL, DOUGLAS	50	50	50	50	50								50	50	50	50
WHALEY, HAROLD E.			20													
FELICE, FRANCIS - AF ADVISOR FULL TIME ACTIVE DUTY																

2 = 1 4 hr period of inactive duty (UTA)
3 = 1 4 hr period of additional flight training (AFTP)
50 = 1 day of active duty

APRIL 1993

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
BROWN, JAMES F.	22	22													
CHRISTMAN, DENNIS J.	30			33				03							
DREW, GEOFFREY															
JAMES, CLIFFORD N.			50	50	50	50	50	50	50	50	50	50	50	50	50
JERNIGAN, JERRY K. JR															
KELLEY, JOHNNY L.	50	50					50	50	50				22		22
KLIMKO, BENJAMIN R.			50	50	50										
POCOPANNI, PAUL A. JR							03	02							20
POSEY, CLYDE J. II			22	22											
SHANNON, JOHN M.									22					30	
WASHBURN, WILLIAM H.															
MUSE, GREG H. (AGR)															
PITTMAN, BIFFLE O. (AGR)															
TRULL, DOUGLAS	50	50	50	50	50										
WHALEY, HAROLD E.	20		30	30			3		33						22
FELICE, FRANCIS - AF ADVISOR FULL TIME ACTIVE DUTY															

	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
BROWN, JAMES F.		22	22												
CHRISTMAN, DENNIS J.		22	22					30			30	30			
DREW, GEOFFREY		22	22						50	50					
JAMES, CLIFFORD N.	50	50		22	22	22	22								
JERNIGAN, JERRY K. JR		22	22												
KELLEY, JOHNNY L.	50	22	22										50	50	50
KLIMKO, BENJAMIN R.		22	22												
POCOPANNI, PAUL A. JR	02	22	22			02					50	50	50	50	
POSEY, CLYDE J. II															
SHANNON, JOHN M.	22	22	50	50	50	50	50	50	50				30		33
WASHBURN, WILLIAM H.		22	22												
MUSE, GREG H. (AGR)															
PITTMAN, BIFFLE O. (AGR)															
TRULL, DOUGLAS		22	22												
WHALEY, HAROLD E.			22						22		50	50	50	50	
FELICE, FRANCIS - AF ADVISOR FULL TIME ACTIVE DUTY															

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

October 10, 2000

Thomas G. Bowman, Esq.
Senior Counsel
Committee on Government Reform
and Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Bowman:

Last week, you contacted me and asked for the FBI's response to a number of questions relating to the presence of 40 mm High Explosive (HE) rounds at Waco, Texas in 1993. In a telephone call with you on October 5, 2000, I provided you with the information requested. You have now asked that I reduce that information to writing for the Committee, which I am happy to do, along with the same caveats as I presented to you in our conversation.

I obtained the responses to your questions about the HE Rounds from members of the FBI's Hostage Rescue Team (HRT). Because of the urgency of your request, HRT conducted only a brief query of its members and provided the best information available based on the collective memories of its members, seven years after the fact. As I indicated to you on the phone, any and all responsive documents on this topic would have previously been produced to the Committee and would remain the best evidence with regard to the FBI's possession of HE Rounds in 1993.

The best recollection of the HRT members canvassed with regard to your specific questions indicated as follows:

- Two mount out vehicles were transported to Waco, one for the Blue Team and one for the Gold Team.
- Each mount out vehicle is believed to have contained 12 HE Rounds (although one HRT member felt that there might have been 18 Rounds rather than 12 on each vehicle).
- The HE Rounds were believed to have been signed over to HRT by the U. S. Marine Corps from the Ammunition Supply Point at Quantico, probably in the 1983 to 1984 time frame.
- At least six M-79 grenade launchers were transported to Waco but it is possible that each mount out vehicle contained a spare M-79.

EXHIBIT
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Thomas G. Bowman, Esq.

The FBI can, of course, state definitively that no HE Rounds were fired at Mount Carmel throughout the 51-day standoff with the Branch Davidians in 1993.

I hope this information is helpful to you and to the Committee. On behalf of the FBI, I would like to thank you and the other Committee staff for your professionalism and cooperation throughout this oversight investigation.

Please feel free to contact me if you have any additional questions.

Sincerely,

Eleni P. Kalisch
Section Chief
Office of Public and
Congressional Affairs

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

July 26, 2000

Mr. Thomas Bowman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Tom:

I am writing in response to your request for information on the allegation that the Army provided the Federal Bureau of Investigation (FBI) with 250 high-explosive (HE) rounds in connection with the 1993 law enforcement operation at Waco, Texas. This allegation arose from an entry in a table published as an appendix to the GAO Report, "Military Assistance Provided at the Branch Davidian Incident." This entry indicated that the Army failed to obtain reimbursement from the FBI for $5,066 of ammunition provided in support of the Branch Davidian operation, including 250 HE rounds. Based on our review of documents and interviews with the relevant personnel, we have not been able to confirm that the 250 HE rounds, were, in fact, ever provided by the Army to the FBI.

We are aware of only two documents that support the entry in the GAO report concerning the HE rounds. The first is an equipment inventory attached to a loan agreement, dated July 30, 1993, between Lt. General H.G. Taylor, Commanding General, III Corps & Fort Hood, and Special Agent James R. Shine, FBI. Tab 1. This document was created a number of months after the operation and represented a preliminary effort to create a master list of the equipment and materiel that were believed to have been provided by Fort Hood to the FBI. The second document is a computer spreadsheet, dated August 31, 1993, entitled "FBI/ATF Support at Waco, Texas, III Corps and Fort Hood." Tab 2. This document lists the items for which the Army sought reimbursement from the FBI for the support provided in connection with the Branch Davidian operation. Both of these documents were created by the Program Manager Analyst (PMA) in the G3 Budget Office. The PMA had no first hand knowledge as to whether any of the items listed on the documents were provided to the FBI. She recalls compiling these documents based on inputs at that time from the Deputy Range Officer for Fort Hood and the Deputy G3, III Corps.



The Deputy Range Officer's recollection is different. He recalls that in March, 1993, the FBI requested to use a "Military Operations in Urban Terrain" (MOUT) range at Fort Hood for 40 millimeter grenade launcher training. MOUT sites contain cinder block building frames that are used to practice hostage rescue or other operations that may occur in urban settings. The Deputy Range Officer said that the FBI wanted to use the MOUT site to practice shooting 40 millimeter shells through the windows. The FBI was strictly prohibited, however, from using HE rounds during these practice sessions because the explosions from the rounds would have damaged the site. The Deputy Range Officer believes that the FBI used 40 millimeter "training/practice" (TP) rounds during the practice sessions because he recalls having to send a clean-up crew to the MOUT site after the FBI departed to remove orange chalk marks that are typically made by TP rounds. This recollection is corroborated by the range control officer that inspected the range after the FBI departed, who observed holes in the concrete MOUT site ringed with orange chalk from TP rounds. The range control officer and his supervisor also recall finding a 40 millimeter TP round embedded in the MOUT site after the FBI departed. The Deputy Range Officer does not remember advising the Budget Office to seek reimbursement for HE rounds.

The Deputy G3 for III Corps also does not recall informing the Budget Office to charge the FBI for HE rounds. The Deputy G3 was responsible for processing all of the FBI's requests for support during Branch Davidian operation. His standard operating procedure was to forward such requests to the G3, then to General Taylor, and finally to Forces Command (FORSCOM). If FORSCOM approved the request, the Deputy G3 would task the appropriate unit within III Corps to provide the support. The Deputy G3 recalls that the FBI came to Fort Hood for 40 millimeter grenade launcher training and was provided TP and illumination rounds. He does not remember tasking any III Corps element to provide the FBI with HE rounds and is confident that he would have been aware of such a tasking had it occurred. Numerous contemporaneous documents in our collection support that the FBI requested and received TP and illumination rounds for use in connection with the training, but they do not contain any references to HE rounds. Tab 3.[1]

The Deputy G3 also recalls the he maintained a folder to keep track of the items of support provided to the FBI for the Branch Davidian incident and sent a copy of the folder to the Budget Office for the purpose of seeking reimbursement. He does not know why the Budget Office charged the FBI for HE rounds. He has a slight recollection that at that time he may have been dealing with a separate action involving HE rounds that was totally unconnected with the Branch Davidian operation. He speculates that the Budget Office mistakenly included rounds relating to that separate action in the reimbursement request sent to the FBI for the Branch Davidian operation.

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[1] Consistent with our previous practice, names of government officials have been redacted from the source documents and provided on a separate list at Tab 7.

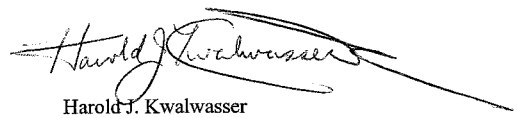
During the GAO investigation years later, the PMA received an inquiry from a GAO investigator asking her to account for the equipment, materiel, and ammunition listed on the equipment inventory that was attached to the July 30, 1993 loan agreement between Fort Hood and the FBI. The PMA annotated this equipment inventory to assist the GAO, writing "recovered" for items that had been returned by the FBI and "consumed" for items that were used or not returned. Tab 4. The PMA reported that all the ammunition, including the HE rounds, had been "consumed" based on her understanding from the Deputy Range Officer that the FBI had been authorized to take with them any ammunition that had not been expended during the 40 millimeter grenade launcher training.

Regardless of whether the FBI requested or received HE rounds from the Army, it is very unlikely that the FBI fired HE rounds at Fort Hood. Two civilian range control officers recall that the FBI conducted 40mm grenade launcher training at the Hargrove MOUT site in March, 1993. Their recollection is confirmed by range control records indicating that that on March 13, 1993, five persons fired one-hundred 40 mm rounds at that site. Tab 5. HE rounds, however, may not be fired at the Hargrove MOUT site because the explosions would damage the facility. In fact, HE rounds may only be fired on ranges classified as "permanent dudded areas" because of the safety hazard that arises if a fired HE round does not explode. Range control records indicate that neither of the "permanent dudded" ranges at Fort Hood -- RIGGS and PKM79 -- were used in March or April, 1993. Tab 6.

The FBI's Office of General Counsel has informed us that the FBI does not have any documents or information, other than the computer spreadsheet mentioned above, indicating that the FBI requested or received HE rounds in connection with the Branch Davidian operation.

I hope this information is useful to your investigation. Although we have not been able to make a definitive determination as to whether the HE rounds were provided to the FBI, we do not believe that continued inquiries on our part into this subject will yield any significant additional information. I would be happy to discuss this subject with you further or address any questions you may have.

Sincerely,



Harold J. Kwalwasser
Deputy General Counsel (Legal Counsel)

cc: Elizabeth Beers, FBI Office of General Counsel
E. Scott Castle, Army Office of General Counsel
Tom Veltz, Office of Special Counsel

MENT FOR THE LOAN OF US ARMY MATERIEL

...form will be used to enter ...ments relative to the loan of Army materiel between the United States Army and ...

...No ...1 Federal departme... ...2 Civilian activities specifically authorized to receive Army materiel on loan ...sphs below are app... ...gencies. ...cases, as cited above, unless otherwise specified at the beginning of each paragraph

This loan agreement is entered into, by, and between the United States of America, hereinafter called "the lender,"

represented by (b) COMMA... NG GENERAL, III CORPS AND FORT HOOD

for the purpose of entering ... this agreement; and (a) FEDERAL BUREAU OF INVESTIGATION

hereinafter called "the borrower," represented by (c) SA JAMES R. SHINE, FBI HQ SIOC, WASHINGTON D.C

for the purpose of entering into this agreement.

1. PURPOSE. Under the authority of (d) 31 USC 1535 (THE ECONOMY ACT), the lender hereby lends to the borrower and the borrower hereby borrows from the lender the Government materiel, hereinafter called " the materiel," listed and described in Exhibit 1 hereto attached and incorporated by reference into the terms of this agreement, which materiel is required by the borrower for (e) MAJOR CASE 80, WACO, TX

2. TERM. This loan of materiel is intended to meet a temporary need covered by federal law. The borrower will keep materiel only for the period of (f) 28FEB93 - 24APR93. Loans may be renewed, if justified, and requested by the borrower and approved by the lender. Nevertheless, the lender may revoke and terminate this agreement and demand ... of the materiel in whole or in part at any time.

3. CONDITIONS. This agreement is predicated upon the following conditions.

a. The lender will make every effort to ensure that each item of the materiel is furnished to the borrower in a serviceable and usable condition according to its originally intended purpose. However, if the use for which the materiel is loaned will permit, materiel of a lesser condition will be loaned. This lesser condition will be noted on the appropriate loan documents. Nevertheless, the lender makes no warranty or guarantee of fitness of any of the materiel for a particular purpose or use; or warranty of any type whatsoever.

b. The borrower will appoint a representative for the purpose of making joint inspection and inventory of all materiel when the borrower physically picks up or returns the borrowed materiel. Upon pickup *(or receipt after shipment)* of the borrowed materiel, the chief of the borrowing activity *(or his authorized representative)* will sign the appropriate documents acknowledging receipt and possession of the materiel. Upon return of the materiel to the Army, the borrower will certify that "the quantities listed in the shipping document(s) are correct." In instances where borrower representatives, authorized to receive and sign for borrowed materiel, are not available when the materiel is delivered, all claims for costs related to the loan will be valid.

c. The borrower is responsible for care and maintenance of borrowed materiel during the term of the loan. The borrower will provide sufficient personnel and facilities to adequately operate, maintain, protect, and secure the borrowed materiel. The borrower will maintain the materiel in a serviceable condition and ascertain that it is returned to the Army in as good a condition as when it was loaned *(fair wear and tear excepted)*. Records of maintenance performed will be kept and returned to the Army with the borrowed materiel. *(NOTE When appropriate, the borrowing activity will place the materiel in a "properly preserved" status prior to or upon return.)*

d. The borrower will store, safeguard, and secure high value items, or arms in a manner consistent with common practice, public law, and local ordinances.

e. The borrower will prevent misuse of borrowed materiel, or its use by unauthorized persons.

DA Form 4881-R, Sep 84 EDITION OF MAY 80 IS OBSOLETE

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TAB I

Z 0019640

f. The borrower will neither ...nor permit any modification or alteration of any borrowed material except with ...ion of the approving auth... for the loan.

g. The borrower will not mo... or pledge, assign, transfer, sublet, or part with possession of any borrowed material an... ...er to any third parti... ...ther directly or indirectly except with the prior written approval of the lender.

h. At all times the lender shall have free access to all loaned material for the purpose of inspecting or inventorying it.

i. The borrower will return borrowed material to a location designated by the lender when the material is no longer ...eded, upon termination of the loan period *(including any approved extension)*, or upon demand therefore by the lender. ...e lender will provide documents to be used by the borrower to return the material.

j. (Applicable to agreements involving the loan of an Army building.) The building will not be moved. Upon ...rmination of its use, the borrowing activity will vacate the premises, remove its own property therefrom, and turn it ...Government property.

. PAYMENT. The borrower will reimburse the lender for expenses incurred in connection with this loan as provided ...elow:

a. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian ...ctivities only.) Before delivery of any materiel by the lender, the borrower will post with the approving authority a ...urety bond and a certified bank check, US Treasury bonds, or bonding company bond in the amount of the total value ...f the materiel as shown in Exhibit I *(See paragraphs 2-7 a(2)(a) and 2-7 a(2)(b), AR 700-131, for exceptions where a "double bond" is required.)* The bond; marked Exhibit II, *(properly executed surety bond and evidence of deposit with the approving authority of certified check, United States of America Treasury bonds, or bonding company bond in the amount of the grand total shown on Exhibit I)*, is hereto attached and incorporated by reference into the terms of this agreement.

b. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Should the borrower fail to return any of the borrowed materiel or fail to reimburse the lender within 30 days after receiving a request for payment of expenses, the bond shall be forfeited as liquidated damages in an amount ...qual to the expense to the Government.

(Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian ...ies only.) Payment of liquidated damages by forfeiture of any portion of the bond to the Government shall not ope... as a sale to the borrower of any of the materiel available to be returned, but not returned to the lender, nor to ext... the lender's right to have the available missing materiel returned. Should the borrower later return to the ...en... of the missing materiel on account of which a portion of the bond was forfeited as liquidated damages, the borrower shall be entitled to recoup from the lender a sum equal to 90 percent of the price of the returned materiel as shown on Exhibit I, less an amount in payment for expenses, if any, computed in accordance with Chapter 6, AR 700-131, and less an amount for depreciation.

d. (Applicable to loan agreements with civil authorities and civilian activities only.) If the normal life expectancy of borrowed materiel can be determined by reference to applicable military publications, the amount to be assessed for depreciation shall be computed by the straight line method using the price shown on Exhibit I and the date of expiration or termination of this loan as initial points. When normal life expectancy is not established by applicable military publications, the amount for depreciation shall be computed by the same method, applying a uniform depreciation rate of 50 percent per annum.

e. (Applicable to loan agreements with civil authorities and civilian activities only.) The borrower will assume all responsibility for Army claims arising from the possession, use, or transportation of the borrowed materiel, and, agrees to hold the lender harmless from any such claims and liability. The borrower will protect the interests of the lender by procuring comprehensive insurance for all borrowed materiel to include coverage for liability, property damage, fire, and theft, and deductible collision insurance for motorized vehicles. The borrower will file duplicate copies of such insurance policy(ies) with the lender and prepare accident reports in accordance with existing laws and local ordinances.

f. The borrower will bear the cost of pickup and return of borrowed materiel, and, will reimburse the lender for costs incurred incident to packing, crating, handling, movement, and transportation of the materiel.

g. The borrower will reimburse the lender for any expenses necessary to repair, rehabilitate, or preserve the materiel following its return to the lender. *(NOTE: Of any borrowed materiel, unless depreciation is significant.)*

h. The borrower will reimburse the lender *(as indicated and at the price shown on Exhibit I)* for the cost of all of the expendable materiel *(including, but not limited to, petroleum, oil, and other lubricants)* used or consumed during the loan.

The borrower will reimburse the lender for costs incident to the pay of Army personnel who may be temporarily ...d to operate, maintain, guard, or otherwise attend to borrowed Army materiel. This includes travel and per diem ...r both Army uniformed and civilian personnel, and regular salary and overtime costs for Army civilians.

f. The borrower will reimbu[illegible] lender for any other expenses to the lender arising in connection with the loan of [illegible] material.

g. (Applicable to loan agree[illegible] with Federal departments and agencies only.) The lender will indicate the specific coun[illegible] classification(s) against which any charges as enumerated above will be charged.

O[illegible]ALS NOT TO BENEFIT No member of or delegate to Congress shall be admitted to any share or part of [illegible] loan or to any benefit arising in connection with it.

CONTINGENCY FEES No person or agency acting for or on behalf of the borrower to solicit or obtain this loan shall be paid any commission, percentage, brokerage, or contingent fee in any way connected with the loan.

DISPUTES. Any disputes concerning a question of fact arising under this loan agreement which are not mutually disposed of by the lender and the borrower shall be decided by the Secretary of the Army as the Government's executive Agent, or by his designee.

Done at (c) FORT HOOD, TEXAS this 30th day of July, 1993

(d) NAME, GRADE, RANK OF ARMY APPROVING AUTHORITY FOR THE LOAN, OR HIS DESIGNEE	SIGNATURE OF APPROVING AUTHORITY OR HIS DESIGNEE
H.G. TAYLOR LIEUTENANT GENERAL, U.S. ARMY COMMANDING OFFICER	
(e) NAME OF CHIEF EXECUTIVE OR HIS AUTHORIZED DESIGNEE OF THE BORROWING AGENCY, AUTHORITY, OR ACTIVITY	SIGNATURE OF CHIEF EXECUTIVE OR HIS DESIGNEE

INSTRUCTIONS The lettered blank portions of the loan agreement are to be completed as specified in the following paragraphs with the same letters.

(a) Enter, as appropriate, the name of the Federal agency, city, county, state, or other civil governmental body, or special activity (e.g., Boy Scouts of America, American Legion) which is borrowing the Army materiel.

(b) Enter name and title of the Army approving authority for the loan, or his designee.

(c) Enter name and title of the borrowing activity's chief executive (e.g., John Doe, Secretary of the Treasury, Governor of the State of Iowa, National Commander of the American Legion, etc.) or his authorized (in writing) designee.

(d) Enter the appropriate authority for the loan from table 2-1, this regulation (e.g., Public Law, US code, DODD).

(e) State the purpose of the loan (use to which the borrowed materiel will be put), e.g., disaster relief activities in support of the Johnstown, PA, flood, National American Legion Convention at Chicago, IL, etc.

(f) Enter the calendar period (duration of the loan, e.g., 1 March 1978 to 15 April 1979).

(g) Enter location, day, month, and year that the agreement was signed.

(h) Signature of the Army approving authority for the loan, or his designee.

(i) Signature of the chief executive, or his authorized (in writing) designee, of the Borrowing agency, authority, or activity.

NOTE Exhibits I and II will be prepared as attachments to the loan agreement.

MILITARY PROPERTY OF THE [illegible]D STATES – EXHIBIT E

For use of this form, see AR [illegible]; the proponent agency is DCSLOG.

NATIONAL STOCK NO	NOMENCLATURE	QUANTITY	CONDITION CODE	PRICE EACH	TOTAL PRICE
	M1A1 ABRAMS TANK	2			
	UH-1 Helicopter	2			
	Mine Detecting Set FTBC Metallic AN/PSS-11)	2			
	Gas Masks, M17	34			
	Light Sets	2			
	Cots	60			
	Tents, GP Medium	3			
	Generator, 1.5KW	2			
	Generator, 3.0KW	2			
5855-01-220-093[illegible]	Night Vision Goggles, PVS 7-B	100		$4,584.00	$9,168.00
	Concertina Wire (Rolls)	80		29.91	2,392.80
	40MM Illumination Rounds	50		24.82	1,242.00
	40MM Target Practice Rounds	200		1.73	346.00
	40MM High Explosive Rounds	250		13.91	3,477.50
	* SEE ENCLOSURE TO INTERAGENCY AGREEMENT FOR TOTAL SUPPORT COSTS TO BE REIMBURSED TO III CORPS AND FORT HOOD.				
				* GRAND TOTAL	*SEE NOTE

DA Form 4881-R [illegible] May 80

1228

FBI/ATF SUPPORT AT WACO, TEXAS
III CORPS AND FORT HOOD
REIMBURSABLE SUPPORT

REVISED 31 AUGUST 1993

UNIT/ACTIVITY	ITEM DESCRIPTION	QTY LOANED	QTY RETURNED	MILEAGE/ HOURS USED	UNIT COST/ RATE PER MI/HR	TOTAL REIMB REQUIRED
1 CAVALRY DIVISION:						
30 BDE	M1A1 ABRAMS TANK	2	2	NOT USED	0.00	0.00
	5 T WRECKER	1	1	296.0	0.00	120.00
	M998 HMMWV W/RADIO	1	1	17500.0	0.10	5,575.00
	2.5T TRUCK	1	1	2100.0	1.31	2,751.00
	JP8 FUEL (FOR GENERATORS)			2488.0	0.75	1,866.00
	SAND BAGS	200	0		0.37	74.00
DISCOM	NETS	2	2	258.0	1.01	511.00
13 CORPS SUPPORT COMMAND:						
1 MED GP	UH-1 (507TH MED CO)	1	1	12.5	566.00	7,075.00
169 TRANS BN	NET	12	12	1464.0	1.91	3,047.00
	M998 (HMMWV)	0	6	744.0	0.49	364.50
169 MAINT BN	UH-1 (RECOVERY MISSION)	1	1	1.0	566.00	566.00
	M1009 (RECOVERY MISSION)	1	1	240.0	0.71	37.00
	M818 (RECOVERY MISSION)	1	1	140.0	0.38	53.20
	M819 (RECOVERY MISSION)	1	1	140.0	0.39	53.10
	5T TRUCK (RECOVERY MSN)	1	1	140.0	0.60	84.00
546 MAINT BN	BARBED WIRE (ROLLS)	80	0		29.91	1,597.00
	PICKET POLES	220	0		2.65	583.00
6 CAVALRY BRIGADE:	UH-1 **	1	1	219.0	566.00	$23,956.00
	CH-47	1	1	7.0	1814.00	13,000.00
	M998 (HMMWV)	1	1	150.0	0.49	73.50
	CHEM LIGHTS (BOXES)	0	0			54.00
ALL-UNITS	TEMPORARY DUTY TRAVEL					15,035.10
DOIM	CELLULAR PHONE CHARGES					552.91
DOL	LEASED VEHICLES FOR LNO#					1,100.00
TOTAL P2 MISSION/BASOPS REIMBURSEMENT (03/BPTM):						$101,627.17
APPROPRIATION: OTHER						
AMMUNITION	ILLUMINATION ROUNDS	50	0		24.84	1,242.00
	TARGET PRACTICE ROUNDS	200	0		1.73	346.00
	HIGH EXPLOSIVE ROUNDS	250	0		13.91	3,477.50
ATCOM	25 % REPLACEMENT COST FOR NON-REPAIRABLE UH-1	005				239,676.00
CECOM (OPA #)	NIGHT VISION GOGGLES W/BATTERIES (ICD)	10#	9#		4501.00	9,160.00
TISA	MRE FOR 169 TRANS (CASES)	0				303.53
OTHER APPROPRIATIONS REIMBURSEMENT:						$245,973.03
TOTAL US ARMY REIMBURSEMENT:						$426,788.20

DAMAGED : AVIATION TROOP COMMAND (AVCOM) REVISED DISPOSITION INSTRUCTIONS FOR 6TH CAVALRY BRIGADE UH-1 HELICOPTER DAMAGED BY THE FBI. AIRCRAFT REPAIR COSTS EXCEED MAXIMUM MAINTENANCE EXPENDITURE LIMITS. AVCOM REQUESTS REIMBURSEMENT FOR 25 % OF ANDF PRICE ($238,676.00). 6TH CAV BDE TO RECEIVE ANOTHER UH-1 HELI FOR FORCE COMMAND REDISTRIBUTION.

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TAB A

Z 0019649

MAR-11-1993 11:18 FROM FBI OPERATIONS CTR. TO *7H917036973147 P.03

25 FEI

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

March 11, 1993

TO: Office of the Secretary of Defense
Executive Secretariat, The Pentagon
Attn: [redacted]

FROM: [redacted] Assistant Director
Criminal Investigative Division

SUBJECT: WACMUR MC 80
REQUEST FOR ASSISTANCE FROM
THE DEPARTMENT OF DEFENSE

Reference: Telephone call on 3/11/93 from [redacted] FBIHQ, Strategic Information Operation Center (SIOC), (202) 324-6700, and [redacted]

In support of this mission, the FBI requests the use of a 40mm/203 range on Ft. Hood, Texas, with appropriate range personnel to operate the range. The Department of Defense is also requested to provide 100 rounds of 40mm/203 practice ammunition and 50 illumination rounds. This ammunition is to be transferred to the possession of the FBI.

This is an immediate need request, availability and time limit coordination is to be handled with [redacted] SIOC, (202) 324-6700.

The FBI recognizes the Economy Act requirements for reimbursement of Department of Defense from the use of this equipment.

All billing for this request should be directed to: FBI, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20535, Attn: Assistant Director, Division 3, MC 80 support.

TOTAL P.03

Z 0022040

TAB 3

DAMO-ODL 11 Mar 93

MEMORANDUM FOR RECORD

SUBJECT: FBI Request for 40mm Grenade Launcher Training

1. On 11 March 93, FBI [redacted] (FBI HQ/202-324-6700) contacted this office telephonically and requested Army provide refresher training on an expedited basis for HRT personnel in use of 40mm grenade launchers. Training is in support of federal law enforcement operations in Waco, Texas. Training is scheduled for 111300 (CST) March 93, at 40mm range at Fort Hood. FBI agents will use there own weapons but require 100 rounds of training/ practice ammunition and 10 rounds of illumination ammunition Army personnel will operate range facility for FBI.

2. Training will be provided under the provisions of the Economy Act with all direct and indirect costs reimbursable.

3. Coordinated training request with OSAGC ([redacted]), ASA(IL&E) [redacted], DALO-ODS [redacted], FORSCOM [redacted] and OSD-ES (LTC Boevers). At 111205 Mar 93, the Acting ASA(IL&E), [redacted], approved the request for training support to the FBI.

[redacted]
LTC, GS
Action Officer

This has been passed to Ft Hood.

703 697 3147 03-11-93 12:31PM P001 #11

D-635

DAMO-ODS 11 Mar 93

MEMORANDUM FOR RECORD

SUBJECT: FBI Request for 40mm Grenade Launcher Training

1. On 11 March 93, FBI [redacted] (FBI HQ/202-324-6700) contacted this office telephonically and requested Army provide refresher training on an expedited basis for HRT personnel in use of 40mm grenade launchers. Training is in support of federal law enforcement operations in Waco, Texas. Training is scheduled for ~~111900~~ 121900 (CST) March 93, at 40mm range at Fort Hood. FBI agents will use there own weapons but require 100 rounds of training/practice ammunition and 50 rounds of illumination ammunition. Army personnel will operate range facility for FBI.

2. Training will be provided under the provisions of the Economy Act with all direct and indirect costs reimbursable.

3. Coordinated training request with OSAGC (Sara Merck) [redacted], ASA(IL&E) [redacted], DALO-ODS [redacted], FORSCOM [redacted] and OSD-ES [redacted]. At 111205 Mar 93, the Acting ASA(IL&E), [redacted], approved the request for training support to the FBI.

[redacted]
LTC, GS
Action Officer

* FBI authorized to depart range w/ any portion of unfired ammunition. Coordinated w/ Army General Counsel ([redacted]). 121300 Mar 93 fax

* Change to 200 TP Rounds. Approved by ASA IL&E [redacted] 120800 Mar 93 (Administrative Change)

D-1822

DAMO-ODS 11 Mar 93

MEMORANDUM FOR RECORD

SUBJECT: FBI Request for 40mm Grenade Launcher Training

1. On 11 March 93, FBI [redacted] (FBI HQ/202-324-6700) contacted this office telephonically and requested Army provide refresher training on an expedited basis for HRT personnel in use of 40mm grenade launchers. Training is in support of federal law enforcement operations in Waco, Texas. Training is scheduled for 111300 (CST) March 93, at 40mm range at Fort Hood. FBI agents will use there own weapons but require 100 rounds of training/ practice ammunition and 50 rounds of illumination ammunition Army personnel will operate range facility for FBI.

2. Training will be provided under the provisions of the Economy Act with all direct and indirect costs reimbursable.

3. Coordinated training request with OSAGC [redacted], FORSCOM [redacted] ASA(IL&E) [redacted] DALO-ODS ([redacted]), [redacted] and OSD-PA [redacted]. At 111205 Mar 93, the Acting ASA(IL&E), [redacted] approved the request for training support to the FBI.

[redacted]
LTC, GS
Action Officer

MFR: Per conversation with [redacted] DA DOMS, at 121410Z Mar 93, authorization has been increased to 200 rounds training practice and 50 rounds illumination.

[redacted]
GS-12
Watch Officer
FORSCOM Ops Center

D-712

2

Log re Waco.

11 MAR 93:

1320: Called [redacted] at FORSCOM watch. No new info.

1330: [redacted] called back; range is available, but (IAW [redacted] now FBI requires 200 vice 100 40mm TP rounds. Told him I'd check if OK to plus up ammo allocation while he gets me data re range (availability of ammo, open/close time, # pax on range, etc.) Told him that it seems to me that as DA agreed to provide range/ammo, request for more ammo doesn't violate principle/shouldn't be showstopper.

1345: Left msg with [redacted]'s sec'y.

1450: Called FORSCOM watch; spoke w watch NCO; they're still tracking with Ft Hood.

1515: [redacted] III Corps G3 Opns, needs [redacted] to send MFR for reimbursement purposes that reflects III Corps is providing 2 helos to FBI. (Other support has been validated in previous MFRs)

1545: Got NGB data from [redacted] on Army watch (70218). Confirmed why data from NGB shows NO NG/SAD in Texas -- counting by $ source IAW [redacted] says there is no change from Thursday's slide/data. Told [redacted] [TAB 1]

1555: [redacted] needs data for CSA, will stop by for copy of MFR re FBI and 40mm trng and read me phone log.

1600: Called FORSCOM, spoke w [redacted], he'll call Ft Hood and call me "right back."

1605: [redacted] is still not in. His sec'y will leave 2nd msg.

1610: [redacted] called back. Ft Hood is working it, range and GIs are available, FBI is at range to train, holdup is paper problem at ASP, not a showstopper. Ft Hood expects to train today. [redacted] will confirm accurate count for req't for ammo, # pax on range, anticipated open/close time. He'll call us or watch [redacted] goes off shift at 1930, will brief his successor).

1630: Told [redacted] at CSA's weekly summary "no change" to data she sent to us for review. Reviewed text w COL T [TAB 2]

1635: [redacted] called back: real count of ammo is 100 TP and 50 Illum -- no change from original request.

1635: [redacted] called back -- told him disregard, FBI 40mm request as seen by him earlier remains in effect.

1640: [redacted] called again, range is **scheduled** for 0900 Central

D-1857

C/O

Friday, 12th. Advised [redacted], [redacted] said no need for Exsum yet, he'll tell MG H that they'll train tomorrow and we'll provide Exsum with details of trng after the trng.

1715: [redacted] called -- expect 8-10 FBI on the range tomorrow. Advised [redacted] and [redacted]

12 MAR 93:

0550: Spoke w [redacted] at FORSCOM watch -- nothing to report, no change in pax/equipment.

0600: Advised [redacted] to pass to [redacted] for his 0630 briefing.

0800: [redacted] asked for an additional 150 TP for 40mm. Advised COL T.

0815: Called [redacted] at FORSCOM; asked him to research w III Corps the availability/impact of ammo plus-up.

[redacted] ? Who's in charge WACO/TX?

FORSCOM OPERATIONS CENTER [illegible]

☐ RECORD OF TELEPHONE CALLS ☐ RECORD OF ACTIONS

FROM (HQ) HQ DA DOMS	TO (HQ) FORSCOM
INITIATED BY [redacted] DSN 227-4331	RECEIVED BY [redacted] (2)
DATE/TIME GROUP (ZULU) 111550Z MAR 93	

INCIDENT/MESSAGE

FBI wants to use Range at FT Hood for 40mm Training, for Thursday, 1300 CST.
- Soldiers to run range
- 100 rds 40mm TP and Illumination

Needs to know if FORSCOM can and wants to support. They do not want to force it down anyone's throat.

ACTION 111555Z - (4) III Corps, [redacted] (3) They are checking, too many unknowns to answer
111600Z - [redacted] This is a normal support mission, OK if FT Hood can do it.
111605Z - (5) [redacted] SJA: courtesy call to him for info. He has no problems
111612Z - to III Corps, (6) [redacted] He advised they are still checking, (7) [redacted] out of office to check. To let him we have no problem with the mission if they can do it. If not, call us back with a recommendation.
111617Z - passed info to [redacted] (8) DA DOMS. (9)
111728Z - Received MFR [redacted] DA DOMS Copy and Provided [redacted] (10) (11) (12) faxed to III Corps.
111845Z - (13) [redacted] will notify the J3.
112045Z - (14) [redacted] called and said that the FBI only wants 100 EDS now and it [redacted] approximately 2 HRS before all coordinations are made.
112210Z - From [redacted] (15) III Corps - Range will go Friday, 0900 CST

VOICE (NOT) AUTHENTICATED	ACTION ELEMENT OVER
JOURNAL ☐ YES ☐ NO ENTRY	ACTION OFFICER

FCJ3 FORM 1342, 1 MAR 89

FORSCOM OPERATIONS CENTER DAILY ACTION LOG

☐ RECORD OF TELEPHONE CALLS ☐ RECORD OF ACTIONS

FROM (HQ) HQ DA DOMS	TO (HQ) FORSCOM
INITIATED BY [redacted] DSN 227-4331	RECEIVED BY [redacted] (2)
DATE/TIME GROUP (ZULU) 121323Z MAR93	

INCIDENT/MESSAGE

- FBI has come in with request for 150 additional TP rounds for 40mm Tng.
- Request has not been approved yet. Before approval given, need statement of impact on FT Hood if approved.

available/not available
Impact on Troops at FT Hood

(3)

ACTION

121325Z - passed to FT Hood, [redacted]. Told him need expeditious answer, also discussed with [redacted]. (4)

121335Z - (4A) Briefed [redacted] J3 TNG SPT AMMO (7075). (6)

121355Z - Conference call (5) [redacted] III Corps, [redacted] DA DOMS [redacted] advised III Corps GNO [illegible] (7) They [illegible] 100 additional TP rounds. No firm answer yet on impact on FT Hood if they provide additional ammo. Also, FBI may not show for Tng Today. WX too bad to fly, having difficulty getting cars to transport agents (8) to FT Hood. FT Hood feels like troops are being jerked around, set up range yesterday, today and now may have to on Saturday. Per [redacted] (9) range should be operated to accomodate FT Hood. Then call.

121410Z - From [redacted] (10) DA DOMS - to make record of increase in authorization, put MFR on bottom of initial document, reference conversation, and increase to 100 Rds TP and 50 round illumination. Date of range: operation to be FT Hood call.

VOICE (NOT) AUTHENTICATED	ACTION ELEMENT
JOURNAL ☐ YES ☐ NO ENTRY	ACTION OFFICER

FCJ3 FORM 1342, 1 MAR 89

(9)

15 March 93

(U) STATUS OF ARMY SUPPORT TO THE FBI AND BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (BATF) IN WACO, TEXAS (U). This EXSUM is self-initiated. Military support continues, as law enforcement agencies report litte change in the situation in Waco, Texas. Additional support provided to Federal agencies over the weekend includes training for the FBI on use of 40mm grenade launchers on 12 March 93, at Fort Hood [approved by Acting ASA(IL&E)], and the loan of 30 protective masks and two xenon search lights by the Texas ARNG.

(1) [redacted] /DAMO-ODS/74331

(2) APPROVED BY [redacted]

APPROVED FOR FORWARDING
EXSUM SUMMARY

(3) [redacted] 17/3

REVIEWED BY DCSOPS

C12

TAB 4

MILITARY PROPERTY OF [illegible]NITED STATES – EXHIBIT I

For use of this form, see AR 7[illegible] the proponent agency is DCSLOG.

[illegible]	NOMENCLATURE	QUANTITY	CONDITION CODE	PRICE EACH	TOTAL PRICE
	W1A1 ABRAMS TANK	2	Recovered 2 Not used		
	UH-1 Helicopter (loaned only)	2	1 Recovered / 1 crashed by FBI		
	Mine Detecting Set PTBC Metallic AN/PSS-11)	2	Recovered 2		
→	Gas Masks, M17	34	Recovered 34		
	Light Sets	2	Recovered 2		
	Cots	60	Recovered 60		
	Tents, GP Medium	3	Recovered 3		
	Generator, 1.5KW	2	Recovered 2		
	Generator, 3.0KW	2	Recovered 2		
5855-01-228-0937	Night Vision Goggles, NVG PVS 7-B	100	Recovered 98	$4,584.00	$9,168.00
	Concertina Wire (Rolls)	80	Consumed	29.91	2,392.80
	40MM Illumination Rounds	50	Consumed	24.82	1,242.00
	40MM Target Practice Rounds	200	Consumed	1.73	346.00
	40MM High Explosive Rounds	250	Consumed	13.91	3,477.50
	* SEE ENCLOSURE TO INTERAGENCY AGREEMENT FOR TOTAL SUPPORT COSTS TO BE REIMBURSED TO III CORPS AND FORT HOOD.				
				* GRAND TOTAL	*SEE NOTE

DA Form 4881-2-R, 1 May 80

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RANGE FIRING LOG

DATE 13 MAR 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5 CAV DSAC										
597 MT CCZE	0717				0735	✓	38 D	0829		CLEAR
1-5 CAV FMLFW	0907				0936	✓	38 D	1021		Clear
15 MI PKRB	0742				0814	✓	38 D	0907		CLEAR
13 SIG CCRF	0800				0813	✓	38 D	0858		CLEAR
49 AD LSMUR-N	0309 0000	0837	2343	20 - per 1180-50 cal						6000. 7.62
49 AD LSMUR-S	0309 0000	0837	2343	20 - per 645 - 50 cal						500 - 7.62
2-12 AR BKMUR	0309 1117	0000	Cont	54 - per 7500 - 7.62					17	2400 - 50 cal
2-12 CAV TRAPMUR	0312 1225	1002	1633	64 PERS 40 120 MM					20	Screening only
2-12 CAV PHTM RUN	0309 0000								10	
2-82 FA OP PHTM	0311 1729	0952	1937	12 PERS.						
1-124 PKHG/C	0312 1509	0801	1624	160 PERS. 160 M67 HG	1730	✓	38 D	1810		CLEARED
544 CS CHMGT	0708	0851	1228	6 Pers 50 Cal	1240	✓	38 D	1313		CLEAR
PKSPoffman	0748	0818	1559	31 CIV. MIX. CALIBER				1830		sgt. Fanvoot
1-66 AR BWMUR	0811								17	
303 MI CCRF	0857	0907	2157	46 - per 5500-5.56				2237	13	RTN TO CLEAR
West Bell PKRA	0858							1105		RTN TO TRAIN
SET UP 2BDE ICD CCMUR	0859							1553		RETURN ON MONDAY TO TRAIN

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TAB 5

RANGE FIRING LOG

DATE 13 Mar. 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-67AR HARMONT	0950	0950	1112	5 Per 100 40mm		✓		1131		CLEAR MR EVERETT

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RANGE FIRING LOG

(FT Supp 1 to AR 381-63)

DATE 1 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										
3-8 CAV BWMUR	0807					✓		1104		Clear by MEYER
49 AD LSMUR-N	0000	0000		16 Pers 1400/7.62						904 50cal CONTINUE
49 AD LSMUR-S	0000	0000		20 Per 20/105mm						CONTINUE
PKSPORT	0650	0733	1725	57 PER 7006 5.56				1730		OIC LINQUIST DEPARTED
1-5 CAV CCRF	0717	0905	2051	141 PER 5280 5.56				2107		RNT TO CLEAR
57 SIG CCGL	0759	0838	1121	15 pers 184 TPT 10mm	1122	✓	38 D	1145		CLEAR 38D 184 Rds TPT
303 MI BGPQ	0816	0925	2110	25 PER 2700 9mm				2120	13 14 16	RNT TO CLEAR
E 1/5 CHMGT	E 1/5 0843	1015	1621	24 PER. 6040 7.62	1726			1803		clear
522 MI CCMGB	0848	1018	1506	24 PER 2400 - 50CAL	1524	✓	38 D	(?)	15	CLEAR
163 MI HARMOUT	0849			65 Pers					10	CONTINUE
B 2-12 CAV PHTN RUN	1125			SET UP					15	CONTINUE

550 b
?) Replaces Prior Edition

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TAB 6

RANGE FIRING LOG

(FF Sheet 1 to AR 385-63)

DATE 2 MAR 93
0000 – 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										
1-5 CAV CCRF	0718	0834	2211	323 - Pers 16260 - 5.56				2224	0730 14	Run to CLEAR.
303 MI BGPQ	0752							0752		Accept AS 75.
49 AD LSMUR-N	0000	0000	2400	20 Pers 1750 7.62 1000 50 cal				2400		130 105 mm CONTINUE
49 AD LSMUR-S	0000	0000	2400	20 Pers 20 105 mm				2400		CONTINUE
163 MI HARMOUT	0000			62 Pers				2400	11 12 18 21	OIC REBRIEF CONTINUE
B 2-12 CAV PHTM RUN	0000			64 Pers				2400		CONTINUE
PKSPORTS	0638	0736	1723	177 MIL 15 CAV 1810 5.56				1723		DEPARTED.
138 AVN RRM72	0704	0806	1115	PERS - 18 165 TOT 66 HE 4 ATP	1133	✓	38 G	1240	0730	Cleared by 38G
17 ENG BWPA	0706	0925	1130	Pers - 17 682 - 9mm	1145		38 D	1201	10	CLEAR
549 MT VGC	0725			350 PER	1639	✓	38 G	1656	11	CLEAR
301 FM BGPQ	0752	0905	1314	9mm 2520 31 PERS	1333	✓	38 G	1349		CLEAR
628 TRANS CCMGB	0815	0926	1657	16 PF 3950 7.62				1702		RAIT TO TRAIN
MED DIGNITY CHMGT	0824	0957	1501	Pers - 38 Rounds 8,040 5000 7.62	1513	✓	38 G	1536		CLEAR.
301 TFW SCB	0959	0959	1050	4 Pers 12 BOMBS.				1050		DEPARTED ~~CLEAR~~
1/5 CAV CHBAC	1008			26 PER	1558	✓	38 G	1625		CLEAR
2-12 CAV BMSC1	1039	1153	2315	48 Pers 800 7.62				2400		CONTINUE
301 TFW SCBR	1420	1430	1501	4 AIR CRAFT 4 CREW 13 BDU 33				1501		DEPARTED.

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RANGE FIRING LOG

DATE 3 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
LRC 217 CAV	1019		1224	25 pers	1225	✓	388	1235	1	Clear
DSAC	1340							1632		RMT TO TRAIN
301 TFW SCBR	1423	1433	1511	6 PERS 6 AIR CRAFT 24 BDU33				1511		Departed

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RANGE FIRING LOG

DATE 3 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF	1409	/	/	/	1422	0	33 L	1521		Return to Clear
1-5 CAV CCRF	0737	/	/	/	0835	✓	38 C	0900		Clear
✓ 49 AD LSMUR-N	0000	0000		20 Pers 1000 - 7.62 cal 500 - 50 cal						130 - 105mm
✓ 49 AD LSMUR-S	0000	0000		16 Pers 17 - 105mm						
✓ 163 MI HARMONT	0000			61 Pers						
✓ B 2-12 CAV PHTM RUN	0000	0924		14 Pers					13	
✓ 2-12 CAV BMSC-1	0000	0954	2220	54 PERS 800 - 7.62				2300	11 15	RTN TO TRAIN
✓ 4MMC BWPB	0643	0821	1214	40 Pers 1822 9mm	1232		38 C	1233		Clear
✓ 4-5 ADA CCGL	0654	0933	1505	232 Pers. 300 40mm	1629	✓	38 B	1651		Ammo verified by B3L CLEAR 300 TPT
✓ 62 EWG BWPA	0705	0841	1046	Pers 13 830 9mm		✓	33 L	1102		Clear
✓ PKSPORTS	0705	0732	1730	177 MIL 15 CAP 2870 5.56				1732		DEPARTED
✓ 1/66 AR 1-66 AR LFW	0817	0910	1527	53 1103 5.56	1527	✓	33 L	1638		CLEAR
✓ 628 TRANS CCMGB	0823	0842	0947 1035	Pers 4 Rou 800/7.62mm	0947	✓	38 B	1024		Clear
✓ 3 CORP PKRB	0827	0949	1208	16 Pers 1000, 5.6mm		✓	33	1218	11	Clear
✓ 227 AVN CCRF	0915	0958	1333	80 PER 4800 - 5.56				1645		DEPARTED WILL BE CLEAR BY 53
No Book ID. 16 Sig PHTM CC	0940	/	/	90 pers	1127	✓	33 L	1138		Clear
✓ 301 FFW SCB	0958	0958	1042	Pers. 8 10 BDU 33				1042		DEPARTED
✓ 3-8 CAV CHMGT	1005	1129	1523	10 PER 3400 7.62	1524 1630	0	38 D 33 L	1522		CLEAR

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RANGE FIRING LOG

DATE 4 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV GSDF										
227 AV SCRF	/	/	/	/				N/A		1-66 AR Accepted RS 15.
49 AD LSMUR-N	0000	0833	2230	16 Pers 100 - 50 cal 104 - 105 mm						800 - 7.62
49 AD LSMUR-S	0000	/	/	SET - UP 65 Pers						
163 MI HARMOUT	0000	/	/	48 Pers						
2-12 CAV PHTM RUN	0000	0833		MILES LASER Rounds - 600 7.62mm Total - 54					16	
2-12 CAV BMSC-1	0729	0843	1524					1654		UNIT TO TRAIN
1-5 CAV DSAC	0903			SET UP # 213 Pers				1442		RTN TO TRAIN
PKSPORT	0653	0744	1730	3262 5.56				1730		594 LINDQUIST
1-7 CAV CCMCA	0657	0833	1448	Pers. 135 Rounds 7.62 5.56mm	1449	✓	98 D	1507		Clear
3/3 ADA CCLE	0608	0841	2018	70 Pers 556 9967				2033	M	RTN TO CLEAR
1-66 AR BWPB	0659	0847	1207	53 - Pers 3800 - 9mm		✓	38 D	1314	M	CLEAR
3-8 CAV BWPA	0745	0820	1346	21 Pers 1450 9mm	1356	✓	38 E	1441		CLEAR
2-12 BCPC	0818	0841	1512	Rounds 1400 Pers: 28 5.56mm				1517		RTN TO TRAIN
1-66 AR CCRF	0813	0842	1603	45 Pers 5358 5.56	1604	✓	33 E	1703		CLEAR
3-18 FSB JMAC A424	0849	1550	1108	40 - Pers BLANK 5.56	1112	✓	33	1141	09 10	CLEAR
LASER 'B'	1722	1722	1809	4 Personnel LASER 4 Pers				1809		DEPARTED
LASER 13	2136	2135	2216					2216		DEPART

1 - 2200 - 0600
2 - 0600 - 1400
3 - 1400 - 2200

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RANGE FIRING LOG

DATE 05 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										
2-2 ADA CCZE	0649	/	/	/	0750	✓	33 L	0819	\	Clear
49 AD LSMUR-N	0000	/	/	/				0745		Return to Train
49 AD LSMUR-S	0000	/	/	/				0745		Return to Train
163 MI HARMOUT	0000	/	/	/		✓		1023	\	Johnson Cleaned by
2-12 CAV PHTM RUN	0000	0900		54 Pers MILES LASER						
2-12 CAV BMSC-1	0803	0952	2235	40 Per 800-7.62				2304	22	RTN TO CLEAR
DELETED 1-5 CAV DSAC	0942	/	/	SET UP	1411		33 33 L	2 6	15 /	WILL RTN MON AFTER RANGE INSPECT OKs
2-12 CAV BGPQ	0723	0735	1543	Per. 103 Round 1550 7mm		✓	33 L	1603	/	CLEAR
4-5 ADA RR M72	0645	0834	1259	Trained 68 Round 100 35mm	1300	✓	33 L	1328	\	CLEARED
PK SPORT	0654	0732	1730	130 Pers 1698 5.56				1730	/	SGT Linquist.
1-5 CAV CHMET	0730	1005	1828	29 Pers 11400 50cal				1947	14 /	HOT 7.62 RTN TO CLEAR
3-6 CAV CCRF	0813	0859	2107	174 Pers 14280 5.56				2135	14 /	RTN TO CLEAR
LASER 'B'	1625	1625	1648	4 Pers LASER				1648	/	DEPARTED
LASER B	1921	192	2000	6 Per LASER				2001	/	DEPARTED

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RANGE FIRING LOG

DATE 06 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										
2-12 CAV BMSC-1	0857				0950	✓	9 D	0956		CLEARED
1-5 CAV CHMGT	0721				0733 0813	✓	33 P 33 P	0845		Cleared
3-6 CAV. CCRF	0720				0749	✓	33 P	0832		Cleared
2-12 CAV PHTMRUN	0000	MILES								
49 AD LSMUR-N										
49 AD LSMUR-S										
1-5 CAV DSAC										WILL TRAIN ON MON.
1-23 MA DSAC + FIRING POINT	0513	1156	1848	127 PERS. 6600 5.56 MM 350 7.62 MM 36 60 MM HE	1848	✓	33 P	1926	15	CLEARED
2-158 BGPQ	0704	0805	1001	30 - PER 1350 - 9 MM	1016	✓	33 P	1034		CLEAR
PKSPORT	0806	0806	1609	63 CIV. MIX CAL.				1609		SGT FRANKLIN
7-6 CAV CHMGT	0848	1106	1657	64 PERS. 14619 7.62 4314. 50 CAL.	1722	✓	38 G	1800		CLEARED
14 MAR CMN	0930	1009	1729	17 PERS. 299 60 MM HE	1800	✓	38 G	1845		CLEARED
14 MAR CSDF	1033	1205	1658	52 PERS. 2000 5.56 MM 2200 50 CAL. 13,600 7.62 MM	1724		33 P	1815	13 15	CLEARED

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RANGE FIRING LOG

DATE 07 MAR 93
0000 - 2400

RANGE/FP	GCC	HOT	COLD	RUNS DY / NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-12 CAV PHTM RUN	0000									
ROTC LIT LRC	0711			44 Pers	✓		33 L	1208	/	CLEAR
PX SPORTS	0712	0804	1600	52 PERS mix				1601		SGT FRANKLIN
502 MP BWPA	0821	0940	1258	40 Pers 2498 9mm	✓		33 L	1310	/	CLEAR
DET 1 USAF OP JACK	0842	0844	1912	2 Pers 8 BOMBS				0915	/	DEPARTED
DET 1 USAF OP JACK	1115	1135	1200	4 Pers 8 BOMBS				1210	/	DEPARTED
1-5 CAV DSAC										

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RANGE FIRING LOG

DATE 08 MAR 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										
2-12 CAV PHTM RUN	0000			10 PER						
1-5 CAV DSAC	0938									
49 AD LSMUR-N	0744									
49 AD LSMUR-S	0744									
1-12 CAV BWMUR	0614	1144		500 88 Pers 50 cm 50 - 120 mm						600 - 7.62
57 SIG CCZE	0649	0842	2155	150 11931 - 5.56				2210		RTN TO CLEAR
PKSPORT	0650	0737	1723	166 mil / 14 cw 2988 - 5.56 Hy Cal				1723		Departed - OIC - Lindquist
1-5 CAV CE-RF	0749	0911	2102	289 per 14440 - 5.56				2116		Sister Company will train in AM
15 MI BGPQ	0756	0905	2117	43 Pers 4480 - 9 MM				2134	19	unit sign-ing would return to Clear in AM -
2-12 CAV CHMGT	0800	1024	2127	1768 - 7.62 9660 - 50 cal				2238		CLEAR AM
1-5 CCGL	0831	0945	1493	9 PERS	1446	✓	33	1501		Cleared 175-RD-33L-OK
4-5 ADA JMMUR	0836			SET-UP						
1-5 CAV FMLFW	0913			SET-UP						
89 HP RRMK19	1548							1738	16 33	Returned to Training 94 Bn

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RANGE/FP	GCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDE										HAS BEEN ON LOG FOR APX 3 WEEKS.
15 MI BGPQ	0736				0830		33 V 533 V	0850		CLEARD
2-12 CAV CHMGT	0728				0827	0832	0 ✓ 33 V 33 V	0931		Cleard
2-12 CAV PHTMRUN	gmac CCCC	0908		60 Pers MILES						
1-5 CAV DSAC	gmac CCCC	1052	1719	20 Pers 933 - 5.56						
4 9 AD LSMUR-N	gmac CCCC			SET UP						
4 9 AD LSMUR-S	gmac CCCC			SET UP						
1-12 CAV BWMUR	gmac CCCC	8915	2200	76 Pers 3.7 - 1300 150 - 7.62				2331		TRAN AM
57 SIG CCZE	0737				0742		33 V	0755	N/A	DIVACOM ACCOMO AUS DEPARTED.
4-5 ADA JMMUR	gmac CCCC	1948 2012	2351	23 Pers 800 - 20 mm					45	
1-5 CAV FMLFW	gmac CCCC	1534	1720	OPFOR 2324 - 5.56					N/A N/A	
89 MP RR M-14	0739 0721	1183	1644	16 SA/ 1 AUTO 12 PERS				1749	40 0	WILL RETURN TO TRAIN AM
PKSPORT	0655	0735	1734	143 MM / 18 CAL 2395 - 5.56 MM M4 CAL				1756		DEPARTED
130 TRANS BWPA	0742	0846	1008	450 ROS 9MM 7 PERS	1030		✓ 33 V	1034		CLEARD
1 EP DIVACOM CCZE	0755	0954	2151	87 Pers 10,000 - 5.56				2155		ACCMPNI RANGE NS IS RTN TO CLEAR
3446S 54V BWPB	0810	1002	1132	850 ROS 9MM 15 PERS	1137		✓ 33 V	1203		CLEARD
2d ADA CHMGT	0809 0844	1343	1721	81 Pers. 944 - 5.56						
3611TH SCOP	1000	1002	1100	4/2 m 4 CAL 24 - 12GA 33				1100		DEPARTED

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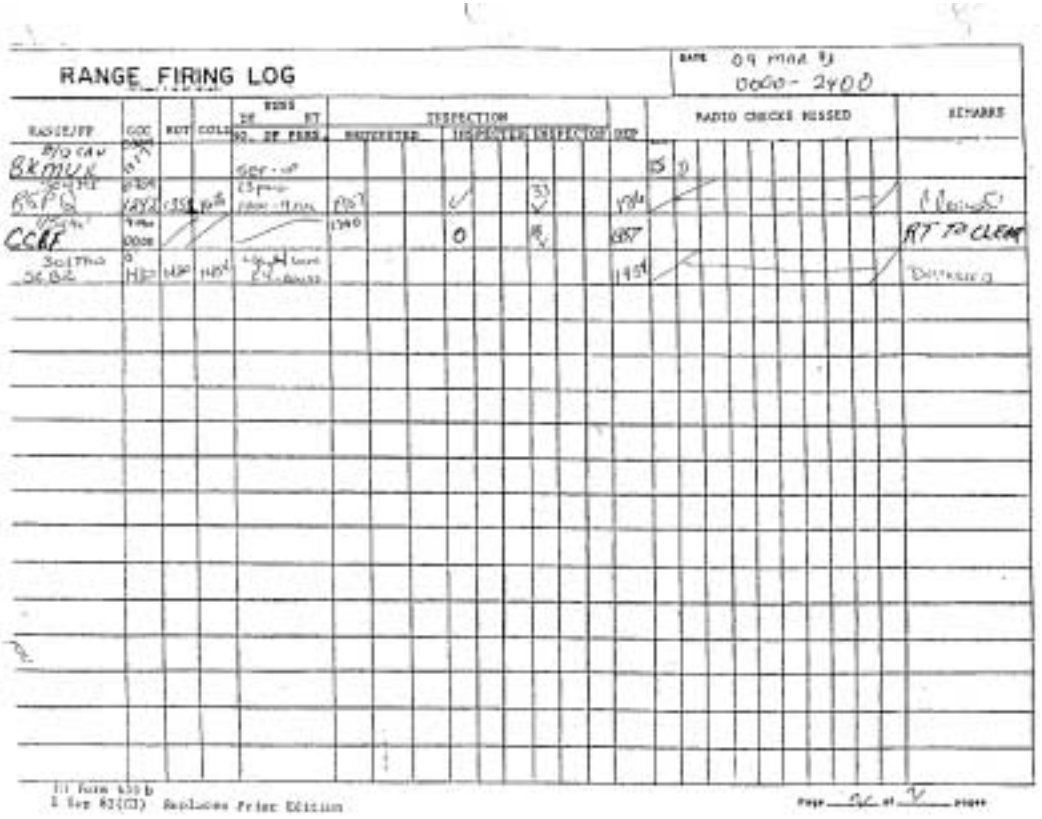

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B/O CAV BKMUK	[illegible]			SEE - UP					15 D	
[illegible]	[illegible]			23 [illegible]						
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	✓	33 ✓	[illegible]		[illegible]
[illegible] CCBF	[illegible] 0000				1340	0	[illegible] ✓	1857		RT TO CLEAR
SOLTHO SCBZ	[illegible]	[illegible]	[illegible]	[illegible]				1954		[illegible]

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1-7 CAV CSDF	0309									
ICD Diarery CCZE	0309									SEE ENTRY BELOW UNIT WAIVED 2 RBN
1-5 CAV CCRF	0309 0815					✓	38 A	0922		CLEAR
2-12 CAV PHTM RUN	0309 0000	mines 0000	2440	56 - PER Ø						
1-5 CAV DSAC	0309 0000	1430	1726	20 Pers 1749-5.56 80-7.62						
49 AD LSMUR-N	0309 0000	1833	2326	25-PER LASER						
49 AD LSMUR-S	0309 0000	1833	1954	20 Pers LASER						
1-12 CAV BWMUR	0309 0000							1238		
4-5 ADA JMMUR	0309 0000	1857	1214	Per: 39 Partial Squad Team						
1-5 CAV FMLFW	0309 0000	1858	1722	18-Pers 3662-5.56						
2-2 ADA CHMGT	0309 0844	0737	2263	25-Per 18200-7.62				2246		2000 - 300 at RTN TO CLEAR
2-12 CAV BKMUR	0309 1117							1730		
89 MP RR M-19	0309 0746	1902	1547	11-Pers. 1540-40MM	1611	✓	71 A	1717		Cleared By Mr Hinds Cleared —
2-2 ADA PKRR	0309 0657	0757	1951	73 Pers 7243-5.56				2020	1200	CLR A.H.
13 COS BWPB	0309 0653	0816	1112	2650 PERS 48 PERS 9MM	1116	✓	33 V	1235		clear
PKSPORTS	0309 0707	1338	1750	3316 / 336 184 M.G. M.A.				1715		DEPARTED
31ST ADA BDE BWPA	0309 0725	1927	2026	6 Pers 800 - 9MM				2000	1300 1400	
4297TH GS VGC	0309 0744			45 PERS	1140	✓	33 G	1208		CLEARED

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17 ENG BGZ	0804	1012	2236	65- PRO 8260-5156				2236	09 1830	RTN TO TRAIN
4MMC RM72	0807	1010	1114	34 35MM 30 9MM 30 9MM	1122	✓	33 V	1159		CLEARED
ICD CCZE	0813	1844	1218	Per 37 Ed. Fire: 3566 5156	1219	✓	39 G 33 V	1300		CLEARED
Det 1 BGPQ	0915	1004	13.10	500 9MM 10 PERS	1313	✓	38 G	1328		CLEARED
RETS TA8	1918	1918	13.17							FF-2D 200FT CLEARED
301 TCS SCBR	1955	1955	1100	4PERS 4AC 24 Bombs				1100		DEPARTED
301TFW SCBR	1484	1630	1523	4 Aircraft 4 CREWS 24 Bombs				1523		
1/8 CAV PKHUR	1637									

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FA 1-82 FA		1247		88 - Pers						
4H PK175605	1247	1318	2111	180 - 155M						

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RANGE/FP	GCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-12 CAV BUSMUR										
2-2 ADA CHMBT	0629				0719		33 P	0749		CLEAR
2-2 ADA PKRB										BN NEW UNIT IS 70% ACCEPTED AS IS
31 ADA BWPA	0741					K 2HM	33 P	0820		CLEAR
49 AD LSMUR-N	0309 0600	0847	Cont	20 - Per Lasen						
49 AD LSMUR-S	0309 0000	0847	Cont	16 - Per Lasen						
3-10 CAV BKMUR	0309 1117	0745	Cont	84 - Per 500 - 5.56					23	4762 - 7.62
1-8 CAV PKMUR	0310 1637	0844	1487	64 Per 28 - 120 27 - 120		CLEARED OR BENOIT	BY	1834		CLEAR MR BENOIT 500 - 5.56A 1600 - 7.62
4-5 ADA JMMUR	0309 0000	0845 0917	1709	24 Pers 7400 - 20						
2-12 PHTM RUN	0309 0000	MILES 0000	Cont	52 - Per MILES						
1-5 CAV DSAE	0309 0000	1929	1719	24 Per 40 PAX - 5.56						
1-5 CAV EMLFW	0309 0000	1024	1718	28 Per 385 - 5.56					07 12 15	DIG/R30 TO OPNS.
17 ENG BGZ	0709	0835	2016	52 Per 7560 - 5.56				2033	09 10	R&H TO CLEAR.
82-6 CCGL	0641	0751	1053	13 Pers 338 40mm 175 Per 2813 - 5.56	1206	✓	33 L	1259	09	AMMO SHORTAGE: 223 TAT 30P
PKSA/Cbman	0644	0734	1757					1740		DEPART
15MI PKRB	0708	1837	2005	104 Per 12330 - 5.56				2140	11	TRAIN AM
1-7 CAV LRC	0717		12-05	43 Per 6		✓	3	1240	09	CLEAR
504 MI CCRF	0713	1934	121	126 Per 3590 - 5.56				2129	13	CLEAR AM

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163 MI 'B' CCMGA	0716	0841	2253	120 - per 7200 - 5.56						
597 MT. CO CCZE	0738	0911	2102	219 Pers 15440 - 5.56					09 11	
289 CS ULS	0749	/	/	21 Pers	1045	V	33 L	1133	09 10 / /	CLEAR
91 ENG CHMGT	0751	0912	2349	13 - PER 8000 - 50 cal				2354		RTN TO TRAIN
2-12 CAV CLD	0809	0811	1042	30 Per 40 C-4 40 TNT	1045	✓	33 V	1223	/ / /	Clear
169 CS BN VGC	0821	/	/	77 Pers		V	33 V	1356	11 / /	CLEAR
3/62 ARM CCGL	1430	/	/	DID NOT TRAIN		N/A		1555	/ /	GOOD POLICE CALL PAMO - N/A
2-82 FA OP PHTM	1729			SET UP						
1-8 CAV CCMUR	2019	/	/	SET-UP					23	

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17 ENG BGZ	1004				1100	✓	33 ✓	1206		CLEAR
504 MI CCRF										NEW UNIT ACCEPTED AS IS
49 AD LSMUR-N	0309 0000	0833	2156	16 - Per Laser						
LSMUR-S	0309 0000	0833	2156	20 - Per 645 - 50 Cal						500 - 7.62
2-12 CAV CCMUR	0311 2019			SET UP				1824	07 15	
4-5 ADA JMMUR	0309 0000	0800 0838	1058	18 Pers 350 50 Cal 3700 20 mm	1432	✓	33 ✓	1556	13	CLEAR
2-12 CAV BKMUR	0309 1117	0922	Cont	40 - Per 2000 - 50 Cal						8000 - 7.62
2-12 CAV PHTM RUN	0309 0000	1019	Cont	96 - Per Hill Laser					13	
1-5 CAV DSAC	0309 0000	0739	1611	83 Pers 3733 - 5.56				1642		RTN TO CLEAR
2-82 FA OP PHTM	0311 1729	0421	2043	12 Pers					13	
163 MI CCMG-A	0311 0716	0834	1154	42 PER 2480 5.56	1220	✓	38 G	1230		CLEAR
597 MT CCZE	0311 0738	0857	2011	126 Pers 7162 - 5.56				2015	1100	CLEAR AM
1-5 CAV FMLFW	0309 0000	1037	1636	92 Pers 4727 - 5.56				1830	03 1855 1930	RTN TO CLEAR DEPARTED WITH OUT CALLING
91 ENG CHMGT	0800				0835	✓	350	0845		CLEAR
15 MI PKRB	0703	0824	1951	45 Per 5035 - 5.56				2011		RTN TO CLEAR
2-2 ADA PKHG Q	0657	0748	1039	35 Pers 262 rounds		✓	38 D	1221		CLEAR
PKSPORT	0705	0733	1739	94 1448 - 5.56				1739		SETLINGHIST
13 SIG CCRF	0801	0900	1752	126 Pers 8647 5.56				1836		ACCEPTED AS IS CLEAR AM

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2-82 FA PK 175605	0310 1917			0 PERS 0 RDS				0903	/	POLICE VERIFIED BY OIC
TA42 2-82 FA PK 145565	0659	0144 1019	1850	89 - Pvt 90 - 155MM				2036	/	Departed
TA44 2-82 FA PK 175605	0958	1031 1102	1850	90 Pvt 137 - 155mm						LT VINCENT
2-82 FA TA44 139 600	2036									

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3-67 AR HARMNT	1504	0823	1047	Ø Ø				1112		DEPART
15 MT CCGL	0855	0924	1048	8 Pers 1LT 40mm		✓	38 Q	1213		12 PT 38 D
2-2 ADA PKHG/C	1039	1054	1154	8 CLAYMORE 30 Pers		✓	38 D	1221		CLEAR
D 2-12 CAV TRAPMUR 1-124	1225	/	/	SET UP						
PKHG/C	1509	/	/	SET-UP						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5CAV DSAC										
597 MT CCZE	0717				0735	✓	38 D	0829		CLEAR
1-5 CAV FMLFW	0907				0936	✓	38 D	1021		Clear
15 MI PKRB	0742				0814	✓	38 D	0907		CLEAR
13 SIG CCRF	0800				0813	✓	38 D	0853		CLEAR
49 AD LSMUR-N	0309 0000	0837	2343	20 - Per 1180-50 Cal						6000. 7.62
49 AD LSMUR-S	0309 0000	0837	2343	20 - Per 645 - 50 Cal						500 - 7.62
2-12 AR BKMUR	0309 1117	0000	Cont	54 - per 7500 - 7.62					17	2400 - 50 Cal
2-12 CAV TRAPMUR	0312 1225	1002	1633	64 PERS 40 120 MM					20	Screening only
2-12 CAV PHTM RUN	0309 0000	✓	✓						10	
2-82 FA OP PHTM	0311 1729	0952	1937	12 PERS.						
1-124 PKHG/C	0312 1509	0801	1624	160 PERS. 160 M67 HG	1730	✓	38 D	1810		CLEARED
544 CS CHMGT	0708	0851	1228	6 Pers 50 Cal	1240	✓	38 D	1313		CLEAR
PKSPortman	0748	0818	1559	31 CIV. MIX. CALIBER				1830		Sgt. Fosvoat
1-66 AR BWMUR	0811	✓	✓						17	
303 MI CCRF	0857	0907	2157	46 - Per 5500 - 5.56				2237	13	RTN TO CLEAR
West Bell PKRA	0858	✓	✓					1105		RTN TO TRAIN
SET UP 2BDE 1CD CCMUR	0854	✓	✓					1553		RETURN ON MONDAY TO TRAIN

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-67 A.R. HARMONT	0950	0950	1112	5 Per 100 40mm		✓		1131	/ /	CLEAR MR EVERETT

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TA 44 2-82 FA PK 175605	0912 0958									
TA 44 2-82 FA PK 139600	0312 2036	/	/					0958	/	verified police
TA 42 2-82 FA PK 145565	1000	1002 1032	1516	80 PERS. Ø 155 MM				1516	/	OIC HOGAN SIMPSON
TA 42 2-82 FA PK 135577	1517	1520 1551	2011	80 PERS. 73 155mm				2016	/	OIC HOGAN RSO SIMPSON
TA 42 2-82 FA PK 120590	2030	2045 2115	2208	80 - per Ø				2204	/	OIC HOGAN RSO SIMPSON
TA 42 2-82 FA 136586	2204	2215 2245	cont	89 - per 20 - 15mm						OIC

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303 MI CCRE	0824				0935	✓	33 L	1023	/	CLEAR
49 AD LSMUR-N	0309 0000	0842	Cont	20 - Per 1500 - 7.62						630 - 50 Cal
49 AD LSMUR-S	0309 0000	0842	2354	16 - Per 516 - 50 Cal						400 - 7.62
2 - 12 CAV BKMUR	0309 1117	0000		64 - Per 6200 - 7.62						2400 - 50 Cal
2 - 12 CAV TRAPMUR	0312 1225	0850	1412	60 PERS 36 120 MM					16	
2 - 12 CAV PHTM RUN	0311 0000	/	/						18	
1 - 66 AR BW-MUR	0313 0811	0934	1111	4-120mm 9-25mm 25						50 Pers
2 - 82 FA OB PHTM	0811 1729	0820	Cont	12 - Per Ø					07	
WBSA PKRA	0732	0854	1532	22 PERS. 660 5.56mm 660 7.62mm	1602	✓	38 H	1637	/	CLEARED
DSAC										
PKSPOTAMON	0700	2246	1555	41 PERS. MIX CAL.				1630	/	[illegible]
2-12 CAV PKMUR	0819	/	/							
1-5 CAV BMSC 2	1228	/	/							

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TA-44 2-82 FA PK 175605	0312 0958			0 Pers 0 Rds				0658		POLICE VERIFIED LT
TA-49 2-82 FA PK 136586	0313 2304	0000	0741	95 Pers 0 Rds				0741	0630	POLICE VERIFIED VINCENT
TA-32 NO FIRE PK 185705	0659			0 / 0				0735		POLICE VERIFIED LT. Broadous
TA 44 2-82 PK175605	0225	1030 1116	1944	90 PERS. 180 155mm						LT BROADOUS
TA 42 2-82 PK135575	0742	1045 1116	1940	95 PERS 30 155mm				1942		LT VINCENT
TA 44 2-82 PK125605	1249	1456 1535	amt	89 - Per 19 - 155mm						POLICE VERIFIED SIMPSON LT
TA 44 PK 170630	1935	2105 2286	2331	80 - Per 13 - 155mm						LT. VINCENT

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1-5 DSAC	0828				15.27	✓	33 A	1635	1405	Cleared
49 AD LSMUR-N	0309 / 0000	0840 / 0000	2242	16 Pers 1200 - 7.62 496 50 cal						
49 AD LSMUR-S	0309 / 0000	0840	2242	20 Pers 25 - 105						
2-12 BKMUR	0309 / 1117	0000	0111	54 - pers 3000 - 7.62					0909	
2-12 CAV TRAPMUR	0312 / 1225	0908	1739	56 - pers 38 120mm						
1-66AR BWMUR	0313 / 0811			SET-UP						
2/12 PKMUR	0314 / 0819	0911		64 Pers 800 - 30 cal 150 - 120mm					01	1500 - 7.62
~~2/12~~ CAV PHTM RUN	0311 / 0000								1830 1930	Departed with out calling
1-5 CAV BMSC-2	0314 / 1228	0839		54 Pers 3245 - 7.62					RC	
2-82 FA OP PHTM	0311 / 1739	0000	1739	27 Pers						
2 Bde 1 CD CCMUR	0715			SET-UP					1000	
PK SPORT	0655	0736	1730	84-tail/6cw 1291-5.56mm Mixed cal.				1735		Departed OXC - Lindquist
27 MSB CCRF	0721	0838	2055	88 Pers 6128 - 5.56mm				2117		[illegible]
1-66 AR CCMGA	0744	0846	0930	415 Pers 85 cal 13 PERS	0941 1059	40 60 ✓	38 G 38 G	1119		CLEAR
2 Bde 1 CD CC MORTAR	0751	0803 / 0840	1552	20 pers 23 - 4.2mm						
163 MI PKHG-C	0814	1037	1459	77 - pers 2 - claymores	1500	✓	33 L	1543		Cleared
HHC 2AD PKRB	0816	0946	1706	70 - Pers 1551 - 5.56	1718	✓	38 A	1741	1405	Cleared
163 MI PKHG-DA	0820			77 - pers	1500	✓	33 L	1543		Clear

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HH 2AD DIVARTY BGPQ	827	0931	1415	15-P 1350-9MM	1415	1543		O	✓		33 L	38 A		1642											Cleared
2-82FA CSDF	1013	1202	1346	28 NS-ROS 29 PERS	1355			✓			33 L			1511	1405										Cleared
27MSB GHMGT	1054	1330	1719	11-PERS 500-[illegible] 500-50CAL	1735			✓			38 A			1805											Cleared
HARMOUT 1/5 CAV	1219			SET UP ONLY																					
1/8 CAV PHTHRun	2014			SET-UP																					

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
27 MSG CCRF	0747				0732 0802	L	38F 38F	0941		CLEAR
49 AD LSMUR N	0309 0000	0833	2333	20 Pers 2000 - 7.62 107 - 105						
49 AD LSMUR-S	0309 0000	0833	2337	20 Pers 27 - 105						
2-12 BKMUR	0309 1117			SET UP						
2-12 CAV TRAPMUR	0312 1225	0833	1335	24 W/M16 W/M203 24 M249 W/M203 24 M60					0720	
1-66AR BWMUR	0313 0811	0849	1388	16 120 81MM 16 120 81MM 75 PER 200		✓		1622		Cleared by PRCCO
2-12 PKMUR	0314 0819	0810		56 Pers 2050 - 7.62 250 - 5.56					0	120 - 120
1-5 CAV BMSC 2	0314 1225	0850		34 Pers 3200 - 7.62					01 13	
2-82 FA OP PHTM	0311 1729	1449		30 Pers						
2BDE CD CCMUR	0315 0715	0516	2322	32 Pers 2400 7.62 mm 160 - 120 mm					15	32 - 4.2 50 - 50 cal
2BDE CD C.C MORTAR	0315 0751	0814	1458	20 Pers 21 - 4.2mm	1457	✓	38A	1540		Cleared
1-5 CAV HARMOUT	0315 1219	1019	1800	37 PERS.						
1-8 CAV PHTM RUN	0315 2014			54 Pers MILES LASER					04	
PK SPORT	0654	0718	1938	116-MM/22cm M-4 CAL 1850 - 5.56				1740		Targeted OIC LINDQUIST
1-80 TANKS PK RIF	0718	0819	1939	22 Pers 3300 - 5.56mm				1951		Unit Armt Check
41 ENG CCGL	0747	0916	1117	225 40 MM TPT 18 PER	1139	✓	38 B	1210	1000	22 Rds Impended CLEAR
522 MI CCMGA	0751	1020	1730	82 Pers 18800 - 5.56mm	1811	✓	33 A	1844		Cleared
142 SIG BN CCRF	0843	0936	1343	4650 65 PERS 5.56	1414 1512	O ✓	38A 38A	1616	16	Cleared

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
545 MP RRMK19	0850	/	/	SET UP						
301TFW SCBR	0952	1006	1051	12 BOMBS 4 AIRCRAFT 4 CREW				1100		CLEARED.
BENG CUDEMO	1044	1232	1522	20 - Pers 21 - C4(½) 22 - ¼ TNT 23 - [illegible]				1550		Return for TRAINING. ~~[illegible]~~
2 BDE 1CD CM Complex	0909	/	/	SET-UP						
301TFW SCBR	1424	1430	1517	4 @ 4 Pers CREW 24 - BDU33				1518		DEPARTED
60 CTAW OP JACK	1729	1806	1854	2 pers				1854		DEPARTED
546 Bomb PD94	1806	1806	1854	2 pers 1 crew 2 - 500 Bomb				1854		DEPARTED

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	RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA 44	3-82FA FP 427	0315 / 0809	0862	1630	40-Pers 100-155 MM	1655	✓	38 A	1738	1735	Cleared
TA 73	2-82FA 276619	0315 / 1320							1029		Policed area verified
TA 04	2-82FA 315525	0315 / 1602	0848	1942	89 Pers 75-155 MM						
01	2-82FA 334569	0315 / 2126	0848	1253	Pers-84 14 HE				1253		verified area policed
TA 44	3-82FA FP 428	0559	0742	1631	50-Pers 100-155 MM	1703	✓	38 A	1738	1730	Cleared
	312MI ALS	0852				1310	✓	38 A	1337		CLEARED
	~~CM Complex~~	~~0909~~	LINE NOT USED								
TA 04	2-82FA 335521	1030	1106	1309	90-Pers 24-155 MM				1309		ver. area policed
73	2-82FA 280620	1254	1324		84 Pers 134-155						
TA 04	2-82FA 310530	1309	1359	1901	90 Pers 56-155 MM				1903		Good Police ~~Verif~~ verified
TA 01	2/82FA PK340570	1949	1952 / 2022	2211	90 Pers 57-155				2213		RSO - 14 Beams
TA 4	2-82FA 310530	2213	2213 / 2243		84 Pers ~~[illegible]~~ O-RDS						

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HAC ZAD CCRE	0748	0943	1644	75-160 5229-5.56	17:15	✓	38 A	1738	11	Cleared
522 MI CHMGT	0753	0843	2040	56-pers 17300-7.62				2117		[illegible]
A 92FA CCZE	0256	1033	1450	pers 65 1260 5.56 Ball	1519	✓	33 V	1543		Cleared
8 ENG CLID	0855	0852	1711	8 BANGLORE 28 lbs. 1¼ TUT 190 DET CORD	17:15	✓	33 V	1754		Cleared
2-12 CAV BWMUR	0826	1420	1926	28 pers Lisson only						
III CORPS NCOA PKRB	0830	0830	1448	36 pers 5.56 6263	1501	✓	33 V	1518		Cleared
91 ENG BGPQ	0849	1947	1402	35 PERS 1450 9MM	1411	✓	33 V	1422	11	Cleared
142 SIG CCM6A	0853	1010	1534	47 PERS 6450 Rds 7.62	1546	✓	33 V	1609	1500	Cleared
2 BDE RD CCMort	0859 / 0941	0941	1702	7 PERS. 40-4.2 mm					12	
301 TEN SCBR	0955	1000	1100	4 pers 4 crew 24 [illegible]				1100		Departed
1/5 GV HMMUR	1055									
301 TEN SC BR	1430	1430	1506	4 Crew 4 Aircraft 24 bombs				1506		Departed

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1-80 TRAN PKRB	0707				0800	✓	38 G	0835		CLEARED
49 AD LSMUR-N	0309 / 0000	0838		20 - PER 112 - 105mm					09	1500 - 7.62 500 - 50 cal
49-AD LSMUR-S	0309 / 0000	0838	1357	24 16mm 16 Pers					09	
1-8 RKMUR	0309 / 1117	1317	1633	64 - Pers 1400 - 50 cal 2800 - 7.62 mm					1000 19	
2-12 TRAPMUR	0312 / 1225	/	/						04 05 06	
2-12 PKMUR	0314 / 0819	0000	cont	56 - PER 100 - 120 mm						1050 - 7.62 298 - 50 cal
1-5 CAV BMSC 2.	0314 / 1228	0000	cont	50 - PER 1982 - 7.62						
2-82 FA OP PHTM	0311 / 1729	0000	2016	23 - Pers					10	
2Bde 1CD CCMUR	0315 / 0715	1328	cont	100 - PER 100 - 120mm						1600 - 7.62 1200 - 50 CAL
1-5 HARMOUT	0315 / 1219									
1-8 PHTM RUN	0315 / 2014			62 - PER 0					09 13	
545 MP RR M 19	0316 / 0950	0827	1709	22 PERS. 3294 m918					A	M918 TP 386 4224
CMC 2Bde 1CD CM COMPLEX	0316 / 0909	0903 / 0946	2150	23 - PER 180 - 4.2mm					RC 03 04 13	WARNING ISSUED
C DEMO				SEE NEXT SHEET						
4-5 ADA BWPA	0648	0733	1556	14 PER 3960 mm	1542	✓	33 ✓	1554		cleared
21 FA PKHGQ	0658		1606	84 - Pers	1606	✓	33 ✓	1621		Cleared
PKSPORT	0730	0738	1730	214 mil - 45 in 3612 - 5.56						SGT JONES
B 282 CSDF	0729	0842	0937	70 Pers 28 155		✓	38 G	1019		CLEAR

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522 MI: CHMGT	0720				0756	✓	33 P	1817		CLEAR
49 AD LSMUR-N	0309 0000	0856 0000		16 - P.80 105 - 105mm						1200 — 7.62 400 — 50cal
49 AD LSMUR-S	0309 0000									
1-8 CAV BKMUR	0309 1117	0833	Cont	64 - PEW 1300 - 7.62 3300 - 50cal					12	
2-12 CAV TRAPMUR	0312 1225			SEE ENTRY BELOW				2327		TURNED RNG OVER TO 1-8 CAV.
1-5 CAV BMSG-2	0314 1225	0000	1243	52 - PEW 2900 - 7.62						
2-12 CAV BWMUR	0317 0816	0847	Cont	48 — PEW 312 - 120mm					09	493 — 50cal 3000 - 7.62
2-12 CAV PKMUR	0314 0819	0847 0000	Cont	88 - PEW 206 - 120mm					16	1500 - 7.62 700 — 50cal
2 BDE ICD CCMUR	0315 0716	1091 0000	Cont	100 - PEW 145 - 120mm					07	1900 - 7.62 1150 — 50cal
1-5 CAV HMMUR	0317 1055	0841	Cont	59 - PEW 2280 - 7.62						
1-8 CAV PHTMRUN	0315 1204	0659	1345	80 - PEW						
2 BDE ICD CM COMPLX	0316 0709	0703 0739	0742	23 Pers 10 4.2" 25 Pers	1130	✓	33 P	1224	00	CLEAR
1-6 CAV HARMGT	0315 1319								17	
2-82 FA OP PHTM	0311 1739	0758	2118	13 Pers				2232	07	
545 MP RR MK19	0316 0950				1019	✓	33	1215	12	CLEAR
2 BDE ICD CC MORTAR PT	0317 0859	0830 0901	1622	7 Pers 27 - 4.2						
8ENG CC Demo	0651	0000	2011	18 Pers 14 - TNT 16 - C4					11 20	4 Bangalore
62ENG CU Demo	0653	1230	1536	912 Pers 2.5 - MINOS C4		✓	33 V	1628		CLEAR 25 - TNT 1/4 LB

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PK6 Portman	0700	0740	1723	171 2251 - 5.56				1723		sgt. Favor
16 Sig CCZE	0721	0840	2120	480 Pers 20380 - 5.52				2144	15	
31 ADA PKRB	0724	0812	2027	89 Pers 7790 - 5.56				2045	11	
169 ORD VGC	0736			235 Pers		33 P	✓	1141	09	CLEAR
3-67 AR BGPQ	0756	0849	1308	52 Pers 9mm 2650				? 1405	62	RTN TO TRAIN DEPART W/O CALL
91 FA CCRF	0758	0843	2259	58 - Pers 11,185 - 5.56				2321	09	
3/8 CAV CCGL	0805	0919	1052	10 Pers 150 Rdd		33 P	0 ✓	1242		150 Rds TPT (33P) CLEAR
628 TC ULS	0814	0814	1054	22 Pers	1055	✓	33	1113	08	CLEAR
1-7 CAV CHMRT	0822	0903	1735	50 Pers 9300 - 50cal		✓	33 V	1804		CLEAR
PHTMCCC	0941			25 Pers				1117		RTN TO TRAIN
1-8 CAV TRAPMVR	0227			SET UP						
410 MP BR M-19	1546			SET UP						
AP 422 LP C	1740	1740	1812	6 Pers				1812		DEPART

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	RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA 12	2-82 FA PK 289498	0318 1336	/	/	/				0249	/	Des. Fired '89 Lt. VBR of CVS
TA 12	PK 303493	0249	0749 1832	2118	89 Per 74-155						

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RANGE/FP	GCC	HOT	COLD	RUNS DY / NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0817				0817		33	0745		CF LRRPs
										UNIT REQUESTED AS 15
	0830					0830	38 C			Uniforms for range
	0725				✓	0725	38 C	0745		CLEAR
49 AD LSMUR-N	0309 0000				0731			0709		58m Hallmark Cleared by
49 AD LSMUR-S	0309 0000							0709		58m Hallmark Cleared by
1-8 CAV BKMUR	0309 1117	0858	Cont	51 Pers 1650 - 50 Cal					22	1800 – 7.62
1-8 CAV TRAPMUR	0318 0237	1015	1418	64 Pers 42 - 120mm					18	
2-12 CAV BWMUR	0317 0826	0842 0000	Cont	40 – Pers 155 - 120mm						469 – 50 Cal 1555 – 7.62 CLEAR PER PRC
2-12 CAV PKMUR	0314 0818			CLEARING		✓	PRC 6	1600		
2 BDE ICD CCMUR	0315 0715	0000	Cont	100 – P 200 128 - 120mm						450 - 50 Cal 3000 – 7.62mm
1-5 CAV HMMWR	0317 1055	0843 0000	Cont	57 – Pers 4880 - 7.62					12	
1-8 CAV PHTMRUN	0315 1854	0000	SAV	20 PERS.				1800	14 15 16	
1-5 CAV BMSC-2	0314 1285							1207	05 11	RETURN 20 rounds for clearing
2-BDE ICD CC M PT	0317 0854	0826 0915	1622	7 Pers 34 4.2		✓	CC MAINT	1700		CC MAINT – CLEAR CLEAR
1-5 CAV HARMOUT	0315 1219			23 Pers				1444	14	CLEAR NR CLEAR
H10 MP RRMK-19	0316 0950	0916	1618	23 Pers 1872 - 40		✓	HM MAINT MVR UT 77 A	2025	A	VERIFY by 77P 3,456 40mm
8 ENG CC Demo	0318 0859	0849	1437	44 Pers 34 - C4			37 V	1513	07 08	25 – TN 400 – Det CD

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-67 AR BG PQ	0758	0858	1320	36 PERS 1720 9mm		✓	33 ✓	1350		CLEARED
PHTM CCC	1330			16 Pers		✓	33 ✓	1425		CLEAR
4-5 ADA CC2E	0649	0843	1449	112 Pers 7020 - 5.56		✓	38 D	1522		CLEAR
PKSPoBman	0653	0736	1730	101 Pers 1484 -				1730		DEPARS LONIQUIST
15FSB CCMCA	0728	0858	1414	18 Pers 1940 - 7.62		✓	33 D	1449		CLEAR
HHB QAD CHMCT	0739	0912	1523	41 - Pers 3810 - 7.62				1526		"
227AVN CCRF	0842	0908	1359	112 Pers 6720 - 5.56		✓	38 D	1430		Unit Range as 227AVN
1-8 CAV PKMUR	1600			SET UP					22	

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-82 FH TM 12 PK303493	0318 0749	/	/	/				1400	0708 /	FAILED TO CALL DEPARTURE

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0642				0725 0830	✓	38 B 38 B	0904	/	CLEAR
1-8 CAV BKMUR	0309 1117	0000	cont	72 - per 2500 - 50Cal					0630 1830	7500 - 7.62
1-8 CAV TRAPMUR	0318 0227	1000		62 Pers 40 Rds 120mm				1500	0630 1730 1830	DEPARTED with out calling
2-12 CAV BWMUR	0317 0826	0000	cont	52 - per 190 - 120mm					0630	2045 - 7.62 545 - 50Cal
1-8 CAV PKMUR	0319 1600	/	/						11	
2 BDE 1CD CCMUR	0315 0715	0000	0125	16 - per 60 - 120mm					04 11	800 - 7.62mm
1-5 CAV HMMUR	0317 1055	0000	cont	60 - per 6510 - 7.62						
3 SIG CCRF	0135	0839	2205	81 - per 6950 - 5.56				2227	10	
PKSPORT	0740	0800	1602	41 Pers Mixed					1600	LINQUIST - SGE DEPARTED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA42 3-132 FA FP411	1200	1201 1231	1906	36/203mm 62 PER				1908	RETURN TO CLEAR	OIC CPT RYON LT BRITON
TA42 3-132 FA FP416 NEED 250	1200	1201 1250	1906	36/203mm 90 PERS				1908		LT MEYER
TA44 3-132 FA FP418	1200	1201 1231	1906	29/203mm 64 PERS				1908		LT GAFFIN

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RANGE/FP	GCC	HOT	COLD	RUNS DY NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0652				0655	V	33 B			CLEAR
1-8 CAV BKMUR	2309 1117	0000	2359	60 - Pen 2560 - 50 Cal						7080 - 7.62
2-12 CAV BWMUR	0817 0836	0000	Cont	58 - Pen 230 - 120mm						685 - 50 Cal
1-8 CAV PKMUR	0319 1600	1543	1707	43073004 12 PERS					09	2580 - 7.62
2 BDE 1CD CCMUR	0315 0715	/	/							
1-5 CAV HMMUR	0317 1658	0000	Cont	78 - Pen 594 - 7.62						
1-8 CAV TRAMUR	0742	1019	1637	39 - 120mm 80 Det				1823		RT TO TRAIN
PKSPORT	0734	0800	1601	33 Civ Mixed				1661		DEPARTED LANCHIST

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0811				0812	✓	39 A	0905	/	CLEAR
	0811				0812	✓	38 A	0905	/	CLEAR
	0811				0812	✓	35 A	0905	/	CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-8 CAV PHTM RUN										
1-5 CAV BMSC-2										
1-8 CAV BKMUR	0309 / 1117	/	/	CLEARING				0430		DEPART 0430 WR TO CLEAR
2-12 CAV BWMUR	0817 / 0836	0850 / 0000		100 Pers 2250 - 7.62 cal 141 - 120mm						410 - 50 cal
1-8 CAV PKMUR	0319 / 1600	0834		88 - Pers 700 - 50cal 152 - 120mm						2000 - 7.62
2-BDE ICD CCMUR	0315 / 0715	/	/	SET-UP					56 RC	
1-5 CAV HMMUR	0317 / 1058	0911 / 0000		39 Pers 6240 - 7.62						
1-8 CAV TRAPMUR										RTN TO TRAIN
PK SPORT	0639	0733	1720	57 - Pers 870 - 5.56				1720	/	DEPARTED OIC - JONES
2-82 FA BGPQ	0701	0815	1551	62 - Pers 3219 - 9MM	1600	✓	33 ✓	1623	/	Cleared
2-82 FA CCRF	0720	0840	2028	65 - Pers 6175 - 5.56				2039	16	[illegible] AM
3-82 CHMGT	0734	0900	2002	28 - Pers 11500 7.62 AM				2019	20 /	[illegible] Cle[illegible] A.M.
49 AD LSMUR-N	0914	/	/	SET-UP						
49 AD LSMUR-S	0914	/	/	SET-UP						
1-9 CAV PKRA	0938	/	/	DID NOT TRAIN DUE TO HEAVY RAINS - LIGHTNING	039	✓	33 ✓	1253	/	Cleared ~~DEPART~~
1-5 CAV DMMUR	1001	/	/	SET-UP					A	
2/12 CAV CCMP	1035	/	/	SET-UP					1100	
1-8 CAV BKMUR	1255	/	/	CLEARING				1632	/	RT TO CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1/8CAV CMComplex	1420	/	/	SET-UP						
3/82FA OPPATH	1551	/	/	SET-UP						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
23 CS CCZE 142 3.9	0822	0916	1710	4000-5.56 67 PERS	1728	V	38 G	1750		CLEAR
PKR/B 30 TFW	0900	1018	1957	46 PERS 5400-5.56 24 BOMBS				2016		RT TO CLEAR
SCBR 1-32AV	0930	1000	1034	4 AC 4 CREW				1100		DEPARTED
BW/MVR 62ENG	1005			SET-UP					RKO	
VLS/RLS 2-92	1007			25 PERS 700-5.56 738-7.62 2918-.50CAL	1053 33 PERS	1728	33 V	1113		CLEAR
CHMGT 1-9CAV	0925	1014	1729				38 G	1739		CLEAR
DSAC NCOA	1146							1330		DEPARTED without Notice
HCAT 301 TFW	1256	1337	1421	148-4MM 18 PERS	1440		33 P	1444		CLEAR
SCBR	1420	1420	1519	2 Aircraft 2 PERSONS 3 BOMBS				1519		DEPARTED
OPJACK	1728	1736	1849	4 PERS 6 BOMBS				1830		DEPARTED

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1-3 CAV PHTM RUN										
1-5 CAV BMSC 2										
2-82 FA CCRF	0803	0840	2030	160 PERSON 12 -3.56				2038		RT TO CLEAR JK
3-82 FA CHMGT	0914				0920		33 V	0935		CLEAR
1-8 CAV BKMVR	0900				1241	NO GO	33 V	1929		RT TO CLEAR JK
2-12 CAV BWMVR	0309 1117	0000	0152	87 PERS 5.56 / 7.62 81 120mm				?		NEW UNIT OCCUPIED SEE BELOW
1-8 CAV PKMVR	0319 1600	0834 0000		62 Para 210 - 7.62 70 - 105						250 - 50 CAL
2ADETCO CCMVR	0315 0713	0848		70 Para 200 - 7.62 150 - 120					1034	1000 - 50 CAL
1-3 CAV HMMVR	0317 1058	0002	0230	47 Para UNKNOWN					0600 2100	UNIT CHANGED TO ON RANGE W/O CALLING.
2BDE TOR BCMVR	0930			SET-UP						
4/9 AD LSMVR-N	0322 0919			SET-UP						
4/9 AD LSMVR-S	0322 0914			SET-UP					0700	
1-3 CAV DMMVR	0322 1001	0847		62 Para 1400 - 7.62 840 - 25m						
2-12 CAV CC MORTER	0322 1035	0843	2019	16 pers 23 - 4.2 INCH					0700	
1-8 CAV CM Complex	0322 1420			SET-UP						
3-82 FA OPPHTM	0322 1420	0738		26 Para						
PKSPORTS	0622	0736	1722	3774 - 3.56 M: 1-223 Civ-8				1722		OIC DEPARTED SGT JONES
1AR DIV LRC	0734		1648	64 PERS	1648		38 G	1656		CLEAR

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RANGE FIRING LOG

DATE 23MAR93
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RANGE/FP	GCC	HOT	CEASE	RUNS DY NO. OF PERS	RUNS NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
C 3/82 ARTCOM FP231	1458	1458 1538	2021	10 - 133mm 40 PERS					2025		RT TO CLEAR
C 3/82 FP233	1502	1502 1543	2021	10 - 133mm 40 PERS					2025		OBSERVERS RT TO CLEAR
~~3/82 FA~~ FP249	2040	2040		130 Per 80 - 155							

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RANGE FIRING LOG

DATE 24 MAR 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
312 MI PHTMC	0743			10 PERS	1543	✓ 38 B		1602	15	Cleared
142 SIG PKRB	0749	0902	1205	4200 5.56 60 pers	1209	38 H		1235	08 1000	UNIT ACCEPTED AS IS
USAG BGPQ	0752	0905	1544	2673 - 9 AM 56 PERS	1545	33 V		1615	0800 1300	CLEAR
115 CAV LRC	0809		1601	15 Per	1601	38 B		1619		CLEAR
DISCOM CCZE	0814	0843	1714	160 7300/5.56	1715	38 B		1807	16	CLEAR
91 ENG CCDemo	0817	1016	1659	C-4/100 lb Range 3 1/4 lb TNT 100	12 BT TNT 100 15 LB Soap Charges 14 M1 Dynamite 100	15 FT DET Cord 1845 38 B		1842	0900	RT TO CLEAR
21 FA CHNOC	0820		1348	70 PER	1349	33 V		1411		CLEAR
227 AVN CCRF	0910	0956	2149	45 - Per 5000 - 5.56				2225		RT TO CLEAR
301 ST TF SCBR	0956	0958	1118	4 AC 4 CREW 24 BOMB				1120		DEPARTED
3280 AF CSDF	1229	1346	1943	8 - PERS 159				2121		RT TO CLEAR
301 TFW SCBR	1424	1424	1513	4 AC - 24 Bomb 4 CREW				1513		DEPARTED

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1-8 CAV											
✓ HHM RUN											
1-5 CAV											
BMSC 2											
2-82 FA						0813					
CCRF	0739								0850	08	CLEAR
1-8 CAV								33 38			
BKMUR	0818					1111 1938		V G	1442		CLEAR
142 SIG				4200				38			
PKRB	6648			550 Cupmus		0653		F	0754		UNIT ACCEPTED AS IS
1-8 CAV	0323			52 - 1990							1360 - 7.62
✓ BWMUR	1005	0840	cont	189 - 120mm							325 - 50 cal
1-8 CAV	0319	0846		96 - PKM							6000 - 500 cal
✓ PKMUR	1600	0000	cont	8000 - 7.62							210 - 120mm
2BDE ICD	0315	1923		40 - PKM							1500 - 7.62
✓ CCMUR	0715	0000	2254	800 - 50 cal							105 - 120mm
1-5 CAV	0317										15 - 4.2 mm
✓ HMMUR	1058								0400		
2BDE ICD	0323										
✓ BCMUR	0930										
49 AD	0322			20 - PKM							
✓ LSMUR-N	0914	0958	2355	LASER							LASER ONLY
49 AD	0322			20 PERS							
✓ LSMUR-S	0914	0958	1941	LASER							
1-5 CAV	0322	0949		39 - PKM							
✓ DMMUR	1001	0000	cont	1170 - 35mm					03		
2-12 CAV	0322	0751		12 - 4.2in							3250 - 7.62
✓ CC MORTAR	1035	0922	2022	24 PERS							
1-8 CAV	0322	1155		18 Pers							
✓ CM COMPLEX	1420	1228	2355	102-4.2mm					1500		102 - CMS only
3-82 FA	0322	0859		26 - PKM							
✓ OP PHTM	1420	0000	2332								
				130 M1A							
PKS Fortman	0639	0133	1730	3013-5.56					1749		DEPARTED
1SFSD				3664 - 40mm							5 Gloves
✓ CHMGT	0737	0823	1945	5480 - 5.56					2012		RT TO TRAIN
				2400 - 7.62							
				42 PER							

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-82 FA FP 231										
3-82 FA FP 233										
3-82 FA ✓FP 249	03.23 2040	0000	0021	180 Pers 0 - RDS				0931		[illegible]
3-82 303 958 1 FP 211	0931	0955 1033	2041	84 PERS 0						

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
91 ENG C.C. DEMO	1415				1415	✓	38 G / 33 V	1515		CLEAR
227 AVN C.C.R.F	0738							0810		62 EN, ACCEPTANCE IS
3280 AF CS DF	0624				0625	✓	33 P	0652		Clear
49 AD LSMUR-N	0322 0914	0000	2345	20 — Per 0						
49 AD LSMUR-S	0322 0914	0637	2345	16 — Per Ø						
1-5 CAV DMMUR	0322 1001	0913 0000	2321	71 — Per 1250-25mm					07 RC ~~15~~ 1830	3490-7.62
1-5 CAV HMMUR	0317 1058	0845	Cont	48 — Per 1108-25mm					06 RC ~~16~~	3600-7.62
2 BDE ICD BCMUR	0323 0930			SET UP					16	
2 BDE ICD CCMUR	0315 0718	0947	Cont	80 — Per 2100-7.62						158 - 120mm 1100 - 50 Cal
2-12 CAV CCMP	0322 1035	0755 0841	1726	12 Per 72 - 4.2						
1-8 CAV PKMUR	0319 1600	0836 0000	1720	24 Per 480 - 7.62 13 - 120					08	235 - 50 CAL
1-8 CAV BWMUR	0323 1005	0836 0000	Cont	52 - Per 104 - 120mm						940 - 7.62
1-8 CAV CM COMPLX	0322 1420				0737	✓	33 V	0938		Cleared
3-82 FA OP PHTM	0322 1420	0806	Cont	26 - Per Ø						
PKSPostman	0638	0738	1702	242 Per 2422 - 5.56				1702		
89 RRMK 19	0647	0802	1625	25 Per 2628 - 40mm				1712		SGT LINGNISKI RTN TO TRAIN 3456
45 ADA CCMGB	0657	0910	1608	42 Per 2200 - 50 CAL 2500-7.62 CAL		✓	38 D	1635	09	CLEAR
1-4 CAV CHMGT	0709	0746	1441	37 Per 9939 - 5.56		✓	38 G	1524	13	CLEAR

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62EN, CCRF	0744	0852	2136	192 Pers 15,340 - 5.56				2214	08 11	[illegible]
545MP BGPG	0748	0914	1357	63 Pers 3650 - 9mm	1422	✓	38 H	1452	08	CLEAR
192 Sig PKRB	0752	0923	1596	56 Pers 4800 - 5.56	1559	✓	38 G	1614	14	CLEAR
6CAV VGC	0859	0859	1026	Ø Pers	1109	✓	38 V	1116	09 10 11	Cleared
NCOA CHPemo	0900	1352	1618	247 Pers ANT 14 - C4	1637	✓	38 D	1657		CLEAR 40 - SHAPE - 3 ea.
1-9CAV DSAC	0931	1019	1643	28 Pers 630 5.56	1654	✓	38 H	1736		CLEAR
AP 427 CP B	2000	2000								

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	RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	3-82 FH-PK303458	0324 / 0931			80 Per 155/4 Rd HE				1216		Verified Police call
	3-82 FA PK304507	1220	1220 / 1310	1738	62 Per 25-155				1741		Good Police
12B	P 231 K306499	1230	1230 / 1310	1738	65 Per 25-155				1741		Good Police
13A	3-82 FP 235	1758	1758 / 1835	2110	62 Per 8-155				2121		CPT. BOBBINS CARTER
13A	3-82 FP 236	1758	1758 / 1835	2110	62 Per 8-155				2121		INCARNATION WEEKS
12B	3-82 FP 225	2133	2133 / 2219	Cont	125 - per 16 - 155mm						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
62 ENG CCRF	0615	/	/	/	0616	✓	332	0705	/	CLEARED, ON COMING UNIT, ACCEPTED AS IS
49 AD LSMUR-N	0322 / 0914	0845	2258	46 – 0						
49 AD LSMUR-S	0322 / 0914	0845	2258	20 – Pers 645 – 50 Cal						500 – 7.62
1-5 CAV DMMUR	0322 / 1001	0842	2356	39 – Pers 943 – 25 mm					1730	1000 – 7.62
1-5 CAV HMMUR	0317 / 1058	0842 0000	Cont	72 – Pers 3730 – 7.62						1744 – 25 mm
2 BDE ICD BCMUR	0323 / 0930	/		SET-UP					1730	
2 BDE ICD CCMUR	0315 / 0715	0000	Cont	80 – Pers 130 – 120 mm						1850 – 7.62 1250 – 50 Cal
2-12 Cav CCMP	0322 / 1035	0755 / 0825	1714	12 Pers 21 – 4.2				1716	/	WILL CLEAR WITH MAIN RANGE
1-8 CAV PKMUR	0319 / 1600	0840	Cont	60 – Pers 157 – 120 mm						1775 – 7.62 500 – 50 Cal
1-8 CAV BWMUR	0323 / 1005	0842 0000	Cont	88 – Pers 166 – 120 mm						1625 – 7.62 1425 – 50 Cal
3-82 FA OP PHTM	0322 / 1420	0840 0000	1243	26 PERS		✓	33	1343	/	CLEAR
89 MP RRM-19	0325 / 0647	0833	1713	39 Pers 2977 – 40	1747		77 / 5	1926	/	RTN MON MORN [illegible] 38F4347
PKSPORT	0628	0739	1726	151 Pers 2446 – 5.56				1726	/	DEPARTS SGT JONES
2-12 CAV CCRF	0705	0847	1557	43 Pers 2440 – 5.56	1622	✓	38 / 13	1644	/	ACCEPTED AS IS – CLEAR
57 SIG VGC	0715	0715	1126	400 Pers	1129	(F) ✓ 33	33	1205	12 /	CLEAR
C 1-9 CHMGT	0718	0920	1504	10 Pers 1246 – 7.62	1516	✓	33	1533	/	CLEAR 3063 – 50 CAL
HHC III CORPS PKRB	0722	0854	1257	20 Pers 8400 5.56		✓	33 / V	1239	/	CLEARED
17 ENG CHBAC	0806	0806	1009	62 Pers	1010	✓	389	1044	/	CLEARED

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DATE 26 MAR 93
0600 – 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
112 AR FP 02.3	1600	/	/	SET-UP						WILL BE HOT ON SAT AM
AP 437+3 LP B	1805	1809	1846	G FOR LASER				1846	/	DEPART

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RANGE FIRING LOG

ARTY

DATE 26 MAR. 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-82 FA TA 12B FP 225	0335 2133	0000	0748	125 Pers 24 155mm HE	1252		38 G/B			OIC RSO VERIFIED POLICE
3-82 TA 15A FP 211	0326 0757	0752 0822	1240	125 PER 30 155mm HE	1252		"	1437		LT R OBRUNS SFC CARTER

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-12 CAV CC MOT PT										
89 MP RR M-19										
49 AD LS MUR-N	0323 0914	0848	Cont	20 - Pers 630 - 50 Cal						1500 - 7.62
49 AD LS MUR-S	0323 0914	0848	Cont	20 - Pers 645 - 50 Cal						500 - 7.62
1-5 CAV DM MUR	0323 1001			CLEARED				0855		CLEARED BY MR ZIRKLE
1-5 CAV HM MUR	0317 1058	0000	Cont	54 - Pers 1764 - 25 mm						2700 - 7.62
1-5 CAV BC MUR	0323 0930	0835	Cont	42 - Pers 1294 - 25 mm						3150 - 7.62
2 BDE ICD CC MUR	0315 0715	0000	0412	7.2 PERS 7.2 - 120 mm 1450 7.62						
1-8 CAV PK MUR	0319 1600	0000	0247	20 - Pers 29 - 120 mm				2044		~~[illegible]~~ CLEAR Mr Myers 560 - 7.62
1-8 CAV BW MUR	0323 1005	0000	1944	4 PERS 2 - 120 mm						
112 AR FP 033	0326 1600	0834	1733	30 PERS 270 - 60 mm				1938		RT TO ~~[illegible]~~ CLEAR
PK SPORTS	0757	0801	1605	64 - Pers mil Cal				1605		MAIRE FRANKLIN
1-5 CAV CRIT MUR	0807			SET UP				1734		RT TO TRAIN
A 1-5 CAV PK RA	0906			NOT USED CX BY PARENT UNIT		V	36 P	1142		Cleared

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										
2-12 CAV BMSC-1	0857				0950	✓	9 D	0956		CLEARED
1-5 CAV CHMGT	0721				0733	0813 ✓	33 P 33 P	0815		Cleared
3-C CAV. CCRF	0730				0749	✓	33 P	0832		Cleared
2-12 CAV PHTM RUN	0000	MINES								
4th AD LSMUR-N										
4th AD LSMUR-S										
1-5 CAV DSAC										WILL TRAIN ON MON.
1-23 INFA DSAC + FIRING POINT	0513	1156	1848	127 PERS. 6600 5.56MM 350 7.62 MM 24 60MM HE	1848	✓	33 P	1936	15	CLEARED
2-158 BGPQ	0704	0805	1001	30 - P.AD 1350 - 9mm	0/6	✓	33 P	1034		CLEAR
PKSPORT	0806	0806	1609	63 CIV. M 16 CAL.				1609		69T FRANKLIN
1-6 CAV CHMGT	0848	1106	1657	64 PERS. 14619 7.62 4314 50 CAL.	1722	✓	38 G	1800		CLEARED
14 MAR CMN	0930	1009	1729	17 PERS. 299 60MM HE	1800	✓	38 G	1845		CLEARED
14 MAR CSDF	1033	1205	1658	52 PERS. 2000 5.56MM 2200 50 CAL. 13,600 7.62 MM	1729		33 P	1815	17 15	CLEARED

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-12 CAV PHTM RWY	0000									
ROTC LIT LRC	0711			44 Pers		✓	33 L	1208	/ — /	CLEAR
PK SPORTS	0712	0844	1600	32 PERS mix				1601		SGT FRANKLIN
502 MP BWPA	0821	0940	1258	40 Pers 2498 9mm		✓	33 L	1310	/ — /	CLEAR
DET 1 USAF OP JACK	0842	0844	1912	2 Pers 8 BOMBS				0915	/ — /	DEPARTED
DET 1 USAF OP JACK	1115	1135	1200	4 Pers 8 BOMBS				1210	/ — /	DEPARTED
1-5 CAV DSAC										

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV C5DF										
2-12 CAV PHTM RUN	XXX			1.7 PER						
1-5 CAV DSAC	0938									
49 AD LSMUR-N	0744									
49 AD LSMUR-S	0744									
1-12 CAV BWMUR	0614	1144		50 EPR 50cm 50 ~ 120 m						COC - 7.62
57 SIG CCZE	0649	0842	2155	150 11931 - 5.56				2210		RTN TO CLEAR
" PKSPORT	0650	0737	1923	106 mil / 14 EPR 24938 - 5.56 M16 CAT				1923		DISPATCHED - OIC - LINDQUIST
1-5 CAV CERF	0749	0911	2102	281 PER 14440 - 5.56				2116		Slater Company will train in AM
15 MI BGPO	0756	0905	2117	43 PER 4480 - 9MM				2134	19	unit initially missed Patrol Cpt CLEAR in AM -
2-12 CAV CHMGT	0800	1024	2127	170 - 7.62 2600 - 50 CAL				2238		CLEAR AM
1-5 CCGL	0831	0945	1493	9 PERS	1446	✓	33 ✓	1501		Cleared 175-RD-33L - OK
4-5 ADA IMMUR	0836			SET-UP						
1-5 CAV EMLEW	0913			SET-UP						
89 HP 2-RICHKID	1548							1730	160	RETURNED TO TRAINING AREA

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CSDF										HAS BEEN ON LOG FOR APPX 3 WEEKS.
15 MI BGPQ	0736	/	/		0830		33 V 38 A	0850	/	Cleard
2-12 CAV CHMGT	0726	/	/		0721 0822	0 ✓	33 V 33 V	0841	/	Cleard
2-12 CAV PHTMRUN	9MAR 0000	0808		60 Per MILES						
1-5 CAV DSAC	9MAR 0000	1052	1719	20 Pers 933-5.56						
49 AD LSMUR-N	9MAR 0000			SET UP						
49 AD LSMUR-S	9MAR 0000			SET UP						
1-12 CAV BWMUR	9MAR 0000	0916	2200	16 Pers 37-120 150-7.62				2311		TRAIN AM
57 SIG CCZE	0737	/	/	/	0742		33 V	0755	/	DIVAD ACCEPTED AS IS DEPARTED
4-5 ADA JMMUR	9MAR 0000	1948 2018	2351	23 Per 800-20					15	
1-5 CAV FMLFW	9MAR 0000	1536	1720	6 Pers 2224-5.56					[illegible]	
89 MP RR M-14	0389 0818	1123	1644	1680/40 mm 12 PERS				1749	110 0	Will return to TRAIN in AM
PKSPORT	0655	0735	1730	143 MK/10 cm 2395-5.56 mm MK CH				1756	/	DEPARTED
180 TRANS BWPA	0742	0846	1008	450 RDS 9MM 7 PERS	1020	✓	33 V	1034	/	CLEARD
~~1-5~~ DIVAD CCZE	0755	0904	2151	87 Pers 10,000-5.56				2155	/	Accepted RANGE AS IS. RTN TO CLEAR
544CS-544 BWPB	0810	1002	1132	850 RDS 9MM 15 PERS	1137	✓	33 V	1203	/	CLEARD
28 ADA CHMGT	0309 0844	1343	1721	4 Pers. 944-50 cal						
30 ITFW SCGR	1000	1002	1100	4 pers. 4 cm 24-BDU 33				1100	/	DEPARTED

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8/12 CAV BKMUK	0304 1117			SET-UP					15 21	
504 MI BGPQ	0304 1242	1351	1658	23 pers. 1000-9 MM	1707	✓	33 ✓	1716		Cleared
1/5 CAV CCRF	9 mm 0000				1340	0	33 ✓	1357		RT TO CLEAR
301 TFW SC.BR	0 1430	1430	1454	4 pers 4 cars 24-BDW33				1454		DEPARTED

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RANGE/FP	GCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV	0309									
CSDF										
ICD DIVARTY	0309									SEE ENTRY BELOW UNIT WANTED TO TRAIN
CCZE										
1-5 CAV	0309						38			
CCRF	0845				✓		A	0922		CLEAR
2-12 CAV	0309	mines		56 - PAR						
PHTM RUN	0000	0000	2440	Ø						
1-5 CAV	0309			20 / Pers 1749 - 5.56 80 - 7.62						
DSAC	0000	1000	1726							
49 AD	0309			25-Per						
LSMUR-N	0000	0853	2326	LASER						
49 AD	0309			20 Pers						
LSMUR-S	0000	1853	1934	LASER						
1-12 CAV	0309									
BWMUR	0000							1238		Clear
4-5 ADA	0309			Per : 19 Patriot / 2000 Stinger						
JMMUR	0000	1857	1214							
1-5 CAV	0309			18 - Pers 3682 - 5.56						
FMLFW	0000	1858	1722							
2-2 ADA	0309			25 - Per						2000 - 3000 at
CHMGT	0844	0737	2203	18200-762				2246		RTN TO Clear
2-12 CAV	0309									
BKMUR	1117							1736		
89 MP							77			
RR M-19	0796	1902	1549	11-Pers. 1540 - 40MM	1641	✓	A	1717		Cleared By Mr Hunt - Cleared —
2-2 ADA	0657			73 Pers						
PKRR		0757	1951	72.43-5.56				2020	1300	Cleared A.M.
13 COS				2650 ROS			33			
BWPB	0653	8816	1112	48 PERS 9MM	1116	✓	V	1235		clear
				3316 / 556						
PKSPORTS	0787	0787	1750	1847 Div M.I.				1715		DEPARTED
31ST ADA BDE										
BWPA	0785	0827	2026	6 Pers 800 - 9MM				2000	1300 1400	Will return to Clear in AM
289TH GS							38			
VEC	0744			45 PERS	1140	✓	G	1200		CLEARED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
17 ENG BGZ	0804	1012	2236	65- Pers 8260-5156				2236	09 1830	RTN' TO TRAIN
4MMC RM72	0807	0900	1114	34 35MM 30 9MM 30 9MM	1122	✓	33 V	1159		CLEARED
1CD CCZE	0813	1845	1218	Per 37 Ed. Ferdi 25cc 5.56	1219	✓	39 G 33 V	1300		CLEARED
Det 1 BGPQ	0915	1004	13.10	500 9MM 10 PERS	1313	✓	38 G	1328		CLEARED
RETS TA 8	0918	0918	13.17							FF-2D 200FT CLEARED
301 TCS SCBR	1955	1955	1100	4 PERS 4AC 24 BOMBS				1100		DEPARTED
301 TFW SCBR	1424	1430	1523	4 Aircraft 4 CREWS 24 Bombs				1523		
1/8 CAV PKHUR	1637									

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DATE 10 MAR
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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA 1-82 FA		1247		80-Pers						
44 PK175605	1247	1318	2111	180-155M						

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RANGE FIRING LOG

DATE 14 MAR. 93
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RANGE/FP	GCC	HOT	COLD	RUNS DY	RUNS NT	NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-12 CAV BUMUR												
2-2 ADA CHMGT	0659						0719	✓	33 P	0749		CLEAR
2-2 ADA PKRB												BU NEW UNIT 15 MI ACCEPTED AS IS
31 ADA BWPA	0741							✓ 1454	33 P	0820		CLEAR
49 AD LSMUR-N	0309 0600	0847	Cant			20 - Pers LASER						
49 AD LSMUR-S	0309 0000	0847	Cant			16 - Pers LASER						
3-12 CAV BKMUR	0309 1117	0905	Cant			84 - Pers 500 - SQUAD					22	
1-8 CAV PKMUR	0310 1697	0844	1437			64 Pers 27 - 120		CLEARED AR BENDT	P	1834		4250 - 262 CLEAR AR BEND 800 - SUCA 1600 - 7.62
4-5 ADA JMMUR	0309 0000	0845 0917	1709			24 Pers 7400 - 20m						
2-12 PHTMRUN	0309 0000	600 MILES	Cant			52 - Pers MILES						
1-5 CAV DSAC	0309 0000	1929	1719			24 Pers 40MM - 556						
1-5 CAV FMLFW	0300 0000	1024	1715			28 Pers 3851 - 5.56					07 12 (15)	DIC/RSO TO OPNS.
17 ENG BGZ	0709	0835	2016			32 Pers 7560 - 5.56				2033	09 10	RSO TO CLEAR.
D-2-6 CCGL	0641	0751	1053			13 Pers 40mm	1206	✓	33 L	1254	09	Ammo shortage 22.3 TAT 30D
PKS(ARTBMAN)	0644	0734	1757			175 Pers 2813 - 5.56				1740		DEPART
15 MI PKRB	0708	0837	2054			104 Pers 12330 - 5.56				2146	11	TRAIN AM
1-7 CAV LRC	0717		1405			43 Pers		✓	3	1240	09	CLEAR
504 MI CCRF	0713	1034	2121			146 Pers 3890 - 5.56				2129	13	CLEAR AM

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RANGE/FP	GCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
163 MI B CCMGA	0716	0811	1253	130 - Per 7200 - 5.56						
597 MT. CO CCZE	0736	0911	1402	319 Pers 15 440-5.56					19 11	
289 CS BLS	0741	/	/	21 Pers	1845	V	33 L	1133	19 10 /	CLEAR
91ENG CHMGT	0751	0912	2347	13 - Per 3000 - 50cal				2351		RAN TO TRAIN
2-12 CAV CLD	0829	0811	0942	30 Per 40 CAL 40 TNT	1845	V	33 V	1223	/	Clear
169 CS BN VGC	0821	/	/	77 Pers		V	33 V	1356	11 /	CLEAR
3/502AR CCGL	1430	/	/	DID NOT TRAIN		N/A		1555	/	GOOD POLICE CALL AMMO N/A
2-82 FA OP PHIM	1739			SET UP						
1-8 CAV CCMUR	2019	/	/	SET-UP					23	

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
17 ENG BGZ	1004				1100	✓	33 ✓	1206		CLEAR
504 MI CCRF										NEW UNIT ACCEPTED AS IS
49 AD LSMUR-N	0309 0000	0833	2156	16 - Per LASER						
LSMUR-S	0309 0000	0833	2156	20 - Per 645-50 Cal						500 - 7.62
2-12 CAV CCMUR	0311 2019			SET UP				1824	07 15	
4-5 ADA JMMUR	0309 0000	0800 0839	1058	18 Pers 350 .50 cal 3700 20mm	1432	✓	33 ✓	1556	13	CLEAR
2-12 CAV BKMUR	0309 1117	0922	Cont	40 - Per 2000-50 Cal						8000 - 7.62
2-12 CAV PHTM RUN	0309 0000	1019	Cont	96 - Per MILE LASER					13	
1-5 CAV DSAC	0309 0000	0939	1611	83 Pers 3733-5.56				1642		RTN TO CLEAR
2-82 FA OP PHTM	0311 1729	2421	2043	12 Pers					13	
163 MI CCMGA	0311 0716	0834	1154	42 PER 2480 5.56	1220	✓	38 G	1230		CLEAR
597 MT CCZE	0311 0738	0857	2011	126 Pers 7162-5.56				2015	1100	CLEAR AM
1-5 CAV FMLFW	0309 0000	1037	1636	92 Pers 4727-5.56				1830	08 1850 1930	RTN TO CLEAR DEPARTED WITH OUT CALLING
91 ENG CHMGT	0800				0835	✓	350	0845		CLEAR
15 MI PKRB	0703	0824	1951	45 Per 5035-5.56				2011		RTN TO CLEAR
2-2 ADA PKHG Q	0657	0748	1039	35 Pers 262 Rounds		✓	38 D	1221		CLEAR
PKSPORT	0705	0733	1739	44 1444-5.56				1739		SET LINGUIST
13 SIG CCRF	0801	0900	1752	126 Pers 8647 5.56				1836		ACCEPTED AS IS CLEAR AM

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RANGE/FP	OCC	HOT	COLD	RUNS DY	RUNS NT	NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-82 FA PK 175605	0310 1247	/	/			0 PERS 0 RDS				0903	/	POLICE VERIFIED BY DIC
TA42 2-82 FA PK 145565	1859	0144 1014	1850			89 - Pers 90 - 155MM				2036	/	DEPARTED
TA44 2-82 FA PK 175605	1958	1031 1622	1850			90 Pers 137 - 155 MM						LT VINCENT
TA44 2-82 FA 139600	2036											

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-67AR HARMOUT	0804	0825	1047	Ø Ø				1112	/	DEPART
15 MT CCGL	0855	0924	1048	8 Pers 175 40mm		✓	38 G	1213	/	125 TPT 38D
2-2 ADA PKHG/C	1039	1059	1154	8 CLAYMORE 30 Pers		✓	38 D	1221	/	CLEAR
D 2-12 CAV TRAPMUR	1225	/	/	SET UP						
1-124 PKHG/C	1509	/	/	SET-UP						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5CAV DSAC										
597 MT CCZE	0717				0735	✓	38 D	0829		CLEAR
1-5 CAV FMLFW	0907				0936	✓	38 D	1021		Clear
15 MI PKRB	0942				0814	✓	38 D	0907		CLEAR
13 SIG CCRF	0800				0813	✓	38 D	0853		CLEAR
49 AD LSMUR-N	0309 0000	0837	2343	20 - per 1180-50cal						6000. 7.62
49 AD LSMUR-S	0309 0000	0837	2343	20 - per 645 - 50cal						500 - 7.62
2-12 AR BKMUR	0309 1117	0000	Cont	54 - per 7500 - 7.62					17	2400 - 50 Cal
2-12 CAV TRAPMUR	0312 1225	1002	1633	64 PERS 40 120 MM					20	Screening only
2-12 CAV PHTM RUN	0309 0000								10	
2-82 FA OP PHTM	0311 1729	0952	1937	12 PERS.						
1-124 PKHG/C	0312 1509	0801	1624	160 PERS. 160 M67 HG	1730	✓	38 D	1810		CLEARED
544 CS CHMGT	0708	0831	1228	6 Pers 1200 50 Cal	1240	✓	38 D	1313		CLEAR
PKSPartman	0745	0818	1559	31 CIV. MIX. CALIBER				1830		sgt. Fanvort
1-66 AR BWMUR	0811								17	
303 MI CCRF	0857	0907	2157	46 - per 5500-5.56				2237	13	RTN TO CLEAR
West Bell PKRA	0858							1105		RTN TO TRAIN
SET UP 2BDE 1CD CCMUR	0859							1553		RETURN ON MONDAY TO TRAIN

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-67 P.R. HARMONY	0830	0950	1112	5 Per 100 40mm		✓		1131		CLEAR MCEVERETT

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA 44 2-82 FA PK 175605	0912 0958									
TA 44 2-82 FA PK 139600	0312 2036	/	/					0958	/	verified police
TA 42 2-82 FA PK 145565	1000	1002 1032	1516	80 PERS. Ø 155 MM				1516	/	OIC HOGAN SIMPSON
TA 42 2-82 FA PK 135577	1517	1520 1551	2011	80 PERS. 73 155mm				2016	/	OIC HOGAN RSO SIMPSON
TA 42 2-82 FA PK 120590	2030	2045 2115	2203	80 - per Ø				2204	/	OIC HOGAN RSO SIMPSON
TA 42 2-82 FA 136586	2204	2215 2245	Cont	89 - per 20 - 15mm						OIC

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
303 MI CCRE	0824				1935	✓	33 L	1023	/	CLEAR
49 AD LSMUR-N	0309 0000	0842	Cont	20 - Per 1500 - 7.62						630 - 50 Cal
49 AD LSMUR-S	0309 0000	0842	2354	16 - Per 516 - 50 Cal						400 - 7.62
2 - 12 CAV BKMUR	0309 1117	0000		64 - Per 6200 - 7.62						2400 - 50 Cal
2 - 12 CAV TRAPMUR	0312 1225	0850	1412	60 PERS 36 120 MM					16	
2 - 12 CAV PHTM RUN	0311 0000	/	/						18	
1 - 66 AR BW MUR	0313 0811	0934	1111	4 - 120 mm 9 - 25 mm 25						50 Pers
2 - 82 FA OP PHTM	0311 1729	0820	Cont	12 - Per Ø					07	
WBSA PKRA	0732	0851	1532	22 PERS. 660 5.56 MM 660 7.62 MM	1602	✓	38 H	1637	/	CLEARED
DSAC										
PKSPORTAWN	0700	0246	1555	41 PERS. MIX CAL.				1630	/	Sylifa Ok
2 - 12 CAV PKMUR	0819	/	/							
1 - 50 CAV BMSC 2	1228	/	/							

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA-44 2-82 FA PK 175605	0312 0958			0 Pers 0 Rds				0658		POLICE VERIFIED LT
TA-42 2-82 FA PK 136586	0313 2304	0000	0741	95 Pers 8 Rds				0741	0634	POLICE VERIFIED VINCENT
TA-32 NO FIRE PK 185705	0659			0 / 0				0735		POLICE VERIFIED LT. Broadous
TA 44 2-82 PK 175605	0225	1039 1116	1944	90 Pers. 180 155mm						LT BROADOUS
TA 42 2-82 PK 135575	1742	1045 1116	1940	95 Pers 30 155mm				1942		LT VINCENT
TA 44 2-82 PK 125605	1249	1456 1535	cont	89 - Pers 19 - 155mm						POLICE VERIFIED SIMPSON 1Lt
TA 44 PK 170630	1935	2105 2286	2331	80 - Pers 13 - 155mm						LT. VINCENT

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5 DSAC	0628				1527	✓	38 A	1635	1405	Cleared
49 AD LSMUR-N	0309 0000	0840 0000	2242	16 Pax 1200 - 7.62 44% 50 cal						
49 AD LSMUR-S	0309 0000	0840	2242	20 Pax 75 - 105						
2-12 BKMUR	0309 1117	0000	0111	54 - Pax 3000 - 7.62					0804	
2-12 CAV TRPMUR	0312 1225	0908	1739	56-pax 38-120mm						
1-66AR BWMUR	0313 0811			SET-UP						
2/12 PKMUR	0314 0819	0911		64 Pax 600 - 30 cal 150 - 120mm					01	1501 - 7.62
~~2-82 CAV~~ PHTM RUN	0311 0000			84				1734	1834	Departed with out calling
1-5 CAV BMSC-2	0314 1228	0839		34 Pax 32+5.7.62					RC	
2-82 FA OP PHTM	0811 1239	0000	1749	27 Pax						
2 BDE ICD ACMUR	0715			SET-UP					1000	
PK SPORT	0655	0776	1730	64 Hill Racing 1291-5.56mm Invited				1735		Departed CXC - Limpovist
27 MSB CCRF	0721	0833	2055	88 Pax 6126 - 5.56mm				2117		
1-66 IAR CCMGA	0744	0846	0938	415 Pax 415 9mm 13 PERS	0941	P39	40 40 ✓	38 G 35 G	1119	CLEAR
2 BDE ICD CCMORTAR	0751	0803 0840	1552	20 Pax 23 - 4.2 inch						
163 MI PKHG-C	0814	0857	1459	77-pax 2-claymores	1500		✓	33 L	1513	Cleared
HHC 2AD PKRB	0816	0946	1706	70-Pax 1551-5.56	1718		✓	38 A	1741	1405 Cleared
163 MI PKHG-DA	0820			77-pax	1500		✓	33 L	1513	Cleared

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED			INSPECTED			INSPECTOR			DEP	RADIO CHECKS MISSED										REMARKS
HH 2AD DIVACTY BGPQ	827	0931	1415	15-P 1350 - 9MM	1415	1543		O	✓		33 L	38 A		1642	/									/	Cleared
2-82FA CSDF	1013	1202	1346	28 155 RDS 89 PERS	1355			✓			33 L			1511	1401	/								/	Cleared
2-7MSB GHMGT	1054	1330	1719	11-PERS 500 - 2 LZ 500 - 50CAL	1735			✓			38 A			1805	/									/	Cleared
HARMOUT 1/5 CAV	1219	/	/	SET UP ONLY																					
1/8 CAV PHTHRUN	2014	/	/	SET-UP																					

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
27 MSG CCRF	0747				0752	✓	38F 38F	0941		CLEAR
4 9 AD LSMUR-N	0309 0000	0853	2333	20 Pers 3000 - 7.62 107 - 105						
49 AD LSMUR-S	0309 0000	0853	2333	20 Pers 27 - 105						
2-12 BKMUR	0309 1017			SET UP						
2-12 CAV TRAPMUR	0312 1225	0838	1335	94 KIOWA MG 42 M240					0730	
1-6 AR BWMUR	0313 0811	0849	1300	16 120 81MM 40 120 81MM 75 PERS 2000		✓		1627		Cleared by PRCCo
2-12 PKMUR	0314 0819	0840		56 Pers 2050 - 7.62 250 - 5.56					0	120 - 120
1-5 CAV BMSC 2	0314 1225	0850		39 Pers 3300 - 7.62					01 13	
2-82 FA OP PHTM	0311 1729	1449		30 Pers						
2 BDE 1 CD CCMUR	0315 0715	0916	2322	32 Pers 2400 7.62 CAL 150 - 120					15	22 - 4.2 50 - 50 CAL
2 BDE 1 CD CC MORTAR	0315 0751	0836	1456	20 Pers 21 - 4.2mm	1457	✓	38A	1540		Cleared
1-5 CAV HARMOUT	0315 1219	1019	1812	37 PERS.						
1-8 CAV PHTMRUN	0315 2014			54 Pers MILES LASER					04	
PK SPORT	0654	0748	1733	116 MM / 22 CAL M-4 CAL 1850 - 5.56				1740		Departed OIC LINDQUIST
1-80 PERS PK RIF	0715	0819	1939	22 Pers 3300 - 5.56mm				1951		Cleared
91 GNS CCGL	0741	0916	1117	225 40 MM TPT 18 PER	1139	✓	38 B	1210	1000	22 SDS Inserted CLEAR
522 MI CCMGA	0751	1020	1730	82 Pers 19800 - 5.56mm	1811	✓	33 A	1844		Cleared
142 SC BN CCRF	0843	0936	1343	4650 65 PERS 5.56	1444	1512 ✓	38 B 38 A	1616	16	Cleared

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
545 MP RRMK19	0850	/	/	SET UP						
301 TFW SCBR	0952	1006	1051	12 BOMBS 4 AIRCRAFT 4 CREW				1100		CLEARED.
8ENG CUDEMO	1044	1232	1522	20 PERS 21 - C4(1/4) 22 - 1/4 TNT 23 - STEEL DYNAMITE				1550		Return for TRAINING. ~~[illegible]~~
2 BDE 1CD CM Complex	0909	/	/	SET-UP						
301 TFW SCBR	1424	1430	1517	4 @ 4 PERS CREW 24 BOMBS				1518		DEPARTED
60 CTAW OP JACK	1729	1806	1854	2 PERS				1854		DEPARTED
596 Bomb PD94	1806	1806	1854	2 PERS 1 CREW 2 - 500 BOMB				1854		DEPARTED

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	RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA 44	3-82FA FP 427	0315 0809	0862	1630	40-Pers 100-155 HM	1655	✓	38 A	1738	1735	Cleared
TA 73	2-82FA 276619	0315 1320							1029		Policed area verified
TA 04	2-82FA 315525	0315 1602	0848	1942	89 pers 75-155 HM						
01	2-82FA 334569	0315 2126	0848	1253	Pers-84 14 HE				1253		verified area policed
TA 44	3-82FA FP 428	0559	0742	1631	50-Pers 100-155 HM	1703	✓	38 A	1738	1730	Cleared
	312MI ALS	0852				1310	✓	88	1337		CLEARED
	~~EM Complex~~	~~0909~~			LIVE NOT USED						
TA 04	2-82FA 335521	1030	1106	1309	90-Pers 24-155 HM				1309		Ver. area policed
73	2-82FA 280620	1254	1324		84 Pers 134-155						
TA 04	2-82FA 310530	1309	1359	1901	90 pers 56-155 HM				1903		good point ~~Verif~~ verified
TA 01	2/82FA PK340570	1949	1952 2022	2211	90 Pers 57-155				2213		RSO - 14 Beams
TA 4	2-82FA 310530	2213	2213 2243		84 Pers 0-RDS						

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HAC 2AD CCRF	0748	0943	1644	75 Pers 5229-5.56	17.15	0 ✓	38 A	1738	11	Cleared
522 MI CHMGT	0753	0843	2040	56 Pers 17300 - 7.62				2117		[illegible]
A 92FA CCZE	0256	1033	1450	Pers 65 1260 5.56 Ball	1519	✓	33 V	1543		Cleared
8 ENG CLID	0855	0952	1711	8 BANGLORE 28 lbs. 1¼ TNT 190 DET CORD	17.15	✓	33 V	1754		Cleared
2-12 CAV BWMUR	0826	1400	1926	28 pers [illegible]						
III CORPS NCOA PKRB	0830	0850	1448	36 pers 5.56 0263	1501	✓	33 V	1518		Cleared
91 ENG BGPQ	0849	1947	1402	35 PERS 1450 9MM	1411	✓	33 V	1422	11	Cleared
142 SIG CCMGA	0853	1010	1534	47 PERS 6450 Rds 7.62	1546	✓	33 V	1609	1500	Cleared
2 BDE ICD CCMORT	0859 / 0941	0941	1702	7 PERS. 40 – 4.2 mm					12	
301 TEN SCBR	0955	1000	1100	4 PERS 4 CREW 24 [illegible]				1100		Departed
1/5 CAV HMMUR	1055									
301 TEN SCBR	1430	1430	1506	4 CREW 4 AIRCRAFT 24 Bombs				1506		Departed

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1-80 TRANS PKRB	0707				0800	✓	38 G	0835		CLEARED
49 AD LSMUR-N	0309 / 0000	0838		20 - Pers 112 - 105mm					09	1500 - 7.62 500 - 50 cal
49-AD LSMUR-S	0309 / 0000	0838	1357	24 16mm 16 Pers					09	
1-8 BKMUR	0309 / 1117	1317	1633	64 - Pers 1400 50cal 2400 7.62 mm					1000 19	
2-12 TRAPMUR	0312 / 1225	/	/						04 05 06	
2-12 PKMUR	0314 / 0819	0000	Cont	56 - Pers 100 - 120mm						1050 - 7.62 298 - 50 cal
1-5 CAV BMSC 2.	0314 / 1228	0000	Cont	50 - Pers 1982 - 7.62						
2-82 FA OP PHTM	0311 / 1729	0000	2016	23 - Pers					10	
2Bde ICD CCMUR	0315 / 0715	1338	Cont	100 - Pers 100 - 120mm						1600 - 7.62 1200 - 50 CAL
1-5 HARMOUT	0315 / 1219									
1-8 PHTM BUN	0315 / 2014			62 - Pers 0					09 13	
545 MP RR M 19	0316 / 0950	0827	1709	22 Pers. 3294 M918					9	M918 TP 38G 4224
CMC 2Bde ICD CM COMPLEX	0316 / 0909	0903 / 0946	2150	23 - Pers 180 - 4.2mm					RC 03 04 13	WARNING ISSUED
C DEMO				SEE NEXT SHEET						
4-5 ADA BWPA	0648	0800	1556	74 Pers 2960 9mm	1542	✓	33 ✓	1554		Cleared
21 FA PKHGQ	0658		1606	84 - Pers	1606	✓	33 ✓	1621		Cleared
PKSPORT	0730	0738	1730	214 mil - 45cm 3612 - 5.56						SGT JONES
B 282 CSDF	0729	0842	0937	70 Pers 28 155		✓	38 G	1019		CLEAR

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RANGE FIRING LOG

DATE 18 MAR. 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY	RUNS NT	NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
522 MI C HMCT	0720						0756	✓	33 P	1817		CLEAR
49 AD LSMUR-N	0309 0000	0856 0000				16 - P.eo 105 - 105mm						1200 - 7.62 1400 — 50cal
49 AD LSMUR-S	0309 0000											
1-8 CAV BKMUR	0309 1117	0833	Cont			64 - P eo 1200 - 7.62 3200 - 50cal					12	
2-12 CAV TRAPMUR	0312 1295					SEE ENTRY BELOW				0327		TURNED RANGE OVER TO 1-8 CAV.
1-5 CAV BMS 2-2	0314 1325	0000	2249			52 - P eo 2900 - 7.62						
2-12 CAV BWMUR	0317 0836	0847	Cont			48 - P eo 212 - 120mm					09	493 - 50cal 3000 - 7.62
2-12 CAV PKMUR	0314 0819	0848 0000	Cont			88 - P eo 206 - 120mm					16	1500 - 7.62 700 - 50cal
2 BDE ICD CCMUR	0315 0716	1001 0000	Cont			100 - P eo 145 - 120mm					07	1900 - 7.62 1150 - 50cal
1-5 CAV HMMUR	0317 1055	0841	Cont			39 - P eo 2258 - 7.62						
1-8 CAV PHTMRUN	0315 1304	0824	2345			80 - P eo						
2 BDE ICD CM COMPLX	0316 0909	0702 0139	0942			23 Pers 40 4.2"	1130	✓	33 P	1224	00	CLEAR
1-5 CAV HARMOTT	0315 1319					25 Pers					11	
2-82 FA CP PHTM	0311 1739	0758	2118			13 Pers				2032	07	
545 MP RR MK 19	0316 0955						1019	✓	33	1235	12	CLEAR
2 BDE ICD CC MORTAR PT	0317 0859	0830 0901	1622			7 Pers 27 - 4.2						
8 ENG CC Demo	0651	0000	2011			18 Pers 14 - TNT 16 - C4					11 30	4 BRIDGES
62 ENG CV Demo	0653	1230	1536			912 Pers 11 - MINES 2.5 C4		✓	33 V	1628		CLEAR 25 - TNT 1/4 LB

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
PK6 Portman	0700	0740	1723	171 2251 - 5.52				1723		sgt. favor
16 Sig CCZE	0721	0840	2120	480 Pers 20380 - 5.52				2144	15	
31 ADA PKRB	0724	0812	2027	89 Pers 7790 - 5.56				2045	11	
169 ORD VGC	0736			235 Pers		33 P	✓	1141	09	CLEAR
3-67 AR BGPQ	0756	0849	1308	52 Pers 9mm 2650				1405	02	RTN TO TRAIN DEPART W/O CALLING
91 FA CCRF	0758	0843	2253	58 - Pers 11,185 - 5.56				2321	09	
3/8 CAV CCGL	0805	0819	1052	10 Pers 150 Rds 22 Pers		33 P	0 ✓	1242		150 Rds TPT (33P) CLEAR
628 TC ULS	0814	0814	1054		1055	✓	33	1113	08	CLEAR
1-7 CAV CHMGT	0822	0803	1735	50 Pers 9300 - 50cm		✓	33 ✓	1804		CLEAR
PHTMCCC	0941			25 Pers				1117		RTN TO TRAIN
1-8 CAV TRAPMVR	0227			SET UP						
410 MP RR M-19	1546			SET UP						
AP 422 LP C	1740	1740	1812	6 Pers				1812		DEPART

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA 12 2-82 FA PK 289498	0318 1336	/	/	/				0749	/	Dec. Fied 69 Lt. BR cd cus
TA 12 PK 303493	0749	0749 0832	2118	8a Per 74-155						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0907				0907		33	0948		C L RIAD
										UNIT ACCEPTED AS IS
	0659					✓	38 G			Unit accepted
	0725				✓	✓	38 G	0745		CLEAR
49 AD LSMUR-N	0309 0000				0731			0709		Sgm. Hallmark Cleard by
49 AD LSMUR-S	0309 0000							0709		Sgm. Hallmark Cleard by
1-8 CAV BKMUR	0309 1117	0858	Cont	51 – per 1650 – 50 Cal					22	1800 – 7.62
1-8 CAV TRAPMUR	0318 0227	1015	1418	64 Pers 42 – 120 mm					18	
2-12 CAV BWMUR	0317 0826	0842 0000	Cont	40 – per 155 – 120 mm						467 – 50 Cal 1555 – 7.6 mm
2-12 CAV PKMUR	0314 0318			CLEARING		✓	PRC 6	1600		CLEAR PER PRC 6
2 BDE ICD CCMUR	0315 0715	0000	Cont	100 – per 128 – 120 mm						450 – 50 Cal 3000 – 7.62 mm
1-5 CAV HMMUR	0317 1055	0843 0000	Cont	57 – Per 4880 – 7.62					12	
1-8 CAV PHTMRUN	0315 1204	0000	1500	20 PERS.				1800	14 15 16	
1-5 CAV BMSC-2	0314 1225							1207	05 11	RETURN 20 mins for clearing
2-BDE ICD CCMPT	0317 0854	0826 0915	1622	7 Pers 34 4.2		✓	CC MUR MAINT	1700		CC MAINT – CLEAR CLEAR
1-5 CAV HARMOUT	0315 1219			23 Pers				1444	14	CLEAR MR CLARK
410 MP RRMK-19	0316 0950	0916	1618	23 Pers 1872 – 40 mm		✓	HM MUR MAINT 77 A	2025	19	Verfic by 77P 3,456 40mm
8 ENG CC Demo	0318 0854	0849	1437	44 Pers 34 – C4			37 V	1513	07 08	25 – TN 400 – Det CD

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-67AR BG-PQ	0758	0828	1320	36 PERS 1720 9mm		✓	33 ✓	1350		CLEARED
PHTM CCC	1330	/	/	4 Pers		✓	33 ✓	1425		CLEAR
4-5ADA CC2E	0649	0843	1449	112 Pers 7020 - 5.56		✓	38 D	1522		CLEAR
PKSPOBMAN	0653	0736	1730	101 Pers 1484 -				1730		DEPART LANIQUIST
15FSB CCMCA	0728	0858	1414	18 Pers 1940 - 7.62		✓	33 D	1449		CLEAR
HHB QAD CHMCT	0739	0912	1503	41 - Pers 3860 - 7.62				1526		"
227AVN CCRF	0842	0908	1359	112 Pers 6720 - 5.56		✓	38 D	1430		Unit Range as 227AVN
1-8CAV PKMUR	1600	/	/	SET UP					22	

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-82 FH	0318	/	/	/				1400	0708 /	FAILED TO CALL DEPARTURE
TR12 PK303493	0744									

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	0642				0725 0830	✓	38 B 38 B	0904	/ /	CLEAR
1-8 CAV BKMUR	0309 1117	0000	cont	72 - per 2500 - 50 Cal					0630 1830	7500 - 7.62
1-8 CAV TRAPMUR	0318 0227	1000		62 Pers 40 Rds 120mm				1500	0630 1730 1830	DEPARTED WITH out calling
2-12 CAV BWMUR	0317 0826	0000	cont	52 - per 190 - 120mm					0630	2045 - 7.62 545 - 50 Cal
1-8 CAV PKMUR	0319 1600	/	/						11	
2 BDE 1CD CCMUR	0315 0715	0000	0125	16 - per 60 - 120mm					04 11	800 - 7.62mm
1-5 CAV HMMUR	0317 1055	0000	cont	60 - per 6510 - 7.62						
3 SIG CCRF	0735	0839	2205	81 - per 6950 - 5.56				2227	10	
PKSPORT	0740	0800	1600	41 PERS Mixed					1600	LINQUIST - 59E DEPARTED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
TA42 3-132 FA FP411	1200	1201 1231	1906	36/203mm 62 PER				1908	RETURN TO CLEAR	OIC CPT RYON LT BRITAN
TA42 3-132 FA FP416 NEED 250	1200	1201 1250	1906	36/203mm 90 PERS				1908		LT MEYER
TA44 3-132 FA FP418	1200	1201 1231	1906	29/203mm 64 PERS				1908		LT GAFFIN

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RANGE/FP	GCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0650				0653	V	33 B		/	CLEAR
1-8 CAV BKMUR	0309 1117	0000	2359	60 - Pers 2560 - 50Cal						7080 - 7.62 685 - 50 Cal 2580 - 7.62
2-13 CAV BWMUR	0819 0826	0000	Cont	58 - Pers 230 - 120mm						
1-8 CAV PKMUR	0319 1600	1543	1707	4307.62 Cal 12 PERS					09	
2 BDE HQ CCMUR	0315 0715	/	/							
1-5 CAV HMMUR	0317 1658	0000	Cont	78 - Pers 594 - 7.62						
1-8 CAV TRAMUR	0742	1019	1637	39 - 120mm 80 Pers 33 C.v				1823		RT TO TRANS
PKSPORT	0734	0800	1601	Mixed				1601		DEPARTED UNIT LIST

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0811				0812	✓	38 A	0805	/ /	CLEAR
	0811				0812	✓	38 A	0805	/ /	CLEAR
	0811				0812	✓	38 A	0805	/ /	CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-8 CAV PHTM RUN										
1-5 CAV BMSC-2										
1-8 CAV BKMUR	0309 / 1117	/	/	CLEARING				0430	/	DEPART 0430 WR TO CLEAR
2-12 CAV BWMUR	0317 / 0836	0850 / 0000		100 Pers 2250 - 7.62 cal 141 - 120 m						410 - 50 cal
1-8 CAV PKMUR	0319 / 1600	0834		88 - Pers 700 - 50 cal 152 - 120 m						2000 - 7.62
2-BDE ICD CCMUR	0315 / 0715	/	/	SET-UP					56 RC	
1-5 CAV HMMUR	0317 / 1058	0911 / 0000		39 Pers 6240 - 7.62						
1-8 CAV TRAPMUR										RTN TO TRAIN
PK SPORT	0639	0733	1720	57 - Pers 870 - 5.56				1720	/	DEPARTED OIC - JONES
2-82 FA BGPQ	0701	0815	1551	62 - Pers 3219 - 9MM	1600	✓	33 ✓	1623	/	Cleared
2-82 FA CCRF	0720	0840	2028	65 - pers 6175 - 5.56				2039	16	[illegible] AM
3-82 CHMGT	0734	0900	2002	28 - pers 1150 - 7.62 RM				2019	20 /	[illegible] AM
49 AD LSMUR-N	0914	/	/	SET-UP						
49 AD LSMUR-S	0914	/	/	SET-UP						
1-9 CAV PKRA	0938	/	/	DID NOT TRAIN DUE TO HEAVY RAINS - LIGHTNING	039	✓	33 ✓	1253	/	Cleared ~~DEPART~~
1-5 CAV DMMUR	1001	/	/	SET-UP					A	
2/12 CAV CCMP	1035	/	/	SET-UP					1100	
1-8 CAV BKMUR	1255	/	/	CLEARING				1632	/	RT TO CLEAR

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY	RUNS NT	NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1/82AV CHComplex	1420	/	/			Set-up						
3/82FA OPPATH	1551	/	/			Set-up						

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
23 CS CCZE	0822	0916	1710	4000-5.56 67PERS	1728	V	38 G	1750		CLEAR
142 Sig PKRB	0900	1018	1957	46PERS 5400-5.56				2016		RT TO CLEAR
301 TFW SCBR	0930	1000	1054	24 BOMBS 4AC 4CREW				1100		DEPARTED
1-8CAV BWMUR	1005			SET-UP					1100	
62 ENG ULS/RLS	1007			25PERS	1053		33 V	1113		CLEAR
2-82 CHMGT	0925	1014	1724	700-5.56 788-7.62 2918-30CAL	33 PERS 1723		38 G	1739		CLEAR
1-9CAV DSAC	1146							1330		DEPARTED without Notice
NCOA HCAT	1256	1337	1421	148-4MM 18 PERS	1440		33 P	1444		CLEAR
301 TFW SCBR	1420	1420	1519	2 Aircraft 2 PERSONS 13 BOMB				1519		DEPARTED
OPJACK	1728	1736	1849	4PERS 6BOMBS				1830		DEPARTED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-8 CAV PHTMRUN										
1-5 CAV BMSC 2										
2-82 FA CCRF	0803	0840	2030	160 PERSON 12 -5.56				2038		RT TO CLEAR
3-82 FA CHMGT	0914				0920		33 V	0935		CLEAR
1-8 CAV BKMUR	0900				1241	NO GO	33 V	1929		RT TO CLEAR
2-12 CAV BWMUR	0309 / 1117	0000	0152	87 PERS 570/7.62 8/120mm				?		NEW UNIT OCCUPIED SEE BELOW
1-8 CAV PKMUR	0319 / 1600	0832 / 0000		62 Pers 210 - 7.62 70 - 108						
2BDE 1CD CCMUR	0315 / 0715	0848		70 Pers 200 - 7.62 150 - 120					1035	250 - 50 CAL
1-3 CAV HMMUR	0317 / 1038	0000	0230	47 Pers UNKNOWN					0600 2100	1000 - 50 CAL
2BDE 1AD BCMUR	0930			SET-UP						UNIT CHANGED CO ON RANGE W/O CALLING.
49 AD LSMUR-N	0322 / 0919			SET-UP						
49 AD LSMUR-S	0322 / 0914			SET-UP					0700	
1-3 CAV DMMUR	0322 / 1001	0847		42 Pers 140 - 7.62 840 - 25mm						
2-12 CAV CC MORTER	0322 / 1035	0803 / 0843	2019	16 pers 23 - 4.2 mm					0700	
1-8 CAV CM Complex	0322 / 1420			SET-UP						
3-82 FA OPPHTM	0322 / 1420	0738		26 Pers						
PKSPORTS	0622	0736	1722	3774 - 3.36 M: 1-223 Civ-8				1722		OIC DEPARTED SGT JONES
1AR DIV LRC	0734		1648	64 PERS	1648		38 G	1656		CLEAR

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RANGE/FP	GCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
(12) C 3/82 ART COM FP231	1458	1458 1533	2021	10 - 155MM 40 PERS				2025		RTO CLEAR
(12) C 3/82 FP233	1502	1502 1547	2021	10 - 155MM 40 PERS				2025		PRESENTZERO RTO CLEAR
(13) FP249	2040	2040		180 Per 80 - 155						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
312 mI PHTACC	0743			10 PERS	1543	✓	38 B	1602	15	Cleared
142 SIG PKRB	0749	0102	1205	4200 5.56 6 pers	1209	✓	38 H	1235	08 1000	UNIT ACCEPTED AS IS
USAG BGPQ	0752	0905	1544	2673 - 9 AM 56 PERS	1545		33 V	1615	0800 1300	CLEAR
115 CAV LRC	0809		1601	15 Per	1601		38 B	1619		CLEAR
DISCOM CCZE	0814	0843	1714	160 7300/5.56	1715		38 B	1807	16	CLEAR
91 Eng CCDemo	0817	1016	1659	C-4/1600 Bangmine 3 1/4 LB TNT 100	1 LB TNT 100 15 LB Shape Charges 14 41 Pin units 100	15 AT DET Cord 18 AM	38 B	1842	0900	RT TO CLEAR
21 FA CHNOC	0820		1348	70 PER	1349		33 V	1411		CLEAR
227 AVN CCRF	0910	0956	2149	45 - Per 5000 - 5.56				2225		RT TO CLEAR
301 ST TF SCBR	0956	0958	1118	4 AC 4 CREW 24 BOMB				1120		DEPARTED
3280 AF CSDF	1229	1346	1943	8 - PERS 159				2121		RT TO CLEAR
301 TFW SCBR	1424	1424	1513	4 AC 4 CREW 24 Bomb				1513		DEPARTED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-8 CAV HTM RUN										
1-5 CAV BMSC 2										
2-82 FA CCRF	0759			0813				0450	08	2333 CLEAR
1-8 CAV BKMUR	0618			1111	1338		53 V 38 G	1442		CLEAR
142 SIG PKRB	0648			4200 5.50 Cupmes	0653		38 F	0759		UNIT ACCEPTED AS IS
1-8 CAV BWMUR	0323 1005	0840	Cant	52 - 120MM 189 - 120mm						1960 - 7.62
1-8 CAV PKMUR	0319 1600	0446 0000	cant	96 - PAO 8000 - 7.62						325 - 50cal 6000 - 50Cal
2BdeICD CCMUR	0315 0715	0933 0000	2254	40 - PAO 800 - 50cal						210 - 120MM 1500 - 7.62
1-5 CAV HTMMUR	0317 1058								0800	15 - 120MM 15 - 4.2mm
2BdeICD BCMUR	0323 0930									
49 AD LSMUR-N	0322 0914	0858	2355	20 - PAO LASER						LAZAR ONLY
49 AD LSMUR-S	0322 0914	0858	1941	20 PERS LASER						
1-5 CAV DMMUR	0322 1001	0849 0000	Cant	89 - PAO 1170-.50mm					07	3250 - 7.62
2-12 CAV CC MORTAR	0322 1035	0757 0921	2022	12 - 4.2in 24PERS						
1-8 CAV RCM COMPLEX	0322 1430	1155 1228	2355	18 PAO 102-4.2mm					130	LAZAR ONLY
3-82 FA QP PHTM	0332 1420	0859 0000	2332	26 - PAO QC						
PKS Portman 15FSB	0639	0133	730	150 M14 3013-5.56 3361V 16in				1745		DEPARTED Sig Gloves
CHMGT	0737	0823	1945	3400 - 50Cal 2409 - 7.62 42 PER				2012		RT TO TRAIN

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-82 FA FP 231										
3-82 FA FP 233										
3-82 FA ✓FP 249	0323 2040	0000	0021	150 Pers 0 - RDS				0931		verified
3-82 303 958 1 FP 211	0931	0955 1033	2041	84 PERS 0						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
91 ENG C.C. DEMO	1415				1415	✓	38 G 33 V	1515		CLEAR
227 AVN C.C.R.F.	0738							0810		[illegible]
3280 AF CS DF	0624				0625	✓	33 P	0652		Clear
49 AD LSMUR-N	0322 0914	0000	2345	20 — Pen 0						
49 AD LSMUR-S	0322 0914	0637	2345	16 — Pen Ø						
1-5 CAV DMMUR	0322 1001	0813 0000	2321	71 — Pen 1250-25mm					07 RC 1830	3490-7.62
1-5 CAV HMMUR	0317 1058	0845	Cont	48 — Pen 1108-25mm					06 RC 16	3600-7.62
2 BDE ICD BCMUR	0323 0930			SET UP					16	
2 BDE ICD CCMUR	0315 0718	0947	Cont	80 — Pen 2100-7.62						158 - 120mm 1100 - 50 Cal.
2-12 CAV CCMP	0322 1035	0755 0841	1726	12 Pen 72 - 4.2						
1-8 CAV PKMUR	0319 1600	0836 0000	1720	24 Pen 480 - 7.62 13 - 120					08	275 - 50 Cal
1-8 CAV BWMUR	0323 1005	0836 0000	Cont	52 - Pen 104 - 120mm						9401-7.62
1-8 CAV C M Complex	0337 1420				0737	✓	33 V	0938		Cleared
3-82 FA OP PHTM	0322 1420	0806	Cont	26 - Pen Ø						
PKSPostman	0638	0738	1702	242 Pen 3922 - 5.56				1702		[illegible]
89 RRMK 19	0647	0802	1625	25 Pen 2628 - 40mm				1712		RTN TO TRAIN 3456
45 ADA CCMCB	0657	0910	1608	42 Pen 2200 - 50 cal 2500 - 7.62 cal		✓	38 D	1635	09	CLEAR
1-9 CAV CHMBT	0709	0746	1941	37 Pen 9939 - 5.56		✓	38 G	1524	13	CLEAR

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RANGE FIRING LOG

DATE [illegible]

0800 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
62EN1 CCRF	0744	0852	2136	192 Pers 15,340 - 5.56				2214	08 11	[illegible]
545MP BGPQ	0748	0914	1357	63 Pers 3650 - 9	1422	✓	38 H	1452	08	CLEAR
142S.9 PKRB	0752	0923	1596	56 Pers 4800 - 5.56	1559	✓	38 G	1614	14	CLEAR
6CAV VGC	0859	0859	1026	Ø Pers	1109	✓	38 V	1116	09 10 11	Cleared
NCOA CHDemo	0900	1352	1618	247 Pers 14 - C4	1637	✓	38 D	1657		CLEAR 40 - SHAPE - 3 ea.
1.9CAV DSAC	0991	1019	1643	28 Pers 630 5.56	1654	✓	38 H	1736		CLEAR
AP 427 CPB	2000	2000								

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RANGE FIRING LOG

ARTY

DATE 25 MAR 93
0000 — 2400

	RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	3-82 FA PK 303458	0324 / 0931			80 Per 155/4 BLHE				1216		Winter Police call
	3-82 FA PK 304502	1220	1220 / 1310	1738	62 Pers 25-155				1741		Good Police
12B	P 231 K 306499	1230	1230 / 1310	1738	65 Pers 25-155				1741		Good Police
13A	3-82 FP 235	1758	1758 / 1835	2110	62 Per 8-155				2121		CPT. Bobbins Carter
13A	3-82 FP 236	1758	1758 / 1835	2110	62 Per 8-155				2121		Incarnation Weeks
12B	3-82 FP 225	2133	2133 / 2219	cont	125 - per 16 - 155mm						

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RANGE FIRING LOG

DATE 26 Mar 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
62 ENG CCRF	0615				0616	✓	33	0705		CLEARED, UNCOMING UNIT ACCEPTED AS IS
49 AD LSMUR-N	0322 0914	0845	2258	16 — 0						
49 AD LSMUR-S	0322 0914	0845	2258	20 - Pers 645 - 50 Cal						500 - 7.62
1-5 CAV DMMUR	0322 1001	0842	2356	39 - Pers 943 - 25 mm					1730	1000 - 7.62
1-5 CAV HMMUR	0317 1058	0842 0000	Cont	72 - Pers 3730 - 7.62						1740 - 25 mm
2 BDE ICD BCMUR	0323 0930			SET-UP					1730	
2 BDE ICD CCMUR	0315 0715	0000	Cont	90 - Pers 130 - 120 mm						1850 - 7.62 1250 - 50 Cal
2-12 Cav CCMP	0322 1035	0755 0825	1714	12 Pers 21 - 4.2				1716		WILL CLEAR WITH MAIN RANGE
1-8 CAV PKMUR	0319 1600	0840	Cont	60 - Pers 157 - 120 mm						1775 - 7.62 500 - 50 Cal
1-8 CAV BWMUR	0323 1005	0842 0000	Cont	88 - Pers 166 - 120 mm						1625 - 7.62 1425 - 50 Cal
3-82 FA OP PHTM	0322 1420	0846 0000	1243	26 PERS		✓	33	1343		CLEAR
89 MP RRM-19	0325 0647	0833	1713	39 Pers 2477 - 40	1747	!	77 5	1926		RTN MON MOTOR [illegible] 38F4347
PKSPORT	0628	0734	1726	151 Pers 2946 - 5.56				1726		DEPART SGT JONES
2-12 CAV CCRF	0705	0847	1557	43 Pers 2440 - 5.56	1622	✓	38 13	1644		ACCEPTED AS IS - CLEAR
52 SIG VGC	0715	0715	1126	400 Pers	1129	(F) ✓	33 33	1205	12	CLEAR
C 1-9 CHMGT	0718	0920	1504	10 Pers 1246 - 7.62	1516	✓	33	1533		CLEAR 3063 - 50 CAL
HHC III CORPS PKRB	0722	0854	1257	20 Pers 5.56		✓	33 V	1239		CLEARED
17 ENG CHBAC	0806	0806	1009	62 Pers	1010	✓	389	1044		CLEARED

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RANGE FIRING LOG

DATE 26 MAR 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
112 AR FP 023	1600	/	/	SET-UP						WILL GO HOT ON SAT AM.
AP 437+3 LP B	1805	1805	1846	6 PER LASER				1846	/	DEPART

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RANGE FIRING LOG

ARTY

DATE 26 MAR. 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-82 FA	0335			125 Pers						OIC
TA 12B FP 225	2133	0000	0748	24 155mm	1252		38 G/B			PSO VERIFIED POLICE
3-82	0326	0757		125 PER						LT ROBBINS
TA 15A FP 211	0757	0822	1240	30 155mm HE	1252		"	1437		SFC CARTER

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RANGE FIRING LOG

(FR Sheet 1 to 88 (G3-G3))

DATE 27 MAR. 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-12 CAV CC MOD PT										
89 MP RR M-19										
49 AD LS MUR-N	0322 0914	0848	Cont	20 - Per 630 - 50 cal						1500 - 7.62
49 AD LS MUR-S	0322 0914	0848	Cont	20 - Po 645 - 50 cal						500 - 7.62
1-5 CAV DM MUR	0322 1001	/	/	CLEARED	/		/	0855	/	CLEARED BY MR ZIRKLE
1-5 CAV HM MUR	0317 1058	0000	Cont	54 - Per 1764 - 25 mm						2700 - 7.62
1-5 CAV BC MUR	0323 0930	0895	Cont	42 - Per 1294 - 25 mm						3150 - 7.62
2 BDE ICD CC MUR	0315 0716	0000	0412	72 PERS 72 - 120 mm 1450 7.62						
1-8 CAV PK MUR	0319 1600	0000	0247	20 - Per 29 - 120 mm	/		/	2044	/	~~[illegible]~~ CLEAR Mr Myers 560 - 7.62
1-8 CAV BW MUR	0323 1005	0000	1944	4 PERS 2 - 120 mm	/		/			
112 AR FP 023	0326 1600	0834	1733	30 PERS 270 - 60 mm	/		/	1938	/	RT TO ~~[illegible]~~ CLEAR
PK SPORTS	0757	0801	1665	64 - Per mil Cal				1665		~~MAJRE~~ FRANKLIN
1-5 CAV CRIT MUR	0807	/	/	SET UP	/		/	1734	/	RT TO TRAIN
A 1-5 CAV PK RA	0906			NOT USED CL BY PARENT UNIT	/	✓ / 36 A	/	1142	/	Cleared

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RANGE FIRING LOG

DATE 28 MAR. 93
0000 — 2400

RANGE/FP	GCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2 - [illegible] A.C. MORT RT										
39 MP FRM-19										
49 AD LSMUR-N	0322 0914	0000	Cont	20 - Pro 630 - 50						1500 - 7.62
49 AD LSMUR-S	0322 0914	0000	Cont	16 — 530 - 50						400 - 7.62
1-8 CAV BWMUR	0323 1005	0832	Cont	64 - Pro 158 - 120						1950 - 7.62 600 - 50 Cal
2 BDE 1CD CCMUR	0315 0715	/	/							
1-5 CAV BCMUR	0323 0930	0000	Cont	78 - Pro 1480 - 25 MM					23	
1-5 CAV HMMUR	0317 1058	0000	Cont	60 - Pro 1625 - 25 MM					20	2225 - 7.62
1-5 CAV CRITMUR	0737			SET UP				1551		2212 - 7.62 RT TO TRAIN
4-112 AR FP 023	0847					✓	38 A	1033	/	Cleared
PKS Portman	0754	0807	1606	50 Pro mit Cal				173	/	Sgt. Franklin DAUZAT

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RANGE FIRING LOG

DATE 27 MAR. 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-12 CAV CC MOM PT										
89 MP RR M-19										
49 AD LS MUR-N	0322 0914	0848	cont	20 - PEO 630 - 50 Cal						1500 - 7.62
49 AD LS MUR-S	0322 0914	0848	cont	20 - PO 645 - 50 Cal						500 - 7.62
1-5 CAV DM MUR	0322 1001	/	/	CLEARED	/		/	0855	/	CLEARED BY MR ZIRKLE
1-5 CAV HM MUR	0317 1058	0000	Cont	54 - PEO 1764 - 25 mm						2400 - 7.62
1-5 CAV BC MUR	0323 0930	0845	Cont	42 - PEO 1294 - 25 mm						3150 - 7.62
2 BDE ICD CC MUR	0315 0715	0000	0412	72 PERS 72 - 120 mm 1450 - 7.62						
1-8 CAV PK MUR	0319 1600	0000	0247	20 - PEO 29 - 120 mm	/		/	2044	/	[illegible] CLEAR MR MYERS 560 - 7.62
1-8 CAV BW MUR	0323 1005	0000	1944	4 PERS 2 - 120 mm	/		/			
1/2 AR FP 023	0336 1600	0834	1733	30 PERS 270 - 60 mm	/		/	1938	/	RT TO CLEAR
PK SPORTS	0757	0801	1605	64 - PEO mil Cal				1605		MAIRE FRANKLIN
1-5 CAV CRIT MUR	0807	/	/	SET UP	/		/	1734	/	RT TO TRAIN
A 1-5 CAV PK RA	0806			NOT USED CX BY PARENT UNIT	/	✓ 36 P	/	1142	/	Cleared

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RANGE FIRING LOG

(FR Form 1 to AR 385-63)

DATE 29 MAR 93
0000- 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-7 CAV CHMGT	1401			NO AMMO FOR TRAINING	1430		38 D	1455		CLEAR
1-8 CAV CCMP	1351			SET-UP					23	ACCEPTED AS IS.
29 MAR RRMK-17	1358				1640	✓	33 V	1711		Cleared
312 MI PHTCC	1442		1617	8 pers				1617		will [illegible] TRAIN
31 ADA ELIMOUT	2121			UNIT INCLUDED STATUS WITH OBCS WHEN [illegible] RHAN IS SAFE						

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RANGE FIRING LOG

DATE 29 MAR 93
0600 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-1CAV MATT										NEW UNIT ACCEPTED AS IS - SEE BELOW.
1-5 CAV HOLLAND	0755	/	/		0827	NO GO	53 V	0936	/	WILL RTN TO CLR THIS DATE 31 MAR 93
49 AD LE MUR-N	0822 0914	0834 RANGE	2223	16 Pers 600 - 7.62 500 - 50cal						
49 AD LE MUR-S	0822 0914	0834 0000	2225	20 Pers 35 - 105						
1-9 CAV RU MUR	0823 1003	0000	0624	64 Pers 858 - 7.62 99 - 120	/			1634	09 /	CLEAR MYERS
2 BDE HQ CC MUR	0815 0715	/	/	SET UP						
1-5 CAV RC MUR	0823 0931	0815 0000		57 Pers 2600 - 7.62 864 - 25mm						
1-5 CAV HMMUR	0817 1658	0834 0000	1417	39 Pers 600 - 7.62 417 - 25MM					04 22	WARNING ISSUED.
1-5 CAV CRITMUR	/	/	/	LINE NOT USED	SEE		BELOW	—		
PK SPORT 17 ENG	0642	0733	1735	8 Pers 1387 - 556				1731	/	DEPUTIED CIC - JONES
CC MGS	0705	0942	1653	3 Pers 7000 - 7.62	1658			1542	/	Cleared
2AD Band PKRB	0654	1007	1541	45 Pers 3594 - 556	1601	V	33 V	1623	/	Cleared
1/2 CAV PKPG	0728	0757	1346	45 Pers 6000 9MM	1254	V	38 B	1315	/	CLEARED
2-3 ADA BWPA	0738	0859	2007	18 Pers 1100 - 9MM				2027	/	[illegible]
2-B 17 ENG PK-LRC	0740	/	/	18 Pers	1436	V	33 V	1501	0830 09 /	CLEAR
4 ENG CCRF	0752	0932	1959	20 Pers 2300 - 5.56				2003	/	Sister unit from Battle Position Range RTN TO TRAIL
1-5 CAV CRITMUR	0825	/	/	SET-UP	/			2050	/	RT TO TRAIN
3 PSG CC GL	0547	1440	1709	24 Pers 300 - 40MM	1752	V	33 V	1752	/	Cleared — AMMO: 300 - 38V -

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RANGE FIRING LOG

DATE 30 MAR. 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2-2 ADA DWPA	0628	/	/		0646	✓	38 H	0700	/	CLEARED
49 AD LSMUR-H	0322 0914	0840	2313	20 Pers 400 - 50CAL 120 - 105						1400 - 7.62
49 AD LSMUR-S	0322 0914	0840	2313	20 PERS 20 - 105						
2 BDE. 1CD CCMUR	0315 0715	0849	2349	60 Pers 1717 - 7.62 143 - 120						420 - 50CAL
1-5 CAV. BCMUR	0323 0930	0838		42 Pers 2300 - 7.62 994 - 25						
1-5 CAV. HMMUR	0317 1058	/	/	Clearing				1635	03 /	[illegible]
1-8 CAV. CCMP	0329 1351	0800 0835	1513	15 - pers 22 - 4.2M						
SETUP 1-5 CAV. CRITMUR	0329 0810	/	/	SET UP						
8 ENG. CCRF	0329 0741	0850	2125	220 - Pers 9044 - 5.56				2133	15 18 /	[illegible]
PKSPORT	0648	0739	1724	CIV - 10 MIL - 164 5.56 - 2,762				1724	/	DEPARTED.
546 PSC CCMGB	0650	0913	1706	38 - Pers 8908 - 7.62	1738	✓	38 D	1734	/	Cleared
522 MI CCMGA	0707	1040	1652	90 - Pers 6075 - 5.56				1719	/	Will Return to TRAIN
62 ENG. PKHG/C	0744	0908	1212	20 PERS 20 MISAY	1147	✓	33 P	1303	/	1 miss Fire Cleared
17 ENG. CHMGT	0746	1054	2332	25 Pers 10200 - 50				2400	09 15	
HHB DIVARTY CCGL	0802	0845	1058	14 PERS. 231 40MM	1145	✓	38 G	1214	/	231 40MM TPT 33 INSPECT CLEARED
89 MP VGC	0808	0905	1038	22 PERS.	1111	✓	38 H	1128	/	CLEARED
89 MP LEA FMLFW	0844	0919	1326	8 PERS. 300 9MM 50 7.62MM	1338	✓	38 B	1401	/	100 12 GA SHOTGUN Cleared
III CORPS ELIMOUT	0329 2121			NOT ON BOARD				?		FOR RADIO checks when CADRE DEPART

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RANGE FIRING LOG

DATE 30 MAR. 93
0000 - 2400

RANGE/FP	GCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
* CMS 1-5 Cav. CM Complex	0848	~~0993~~ 1020	1443	18 Pers 52 - 4.2						
21. FA RM M72	0839	1028	1131	20 20 35mm	1133	✓	23 P	1147		CLEARED
401 MP RR MK 19	1207			SET UP					22	
602 TAW OP JACK	1736			[illegible] Cancelled				1909		DEPARTED
~~596 BOMB~~ ~~PD 94~~										
8 Eng C Demo	1843			SET-UP						

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RANGE FIRING LOG

DATE 31 MAR 93
0000-2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3AG CCRF	0749	0836	2200	68 - Per 7643-5.56						
17 ENG RWPA	0750	0843	1533	57 Pers 4338-9MM	1536	✓	33	1544		Cleared
1/5 CAV CSDF	0759	0838	1726	75-Pers 51-25MM 1500-7.62/103-5.56				1804		Will Return to TRAIN *
PHTM CCF	0930		0955	6 PERS TRAD	1015	✓	33 L	1020		CLEARED
2-58 AVN PKDA	1229		1548	57-Pers	1548	✓	33	1553		Cleared
2/58 AVN VGC	1213	1329	1636	74 Pers	1634	✓	33 D	1644		Cleared
15 MI ULS	1255		1526	21 Pers	1526	✓	33	1530		Cleared
2-12 CAV CMN	1341	/	/							
47 EOD EOD	1424	1451	1509	4 Pers Assorted Duds				1510		DEPARTED
1/5 CAV FP100	1929	1929 2002	Cont	9 - A 5 - 4.2						

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RANGE FIRING LOG

DATE 31 MAR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5 CAV HMMUR	1434					✓	Cleared By Mr. Clemens	1540		By Mr. Clemens. CLEARED
B 8 ENG CCRF	0621				0659	✓	38 H	0746		CLEARED
49 AD LSMUR-N	0322 / 0914	0834	Cont	20 - Pev 130 - 105mm						1500 - 7.62 500 - 50 Cal
49 AD LSMUR-S	0322 / 0914	0834	2350	16 - Pev 15 - 105mm						
2 Bde ICD CCMUR	0315 / 0725	0905	Cont	56 - Pev 78 - 120mm					00	2000 - 7.62 600 - 50C
1-5 CAV BCMUR	0323 / 0430	0926 / 0000	Cont	30 - Pev 586 - 25mm						1325 - 7.62
1-8 CAV CCMP	0329 / 1351	0757 / 0834	2331	19 - Pev 17 - 4.2mm						
1-5 CAV CRITMUR	0329 / 0810	1007	Cont	79 - Pev 2580 - 25mm						3376 - 5.56
1-5 CAV CM ~~[illegible]~~	0330 / 0848	0942 / 1014	1507	18 - Pers 26 - 4.2mm						
401 MP RR M-19	0330 / 1207	0821	1356	25 PERS 1405 - 40mm	1617	✓	38 A	1642	15 16	Cleared - 3075 - 40MM TP
8 ENG C DEMO	0330 / 1843	1129	1646	19 - Pers 28 - CM 2 - M16 AT / 2 - M19 AT / 2 - M21 AT / 300 - DECORD					1000	
17 ENG CHMGT	0650				0700	✓	38 G	0722		CLEAR
HHB 31 Bde ELIMOUT	0010									NO FM
PK SPORT	0658	0734	1730	36 mil 9 cir 2307 - 5.56 Pev				1734		DEPARTS SST JONES
522 MI CCMGA	0706	0842	1601	71 - Pev 5171 - 5.56	1639	✓	38 D	1706		Cleared
1ST MED FMLFW	0711	0807	2059	120 - Pers 7670				2111		[illegible]
545 MP CHMGT	0737	0907	1728	33 - Pers 7200 - 7.62	1729	✓	38 D	1742		Cleared
17 ENG CCZE	0739	0939	2211	89 - Pev 7210 - 5.56				2213	15 16	

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RANGE FIRING LOG

DATE 1 - APR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1 MED TRAILER	0764	/	/		1737	✓	33 V	0828	/	CLEAR
17 ENG LAZR	0743	/	/		0812 0857	✓	33 V / 33 V	1137	/	CLEAR
49 AD LSMUR-N	0732 0814	0000	Cont	16 - Pers 118 - 165						1300 - 7.62. 500 - 50 Cal
49 AD LSMUR-S	0732 0814	/	/							
1-5 CAV CRITMUR	0729 0810	0000	Cont	72 - Pers 1160 - 25mm						6800 - 5.56 4000 - 7.62
2 BDE TED CAMUR	0815 0735	0000	Cont	90 - Pers 125 - 120mm						1600 - 7.62 800 - 50 Cal
1-5 CAV BCMUR	0728 0830	0000	0846	12 Pers 30 (25mm TP 22's (Ball)		CLEAR AT	MR WILSON BC	MAINT	1346 DEPART	CLEAR MR WILSON
1-8 CAV CP MP	0729 1351	0752 0822	1647	15 Pers 30 - 4.2						
2-12 CAV CAIN	0731 1341	0734 0834	2147	25 - Pers 140 - 4.2mm						
1-5 CAV CMS	0830 0948	1005 1045	1834	18 Pers 65 - 4.2						TRAIN AM
8 ENG CDEMO	0730 1843	1834	1654	17 Pers 34 - C4				1430	/	CLEAR AM 1.5 - TNT
3 AG CCRF	0731 0749	0839	2142	57 - Pers 5830 - 5.56 11 Pers				2215	08 /	
1-8 CAV FP 100	0731 1928	0000	0500	14 - 4.2mm				0500	04 08	WILL RECOCCUP IN PM
1-5 CAV CSDF	0832	0852	1707	36 Pers 23mm 60 7.62 700				1212	/	536 SWORDS RTN TO TRAIN
2(S) CHEM CHMAT	1620	1642	1806	36 Pers 7800 - 7.62				1837	16 /	TRAIN AM
PKSPOST	0649	0722	1722	14 Pers 1554 - 5.56				1722	/	DEPART ST JUNQUIST
17 ENG CCG/TPT	0729	1824	1245	27 Pers 471 40mm 18 Pers	1356	✓	33 V	1401	/	CLEAR 475 TPT 33V
DRC LRC	0907	/	/							

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RANGE FIRING LOG

(FR Supp 1 to AR 385-63)

DATE 1 APR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY - NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3BC BGPG	1201	1254	1709	24 Pan 1900 9 am	1729	✓	38 F	1736		Cleared
LLUM 1-5 CAV	2023	2023		9 - PCU						
INLY FP 100		2105		18 - 42 LL						

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
					0730	✓	38 H	0811		CLEAR
	0620				0638	✓	38 F 37 F	0839	07	CLEARED
49 AD LSMUR-N	0332 0914	0000	2044	4 - Pev 200 - 7.62				0755		SGM HALLMARK CLEAR
49 AD LSMUR-S	0332 0914							0755		SGM HALLMARK CLEAR
1-5 CAV CRITMUR	0329 0810	0000		62 - Pev 1100 - 25 mm					16	4000 — 7.62 6300 - 5.56 mm 100 - 50 CAL.
2BDE ICD CCMUR	0315 0725	0000	0954	16 Per 23 - 120 mm 380 7.62					05	
1-8 CAV CCMP	0329 1351			WILL CLEAR	0702			0820		WILL BE CLEARED WITH RANGE
2-12 CAV CMN	0331 1341				1004	✓	38 G	1050	05	CLEARED
ILLUM ONLY 1-5 CAV FP 100	0401 2023	2010 2047		10 - Pev 18 - 4.2 ILL					2030	
DRC LRC	0401 0907			120 Pers						
1-5 CAV CSDF	0824	0827	1530	68 300 - 7.62 276 - 5.56				1550		TRAIN AM 20 - 25 mm 40 - 25 mm
181 CHEM CHMGT	0735	0807	1144	17 Pers 6400 7.62	1159	✓	38 H	1231		CLEARED
1-5 CAV CMS						✓	38 G	1050		CLEAR W/ NORTH CLEAR
565 SUPPLY PKRB	0601	0740	2037	120 Pers 8500 - 7.62				2107	1930	CLEAR AM
TX AM ROTC CCZE	0632	0806	1527	137 Pers 2470 - 5.56				1535		RTN TO TRAIN
PKSPORT	0645	0735	1725	92 Pers 1157 - 5.52				1725		REPAIR WNQUIST
DRC ROTC CCRF	0816	1001	1753	160 Per 6400 - 5.52				1817	14	TRAIN AM
7/6 CAV HMMUR	1010								14	

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RANGE/FP	OCC	HOT	COLD	RUNS DY. NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1/23 MARINES DSAC	0700							1230		WILL BE RETURNING TO BDE
312 MI ACCC	1310			CLEAR DLY	1346		33 Y	1356		CLEARED
4-112 AR FP 023	1308									
7-6 CAV FARRP 2W	1509			REFUEL/REARM SET-UP						
6-112 FP 026	1404									

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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
[illegible]	0711				0731	✓	38 H	0808		CLEAR
1-5 CAV CRITMUR	0329 0810	0000		36 Pers 1840 25mm						2900 7.62 7425 5.56
2 BDE ICD CCMUR	0315 0725			6					06 19	
7-6 CAV HMMUR	0402 1010			TOC LOCATION						REVERT TO DM/HM COMPLEX
7-6 CAV FARP-2W	0402 1509									
DRC LRC	0401 0907		1700	17 PER	1724		33 S	1856	11 12	CLEARED
1-5 CAV FP 100	0401 2023	0000		7 Pers 10 4.2				0428		RTN TO CLEAR 5 APR 93
4-112 FP 023	0402 1308	0703 0733	1558	130 - 4.2 293 - 60mm 31 PERS	1623		38 H	1706		CLEARED
6-112 FP-026	0402 1904	1024 1054	1657	15 PER 130 4.2	1823		38 H	1916		CLEARED
1-5 CAV CSDF	0827	1028	2106	50 Pers 40 5.56 20-25mm 106-7.62				2137		RT TO CLEAR
TX AM CCZE	0700	0820	1506	148 PER 267 - 5.56	1521		38 H	1533		CLEAR
DRC CCRF	0710	0921	1805	104 PER 6440 - 5.56	1816		33 S	1910	1400 1600	CLEAR
1-23 MAR DSAC	0534	0727	1535	30 PER 1640 - 5.56 150 - 60mm 200 - 7.62	1607		38 H	1836	09 17	CLEAR
4/133 FA OPPHTM	0741	1120	1716	38 Pers	1732		38 H	1903	17	CLEAR
PKSPORTS	0752	0830	1550	30 PER MIX				1530		SGT FAVOR
7-6 CAV BGPQ	0806	0948	1540	33 PER 2500 9MM	1542		38 H	1624	13 168	CLEAR
7-6 CAV PKRB	0814	1155	1714	27 PER 2650 5.56				?	17	DEPARTED without calling
7-6 CAV D/HM COMPLEX	1038	1038 1100	1651	10 PERS 550 - 30mm 40 - Rockets				1659		N/C STATIS Moved ALL personnel TO HMMUR

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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5CAV CSDF										
1-5CAV FP100										
1-5CAV CRITMUR	0329 / 0810	0918	1459	39 Pers 1000 ~ 7.62 672 - 25m				1705		RTN TO CLEAR ON MON
2 BDE ICD CCMUR	0315 / 0735			CLEARING				1332		RTN TO CLEAR C.
7-6 CAV HMMUR	0402 / 1010			CLEARING				1500		CLEAR HUNDLEY
7-6 CAV FARRP 2 W	0402 / 1509			CLEARING		✓	79 A	1503		CLEARED BY MR HUNDLEY
7-6 CAV DM/HMCOMPLEX	0403 / 1038	0911	1056	4 Personel 240 30mm 24 Rockets 1324	CLEARED		BY	1500	HMMUR - MR HUNDLEY DMMUR - MR DIXON	
PKSPORT	0748	0807	1600	22 Pers MIX				1600		DEPART MR FAVOR
7/6 CAV PKRB	0845						38 B	0908		CLEAR

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RANGE/FF	OCC	HOT	COLD	DY RUNS NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-5 CAV CRITMUR	0922						75 JACKSON	1635		CLEAR BY MR. JACKSON
1-5 CAV CSDE										
1-5 CAV EP 100	0727							1635	15	RTN TO CLEAR AM.
2BDE ICD CCMUR								1639		RTN TO CLEAR
HHMC PRAB	0623	0753	2150	42 - Pers 7120 - 5.56				2151	09	RTN TO CLEAR
3/41 INF CSMCA	0628	0913	2157	107 - Pers 3569 - 5.56				2236	15	RTN TO CLEAR
4940 CSMWR South	0634			SET-UP						
4940 CSMWR North	0634			SET-UP						
Range Control PASSPMOD	0736	0736	1830	184 Pers 2152 - 5.56				1830		DEPART
1/9 CAV BGPG	0647	0757	1231	Pers - 102 Ammo - 4100		✓	33 J	1312		CLEARED
1BE 2AD 3BNPA	0714	1035	2117	53 Pers 5000 - 9mm				2214		RTN TO CLEAR
C2/12 CCRF	0724	0845	2217	130 - Pers 8630 - 5.56				2236		
1/3 FA RRM72	0804	0958	1112	#Pers 37 # of RD 252 40mm	121	✓	38 J	1144	09 10	CLEARED
17 ENG BKMUR	0829	1117	1727	50 Pers 331 - 7.62						
2/82 CHMGT	0855	0912	1551	40 Pers 3720 - 7.62 2600 - 50 CAL	155		36 C	1612		CLEAR
17 ENG BGZ	0809	0953	2121	36 Pers 5350 - 5.56				2136		TRTN AM
1-5 CAV BMSC-2	0927				0927			0945		DEPARTED SIMMONS (CLEARED)
410 MP RRMK19	1052			SET-UP						

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										Cleared by MR. Jackson (Crit)
										CLEARED BY MR. JACKSON (CRIT)
	0845			CLEARING					10	RTN TO CLEAR
	0737							0806		5.7 Sig TOOK AS IS
	0748							0820		NEW UNIT ACCEPT RN AS IS.
	0733				0809	✓	38 H	0831		cleared
	0753				0825	✓	38 H	0905		Cleared
49 AD LSMUR-N	0405 0634	0852		28 - Per LASER						
49 AD LSMUR-S	0405 0634	0852		28 - Per LASER						
17 ENG BKMUR	0405 0829	0847	1540	18 PERS 927 - 7.62					11 (14)	OIC WARNED
410 MP RR MK-19	0405 1052	0910	1814	47 Pers 3300 - 40						5,310 TPT 40MM Inspec = 77
502 LS CCMGA	0621	0803	1739	273 Pers 10920 - 5.56		✓	38 C	1813		ACCEPTED AS IS. CLEAR
57 Sig PKRB	0645	0836	2228	142 - 11983 - 5.56				2227		RTN TO CLEAR
3/41 CCMGB	0654	0915	2139	56 - Per 4974 - 5.56				2210	07 (1910)	OIC WARNED
169 CS BWPB	0700	0804	1217	No of Per 55 No of Rounds 3300 9mm	1217	✓	38 C	1227		Cleared
PKSPT	0700	0735	1738	297 PERS 4010 - 5.56				1738		Departed
17 Eng BGZ	0711	0736	2101	19 Pers 2940 - 5.56				2117		RTN TO CLEAR.
2/12 CHMGT	0725	0848	2111	29 Pers 9600 - 50				2140		RTN TO CLEAR

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57 Sig ECGL	0745	0842	1402	32 Pers 510 - 40 TPT		✓	38 C	1444		600 TPT 40mm 38 I / 33P - OK
17 Eng CCDEMO	0807	1003	1815	45 Pers 100 - TNT 5 - SHAPE				2002		CLEAR AM 72 - CAPS 213 - C4
40 chem RBM72	0935	1252	1531	11 PER 374 40 mm		✓	38 C	1652	10 11 15	OIC WARNED CLEAR
301 TFW SCB	1000			AIRCRAFT DID NOT SHOW				1100		DEPART
166 AR CMC	1019			SET-UP						
190 MAIT. HARMOUT	1030									
2/5 CAV PKHG/C	1057	1537	1631	40 - PERS 40 - GRENADES		✓	38 C	1719		CLEAR
1/5 CAV SCRF	1154	1257	1823	150 Pers 6000 - 5.5			38 C	1852		CLEAR
301 TFW SCBR	1435	1443	1526	4 Pers 12 BOMBS				1527		DEPART
2-5 CAV PKHG D/A	1057			40 Pers FUZES		✓	38 C	1719		CLEAR
596 WING OP JACK	1716			1 Pers				1915		GOOD POLICE DEPART
596 TA94	1810	1838	1913	8 PERS 3 BOMBS				1915		DEPART

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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0745									CLEARED
	0911				0929	✓	38 G	0951		CLEARED
	0648				0658	✓	38 G	0722		CLEARED
	1108				1149	✓	38 H	1233		CLEARED
49 AD LSMUR-N	0405 0634	0933		28 PER LASER						
49 AD LSMUR-S	0405 0634	0933		28 PER						
17 ENG BKMUR	0405 0828	0927	2327	19 Pers 8800 7.62					8	
4/10 MP RRM-19	0405 1053	0949	814	36 PER 2376 40mm				2039		RNT TO CLEAR
1-66 AR CMC	0406 1018	1117	0387	19 Pers 230 107						
190 MT HARMOUT	0406 1030			51 Pers						
1/66 AR BWPA	0618	0833	1313	2500-4MM 30 PERS	1314		38 H	1327		CLEAR
3/41 FA CCMGA	0647	0901	2206	57 Pers 4607 6.56					20	
PKSPT	0712	0734	1732	134 MIL PERS 2144 5.56				1732		DEPARTED
1/8 CAV CHMGT	0723	0902	1431	22 PER 2,100 7.62				1451	8	RETURN TO TRAIN.
16 AR PKRB	0755							0758		Signed for DYS IS Rebecca Mtr Turkey Due To weather
91 ENG BAPO	0914	0912	1603	68 PER 5050 9MM	1632	✓	38 C	1645		CLEARED

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RANGE/FP	OCC	HOT	COLD	RUNS DY. NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-3FA OP-Pltm	0936	1126		12 Pers						
3280 Airtime CSDF	1332	1405	2039	5 5100 SCAL				2055		RETURN TO CLEAR
301TFW SCBR	1430	1430	1513	4 HR CRAFT 4 CRAW'S 13 ADK 35				1513		DEPARTED
NCOA PHTM Run	1435			5 Pers						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2BDE ICD CCMUR	0835							1703	10	RTN TO CLEAR
502 LS CCMGB										
410MP RRM-19	0750					✓	33 H	1228		Cleared
3280 TTS CSDF	0706				0707	✓	32 V	0809		Cleared
49AD LSMUR-N	0405 0634	0800 0000	2400	28 Pers 1391 50 2800 7.62						CONTINUE
49AD LSMUR-S	0405 0634	0800 0000	2400	28 Pers 900 50 Cal 700 7.62						CONTINUE
17ENG BKHMUR	0405 0829	1033	2135	15 Pers 9700 50Cal				2322	04 22	will Rtn on Monday.
1-66AR CMC	0406 1018	0937 0905	1500	18 - Pen 120-42mm	1630	✓	38 C	1702		CLEAR
190MT HARMOUT	0406 1030					✓	79	1432		CLEAR
3-41INF CCMGA	0407 0647	0807	2143	98 - pen 5247-5.56				2212	06	RTN To clear
NCOA PHTM RUN	0407 1435		2400	6 Pers						CONTINUE
1-3 FA OP PHTM	0407 0036	0854	1405	11 - pen	1405	✓	38 C	1450	00 01	Bing only
EOD	0805		1039					1039		Departed
1-8CAV CHMGT	0642	0822	2141	30 - pen 3400-50cal				2211		2000 - 7.62 RTN To CLEAR
180 TRANS CCZE	0650	0916	1650	155 - pen 9300 - 5.56	1706	✓	38 C	1719		CLEAR
PKSPortman	0656	0736	1732	334 - pen 5353-5.56				1732		Sgt. Linquistest
1-9CAV BMSC-2	0659	0843	2400	64 Pers 2600 7.62					10	CONTINUE
2-82FA CCRF	0704	0810	2149	208 Pers 13559 5.56				3202	07 14	RTN TO CLEAR

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1-12CAV BMSC-1	0711	0826	1237	(7.62) 210Rd 35 Per		✓	9 A	1255		Cleared
3FIN CCGL	0721	0918	1322	276/40mm 20 PERS	1505	✓	38 I	1516	09	276/40mm 7PT
1-66AK PKRB	0724	0811	1218	1961/5.56 30 PER	1218	✓	38 H	1247		CLEAR
2-12CAV BWPA	0734	0812	1215	4153-9MM 69 PERS	1215	✓	33 V	1233		Cleared
2-158AV VGC	0735	0735	1544	170 - Per	1548	✓	38 A	1600	08 09	CLEAR
312MI LRC	0737	0737	1222	56 PER	1222	✓	23 V	1243		Cleared
3FIN RRM72	0844	1228	1355	14 - Per 149 - 40mm	1402	✓	38 H	1434		CLEARED
21FA BGPO	1035	1056	1417	40 - Per 950 - 9mm	1418	✓	38 J	1435		CLEARED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2BDE ICD CCMUR	0820							1758	1300	CLEARED BY WALSCH
502 CCMGB										
3-41 CCMGA								*		2Chem accept Range as is
1-8CAV CHMGT	0634							0682		8Eng Accept Range as is.
2-82 FA CCRF	0747							0750		2/5CAV accept as is
17ENG BRKHMUR	1049				1122	✓	33	1207		Cleared
1/9AD LSMUR-N	0405 0634	0809		28 Pers 1606 50Cal 2860 7.62				2400		CONTINUE
1/9AD LSMUR-S	0405 0634	0809		28 Pers 21 105mm				2400		CONTINUE
NCOA PHTM RUN	0407 1435			18 Pers				2400		CONTINUE
1-9 CAV BMSC-2	0408 0659					9 C	✓	0854		Cleared
2Chem CCMGA	0640	0812	1658	160 - Pev 7600 - 5.56	1725	38 C	✓	1739	12	Accept Range as is
2-S CCRF	0643	0809	1511	201 - Pev 7900 - 5.56	1535	38 B	✓	1601	14	Accept Range as is
8Eng CHMGT	0652	0807	1829	73 17892 50cal	1903	33 V	✓	1919	07	Accept Range as is
2/5CAV CCGL	0655	0813	1149	20 Per 248 RSSPT	1153	38 C	✓	1208	09	387TPT 40mm (385)
PKS Portman	0702	0734	1733	127 - Pev 1471 - 5.56				1733		Sgt. Jones
2/5 BCPQ	0726	0810	1410	81 - Pev 3000 - 9mm	1410	38 C	✓	1425		CLEARED

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
502 CCMGB										CLEARED IN MARCH BOOK - NOT LISTED IN APRIL BOOK
49 AD LSMUR-N	0405 0634	0802		28 Pers 165 105 mm 1300 50 cal						2700 7.62 CONTINUE
49 AD LSMUR-S	0405 0634	0802		28 Pers 30 105 mm 700 50 Cal						CONTINUE
NCOA PHTM RUN	0407 1435			19 Pers m 1 LBS						CONTINUE
WBSC PKRA	0724	0857	1237	14 Pers 814 Rd		✓	39 H	1338	07	Cleared
PKS Portman	0744	0804	1611	4 civ mix cal				1611		DEPARTED Sgt. Jones

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49 AD LSMUR-N	0405 0634	0000 0837	2400	28 Pers 185 105 2100 7162					RC ~~10~~ /	700 SPCAL
49 AD LSMUR-S	0405 0634	0000 ~~0837~~		NONE					/	CONTINUE
NCOA PHTM RUN	0407 1435	/	/	15 Pers MILES LASER					/	CONTINUE
FK Sportsman	0749	0815	1602	31 CIV mixed				1602	/	DEPARTED 5 gb. Jones

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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
NCOA PHTM RUN	0407 1433			MILES 12 PERS				2400	/	CONTINUED
V9 CAV BN MUR	0824	1857	2400	LASER 16 PERS				2400	/	CONTINUED
A 442 LASER PT L	2214	2214	2216	LASER 2 PERS				2216	/	DEPARTED
LASER PT H	2255	2253	2314	LASER 4 Pers				2314	/	DEPARTED

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NCOA	0907					✓	0945 9	0800		CLEARED
PHTM RUN	1435									
1-9CAV	0913			14 Pers		✓				DONNA PERKINS
BWMUR	0824	0000	0225	Ø				1047	03	CLEARED
11235 ADA										
TRADMUR	0638			SET UP						
B 15MI										
CCDEMO	0802				1403	✓	33 H			
504 MI										
PKHQ	0855				1188	✓	33	1123		CLEARED
502 FSB							38			
CHRAC	0827				0827	✓	G	1054		CLEARED
A/9 CAV										
PKMUR	0941				0941	✓	33	1045		CLEARED
B 3ENG										
CUD	0949				0949	✓	33 H	1123		CLEARED
										RECON ONLY

Drawing Clean-up

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DATE 17 APR 93
0800 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
1-233 ADA	0416			83 PERS 18 CHAPP 16 REDEYE						60 BATS
TRAPMUR	0638	0724	0828	C2 Pers 1044 - 5.56						
PKSPORTSMAN	0741	0805	1558	38 Pers 3250 - 5.56		✓	38 E	1338	✓	DEPART
2 CHOM CCRF	0758	0926	1526	40m - 7.62mm Pers 19	1335	✓	38A	1606	✓	CLEAR
123 MAR CCMG13	0847	0906	1315	SET-UP				1420	✓	CLEARED
CAT B HAMMER	0854	/	/	13 Pers 95 - 4.2				1015	✓	RETURN FOR TRAINING 18 APR
NCOA CMDN	1041	1315	1726					1744	✓	WILL CLEAR MONDAY ✓

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RANGE FIRING LOG

(FR Suppl 1 to AR 385-63)

DATE 18 APR 93
0000 - 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
NCMA CMM										CLEAR MON
1-23 ADA TRAFFIC	0416 0638	/	/					1825	0811	CLEARED BY 73A.
CATB DMMUR	1032	1438	1723	2 Per 21 - 2.75 240 - 50 cal				1816	/	DEPART
PK SPORMAN	0756	0606	1602	43 SZU 1 mil				1602	/	CLEARED SGT LINQUIST
FARP2W	1131	/	/	RE FUEL REARM				1815	/	DEPART

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RANGE FIRING LOG

(FH Form 1 to AR 381-63)

DATE 19 APR 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
NCOA [illegible]	0840	/	/	/	0903	✓	38 H	0943	/	CLEARED
ATB DMMUR	1559	1630	2135	5 - per 560 - 50 cal				2146	/	RTN TO TNG 28 - 2.75 RKS
ATB FARRP 2W	1229	/	/	RE FUEL RE ARM				2210	/	RTN TO TNG
8-ENG C-DEMO	0541			SET UP					07 16	
89 MP BWPA	0614	0713	2316	124 - per 10300 - 9mm				2316	13	
502 FSB RR M-72	0655	0922	1015	12 - per 75 - 40mm	1026	✓	38 H	1034	09 /	CLEARED
PKSPORT	0707	0733	1700	240 PERS 4200 - 5.56				1700	/	DEPART SSG JONES
502 MP PKRB	0732	0835	1227	53 - per 900 - 5.56	1242	✓	38 J	1258	12 /	CLEARED
1-12 CAV FMLFW	0735	0902	1532	22 Pers 335 - 9mm	1537	✓	38 I	1555	08 /	CLEARED
3-6 CAV PKHG/C	0743	0908	1109	8 - per 4 - M-18 cm	1124	✓	38 J	1144	09 /	CLEARED
3-8 CAV CCRF	0748	0859	2222	170 - per 11,760 - 5.56				2230		
3-82 FA OP JACK	0752	0856	2330	63 - per LASER					09	
1-12 CAV CCGL	0755	0915	1633	17 Pers 300 - 40 TPT			38 I		12	AMMO VERFIED by 38 I
163 MI ULS	0818	/	/	14 Pers Ø	1116	✓	38 E	1142	/	CLEARED
3-66 AR BWPB	0759	0910	1446	32 Pers 1470 9mm				1458	10 /	RTN TO TRAIN
6 CAV BGPQ	0832	0949	1353	58 2400 - 9mm	1410	✓	33 C	1427	/	CLEARED
1-12 CA CCZE	0834	1014	1506	13 Pers 520 - 5.56	1528	✓	38 C	1542	/	CLEARED
49 AD LSMUR-NG	0859	/	/	SET-UP						

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(Fn Supp 1 to AR 385-63)

DATE 19 APR. 93

RANGE/FP	OCC	HOT	COLD	RUNS DY. NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3-66 AR CC/CA	0855	0944	1418	4 Pers 700 - 7.62		✓	33 ✓	1447		CLEAR
2-2 ADA TRAPMUR	0901	/	/	SET UP					11 / 12 1830	CALLED 550 31 ADA-RPT RANGE VIOLATION SAFETY ON MISSED RADIO CHECKS.
312 MI PHTM CC	0924	/	/	35 Pers ∅				1540		RTN TO TRAIN AM
1-9 CAV PHTM RUN	1305	/	/	MILES LASER						

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RANGE FIRING LOG

(FA Supp 1 to AR 101-63)

DATE 20 APR 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	0706				0731	✓	33 V	0740		CLEARED
	0812							0866		502 MP ACCEPT RANGE AS IS
49 AD LSMUR CPY	0839 0419			SET UP						
2-2 ADA TRAP MUR	0901 0419			SET UP						
8 ENG C-DEMO	0541 0419	0758	1804	40 Pers 600 - 50CAL 1980 - 5.56						200 LB - TNT
3-82 FA OP JACK	0752 0419	0703		46 - PER LASER					01	
1-9 CAV PHTM RUN	1305 0419	1529		MILES LASER					08	
ATB DM MUR	1402	1425	2400	4 pers 1500 - 50CAL 40 - 2.75 RKT				2400	23	will Rtn to TRAIN
ATB FARP-2W	1217			RE-ARM RE FUEL						OIL WARNED OF PER VEHICLES ON FARP.
3-66 AR BWPB	0750	0835		DOUBLE ENTRY SEE PAGE 2 FOR INFO						
3/2 MI PHTM CC	0714			25 Pers	1519	✓	33 H	1577		CLEAR
411 MP PKRB	0630	0732	2318	98 - Per 12500 - 5.56				2326	08 09 10	
PKSPORT	0639	0734	1700	8 Per mix				1746		DEPART
3/8 CAV BGPQ	0710	0837	1632	57 Pers 2000 9 mm		✓	33 H	1716	17	CLEAR
2/12 CAV BWMUB	0724			MILES LASER				1805		RTN TO TRAIN
57 SC PKHG/C	0736	1028	1232	3 MRAI 30 Per	1332	✓	33 H	1249	07	CLEARED
502 MP LLRF	0742	0850	2232	52 - Per 7224 - 5.56				2239	11	
Discom BWPA	0747	0859	1404	50 Per 2000 - 9 mm	1420	✓	33 H	1437	08	CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3/66 AR BWPB	0750	0900	1607	94 Pers 5280 - 9 mm		✓	33 H	1642		CLEARED
2/12 PKMUR	0751			45 Pers MILES LASER				1801		RETURN TO TRAIN
1/12 CAV CCZE	0754	0819	1639	75 Pers 2300 - 5.56		✓	33 H	1659	14 15	CLEAR
62 ENG RRM42	0756	0822	1010	8 - Pers 154 - 40mm	1011		38 H	1034		CLEARED
91 ENG CHMGIT	0802	1156	1830	30 Pers 9000 - 50 CAL				1914		RTN TO CLEAR
4/6 CAV CCGL	0805	0918	1121	Per. Trained 28 40mm Rounds Fired 181	1140	F	33 H	1232	10	181 Rounds TPT
545 MP RRMK19	0852			SET UP						
3/8 CCDemo										
1-5 CAV CCMGA	0911	0952	1554	50 Pers 3500 - 5.56		✓	33 H	1634	13	CLEAR
301 Tact SCBR	0957	1001	1100	6 Pers 12 Bombs				1100		DEPART
301 SCBR	1439	1439	1519	6 Pers 6 Bombs				1519		DEPART
TA 94 FW 21 OP JACK	1755	1838	1924	8 Pers 27 - 500 LBS				1924		B-52 OPERATIONS
ATB CH HELFIRE	1830	1904	1942	6 Pers 2 HELFIRE				1944		DEPART

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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3/82 FA	1219	0703								
FTX44 PK122608	1419	0745								
TR-42 PK 136610	1015	1220 1345	1508	45 Pers 45 - 155				1508	/	GCSO Police
TR-42 PK 132582	1125	1230 1142	Cont	96 48 - 155mm						
TR-42 PK 134578	1125	1215 1142	Cont	130 38 - 155mm						
TR-42 PK 170604	1245	1319 1245	Cont	— 0 - 155mm						
TR-42 PK 176606	1245	1319 1245	Cont	— 0 - 155mm						
TR-42 PK 134586	1545	1513 1546	Cont	91 41 - 155mm						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
										1/3 accepted as is At 0639
	0831				0831	✓	33 H	0851		3/6 Accepted as is
	0654				0719	✓	33 L	0732		Cleared
49 AD LSMUR CAV	0839 0419	?	2400	41 Pers Miles Laser						CONTINUE
2-2 ADA TRAPMUR	0901 0419			SET UP					11 (21)	NOTIFIED 2-2 ADA SDO. WARNING ISSUED TO RN.
8 ENG C-DEMO	0541 0419	?	1631	40 Pers 600 - 50 CAL 1500 - 5.56						CONTINUE
3-82 OP JACK	0752 0419	0000		2 GLID LASER						CONTINUE
54 MP RRM-19	0852 0420	0811	1507	29 Pers 2448 - 40				1652		WILL CLEAR AM
1-9 CAV PHTM RUN	1305 0419			57 Pers Miles Laser					10	CONTINUE
ATB FARP-2W	1217 0419	1251		RG FUEL RG ARM				1947		RTN TO CLEAR
ATB DMMUR	1419	1447	1830	5 PER 1320 50 CAL				1847		RTN TO CLEAR 93, 2.75 RKT
2-12 CAV BWMUR	0827	0913	1826	64 Pers Miles Laser				1917		RTN TO TRAIN
2-12 PKMUR	—	—	—	NOT USED — SEE BELOW						
1/5 INF CCRF	0639	0809	1741	223 Pers 18655 - 5.56		✓	33 V	1815		accepted as is CLEAR
1/3 FA CCMGB	0642	0841	1212	107 Pers 8879 5.56				2001		RTN TO TRAIN
PKSPORT	0657	0733	1830	266 PERS 4662 - 5.56				1830		DEPART
169 MT CCZE	0659	0879	2212	115 Pers 10550 - 5.56				2227		Will Return to Clear
HHC/Discom PKRB	0737	0830	1515	38 Pers 2900 - 5.56	1526	✓	33 V	1552		CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
628 TC RBM-72	0720	0915	1033	Per Trans 10 MBMM 4pt Ammo 182	1049	✓	39 H	1135	10	CLEAR
544 MP VGRC	0725		1325	100 per	1447	✓	33 V	1439		CLEAR
142 Sig CCMGA	0721	0804	1635	33 Per 5500 - 366	1641	✓	33 V	1710		CLEAR
HHC 3CAV BGPQ	0842	0955	1546	36 Pers 1643-9		✓	33 H	1609	12	CLEAR
502 MP BWPA	0820	1055	1228	68 Pers MMBO 9 mm				2248	11	NEAR MISS FIRE
A 1/13 CAV BWPB	0813	0892	1107	Per. Trained 33 R.O. Rived 19 FS 9 mm	1107	✓	38 G	1120		CLEARED RTN TO TRAIN
2/12 CAV PKMWR	0516	0913	1830	C/S/A MILES LASER				1926		
C 1/5/19 CCGL	0817	0918	1207	Per Trans 19 MBS PLUS 1 MM 40 PER TP 1 MM	1411	✓	33 H	1438		NO AMMO ISSUED CLEAR
3/6 CAV CHMGT	0838	1004	1607	40 Pers 6000 - 7162	1621	F ✓	33 V 33 V	1744	14	CLEAR
30 1st MEF SCBR	0858	0856	1035	12 A-MBS 4 AIR CRAFT 4 PURSUNEL				1035		CLEAR
2 CHEM ALS	1221			13 Pers		✓	33 H	1540		CLEAR
301 TFW SCBR	1420	1420	1523	14 Pers 12 60 MMS				1523		DEPART
1-9 CAV BCMUR	1439			STOP - UP					29 21	WARNING ISSUED CONTINUE
A 92 FA MRL 009	1659	NO (✓)		SET-UP						CONTINUE

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RANGE FIRING LOG

DATE 22 APRIL 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
532 FIP KWPA	0703				0721	✓	33 H	0830		Cleared
515 MP RRM-19	0429				0432	✓	33 H	1217		CLEARED
ATB EARRP-HL	1318						✓	1329		MONTH 72A
ATB DMMUR	1050						✓	1252		MAINTNC- CLEARED
169 MT ECZE	0445				0708	✓	33 H	0804		Cleared
49 AD LSMUR	0419 1839	0812 0000		32 Pers Laser						
2-2 ADA TRPPMUR	0419 0901	0806	1223	70 Pers 15 Stinger	1526	✓	73 A	1607	06	CLEARED
8 ENG C DEMO	0419 1541	0815	1821	42 — Per 207 — 5.56 70 Pcs	1821	( )	33 V	2038		220MM RL 800 — 50 CAL
3-82 FA OP JACK	0419 0752	0000	1343	LASER	1432	✓	33 N	1516		CLEARED
1-9 CAV PHTM RUN	0419 1325			0 Pers NOT USING					04 07 23	
1-9 CAV BCMUR	0421 1439	0930		42 Pers 90 — 5.5mm 7.62						
A 92 FA MLRS DIO	0421 1634	0829	2313	21 Pcs 24 M77						
2-12 CAV PKMUR	0940	0943	1823	60 — Per miles				2007		
2-12 CAV BWMUR	0944	0946	1820	60 miles				1823		
1-3 FA CCMGR	0744	0806	2334	152 Pers 130 — 5.56				2304		RTN TO TRAIN
PKS Platoon 1-227 AVN	0640	0714	1729	233+18 3796 SD				1739		Shallow Water
BB-PD 169 MT	0652	0744	1417	80 — Per 5280 — 9mm	1442	✓	33	1449		CLEARED
LRC	0457		1215	55 Pers	1215	✓	33	1237	07	Cleared

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
L6 CCRF	0709	0811	1707	175 — Per 12,000 - 5.56	1726		33 V	1746	15 16	CLEARED
1/2 CAV BWPB	0715	0752	0917	35 Per 1550 Rd 9mm	0934	✓	33 H	0951	09	Cleared
1-6CAV PKRA	0726	0850	1316	36 PERS. 1680 5.56	1334	✓	33 V	1358		CLEAR
3/2 MI CHMGT	0853	1017	2143	28 — Per 11145 - 7.62				2214		RTN - Clear
3FIN Hargmarsh	0755	0756	1101	16 Per		✓		1139		Halloworth
3-8CAV PKHC/C	0848	0933	1207	20 HC 12 Claymore	1222	✓	33 H	1234		CLEARED
A+B TRAPMUR	1647			No fire due to equip missing (Cable)				1812		RTN TO TNG

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RANGE FIRING LOG

(Fr Supt 1 to AR 385-63)

DATE 23 APR 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
2 ENG C DEMO	0817				1108		33V 38G	1150		CLEAR
A 92 FA MLRS	0421 1639				FIRST HGHT 1656	(F) ✓	33 V 38 C	1745	05 10 11	DEPARTED w/out Calling
2-12 CAV PKMUR	1719				1825	✓		1823		Mr Crabtree
2-12 CAV BWMUR	1719				1825	✓		1823		Mr Crabtree
312 MI CHMGT	0640				0659	✓	38 G	0716		CLEAR
49 AD LSMUR	0419 0839	0805	2326	20 Pers 650 Stand 500 7.62 16 Pers (S)						CONTINUE
D 1-9 CAV PHTM RUN	0419 1305	0809	2400	12 Pers					18	CONTINUE
1-9 CAV BCMUR	0421 1439	0828	2400	42 Pers 750 7.62						CONTINUE
1-3 FA CCMGB	0723	0856	2240	137 Pers 9851 5.56				2322	17	RTN TO TRAIN
ATB TRAPMUR	1359			NO FIRE	1400		33 A	1410		CLEARED
ENG BD PHTMCC	0624		0744	65 PER	0745	✓	38 G	0809	08	CLEAR
PKSPORTS	0640	0712	1727	177 - Per 2761 - 5.56				1727		DEPARTED
4 MMC CCMGA	0645	0858	1649	39 PER 4400 - 7.62		✓	33	1710	07	CLEARED
553 CS PKRB	0658	0841	2209	120 Pers 9300 5.56					17	[illegible]
1/12 CAV BWPB	0709	0838	1120	33 PER 1935 9MM	1140	✓	38 G	1150		CLEAR
3/6 CAV BGPQ	0729	0839	1520	90 - per 5160 - 9MM	1539	✓	33 ✓	1619		Cleared
4/6 CAV CHMGT	0743	0843	1727	64 - per 19,000 - 7.62				1757		RTN to TNG
57 SIG RR72	0758	0806	0939	130 40MM 25 PERS	0949	✓	33 ✓	1023		CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
6 CAV CCRF	0822	0914	1239	60 PERS 3600 556	1255	✓	33 V	1319	13	CLEAR
215 FB CC 75	1329	1405	1611	42 PER 1682 556	1612	✓	33	1653		CLEAR

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
[illegible]	0714				0719	✓	38 G	0755		CLEARED
49AD LSMUR N	0419 / 0839	0837		20 Pers 2130 50 Cal 1500 7.62						
1-9CAV PHTM RUN	0419 / 1305			SET UP ~~[illegible]~~					22 23	
1-9 CAV BCMUR	0421 / 1439	0958		48 Pers 1090 25mm 2900 7.62					*	
1-3FA CCMGB	0726	0909	1633	Per 89 5.56 7.079	1702	✓	38 G	1719	08	CLEARED
4-6CAV CHMGT	0812	0903	1413	20 Pers 5550-7.62	1415	✓	38 G	1433		CLEARED
8 124CAV CM COMPLEX	0152	0929 / 0821		46 Pers 420 4.2					06 07 2358	
AMAR PKRA	0656	0845	1442	106 Pers 4925. 5.56					21	RTN TO TRAIN
AMAR BWPB	0739	0827	1632	RD. 80 Per. 13 9mm	1636	✓	38 G	1643		CLEARED
1169 MT BGZ	0752	0846	1139	44 PERS 3958 5.56	1140	✓	38 G	1208		CLEARED
PKSPORTS	0807	0807	1611	84 Pers 504-5.56				1612		CLEARED
ROTC HMOUT	0838			48 Per MOUT TNG.					15	
8EN TRAPMUR	0923			SET-UP						
SAM HOUS UNIV CCRF	1051	1319	1502	24 Pers 1350-5.56	1502	✓	33 G	1540		CLEARED
LSMUR S	0419 / 0839	0837		16 Pers 520 50 Cal 400 7.62						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
49AD LSMUR	0419 / 1839	0816 0000	2400	32 Pers 1676 50Cal 1600 7.62						
1-9 CAV PHTM RUN	0419 / 1305			SET UP MILES LASER					04 06	
1-9 CAV BCMUR	0421 / 1434			SET-UP					05	
B 124 CAV CM COMPLEX	0424 / 0152	0000	0020	46 Pers Ø 4.2	0845	✓	38 G	0950	03 04 05 08	CLEARED
H MARINES PKRA	0424 / 1657	0706	1139	106 PERS. 7,725 5.56	1143	✓	38 E	1339	00 12	Cleared
ROTC HARMOUT	0424 / 1838		0830	40 Pers				1000	02 03	CLEARED MK. HINKLE
8 ENG TRAPMUR	0424 / 1923	0828	1816	14 Pers 7.62 - 1200 165 - 76 RDS						755 - 50
PKSPORT	0709	[illegible]	1609	53 Pers MIX				1609		OIC SGT. FRANKLIN
3/8 CAV. BWMUR	0828		1215	4 Pers. LASE				1215		RTN TO TRAIN Benoit
401 MP RR M-19	1429			SET UP						

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RANGE/FP	OCC	HOT	COLD	RUNS DY NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
49 AD LSMUR	04 19 0831	0000	2343	36 - Per 21 - 105mm						1006 - 50 Cal 1200 - 7.62
1-9 CAV PHTM RUN	04 19 1305	0936	Cont	Ø					11 (16)	OIC WARNING-RADIO CKS
1-9 CAV BCMUR	04 21 1439	0804	Cont	56 - Per 1420 - 25mm						2350 - 7.62
8 ENG TRAPMUR	04 24 0923	0857	1822	36 Per 1009 50 2101 - 7.62					2000	
401 MP RR M-19	04 25 1429	0706	1829	55 Pers 3996 - 40mm						Verified by Hm maint.
20 ENG CCGL	0659	0832	1243	32 - Per 570 - 40mm	1429	✓	33 H	1453		Verified by 33V - 570 Rds
PKSORT	0703	0707	1730	299 MSL 5297 5.56 6 CIV.				1740		SGT Jones
1-3 FA BWPA	0721	0905	1500	20 Per 1600 - 9mm	1512	✓	33 V	1546		CLEARED
3-66 AR PKRB	0736	0911	1554	45 Pers 422 - 5.56				1616	08	RTN TO TRAIN
41 ENG BGZ	0753	1200	1722	12 P 501 - 7.62					10	
1-12 BGPQ	0809	0845	1603	52 Pers 2950 - 9mm		✓	38 J	1623		CLEARED
15 FB CCRF	0840	0919	2133	194 Pers 2920 - 5.56				2149		RTN TO CLEAR
1-82 FA CCMGA	0849	0935	2131	28 PER 18860 5.56				2158		RNT TO CLEAR
57 SIG CCZE	0848	0938	2243	150 Pers 14520 5.56				2300		[illegible]
3-6 CAV RR-M72	0926	1041	1123	8 - Per 48 - 40mm	1131	✓	38 C	1237		CLEAR
1-12 Cav JMMUR	0953			SET-UP						
20 ENG CHMGT	1045	1251	2106	16 Pers 6100 - 50 CAL				2120	11	RTN TO TRAIN

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RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
18 [illegible]	0738						33 V	0800		3/12 TOOK AS ID
[illegible]	0757				0838	✓	38 I	0906		cleared
[illegible]	0705				0728	✓	33 V	0742		cleared
49 AD LSMUR	0419 0839	0854	Cant	36 - Pers 117 - 105mm					22	1500 - 7.62 1000 - 50 Cal
3 ENG TRAPMUR	0424 0923	0854	1734	32 Pers 2943 7.62					07	35 165 1052 - 50cm
1-9 CAV RCMUR	0421 1439	000	Cant	64 - Pers 660 - 25mm						1000 - 7.62
1-9 CAV PHTM RUN	0419 1515	000	Cant						08	
1-13 JMMUR	0426 0953									
Hal MP RRM-19	0425 1429	0736	1229	18 Pers Manned 1044 RD 40mm GL				1440 1229		Return to Clear 28MAY93 AM
91 ENG BCZ	0426 0752	1057	1705	24 Pers 902 - 7.62					08	
20 ENG CHMCT	0757	0816	2118	28 Pers 14000 - 7.62 105 Pers				2134	19	RTN TO TRAIN
8-66 AR PKRB	0822	0949	1512	4200 - 5.56 29 Pers				1520		RTN TO TRAIN
PKSPT	0651	0704	1711	316 - 5.56				1711		DEPART Sgt Jones
1/82 CCGL	0754	0844	1024	Per Trained 14 13 RD	1104	✓	33 H	1124		33V CLEARED 13 RD TOT
16 Sig CCZE	0755	0848	2261	198 - Pers 16606 - 5.56				2233	15	RTN TO MAIN
3/12 CCRF	0800	0806	2312	68 - Pers 8640 - 5.56				2318		ACCEPTED AS IS 33V
36 MED FMLFW	0821	0855	2035	58 Pers 5200 - 5.56				2051		RTN TO CLEAR
1/82 BWPA	0836	0922	1617	22 Pers 1750 - 9mm	1620	✓	33 H	1635	16	CLEAR

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RANGE FIRING LOG

(FH Supt 1 to AR 385-63)

DATE 27 APR 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
522 MI PKHQ/C	0912	0927	1133	40 PERS 500 RDS	1147	✓	33 H	1204		CLEARED
301 TF SCB	0952	0958	1039	4 CREWS 24 Bombs						CLEARED
20 Eng CDEMØ	1033			SET-UP						
2/8 CAV CMC	1128			SET-UP					22	
163 AB MT ULS	1206			25 Pers		✓	33 H	1558	12	CLEARED
C1/82 RRM72	1256	1313	1408	26 Pers 113 - 40	1416	✓	38 H	1452		CLEARED
301 TFW SCBR	1421	1530	1514	4 Pers 14 Bomb				1514		DEPART

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RANGE FIRING LOG

DATE 28 APR. 93
0000 — 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY. NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3/12 AI CCRF	0713				0733	✓	38 G	0801		Cleared
16 GR CCZE	0741				0759	✓	38 C	0821		CLEARED
36 MED FMLFW	0736				0754			0810		unit accepted as is.
[illegible] KRMAT	1041				1441	✓	33 H	1508		CLEAR
49 AD LSMUR	0419 / 0839	0000		31 Pers 124 105 MM 1200 7.62	800 50 CAL					
1-9 CAV BCMUR	0421 / 1439	0000	2127	42 Pers 280 - 7.62 1120 - 25						
8 ENG TRAPMUR	0424 / 0923	0823	1755	48 Pers 1555 - 50 3813 - 7.62						
1-12 CAV JMMUR	0426 / 0953	1342	1850	27 Pers 309 40 1587 - 50						46 - 165
1-9 CAV PHTM RUN	0419 / 1305	0000		ØPERS					22 23	
20 ENG C-DEMO	0427 / 1033	0825	2029	36 Pers [illegible]	815 LP S/C	2 DAN	[illegible]	10 AM 15 [illegible]	[illegible]	OIC/RSO DEPARTED W/OUT CALLING FOR PERM CEASE FIRE.
2/8 CAV CMC	0427 / 1128	0909	2220	21 Pers 220 - 4.2						
91 ENG BG-Z	0426 / 0752	0818	1331	22 Pers 925 # of RPS 7.62	1545	✓	33 H			CLEARED
20 ENG CHMGT	0738	0852	2121	25 Pers 11 000 - 50 CAL				2141		RTN TO CLEAR
3-66 AR PKRB	0815	0903	1517	98 Pers 4950 - 5.56				1517		RTN TO TRAIN
802 J PK SPORTS	0648	1130	1727	109 Pers 1390 - 5.56				1727		DEPART SGT. Linguish
555 ENG CCRF	0806	0900	1633	127 Pers 7700 - 5.56		✓	38 G	1658	10	CLEARED
HHC 2ND BWPA	0813	0925	1122	Per. Trained 32 RD. Fired 2600 9MM	1129	✓	38 C	1142		CLEARED
31 ADA FMLFW	0817	0925	2148	16 Pers 1050 - 5.56				2204		ACCEPTED AS IS. RTN TO CLEAR

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RANGE FIRING LOG

DATE 28 APR 93
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RANGE/FP	OCC	HOT	COLD	RUNS DY. NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
17 ENG BMSC-1	0830			SET-UP						
3280 AF CSDF	1414	1455	2025	6 PAX 6000 - 50CAL				2035	/	RTN TO CLEAR
ICD HARMONY	1621	/	/	SET UP					22	

RANGE FIRING LOG

DATE 29 APRIL 93
0000 – 2400

RANGE/FP	OCC	HOT	COLD	RUNS DY · NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
3280 [illegible]	0658	/	/		0659		33 H	0732	/	CLEARED
[illegible]	0811	/	/					0815	/	1/82 FH ACCEPTS CHMGT "AS IS".
[illegible]	0735	/	/		0824	✓	33 H	0851	/	CLEARED
49 AD LSMUR	0419 / 0839	0849	2304	16 Pers 111 - 120 MM 1200 7.62					/	CONTINUE 800 50cal
1-9 CAV BCMUR	0421 / 1439	0915	2400	21 Pers 25 300 7.62 1250					/	CONTINUE
8 ENG TRAPMUR	0424 / 0923	/	/		1339 1516	✓	73 E 73 A	1619	/	CLEARED
1-12 CAV JMMUR	0426 / 0953	0838	2222	27 Pers 50cal 3812 40mm 522					/	CONTINUE
1-9 CAV PHTM RUN	0419 / 1305			39 Pers					/	CONTINUE
20 ENG C-DEMO	0427 / 1033	0930	1400	25 - Per 18 - 40 lb SC	11 - M2 84 - GLK	mines TNT		1654	/	12 - 15 Lb SC 1 - M15 mine 1 - BL KITS
2-8 CAV CMC	0427 / 1128	0706 / 0745	0855	30 Pers 210 4.2" HE 30 4.2" ILL.	0916	✓	33 H	1037	/	CLEARED
17 ENG BMSC 1	0428 / 0830								/	CONTINUE
1 CD HARMCUT	0428 / 1621			NO TRAIN					02 /	CONTINUE
3-66 AR PKRB	0919	/	/		0930	✓	33	0953	/	CLEARED
4-6 CAV BWPA	0535	0748	1141	76 PERS 4650 9MM	1152	✓	33 H	1217	06 12 /	CLEARED
BGPQ	0623	0852	1349	65 - Per 2743 - 9mm	1422	✓	38	1443	/	CLEARED
PK SPORT	0624	0708	1728	239 - Per 3914 - 5.56				1730	/	departed
91 ENG CCRF	0643	0807	2301	137 Per 8000 5.56				2337	/	[illegible]
1/82 FH CHMGT	0710	0822	2339	45 Pers 7698 50cal 9000 7.62					/	[illegible]

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RANGE FIRING LOG

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91 ENG. SLMCIL	0712	0842	1737	58 - PERS 16 - 165mm	1700	✓	13 A	1913	17	119 - ROAD
1/9 CAV. CCCL	0743	0858	1112	22 PERS. 300 40mm	1159	✓	33 H	1384		100 40MM TPT 33H CLEARED
49 TRANS. ALS	0816	1130	1151	45 PERS	1151	✓	33 H	1218		CLEARED
3 SIG. BDE. CC2E	0850	1032	2216	46 Pers 5240 5.56				2303	13	
180 TRANS VCC	0852	0901	1105	80 PERS	1188	✓	33 H	1157		CLEARED
MTK. PT. JMMIUL	1037	3049	3215	19 Pers 30 107mm				2305		
AP 436 LASER L	2136	2154	2159	2 Pers				2159		DEPARTED
AP 28543 LASER B	3201	3201	3326	6 Pers				3326		

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RANGE FIRING LOG

DATE 30 APRIL 93
0000 - 2400

	RANGE/FP	OCC	HOT	COLD	RUNS DY / NT NO. OF PERS.	INSPECTION REQUESTED	INSPECTED	INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
	[illegible]	0849				0847	✓	33 E	1036		CLEARED
	[illegible]	0650				0737	✓	38C	0750		CLEARED ACCEPTED AS LS GAINING UNIT
	[illegible]	0649							0819		GAINING UNIT ACCEPTED AS LS
	[illegible]	0744				0838	✓	38 E	0905		CLEARED
	[illegible]	0652				0803	✓	38	0900		CLEARED
	49AD	0411							1111	04 05	DEPARTED
Clear	LSMUR	0834									
NO FIRING	1-9 CAV	0421	0842		48 PERS 1230 5.5mm						
	BCMUR	1439	1800	2400	7.62 1600						
	1-12 CAV	0426									
Clear	JMMUR	0953				1030	✓	38 C	1205		CLEARED
	1-9 CAV	0419						9 C	1615	14	
Clear	PHTM RUN	1305									CLEARED
	17 ENG	0428									
Clear	BMSC 1	0830				0905	✓	9A	0938		CLEARED
	1 CD	0428									
	HARMONY	1621									
					72 - PERS						
	PK SPORT	0610	0703	1730	835 - 5.56				1730		JONES
	2-8 CAV				11,426 7.62						
	CCMGA	0642	0807	1222	27 PERS	1235	✓	33 ✓	1248		CLEARED
	44 CHEM	0753			42 PER						
	CCMGB		0946	1639	5800 - 50 CAL	1646	✓	33 ✓	1725		CLEAR
	1-9 CAV				150 - PERS						
	KCRF	0737	0840	1505	5565 - 5.56				1604		CLEAN
	312 MI				17 Pers						
	CHMGT	0819	0937	2210	605 - 5.56				2243		
	182				10800 .50 CAL						
	LRC	0940	0940	1424	30 PER				1425		RNT TO TRAIN MONDAY
	1/6 CAV										
	FARP 2W	1305			REFUEL						

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RANGE FIRING LOG

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RANGE/FP	OCC	HOT	COLD	RUNS DY - NT / NO. OF PERS.	INSPECTION REQUESTED	INSPECTION INSPECTED	INSPECTION INSPECTOR	DEP	RADIO CHECKS MISSED	REMARKS
CATB TRAPMUR	1429	1643 / 1715	1759	5 - PEN 2 - STINGER		✓	73 A	1844	14	CLEARED
123 MARINES CMN	2240			SETUP						

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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
TTY (202) 225–6852

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BERNARD SANDERS, VERMONT,
INDEPENDENT

August 8, 2000

Mr. Henry L. Hinton, Jr.
Assistant Comptroller General
National Security and International Affairs Division
General Accounting Office, Room 4035
441 G Street, NW
Washington, DC 20548

Dear Mr. Hinton:

Last fall the Committee on Government Reform received and reviewed a copy of the *Report to the Secretary of Defense, the Attorney General, and the Secretary of the Treasury, DEPARTMENT OF DEFENSE Military Assistance Provided at the Branch Davidian Incident, August 1999* (GAO/NSIAD/OSI-99-133).

On November 30, 1999 staff representatives of the Committee on Government Reform met with Ms. Carol Schuster and Ms. Melissa McDowell of your staff to discuss the report and review the supporting documents. The meeting was very productive. Based upon those discussions, the Committee identified certain supporting documents that were relevant to the Committee's continuing inquiry of the Waco incident and requested that copies be provided.

After receipt of the GAO's supporting documents, my staff requested the Department of Defense (DOD) to explain the purported delivery of 250 high explosive (HE) rounds to agents of the Federal Bureau of Investigation (FBI) at Ft. Hood during the Waco standoff. Representatives within the DOD Office of General Counsel indicated they were inquiring into the matter. On August 2, 2000 the Committee received correspondence and associated documents discussing the results of DOD's inquiry into this matter. I have attached a copy of this material.

I request that you review the results of the DOD inquiry and inform the Committee regarding what impact, if any, this information has concerning the findings and opinions expressed within your earlier report regarding military assistance provided to law enforcement agencies at Waco. I further request that you respond back not later than August 21, 2000 to facilitate the Committee's timely resolution of this issue.



Mr. Thomas Bowman, Senior Counsel, Committee on Government Reform, is my point of contact regarding this issue and he may be reached at (202) 225-5074.

Sincerely,

Dan Burton
Chairman

cc: The Honorable Henry Waxman
Ranking Member

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BERNARD SANDERS, VERMONT,
INDEPENDENT

August 8, 2000

The Honorable Louis J. Freeh
Director
Federal Bureau of Investigation
935 Pennsylvania Aveenue NW
Washington, DC 20535

Dear Director Freeh:

Last fall the Committee on Government Reform received and reviewed a copy of the *Report to the Secretary of Defense, the Attorney General, and the Secretary of the Treasury, DEPARTMENT OF DEFENSE Military Assistance Provided at the Branch Davidian Incident, August 1999* (GAO/NSIAD/OSI-99-133).

After receipt of the GAO's supporting documents, my staff requested the Department of Defense (DOD) to explain the purported delivery of 250 high explosive (HE) rounds to agents of the Federal Bureau of Investigation (FBI) at Ft. Hood during the Waco standoff. Representatives within the DOD Office of General Counsel indicated they were inquiring into the matter. On August 2, 2000 the Committee received correspondence and associated documents discussing the results of DOD's inquiry into this matter. I have attached a copy of this material.

Within the DOD material it is asserted that the FBI's Office of General Counsel informed DOD that the FBI does not have any documents or information, other than a computerized spreadsheet, indicating that the FBI requested or received HE rounds in connection with the Branch Davidian operation. DOD goes on to indicate they are unable to make a definitive determination as to whether the HE rounds were provided to the FBI.

I request that you review the results of the DOD inquiry and inform the Committee in writing whether the FBI received any HE rounds from any munitions source within DOD in connection with the Branch Davidian operation. I further request that you respond back not later than August 21, 2000 to facilitate the Committee's timely resolution of this issue.



Mr. Thomas Bowman, Senior Counsel, Committee on Government Reform, is my point of contact regarding this issue and he may be reached at (202) 225-5074.

Sincerely,

Dan Burton
Chairman

cc: The Honorable Henry Waxman
Ranking Member

GAO
Accountability • Integrity • Reliability

United States General Accounting Office
Washington, DC 20548

National Security and
International Affairs Division

B-286114

August 21, 2000

The Honorable Dan Burton
Chairman, Committee on
Government Reform
House of Representatives

Subject: Department of Defense: Military Assistance During the Branch Davidian Incident

Dear Chairman Burton:

As you requested, we have reviewed the July 26, 2000, Department of Defense (DOD) response to your inquiry regarding the Army's delivery of 250 rounds of high explosive ammunition to agents of the FBI during their standoff with the Branch Davidians at Waco, Texas, in 1993. As you know, we issued a report on the military assistance provided to law enforcement agencies at Waco[1]. That report dealt with the requirements for authorizing military support to the Bureau of Alcohol, Tobacco, and Firearms and the Federal Bureau of Investigation (FBI) as well as the type, costs, and reimbursements of the military support that was provided. One of the items we identified in our report as being provided to the FBI was 250 rounds of high explosive, 40mm grenade launcher ammunition.

Specifically, you asked DOD to explain the purported delivery of these high explosive rounds. In your letter to us, you asked whether we would change any of the findings or opinions expressed in our August 1999 report based on DOD's response. To respond to your inquiry, we reviewed DOD's response in relation to relevant documents gathered during the course of our earlier review.

RESULTS OF OUR ANALYSIS

From our review of DOD's response to your inquiry and related documents, we concluded that our August 26, 1999 report remains an accurate reflection of our findings and does not need to be modified. The relevant findings in our August report were that (1) the ammunition in question qualified as military support for a civilian

[1] *Department of Defense: Military Assistance Provided at the Branch Davidian Incident (GAO/NSIAD/OSI-99-133, Aug. 26, 1999).*

EXHIBIT 121

agency and the Army should be reimbursed as required by the Economy Act and (2) the Army was not reimbursed by the FBI for the 40mm grenade launcher ammunition (200 practice rounds, 50 illumination rounds, and 250 high explosive rounds). Nothing in DOD's response to you indicated that DOD had any information to refute our report. In addition to this overall conclusion, we would like to offer the following clarifying comments on two aspects of DOD's response to your inquiry: (1) whether the high explosive ammunition was, in fact, provided to the FBI and (2) whether it was fired at the ranges at Fort Hood, Texas, when the FBI was present.

On the first point, DOD said that it had not been able to definitively determine whether the high explosive rounds were provided to the FBI. This finding was based on individuals' recollections of what occurred rather than on official records or personal notes. While we cannot conclusively prove that the Army provided high explosive ammunition to the FBI, the Army's official documentation indicates that it may have been provided. For example:

- Although DOD referred to the July 30, 1993 Memorandum of Understanding between the Army and the FBI as "a preliminary effort to create a master list of items provided to the FBI", it nonetheless used the list as the basis for establishing the cost of items to be reimbursed, including the cost of ammunition. Also, the accompanying July 23, 1993, Army memorandum transmitting this document for approval stated that among other costs to be reimbursed was "ammunition ($5K)."[2] This cost was also referenced in the attachment to the agreement. The Commanding General, Garrison Commander, and Chief of Staff at Fort Hood and several other Army officials concurredwith the Memorandum of Understanding, as noted in the transmittal memo.

- On January 23, 1996, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict provided the Chairman of the Subcommittee on National Security, International Affairs and Criminal Justice, House Committee on Government Reform, with "more detailed information about DOD support to the Bureau of Alcohol, Tobacco, and Firearms and the FBI." This documentation noted that ammunition costing $5,066 was provided to the FBI. While the Assistant Secretary listed only the practice and illumination rounds as being provided by the Army, the $5,066 cost provided in the documentation agreed with the total amount in the Memorandum of Agreement for all three types of ammunition to include the high explosive rounds.

On the second point, DOD said that the Department had no record that any high explosive ammunition was fired at any of the ranges at Fort Hood during the period the FBI was present. What physically happened to the military items provided to the FBI was not the focus of our earlier report. However, we were told that the term consumed, noted next to the ammunition items in documentation provided to us during our review, was used to indicate that the materials that the Army provided to the FBI were no longer in its inventory. The notation did not necessarily mean that

[2] The actual amount for the 40mm ammunition was $5,066, which the Army accounted for as follows: 50 illumination rounds, $1,242; 200 target practice rounds, $346; and 250 high explosive rounds, $3,478.

the ammunition was fired at the Fort Hood ranges. Also, a notation on another document shows that the FBI was granted permission to take away any unused ammunition from the firing range. In commenting on our draft report, DOD officials said that it is unlikely that the FBI would have fired the high explosive rounds at the Fort Hood range since doing so would have damaged the range.

In closing, we see no need to change any of the information in our report on the military assistance provided during the Branch Davidian incident. As noted in our 1999 report, DOD officials indicated that they accepted our findings on the matters as presented. Moreover, the Department of Justice and the FBI indicated that they agreed with the substance of our report.

DOD officials reviewed a draft of this report and concurred with its contents. We have incorporated their comments where appropriate. We conducted our work in August 2000 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send a copy of this report to the Honorable Henry Waxman, Ranking Member, House Committee on Government Reform. If you have any questions, please call me on 202-512-5140. Key contributors to this report were Bill Solis, Leo Jessup, and Melissa McDowell.

Sincerely yours,

Carol R Schuster

Carol R. Schuster
Associate Director, National Security
Preparedness Issues

(702093)

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 21, 2000

Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter to Director Freeh dated August 8, 2000, in which you asked whether the FBI received any High Explosive (HE) Rounds from the Department of Defense (DoD) in connection with the Branch Davidian operation near Waco, Texas in 1993.

The FBI has not identified any documentation or information which confirms that the FBI requested or received HE rounds from any munitions source within DoD in connection with the Waco-related events. Numerous interviews of the individuals deployed to Waco reflect no recollection of the FBI requesting or receiving HE rounds from DoD for any purpose, including training/target practice.

The FBI defers to the lengthy record submitted to you by DoD on July 26, 2000 which suggests that HE rounds were not provided to the FBI during the Branch Davidian operation. Despite the best efforts of DoD and the FBI to "prove a negative," we recognize that the record before the Committee is inconclusive. As mentioned by DoD, however, the critical point to remember is that the FBI did not fire any HE rounds during the Branch Davidian operation.

Please feel free to contact me if you have any questions.

Sincerely,

John E. Collingwood
Assistant Director
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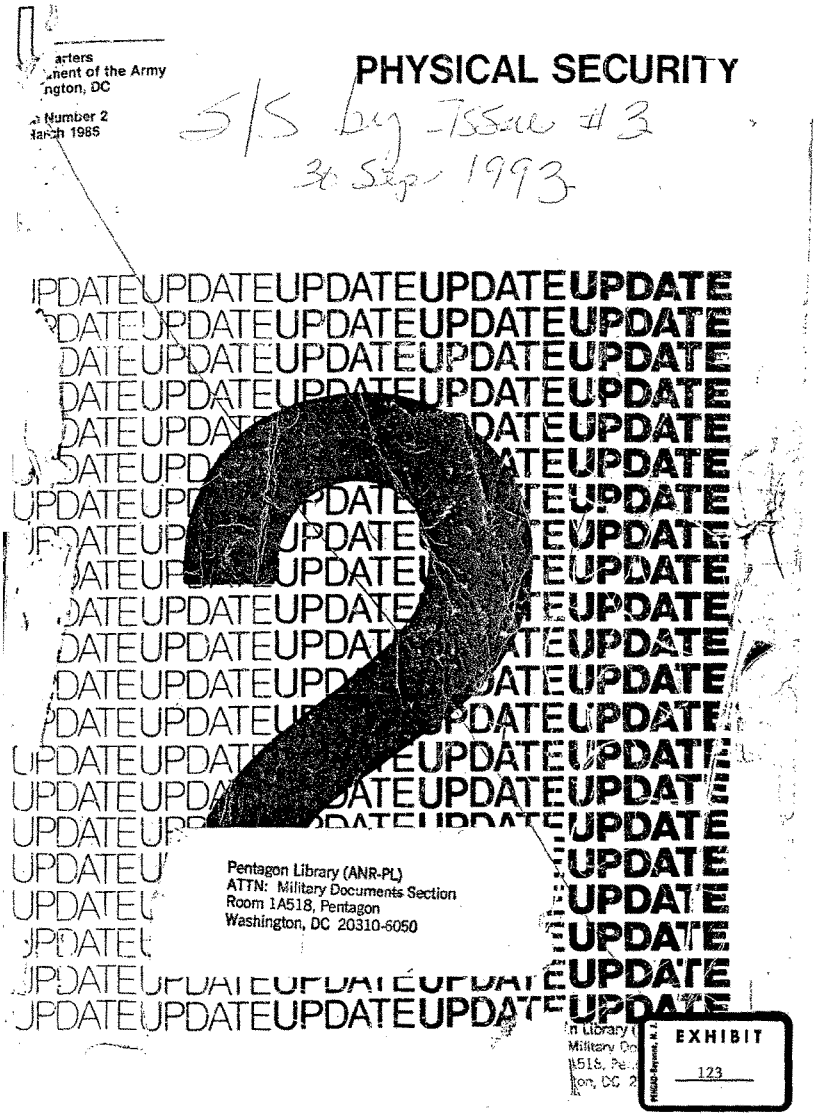
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Headquarters
Department of the Army
Washington, DC
31 March 1986

*Army Regulation 190–11

Effective 30 April 1986

Military Police

Physical Security of Arms, Ammunition, and Explosives

This UPDATE printing publishes a new revision which is effective 30 April 1986. Because the structure of the entire revised text has been reorganized, no attempt has been made to highlight changes from the earlier regulation dated 15 October 1981.

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

R. L. DILWORTH
Brigadier General, United States Army
The Adjutant General

Summary. This regulation prescribes policy, procedures and standards for the physical security of sensitive conventional arms, ammunition, and explosives (AA&E) in the custody of the Department of the Army (DA). It includes all of DOD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, 3 February 1983; and it adds implementing and supplementing instructions tailored for use within DA. DA additions are set in boldface type to make them distinct from DOD requirements.

Applicability. This regulation applies to the Active Army and the Army Reserve. It applies to the Army National Guard (ARNG) when on active Federal service. The Chief, National Guard Bureau (NGB), will issue appropriate regulations, consistent with policies and procedures of this regulation, for the physical security of AA&E in the custody of the non-Federalized ARNG. This regulation also applies to the Civilian Marksmanship Program (CMP) when AA&E items are in the custody of DA, or located on installations, or facilities, owned, leased, or otherwise under the jurisdiction of DA. Physical security requirements for AA&E issued to civilian shooting clubs participating in the program are prescribed by the Director of Civilian Marksmanship in appropriate regulations. Reporting requirements in chapter 8, this regulation apply to the ARNG and CMP at all times.

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Internal Control System. This regulation is subject to the requirements of AR 11–2. It contains internal control provisions and checklists for conducting internal control review. (Checklists are being developed separately and will be staffed as a separate action.)

Supplementation. Supplementation of this regulation is prohibited without prior approval of HQDA (DAPE–HRE), Wash DC 20310–0300.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested improvements. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, US Army Military Police Operations Agency, ATTN: PEMP–S, 5611 Columbia Pike, Falls Church, VA 22041–5014.

Distribution. Active Army, USAR, ARNG—A, B, C, and D.

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Glossary—(See consolidated glossary in the back of this issue.)

hapter 1
eneral Information

-1. Purpose

a. In accordance with DOD Directive 100.76 (ref (g)), this Manual (Regulation) escribes standards and criteria for the ysical security of sensitive conventional A&E, including nonnuclear missiles and ckets, as set forth in appendix A, in the stody of any DOD (DA) Component. AR 90–11 provides policy, procedures, and andards, and assigns responsibilities for e effective implementation and application DOD 5100.76–M.

b. Although the standards and criteria in is Manual (Regulation) will provide ade- uate protection against loss or theft of A&E at most DOD (DA) activities, the reat or characteristics of a particular loca- on may necessitate supplementary mea- ures subject to approval by the DOD omponent (MACOMs) concerned. DOD omponents (MACOMs) shall establish rocedures to review the justification of mil- ary construction projects that exceed the riteria in this Manual (Regulation). This lanual (Regulation) does not authorize ethods or operations inconsistent with OD 6055.9–STD (ref (h), as implemented y AR 385–64.)

-2. Scope

a. If AA&E items are classified, they hall be stored and transported in accor- ance with this Manual (Regulation) or OD 5200.1–R (ref (i)), as implemented by R 380–5, whichever is more stringent. OD Components (MACOMs) shall pre- cribe physical security requirements for AA&E items outside the scope of this Man- al (Regulation). Consistent with reference h), operational requirements, and this lanual (Regulation), physical security re- uirements for production and manufactur- ng operations at Government facilities shall e prescribed by the Joint Logistics Com- anders/Joint Conventional Ammunition rogram Coordination Group.

b. The criteria in this Manual (Regula- ion) are intended for sites where AA&E are aintained on a permanent basis during laily peacetime conditions, and not for con- ingency sites or operations, such as war- ime, force generations, exercises, or perational readiness inspections, unless otherwise specified. Upon the declaration of war, commanders may prescribe procedures uspending specific physical security provi- ions of this regulation to account for local onditions, while ensuring maximum practi- al security for Government personnel and roperty. This authority is granted to instal- ation, division, and separate brigade com- anders and may be delegated to ommanders in the grade of lieutenant colo- el. Upon mobilization (prior to a declara- ion of war), this authority is granted to ommanders of MACOMs and may not be urther delegated. In above circumstances (declaration of war or mobilization), suspension of transportation physical security requirements will be coordinated expeditiously with HQDA (DAPE–HRE and DALO–TSP) with information to Cdr, Military Traffic Management Command. For sites and operations not specifically covered in this Manual (Regulation), the DOD Component (MACOMs) concerned shall establish requirements and procedures to provide protection for AA&E consistent with the philosophy in this Manual (Regulation), when operationally and environmentally feasible.

1–3. References

References cited in this regulation are listed in Appendix B. References originally cited in DOD 5100.76–M are in section I of the appendix; Army references are in sections II and III.

1–4. Explanation of terms

Special terms used in this regulation are explained in the consolidated glossary.

1–5. Security of nonsensitive AA&E

AA&E that does not meet the criteria in this regulation for "sensitive" items must be safeguarded from pilferage, theft, and wrongful destruction when stored or deployed in the field. Although this regulation does not prescribe security criteria for these items, AR 190–13, the Army Physical Security Program, assigns commanders the responsibility to ensure reasonable security measures are taken to safeguard property and facilities that may be vulnerable to criminal acts or other disruptive activities. Commanders and security personnel involvement is necessary to ensure security measures taken provide adequate security based on an assessment of the threat and vulnerability of the items concerned. Such security measures can include use of fences, lighting, locks and key control, security patrols, and any other measures deemed appropriate by the commander responsible for the security of the items involved.

1–6. Objective

The Army's inventory of AA&E is a vital part of its readiness posture. Loss or theft of such material can foster fear in the public sector and create an image of the Army's inability to secure its assets. The degree of security to provide AA&E are contingent upon many variables. It is impractical, therefore, to prescribe definitive DA physical security standards to cover all anticipated conditions that could pose a threat to the security of the items to be protected. Minimum physical security standards are prescribed in this regulation. As the criminal or other type threats to these materials increase at the local level, security measures at that level may need to be more stringent than those prescribed in this regulation. Commanders will notify HQDA immediately through command channels when local resources are inadequate to provide necessary protection.

1–7. Other regulations governing AA&E

a. AA&E retained for evidence as part of a criminal investigation by military police or criminal investigation elements will be secured in an authorized evidence repository according to AR 195–5.

b. Arms stored as DA historical or museum items will be secured according to chapter 4, this regulation. Weapons on display in museums will be secured according to AR 190–18.

c. Additional restrictions on the use of and transportation of foreign material for training are contained in AR 350–2.

d. Exchange Service Manual 16–1 governs security requirements for Army and Air Force Exchange Service facilities.

e. AR 190–13 prescribes policies, procedures and guidance governing the Army physical security program, including physical security equipment management and physical security inspection requirements for AA&E storage facilities. It also defines requirements for posting and maintaining restricted areas.

f. AR 710–2 contains inventory, accountability, issue, and turn-in procedures below wholesale level. AR 740–26 establishes physical inventory controls at wholesale supply activities.

g. AR 700–99 prescribes policies and procedures for acquisition, accounting, control, and disposal of captured enemy equipment and foreign material.

h. AR 608–4 establishes policy and procedures for control and registration of war trophy firearms.

i. AR 920–20 contains security responsibilities of clubs enrolled in the Civilian Marksmanship Program.

1–8. Responsibilities

a. The Deputy Chief of Staff for Personnel (DCSPER) will develop policies, standards, and procedures on the physical security of sensitive conventional AA&E.

b. Heads of HQDA staff agencies, MACOMs, and installation commanders will support the AA&E physical security program in accordance with responsibilities prescribed in AR 190–13 and this Regulation.

c. Additionally:

(1) The Chief of Engineers will ensure that construction plans for new or modified AA&E storage facilities meet the minimum standards prescribed by this regulation.

(2) The Commanding General, US Army Materiel Command (CG, AMC) will prescribe policies, procedures, and standards to physically secure AA&E manufacturing and production facilities and those AA&E under research or being tested and evaluated under DA jurisdiction. Implementing instructions issued by CG, AMC will be according to the philosophy and policies in this regulation. Security requirements for conventional ammunition and explosives at Government-owned, contractor-operated facilities are prescribed by the Joint Logistics

Commanders, Joint Conventional Ammunition Program Coordinating Group. Security requirements for AA&E in the custody of or being manufactured at contractor-owned, contractor-operated facilities are established in DOD Instruction 5220.30.

(3) The Commanding General (CG), US Army Criminal Investigation Command (USACIDC) will—

(a) Conduct preliminary investigation into losses of all Category I and II AA&E items, regardless of dollar value, to determine if criminality occurred.

(b) Conduct preliminary investigation into losses of Category III and IV items meeting the quantities listed in appendix E this regulation, regardless of dollar value, to determine if criminality occurred.

(c) Conduct investigations of actual or attempted break-ins or armed robberies of AA&E storage facilities.

(d) Provide copies of USACIDC Serious/Sensitive Incident (SSI) reports which may be prepared pertaining to *(a)*, *(b)*, and *(c)* above to CDR, USAMPOA.

(e) If criminality occurred, conduct a complete investigation and provide CDR, USAMPOA, upon request, copies of such investigation reports.

(f) If needed, coordinate with the proper law enforcement activity (LEA), provost marshal office (PMO), or security office, to ensure assignment of a physical security specialist to the investigation.

(g) Using the results of completed investigations, assist HQDA (DAPE–HRE) and the commander concerned in evaluating existing security measures and recommending corrective action to improve security of such items.

(4) Commanders and custodians of AA&E will—

(a) Comply with this regulation.

(b) Ensure necessary measures are taken to safeguard AA&E at all times. This includes providing specific instructions on individual responsibility for AA&E during—

1. Operational or field training conditions.
2. Care and maintenance.
3. Competitive marksmanship meets.
4. Storage on, or when mounted on, vehicles and aircraft.

5. Ensure timely submission of serious incident reports (SIR) in accordance with AR 190–40.

(c) Report all losses (actual or suspected) immediately to the proper law enforcement agencies.

(d) Conduct prompt investigation of losses after a decision by the USACIDC that criminal acts were not involved.

(e) Fix responsibility when negligence is determined and take proper corrective action to prevent further loss.

(f) Publicize AA&E security and loss prevention through command information and unit training programs.

(g) Plan, program, budget, and allocate resources for the implementation of required policies outlined in this regulation.

(h) Ensure that AA&E storage facilities are checked, inventoried, and inspected as required by this regulation, as well as by AR 190–13, AR 710–2, and AR 740.26.

(5) Active Army installation commanders, and Reserve Component (RC) and ROTC unit commanders will ensure the following:

(a) Coordinate physical security plans with local law enforcement activities and supporting military intelligence (MI) and USACIDC elements.

(b) Set up liaison at the local level with the agencies mentioned in chapter 3, this regulation.

(c) Ensure that agreements governing consolidated AA&E storage facilities and the storage of AA&E property of Federal, state, contractor agencies, and foreign government agencies contain definite assignment of responsibility for the items stored.

(d) Conduct unannounced inspections as often as deemed necessary by the commander concerned.

(e) Ensure construction programming documents involving AA&E facilities have been coordinated with the responsible provost marshal or security officer.

(6) Facilities, activities, and units on Active Army installations, or sub-installations, will coordinate physical security plans or SOP's once a year with the installation PM or security office. They will—

(a) Ensure their security procedures are current and in keeping with the command and HQDA physical security directives.

(b) Include provisions in security procedures for applying physical security measures for storage areas in keeping with the host commander's assessment.

(7) Tenant activities (located both on and off installation) must identify their security requirements to the host installation. They will ensure funding provisions are considered in proper budget programs.

(8) LEA, PMO, and security officers of installations and activities will provide representatives to the installation planning board. These representatives will ensure provisions of this regulation are considered during the planning process.

(9) This regulation does not relieve responsible or accountable officers of their responsibility to account for property according to AR 710–2 and AR 735–5.

(10) Persons issued or holding AA&E are responsible for securing such property while it is charged or entrusted to their care.

Chapter 2
Policy

2–1. General

a. DOD Components (Commanders) shall apply enough human resources and funds to AA&E physical security programs at all levels. MACOM commanders will identify resource needs in the planning, programing and budgeting system, and allocate necessary resources to support their AA&E physical security program. Installation commanders will ensure funds identified for physical security are used as intended. Systems should incorporate technology and equipment available within the federal government and the private sector to provide cost effective protection, automated accountability, and inventory control. Physical security equipment management policy is established in AR 190–13. Security criteria will be included in initial plans for research and development, as well as all new or modified construction projects.

b. To minimize the cost of physical security and inventory control, and to reduce theft vulnerability, the quantities of AA&E and the number of storage facilities for AA&E should be reduced. Storage should be consolidated to the maximum extent consistent with operational, safety, and training requirements.

(1) AA&E should be removed from designated storage areas as briefly as possible. The quantity to be removed should be as small as practicable to support specific missions or projects. Storage areas should be as small as possible consistent with safety standards and mission requirements.

(2) Further reduction of costs for protection and inventory control can be effected by segregating the consolidation of AA&E into smaller storage areas by assigned risk category, and providing the degree of physical security protection appropriate for that category. Priority attention shall be given to demilitarization or disposal of obsolete and unserviceable AA&E to avoid unnecessary storage, security, and inventory-related costs.

(3) The provisions of this Manual (Regulation) are intended to provide adequate storage security for AA&E at most DOD (DA) activities. There may be a few unusual activities, such as large depots or remote storage areas without existing electrical service, where not all criteria in this Manual (Regulation) can be directly applied in a cost effective manner. At these unusual or unique facilities, local conditions must be carefully evaluated, and the security system must be tailored to the local conditions, based on practicability and cost, rather than specific security requirements prescribed herein. In these instances, waivers or exceptions should conform to the requirements provided in section D.

2–2. Construction of facilities

a. The provisions of this Manual (Regulation) are mandatory for new construction of permanent land-based installations for storage of sensitive AA&E. Modification to existing facilities shall be accomplished in accordance with the criteria set forth herein.

b. The tearing down and rebuilding of facilities shall not be undertaken unless there has been a determination by the DOD Component (MACOMS) that existing security measures cannot be supplemented to provide the required degree of protection.

When nonstandard structures or facilities provide equivalent or better protection, modification shall not be undertaken. Exceptions to this policy shall be granted under paragraph 2–4, below.

c. Upgrading of existing storage structures must be consistent with approved plans for future development and new construction plans. The type, planned use, modification costs, and remaining economic life of storage structures must be considered. Additionally, in determining upgrade requirements, ammunition and explosives will be consolidated by risk category to the maximum extent consistent with operational, safety, and training requirements. Adequate compensatory security measures will be established for AA&E storage structures that do not meet minimum construction standards. Definitive drawings/specifications for new construction, upgrade, or modification of AA&E storage structures will be coordinated with the engineer office, safety office, and LEA, PMO, or security police office to ensure safety and physical security requirements are met.

d. Qualified engineer personnel will verify the structure composition of AA&E storage facilities (e.g., walls, ceilings, roofs, floors, and doors.) Statements will be prepared on DA Form 4604–R (Security Construction Statement). Statements will indicate the highest construction category met for storage of AA&E, e.g., Category I, II, III, or IV AA&E items and date of applicable regulation. (See para 2–4 for procedures when structural deficiencies exist.) DA Form 4604–R will be posted in each AA&E storage facility. The form will be reproduced locally on 8½ by 11-inch paper. A reproducible copy of DA Form 4604–R is located at the back of this volume. A blanket statement on DA Form 4604–R may be issued at an installation for all facilities, such as ammunition magazines, constructed according to the same specifications. Under these circumstances a copy of the form need not be posted in each individual storage structure, but must specifically identify the facilities by number and location, and be readily available for inspection. Security construction statements will be reviewed during physical security inspections. The statements will be revalidated by engineer personnel every five years.

e. Physical security personnel will monitor construction of new facilities and renovation of existing facilities. Engineer personnel will coordinate new construction and renovation projects with local provost marshal or security officer. In addition to meeting construction standards, storage of AA&E will meet physical security criteria, such as IDS, locks and hasps, lighting, and security patrols, as appropriate, for the particular category of AA&E involved.

2–3. Priority lists

DOD Components (MACOMS) shall establish a priority list for meeting the security requirements as follows. Requirements will be listed in priority sequence by category for planning, programing, and budgeting purposes. Priority of installation of intrusion detection system is to Category I and then to Category II.

a. Facilities storing Category I items, when protection is inadequate. Those having the largest quantity shall receive initial attention.

b. Facilities storing Category II items.

c. Facilities storing Category III items.

d. Facilities storing Category IV items.

e. Generally, locations in the United States and Puerto Rico shall receive priority over locations in other areas.

f. Deviations from these priorities shall be permitted only when DOD Components (MACOMS) have determined that a local threat dictates these deviations.

2–4. Waivers and exceptions

DOD Components (Commanders) are authorized a 10 percent deviation from the physical security construction standards established by this Manual (Regulation) for existing facilities. Otherwise waivers and exceptions to the physical security requirements of this Manual (Regulation) may be granted by major commands or their equivalent in accordance with procedures established by the DOD Components (HQDA) (DAPE–HRE) under the following provisions:

a. Waivers and exceptions shall be considered individually; blanket waivers and exceptions shall not be authorized. Copies of approved waivers or exceptions applying to commercial carrier's transportation minimum security standards (chap 7), together with compensatory measures taken, shall be forwarded to the Commander, Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

b. Waivers normally may be granted for a period of 1 year and may be extended only after a review of the circumstances necessitating the extension. MACOMs may grant waivers for a period not to exceed 2 years when resources considerations clearly indicate a continued waiver requirement beyond the normal one year waiver period. Justification for such waivers will be required. Each extension shall state first extension, second extension, etc.

c. Exceptions shall be granted only when correction of a deficiency is not feasible or when the security afforded is equivalent to or better than that afforded under the standard criteria.

d. Request for waivers and exceptions shall contain compensatory measures in effect or recommended. Approvals for waivers and exceptions shall specify required compensatory measures. Equivalent protection exceptions do not require compensatory measures.

e. Deficiencies that will be corrected within 60 days shall not require a waiver or exception; however, compensatory measures shall be taken during the interval.

f. Authority to grant waivers and exceptions constituting a physical security standard below those prescribed in this regulation is delegated to MACOMs and the heads of Army staff agencies commanding field operating agencies and activities. The authority may be further delegated to the appropriate staff element within the MACOM/agency having assigned staff cognizance for matters contained in this regulation. This authority may not be further delegated below the MACOM/agency level. USAR requests for waivers and exceptions will be submitted through command channels to Commander, US Army Forces Command.

g. Requests for physical security waivers or exceptions will be coordinated between the LEA, PMO, or security office of the installation or activity. When structural deficiencies exist, requests also will be coordinated with the supporting engineer.

h. A request for a physical security waiver or an exception will include—

(1) A statement of the problems or deficiencies that constitute standards below those cited in this regulation.

(2) Compensatory measures in effect at AA&E storage facilities to make up for noncompliance with required standards of protection.

(3) Reasons the unit, facility, or installation cannot comply with the requirements of this regulation.

(4) The commander's statement of corrective action taken or planned to correct the deficiencies for which the waiver or exception is required.

(5) Each successive command's recommendation.

i. The unit and the approving headquarters will retain on file the waiver or exception, including the documents listed in c above.

j. Exceptions will be regarded as generally permanent; however, they will be reviewed at least once every two years to determine if they need to be continued. The review may be conducted by the approving authority concerned or by the commander to whom the exception was granted.

k. Exceptions previously granted under the criteria of AR 190–11, 30 March 1977 or 15 October 1981, if still required, are valid under the provisions of this regulation. Such exceptions need not be resubmitted for approval. However, such exceptions will be reviewed as indicated in (5) above.

2–5. Security of AA&E during training, in museums, and aboard ships

Specific criteria and standards for protection of AA&E during training, in museums, and in shipboard armories or otherwise on board ships shall be developed by the DOD Component (DA) concerned, based on the security philosophy in this Manual (Regulation). Arms stored as DA historical or museum items will be secured according to chapter 4, this regulation. Weapons on display in museums will be secured according to AR 190–18. AA&E deployed in the field

for training or operational purposes will be secured at all times. The deploying commander will establish and enforce procedures for securing deployed AA&E based on an assessment of the threat, objectives, location, and duration of the deployment. The following guidelines apply:

a. AA&E will be under continuous positive control.

b. AA&E will not be left unattended or unsecured.

c. Persons charged with custody of AA&E will have the capability to sound the alarm if a forceful theft is attempted.

d. A response force will be available to protect the AA&E.

e. A system of supervisory checks will be established to ensure all personnel comply with security procedures. Supervisory checks of the AA&E holding area will be made to ensure the AA&E being guarded have not been tampered with.

f. Control of ammunition and explosives during field training or range firing will be monitored closely by all officers and noncommissioned officers (NCO's). Upon completion of training, the area(s) will be policed and unused ammunition and explosives collected for turn-in. Personnel should be closely checked to ensure unused ammunition and explosives are not retained. Close supervision by officers and NCO's can eliminate most security problems in the training area.

g. Selection of personnel to perform guard duties at AA&E holding areas will be closely monitored by commanders to ensure only responsible individuals are assigned duty.

2–6. Inspections and audits

Security measures including theft or loss reporting and inventory and accountability procedures for AA&E shall be examined during appropriate inspections and audits. The status of existing waivers and exceptions shall be examined for compliance and continuing necessity.

a. Physical security inspections will be conducted according to AR 190–13 on facilities in which AA&E governed by this regulation are stored. Additionally, schedule physical security inspections as follows:

(1) For new AA&E storage facilities, before and immediately after occupancy.

(2) On significant change in facility structure.

(3) After a forced entry or attempted forced entry with or without theft.

(4) When units have received an unsatisfactory rating on their physical security inspection, reinspection will be within 6 months. A copy of an unsatisfactory physical security survey or inspection concerning RC and ROTC units will be furnished the installation commander providing logistical support. The followup physical security inspection report will be annotated to show what elements have received copies.

b. Physical security inspections of AA&E deployed in the field for training and operations will be conducted to ensure these items are properly protected.

c. Results of physical security inspections/surveys will be briefed to commander responsible for the security of the facility or area inspected.

d. Inventory, accountability, issue, and turn-in procedures will be included in physical security inspections to ensure the procedures support the physical security program. AR 710–2 applies to supply operations below the wholesale level. AR 740–26 establishes physical inventory controls at the wholesale level. Chapter 4, this regulation, applies regarding accountability requirements for contractor owned and commercial arms and ammunition.

e. When custody of arms storage facilities is transferred between authorized persons, they will conduct a physical count of the weapons and ammunition stored therein, according to requirements in AR 710–2. The inventory and change of custody will be recorded as prescribed in AR 710–2.

2–7. Prohibition

Reserve Officers Training Corps (ROTC/JROTC) units, gun clubs, and other activities under the responsibility of the Director of Civilian Marksmanship are not authorized possession of any Category I or Category II AA&E. ROTC units may use Category II AA&E during authorized training with active DOD Components. National Guard and reserve units shall not be permitted to store Category I AA&E. However, these units may be given temporary custody of Category I AA&E for training on military installations in accordance with specific security instructions provided by the commander of the installation. ROTC units, gun clubs, and activities under auspices of the Civilian Marksmanship Program are not authorized to store category I and II AA&E. Under proper supervision and security precautions, ROTC units may use category II weapons for familiarization training and field training exercises or marksmanship, on and off a military reservation. Active Army installations and RC facilities may provide support to ROTC units when requested. RC units may retain temporary custody of category I and II ammunition for training purposes only on Federal military reservations. In this case, the installation will provide specific security instructions and support.

2–8. Requisition

Each DOD Component (HQDA) (DALO–SMP–U) shall establish procedures for item managers to ensure the adequacy of requisition verification of AA&E items. Commanders will include instructions to ensure AA&E requisitions are authorized by designated personnel and released only to properly identified authorized personnel. The procedures shall include positive steps for rejecting excess and unauthorized requisitions. (See AR 710–2 for policy on requisitioning.)

2–9. Investigations

A thorough investigation shall be made of lost, stolen, or missing AA&E to determine the circumstances surrounding the loss or theft and to fix responsibility as appropriate. Inventory and accountability losses must be investigated thoroughly. BEFORE ANY LOSS CAN BE ATTRIBUTED TO ANY INVENTORY OR ACCOUNTABILITY DISCREPANCY, IT MUST BE DETERMINED THROUGH INVESTIGATION THAT THE LOSS WAS NOT THE RESULT OF THEFT OR MISAPPROPRIATION, IN ACCORDANCE WITH DOD 7200.10–M (ref (j)).

a. Guidance on actions to be taken. Active Army and RC commanders, or their designated representatives, having direct responsibility for property lost, stolen or missing or the receiving unit or agency will—

(1) Notify the supporting LEA, PM, or security office as soon as the incident is discovered. The notice will be as complete as possible but will not be delayed because of incomplete data. USAR will notify the PMO or LEA responsible for the geographical area. In continental United States (CONUS), this notice will include the proper FBI field office having area jurisdiction. Civil authorities in oversea areas will be notified according to local policy.

(2) When sensitive AA&E are reported lost, a preliminary investigation will be conducted by the USACIDC to determine criminal intent before initiation of any administrative action (see para 1–8, chap 1.)

(3) Initiate administrative action according to AR 735–11 if the USACIDC investigation determines criminality was not involved. The report of survey or an equal procedure will not be used as a disciplinary or punitive measure. The use of this administrative procedure will not prevent recourse to disciplinary measures when proper. Therefore, the survey will not be used instead of a criminal investigation when one is warranted.

(4) Determine accountability for recovered property as set forth in AR 710–2. A person may be found pecuniarily liable and required to pay for a loss. If so, he or she will not be allowed to claim title or obtain ownership of item should it be recovered.

(5) Consider relative investigative findings in violation of this or other applicable regulations. Take proper punitive action if events warrant.

(6) Request, through channels, that an AR 15–6 investigation be initiated for AA&E in appendix E. This form may be used instead of a Report of Survey (See AR 735–11.)

b. Property overages. Property overages will be handled in the same way as stated above.

c. The investigation. Facts must be presented by the requesting person. The installation, depot, or community commander may then direct that an investigation be initiated. The officer appointed to conduct the investigation will follow procedures found

storage rooms, magazines, or perimeter barriers using such a system. Signs will be affixed at eye level, when possible. They will be affixed on the exterior walls containing an entrance to the ammunition or explosives storage room, vault, building, or magazine or, in the case of alarmed barrier fences, on the outside of the fence at about 100-meter intervals. Signs will be placed at a location where they will not hinder observation or fields of fire. Signs will not be placed where they may be used by intruders to gain entry. Alarm signs will not create nuisance alarms. Otherwise, the signs will be posted outside the perimeter fence. IDS signs depicted in app F will be used.

5–12. Storage of classified items

Classified missiles and rockets, or other classified items, will be segregated from unclassified items stored in the same storage facility, when possible. Strict access and accountability control procedures will be established by the commander concerned. See paragraph 5–9 for two-person rule requirement for access to Category I missiles and rockets. Personnel whose duties require access to above storage facilities will have a security clearance commensurate with the classification of the items involved.

5–13. Additional security measures for igloos and magazines

King Tut blocks (see Glossary for description), or similar protective blocks, may be used to enhance the overall security of ammunition and explosives stored in unalarmed igloos and magazines (see IDS requirements in this chapter) in plants, depots, and ammunition supply points, at the option of the commander concerned. If used, first priority for use of such protective blocks will be to category I and II ammunition and explosives.

Chapter 6
Accountability, Disposition, Disposal, and Demilitarization

6–1. Nonnuclear missiles and rockets (category I)

a. General. Each DOD Component (Commanders) having custody of nonnuclear missiles and rockets as defined herein shall establish and maintain records which will provide for continuous accountability. This shall include those issued for training by requiring the return of unexpended missiles and expended residue. When applicable, such records shall be maintained by serial number. Incoming shipments shall be inventoried promptly after receipt to ensure that all items have been received. All contracts for the procurement of nonnuclear missiles and rockets shall provide for individual serialization.

b. Inventories. In addition to the requirements in DOD Instruction 4140.35 (ref (1)), the following apply:

(1) *Unit Level.* A 100-percent physical count shall be taken monthly. A 100-percent physical inventory by serial number shall be taken quarterly.

(2) *Depot, Post, or Base Level.* A 100-percent inventory shall be taken semiannually.

6–2. Arms

a. Arms Serial Number Registration and Reporting.

(1) *General.* A DOD central registry shall be maintained to record, by serial number, the ownership account of all arms. **AR 710–3 establishes policies and prescribes responsibilities and procedures for serial number registration and reporting of arms as defined herein belonging to Army units, organizations, activities, and installations which maintain property books and stock record accounts. MACOMS will emphasize the necessity for strict compliance with the prescribed reporting requirements.**

(2) *Delineation of responsibilities*

(a) The Department of the Army is the assigned agency responsible for operating and maintaining the DOD central registry which maintains control over serial numbers of arms as defined herein and file of those arms that have been lost, stolen, demilitarized, or shipped outside the Department of Defense. The DOD central registry shall be constituted by tapes, forwarded to it monthly from the DOD Component registries containing in serial sequence the most recent list of serial numbers of arms for which the DOD Component maintains accountability, and a history file of arms reported lost, stolen, demilitarized, or shipped outside the control of the Department of Defense.

(b) Each DOD Component is responsible for maintaining a mechanized registry for serial numbers of arms in their inventory. The registry shall be updated based on transaction reporting; for example, receipts, issues, and turn-ins.

(c) When the DOD central registry receives an inquiry concerning a lost, stolen, or recovered weapon that is listed with the registry as DOD property, or as missing from a DOD activity, the central registry shall inform the affected DOD Component registry. The DOD Component (**Commanders**) shall establish procedures to ensure that:

1. Such losses, thefts, or recoveries are, or have been, appropriately investigated as required in paragraph 2–9, chapter 2 and reported as outlined in chapter 8 of this Manual (**Regulation**).

2. DOD Component (**DA**) AA&E recovered by police or investigative agencies are returned to DOD (**DA**) control for disposition upon completion of investigative and prosecutive action.

(3) *Exclusions.* Privately owned arms and arms purchased with nonappropriated funds are exempt from being reported to the DOD Central Registry. However, each post, camp, or station having nonappropriated fund arms shall establish procedures to identify such weapons by type and serial number.

(4) *General Procedures.*

(a) The arms serial number registration and reporting procedures shall ensure control over all arms serial numbers, from the manufacturers to depot; in storage; in transit to requisitioners; in post, camp, station custody; in the hands of users during turn-ins; in renovation; and during disposal or demilitarization. The DOD central registry shall maintain records of serial number adjustments and shipments to flag rank officers, foreign military sales (FMS) and grant aid, activities outside the control of the Department of Defense, and transfers between DOD Components. Incoming shipments shall be inventoried promptly after receipt to ensure that all items have been received and entered into the DOD central registry or the DOD Component registry, as appropriate.

(b) National or DOD Component-assigned stock numbers shall be used by the DOD Components for the initial load and all later transactions to the DOD central registry.

(c) All arms, regardless of origin, that are accounted for in unclassified property records, shall be reported. Automatic weapons shall be reported on a priority basis.

(d) Arms with NSN or serial number, with missing, obliterated, mutilated, or illegible serial numbers, when discovered, shall be reported to the DOD central registry by the DOD Component registry, by message or letter for assignment of NSN and management control number serial number in the following format:

NSN: (NSN or "None")
Serial Number: (Serial No. or "None")
Description: (Make, model, caliber any or other nomenclature data)

(e) When the DOD central registry identifies duplicate serial numbers by weapon type in the DOD Components, appropriate instructions shall be provided by the U.S. Army Armament, Munitions, and Chemical Command for the modification of the serial numbers. Movement and shipment of weapons shall be held in abeyance pending correction of serial numbers.

(f) To ensure the DOD central registry is properly maintained, the following is required for small arms shipments:

1. Two weapon serial number (WSN) control cards for each weapon in shipment shall be attached to the supply documentation.

2. When operational procedures preclude compliance with paragraph 6–2*a*(4)*(f)1* above, a listing of WSNs shall be attached to the supply documentation.

3. Incoming shipments shall be opened by a designated receiver and the receipt of each item verified by check of the serial number. However, incoming shipments from new procurement received at depots that are preservation packaged need not be individually checked if the contract provides for a 100-percent serial certification by

the contractor which is checked by government contract representatives based upon acceptable sampling techniques. In this latter case, however, the receiving activity randomly shall sample to verify the accuracy of serial numbers in each shipment from new procurement.

(g) The DOD Component registries shall reconcile inter-Service transfers of weapons on a transaction-by-transaction basis. Follow-up procedures shall be established to ensure that the loop is closed on inter-Service transfers.

(h) Questions concerning the daily operations shall be referred to the DOD Central Registry. The DOD Central Registry address is:

Commander, US Army Armament Munitions, and Chemical Command

ATTN: AMSMC–MMD–LW

Rock Island, Illinois 61299–6000.

b. Physical Inventory Control

(1) *General.* All items included in the definition of the term "arms" shall be subjected to physical inventory control procedures contained in DOD Instruction 4140.35 (ref (l)). The provisions of reference (l), requiring a high degree of protection and inventory control specified for sensitive items, apply.

(2) *Policy and Procedures.* Policy and procedures for physical inventory control are contained in reference (l), **as implemented by AR 740–26.**

(a) The nature and sensitivity of arms control dictates strict adherence to the provisions of reference (l) with respect to physical inventories, research of potential inventory adjustments, reversal of inventory adjustments, retention of accountable documentation, quality control, and inventory effectiveness reporting.

(b) The special provisions for controlled inventory items are important to the control of arms. In addition to the provisions in reference (l), the following minimum requirements shall be met:

1. Unit Level. A 100-percent physical count shall be taken monthly and an inventory by serial number shall be taken quarterly, except for boxed and banded arms. In this latter case, the count and inventory shall consist of a 100-percent count as reflected by the number of items listed on the boxes. Any evidence of tampering shall be cause for that box to be opened and 100-percent count to be taken of the weapons in the box. The inventory records shall be maintained for a minimum of 2 years for inventories that do not reflect discrepancies. Records of inventories that reflect discrepancies shall be maintained for a minimum of 4 years.

2. Depot, Post or Base Level

a Those arms not already entered into the DOD central registry shall be completely inventoried in conjunction with the serialization reporting program.

b Thereafter, the inventory shall be taken once each fiscal year at depot and semiannually at post or base level. These inventories shall consists of a 100-percent count as reflected by the number of items listed on the boxes. A complete count shall be made of the contents of every box that is opened or damaged. The inventory records shall be maintained as required in paragraph 6–2b(2)*(b)1.* above.

6–3. Ammunition and explosives

a. General. All items included in the definition of the terms "Ammunition" and "Explosives" shall be subject to physical inventory control procedures contained in DOD Instruction 4140.35 (ref (l)), **as implemented by AR 740–26. AR 710–2 also applies.** The provisions of the reference (l), requiring a high degree of protection and inventory control specified for sensitive items, apply. Upon receipt a check shall be made to verify that all items shipped have been received.

b. Policy and Procedures. Detailed policy and procedures for physical inventory control of ammunition and explosives are contained in reference (l), **as implemented by AR 740–26. AR 710–2 also applies.** The nature and sensitivity of ammunition control dictates strict adherence to the provisions of reference (l) with respect to physical inventories, research of potential inventory adjustments, reversal of inventory adjustments, retention of accountable documentation, quality control, and inventory effectiveness reporting. The special provisions for controlled inventory items are important in the control of ammunition and explosives.

6–4. Inventory losses

Accounting and inventory losses of AA&E shall be handled in accordance with the provisions of DOD 7200.10–M (ref (j) as **implemented by AR 735–11.**

6–5. Inventory effectiveness review

Inventory effectiveness reviews shall be conducted by the DOD Component (MACOM) concerned on an unannounced basis.

6–6. Disposal and demilitarization

Disposal of all excess and surplus arms, parts, ammunition, and explosives is governed by the provisions of DOD 4160.21–M (ref (m).) The demilitarization of AA&E shall be accomplished in accordance with DOD 4160.21–M–1 (ref (n)) AA&E undergoing demilitarization must be transported and stored in accordance with this Manual **(Regulation)** until demilitarization is completed. AA&E being disposed of without demilitarization (FMS, transfer to law enforcement agencies, and the like) shall be transported and stored in accordance with this Manual **(Regulation)** until accountability is transferred. The following also apply;

a. General

(1) *Arms.* A report (transaction) by serial number shall be made to the DOD central registry upon the demilitarization of each arm that has been previously entered into the DOD central registry.

(a) A report (transaction) shall be furnished to the DOD central registry in the case of each arm disposed of other than by demilitarization regardless of whether or not a record for that weapon already appears in the DOD central registry.

(b) A demilitarization certificate shall be completed by a technically qualified U.S. Government representative before residue from the demilitarization process is released from U.S. control.

(2) *Ammunition.* Defense Property Disposal Offices (DPDO) are not permitted to receive live ammunition items. DPDO may receive inert ammunition components. In the United States, ammunition shall be demilitarized by a DOD Component activity having such a capability. Overseas, where U.S. forces do not have the capability to demilitarize ammunition items, demilitarization may be performed by approved contractors who are licensed or controlled by the government of the country in which the contractor operates. The Military Departments are responsible for the economical and effective demilitarization of ammunition under their accountability. A certificate as prescribed by DOD 4160.21–M–1 (ref (n)) shall be executed by a technically qualified U.S. Government representative for all items demilitarized.

(3) *Explosives.* In addition to the requirements above, sales of surplus explosives in the United States are limited to individuals and companies holding a valid user's or dealer's license issued by the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. Overseas sales are limited to companies controlled or licensed by the respective government. Purchasers of explosives must provide a "Certificate Regarding End Use of Explosive Materials" as prescribed in reference (m).

b. Procedures. Detailed procedures for disposal are included in reference (m). Detailed procedures for demilitarization are included in reference (n). Each DOD Component **(MACOM)** shall establish procedures to ensure that accountability of items shipped to DPDOs is not dropped from supply records until they are in receipt of turn-in Documents from the DPDO and the transaction records are reconciled.

6–7. Disposal of abandoned and confiscated privately owned firearms

Anniston Army Depot, ATTN: SSDAN–DSP–PPC, Anniston, Alabama 36201, is the CONUS disposal facility for shipping abandoned and confiscated privately owned firearms. The following procedures apply:

a. **Prior to shipment, register firearms in the DOD Small Arms Serialization Program per TM 38–214.**

b. **Use DD Form 1348–1 to accomplish supply turn-in transactions with Anniston Army Depot.**

c. **Ship firearms via registered mail, return receipt requested.**

(g) **Reports will include incidents involving arms and ammunition meeting criteria in paragraph 8–2a above, in the custody of a nonappropriated fund activity (such as an exchange, rod and gun club, or recreational marksmanship activity).**

(9) **Reports will also include privately owned arms under the control and supervision of the Government on or off a military reservation or facility; for example, in household shipments by military contracted carriers, hold baggage, military aircraft, Government quarters, and arms storage facilities. In OCONUS, this also applies for incidents off military reservations; for example, private quarters and privately owned vehicles.**

b. The Director, Security Plans and Programs, Office of the DUSDP (ODUSDP), shall be provided advice by telephone from the DOD COMPONENTS (HQDA) concerned of all significant incidents of theft, loss, or unaccounted for AA&E as soon as possible but not later than 72 hours after occurrence or discovery. Generally, loss or theft of the following AA&E shall be considered significant **(see requirements in AR 190–40.)**

(1) One or more missile or rocket rounds.

(2) One or more machine guns.

(3) Five or more automatic fire weapons **(including semiautomatic weapons according to AR 190–40.)**

(4) Twenty-five or more manually operated weapons **(five or more weapons according to AR 190–40.)**

(5) Ammunition.

(a) .50 caliber and smaller—5,000 rounds or more, except 20,000 rounds or more of .38 caliber ammunition.

(b) Larger than .50 caliber—five rounds or more of nonautomatic weapon ammunition.

(c) Larger than .50 caliber—1,000 rounds or more of automatic weapon ammunition.

(d) Five or more fragmentation, concussion, or high explosive grenades.

(6) One or more mines (antipersonnel and antitank.)

(7) Demolition charges, blocks of explosives, and other explosives—100 pounds or more net weight.

(8) Also reportable are:

(a) Armed robberies or attempted armed robberies.

(b) Forced entries or attempted forced entries in which there is physical evidence of the attempt.

(c) Any evidence of terrorist involvement.

(d) Incidents that cause significant news coverage, or appear to have the potential to cause such coverage.

(e) Any evidence of trafficking, such as bartering for narcotics or taking AA&E across international borders, regardless of the quantity of AA&E involved.

(9) **Procedures for reporting significant loss, theft, and recovery of AA&E and for reporting of actual or attempted break-ins of AA&E storage facilities are prescribed in AR 190–40. Commanders will ensure timely submission of serious incident reports (SIR) according to requirements in AR 190–40. Significant incident reports are provided high-level officials. Sufficient initial and follow-up data must be provided to answer questions who, what, where, when, how and why concerning the incident. Provide information on physical security measures taken to prevent recurrence of similar incident. Additionally, if any loss or recovery involved inventory or accountability standards, list procedures in effect. If actual or attempted forced entry is involved, show—**

(a) Time of discovery.

(b) Method of entry or attempted entry.

(c) Measures used to neutralize or bypass security measures.

(d) **AA&E or other items missing, if any.**

(e) **Physical security posture of facility at time of incident, use of guards, IDS, barriers, and other security measures.**

(f) **Date of last survey or inspection.**

(g) **Compliance with regulatory physical security requirements.**

c. Each DOD Component (MACOM) shall maintain records on a semiannual basis (January 1 through June 30, and July 1 through December 31) including at the very minimum all instances of thefts, losses, and recoveries of AA&E, including any reported under paragraph 8–2a above. **Requirement also applies to Army National Guard (ARNG) and Civilian Marksmanship Program (CMP).** These records shall include:

(1) A summary of the circumstances in each instance.

(2) Dates, locations, and units such as Regular, Reserve, National Guard, or Director of Civilian Marksmanship.

(3) A statement regarding the loss or recovery based on the investigation, such as inventory, theft, in-transit, training, operational, or other.

(4) **MACOMs will submit a semiannual report (RCS CSGPA–1645) (Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives) (app G.) The report will be sent to Cdr, USAMPOA no later than 15 working days after the cutoff of the above reporting periods. An information copy of the report will be sent to Cdr, US Army Troop Support Command (TROSCOM), ATTN: AMSTR–WS, 4300 Goodfellow Blvd., St Louis, MO 63120–1798. Requirement for above semiannual report also applies to ARNG and CMP.**

d. DOD Components (DA) shall provide the Director, Security Plans and Programs, ODUSP, follow-up information, in writing, of significant incidents until the investigation is complete. **MACOMs, ARNG, and CMP will provide the follow-up information to Cdr, USAMPOA.**

8–3. Investigative aids

DOD Components (HQDA) shall establish procedures to ensure that appropriate information is submitted to the NCIC and to the DOD central registry promptly upon the discovery of the loss or theft of DOD arms. Information also shall be submitted to the NCIC and the central registry upon recovery of DOD arms. Appropriate information on the theft or suspected theft of AA&E also shall be provided to local Federal Bureau of Investigation (FBI) offices and local police. **The following procedures apply:**

a. **Lost, stolen, or recovered weapons will be entered in the NCIC according to AR 190–27.**

b. CONUS installation commanders, PMs, or their designated representatives, will send DA Form 3056 to the NCIC Army Field terminal responsible for the geographical area in which the installation is located. Proper entry will be made in the NCIC. OCONUS installation commanders, PMs, or their designated representatives, will send the completed DA Form 3056 to Cdr, USAMPOA. Lost, stolen, or recovered weapons entries into the NCIC from overseas commands will be made by Cdr, USAMPOA.

c. CONUS Army field terminals, after making entry into the NCIC, will annotate Item 11 of DA Form 3056 and distribute the form according to the instructions on the reverse side.

d. **Ammunition and explosive losses or recoveries will not be entered in the NCIC files.**

e. **Lost, stolen, or recovered weapons will be promptly entered in the DOD Small Arms Control Registry according to AR 710–3. Information on the source of the weapon report will be included. Recovered weapons will be cleared from the NCIC files.**

f. Military weapons will be accepted from civil (local, state, and Federal) law enforcement agencies. A weapon will be accounted for under AR 735–5 if both of the following apply:

(1) The weapon can be identified as a military weapon. If the weapon satisfies the general specifications for a military weapon, assume that it is a military weapon; a serial number or other identification is desirable, but not required.

(2) The weapon is no longer required for evidence in criminal or administrative proceedings.

g. Personnel may call the DOD Small Arms Registry (AUTOVON 793–4678/4977/6519 or commercial (309) 782–4678/4977/6519) to identify weapon ownership. Recovered weapons identified as property of another DOD agency will be returned to that agency only upon request of the agency concerned. Normally, the weapons will be considered Army property and will be treated as such. Serviceable weapons should be returned immediately to normal use if required by the activity. The weapon may be excess or not authorized to support the mission of the activity. If so, the weapon will be reported to the proper national weapons inventory manager for redistribution or reuse. If the national weapons inventory manager provides disposal instructions,

the activity will dispose of the weapon according to existing disposal and demilitarization procedures.

h. Address inquiries on loss, theft, or recovery of firearms, ammunition, and explosives to Cdr, USAMPOA.

8–4. Disposition of records

a. DOD Components (MACOMs, ARNG, and CMP) shall establish procedures to ensure that records reflect the final disposition of investigative action, including recoveries and disciplinary action, as appropriate.

b. Information pertaining to the final disposition of investigative action shall be made to the Director, Security Plans and Programs, ODUSDP, by HQDA, in accordance with paragraphs 8–2*b* and 8–2*c* above. MACOMs, ARNG, and CMP will provide the information to Cdr, USAMPOA.

Appendix B
References

Section I
References in Manual

DOD 5000.9–STD, "Department of Defense Dictionary of Military and Associated Terms," JCS Pub. 1, June 1979, authorized by DOD Directive 5000.9, March 23, 1981.

Title 49, United States Code, Section 1655 (49 CFR 397).

Title 49, United States Code, Sections 1801–1805 (49 CFR 177).

DOD 5220.22–R, "Industrial Security Regulation," February 1984, authorized by DOD Directive 5220.22, December 8, 1980.

AR 55–355/NAVSUPINST 4600.70/AFM 75–2/MCO P4600.14A/DLAR 4500.3, "Military Traffic Management Regulation."

DOD 4500.32–R, "Military Standard Transportation and Movement Procedures (MILSTAMP)," August 1979, authorized by DOD Directive 4000.25, "Administration of Defense Logistics Standard Systems," November 18, 1983.

DOD Directive 5100.76, "Physical Security Review Board," February 10, 1981.

DOD 6055.9–STD, "DOD Ammunition and Explosives Safety Standards," July 1984, authorized by DOD Directive 6055.9, November 25, 1983.

DOD 5200.1R, "Information Security Program Regulation," August 1982, authorized by DOD Directive 5200.1, "DOD Information Security Program," June 7, 1982.

DOD 7200.10–M, "DOD Accounting and Reporting of Government Property Lost, Damaged, or Destroyed," May 1977, authorized by DOD Instruction 7200.10, May 16, 1977.

DOD Directive 3224.3, "Physical Security Equipment: Assignment of Responsibility for Research, Engineering, Procurement, Installation, and Maintenance," December 1, 1976.

DOD Instruction 4140.35, "Physical Inventory Control for DOD Wholesale Supply System Materiel," May 16, 1984.

DOD 4160.21–M, "Defense Utilization and Disposal Manual," September 1982 authorized by DOD Directive 4160.21, December 5, 1980.

DOD 4160.21–M–1, "Defense Demilitarization Manual," October 1981, authorized by DOD Directive 4160.21, December 5, 1980.

AR 55–38/NAVSUPINST 4610.33B/AFR 75–18/MCOP 4610.19C/DLAR 4500.15, "Reporting of Transportation Discrepancies in Shipments".

DOD 5105.38–O, "Military Assistance Program Address Directory," March 1981, authorized by DOD Directive 5105.38, August 10, 1978.

Section II
Required Publications

AR 15–6 (Procedures for Investigating Officers and Boards of Officers Conducting Investigations). Cited in para 2–9, chapter 2, and Appendix D.

AR 190–13 (The Army Physical Security Program). Cited in para 1–3, 1–5, and 1–6, chapter 1, para 2–1, chapter 2, para 3–2, chapter 3, para 4–4 and 4–12, chapter 4, and para 5–9 and 5–10, chapter 5.

AR 190–28 (Use of Force by Personnel Engaged in Law Enforcement and Security Duties). Cited in para 3–9, chapter 3, and para 4–21, chapter 4.

AR 190–40 (Serious Incident Report). (RCS CSGPA–1340) (R1). Cited in para 1–6, chapter 1 and para 8–2, chapter 8.

AR 190–51 (Security of Army Property at Unit and Installation Level). Cited in para 5–8, chapter 5.

AR 710–2 (Materiel Management for Using Units, Support Units and Installations). Cited in para 1, Definitions, para 1–5, chapter 1, para 2–6, 2–8, and 2–9, chapter 2, para 4–10 and 4–12, chapter 4, and para 5–1, chapter 5.

AR 710–3 (Asset and Transaction Reporting System). Cited in para 6–2, chapter 6, and para 8–3, chapter 8.

AR 735–5 (General Principles, Policies, and Basic Procedures). Cited in para 1–6, chapter 1.

AR 735–11 (Accounting for Lost, Damaged, and Destroyed Property). Cited in para 2–9, chapter 2, and para 6–4, chapter 6.

AR 740–26 (Physical Inventory Control). Cited in para 1–5 and 1–6, chapter 1, para 2–6, chapter 2 and para 6–2 and 6–3, chapter 6.

Section III
Related Publications

Related publications are merely sources of additional information. The user does not need to read them to understand this regulation.

AR 12–1 (Security Assistance—Policies and Responsibilities).

AR 55–355 (Military Traffic Management Regulation).

AR 195–5 (Evidence Procedures).

AR 190–12 (Military Police Working Dogs).

AR 190–14 (Carrying of Firearms).

AR 190–18 (Physical Security of US Army Museums).

AR 190–22 (Search, Seizure, and Disposition of Property).

AR 190–27 (Army Participation in National Crime Information Center (NCIC).

AR 190–45 (Records and Forms).

AR 340–18 (The Army Functional File System).

AR 350–2 (Opposing Force (OPFOR) Program).

AR 380–5 (Department of the Army Information Security Program).

AR 385–64 (Ammunition and Explosives Safety Standards).

AR 604–5 (DA Personnel Security Program Regulation).

AR 608–4 (Control and Registration of War Trophies and War Trophy Firearms).

AR 640–3 (Identification Cards, Tags, and Badges).

AR 700–99 (Acquisition, Accounting, Control, and Disposal of Captured Enemy Equipment and Foreign Materiel).

AR 708–1 (Cataloging and Supply Management Data).

AR 920–20 (Promotion of Practice with Rifled Arms).

FM 19–30 (Physical Security).

TB 5–6350–264 (Selection and Application of Joint-Services Interior Intrusion Detection System (J–SIIDS).

TM 9–1300–206 (Ammunition and Explosives Standards).

Army and Air Force Exchange Service publication, Exchange Service Manual 16–1.

Appendix
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Headquarters
Department of the Army
Washington, DC

Issue Number 3
30 September 1993

Update 10-3

Physical Security



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EXHIBIT
124

Headquarters
Department of the Army
Washington, DC
30 September 1993

*Army Regulation 190–11

Effective 30 October 1993

Military Police

Physical Security of Arms, Ammunition, and Explosives

By Order of the Secretary of the Army:

GORDON R. SULLIVAN
General, United States Army
Chief of Staff

Official:

MILTON H. HAMILTON
Administrative Assistant to the Secretary of the Army

History. This UPDATE printing publishes a revision of this publication. Because the publication has been extensively revised, the changed portions have not been highlighted.

Summary. This regulation prescribes policies, procedures and standards for the physical security of sensitive conventional arms, ammunition, and explosives (AA&E) in the custody of the Department of the Army. It implements and includes all applicable guidance from DOD 5100.76–M, with appendix H which replaces DODI 5220.30, and adds implementing and supplementing instructions tailored for use within Department of the Army. The new appendix H prescribes standards for safeguarding certain categories of sensitive arms, ammunition, and explosives in the custody of or being manufactured by DOD prime contractors and subcontractors.

Applicability. This regulation applies to the Active Army, Army Reserve, and contractor-owned, contractor-operated facilities. It applies to the Army National Guard when on active Federal service. This regulation also applies to the Civilian Marksmanship Program when arms, ammunition, and explosives items are in the custody of Department of the Army, or located on installations, or facilities, owned, leased, or otherwise under the jurisdiction of Department of the Army. Physical security requirements for arms, ammunition, and explosives issued to civilian shooting clubs participating in the program are prescribed by the Director of Civilian Marksmanship in appropriate regulations. Reporting requirements in chapter 8, this regulation apply to the Army National Guard and Civilian Marksmanship Program at all times. This regulation is mandatory for use by all major Army commands and for incorporation into those Department of Defense contracts where it is relevant. Deficiencies in facilities used to store sensitive conventional arms, ammunition, and explosives that were not corrected by 1 September 1984 will be covered by an approved security waiver or exception as set forth herein. A plan of action and milestones addressing fiscal years 92 to 96 to correct outstanding structural and intrusion detection system deficiencies at arms, ammunition, and explosives storage sites containing Categories I and II AA&E will be prepared annually by the MACOMs for Department of the Army Headquarters review, until the program is complete. Appendix H is effective immediately for all new acquisitions. Contracts in existence before this revision are allowed to continue operating under DODI 5220.30 until contract modification at which time the provisions of appendix H will be incorporated into those contracts. Forward one copy of implementing documents to Department of the Army and to the Deputy Under Secretary of Defense (Policy) within 120 days. This regulation does not apply to privately-owned weapons in household goods shipments. This publication applies during partial and full mobilization.

Proponent and exception authority. The proponent of this regulation is the Deputy Chief of Staff for Operations and Plans. The Deputy Chief of Staff for Operations and Plans has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The Deputy Chief of Staff for Operations and Plans may delegate this authority in writing to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

Internal control systems. This regulation is subject to the requirements of AR 11–2. It contains internal control provisions but does not contain checklists for conducting internal control reviews. These checklists are contained in DA Circular 11–89–2.

Supplementation. Supplementation of this regulation is prohibited without prior approval of HQDA (DAMO–ODL), 400 ARMY PENTAGON, WASH DC 20310–0400.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested improvements. Users are invited to send comments and suggested improvements, through established command channels, on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to HQDA (DAMO–ODL–S), 400 ARMY PENTAGON, WASH DC 20310–0400.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12–09–E, block number 2568, intended for all command level A for the Active Army and the Army National Guard, and D for the U.S. Army Reserve.

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*This regulation supersedes AR 190–11, 31 March 1986; and paragraphs 3, 4, 5, 10, 12, 14, 18, 20 through 26, and appendix B of AR 190–18, 1 April 1984.

Headquarters
Department of the Army
Washington, DC
30 September 1993

*Army Regulation 190–11

Effective 30 October 1993

Military Police

Physical Security of Arms, Ammunition, and Explosives

By Order of the Secretary of the Army:

GORDON R. SULLIVAN
General, United States Army
Chief of Staff

Official:

MILTON H. HAMILTON
Administrative Assistant to the Secretary of the Army

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*This regulation supersedes AR 190-11, 31 March 1988; and paragraphs 3, 4, 5, 10, 12, 14, 18, 20 through 26, and appendix B of AR 190-16, 1 April 1984.

Chapter 1
General Information

Section I
Introduction

1–1. Purpose

a. This regulation prescribes standards and criteria for the physical security of sensitive conventional arms, ammunition, and explosives (AA&E), including nonnuclear missiles and rockets, as set forth in appendix B, in the custody of any Department of the Army (DA) Component, or contractor and subcontractor. (See app H for AA&E physical security standards at contractor facilities.) This regulation also prescribes policy, procedures, and standards, and assigns responsibilities for the effective implementation and application of physical security of AA&E.

b. Although the standards and criteria in this regulation will provide adequate protection against loss or theft or AA&E at most DA activities, and Department of Defense (DOD) (DA) contractor activities, the threat or characteristics of a particular location may require increased measures subject to approval by the major Army commands (MACOMs) concerned. MACOMs will establish procedures to review the justification of military construction projects that exceed the criteria in this regulation. This regulation does not authorize methods or operations inconsistent with AR 385–64, paragraphs 1 through 12 and appendix A.

c. The provisions of this regulation apply to sensitive conventional arms, ammunition and explosives as follows:

(1) *Arms.* Weapons that will, or are designed to, expel a projectile or flame by the action of an explosive and the frame or receiver of such weapons and comparable foreign arms, U.S. prototype arms and illegally manufactured arms which are retained in the inventory for training, familiarization, and evaluation. This includes handguns, shoulder-fired weapons, light automatic weapons up to and including .50 caliber machineguns, multibarrel machineguns such as the 7.62mm M134, recoilless rifles up to and including 106mm, mortars up to and including 81mm, man-portable rocket launchers, flamethrowers, and individually operated weapons that are portable or can be fired without special mounts or firing devices and that have potential use in civil disturbances and are vulnerable to theft. Comparable foreign arms, U.S. prototype arms, and illegally manufactured weapons retained in the inventory for training, familiarization, and evaluation are also included.

(2) *Ammunition.* A device charged with explosives, propellants, pyrotechnics, initiating composition, riot control agents, chemical herbicides, smoke and flame for use in connection with defense or offense including demolition and having, in general, an individual or unit of issue, container, or package weight of 100 pounds or less. Included are rounds of 40mm and larger; conventional, guided missile, and rocket ammunition weighing 100 pounds or less per round; and 1,000 or more rounds of ammunition smaller than 40mm; and, other ammunition specified in appendix B. Ammunition excluded from the specified requirements of this regulation are the following:

(a) Devices charged with nuclear or biological agents;

(b) Devices charged with chemical agents, except for those specified in appendix B;

(c) Blank ammunition, .22 caliber rimfire ammunition, inert training ammunition;

(d) Artillery, tank, mortar ammunition 50mm and large, and naval gun ammunition 3 inches, 76mm, and larger. However, this ammunition requires Transportation Protective Service as set forth in chapter 7.

(3) *Explosives.* Any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. The term includes, but is not limited to, individual land mines, demolition charges, blocks of explosives and other explosives consisting of 10 pounds or more. The scope of this regulation additionally includes and is limited to:

(a) Categorized explosives specified in appendix B.

(b) Uncategorized Class A and B explosives when being transported (see chap 7).

d. AA&E items covered by this regulation that are also classified will be stored and transported per AR 380–5, appendix H, AR 55–355, chapter 34, and this regulation. Where specific individual requirements differ between these regulations, the more stringent requirement will be followed.

e. MACOMs will prescribe physical security requirements for AA&E items outside the scope of this regulation. Consistent with operational and safety requirements and this regulation, physical security requirements for production and manufacturing operations at Government facilities will be prescribed by the Joint Ordnance Commanders' Group (JOCG).

f. The criteria in this regulation are intended for sites where AA&E are maintained on a permanent basis during daily peacetime conditions, and not for training, contingency sites or operations, such as wartime, force generations, exercises, or operational readiness inspections. For sites and operations not specifically covered in this regulation, MACOMs will establish requirements and procedures to provide protection for AA&E consistent with the philosophy of this regulation, when operationally and environmentally feasible. Upon declaration of war, commanders may prescribe procedures suspending specific physical security provisions of this regulation to account for local conditions, while ensuring maximum practical security for Government personnel and property. This authority is granted to installation, division, and separate brigade commanders and may be delegated to commanders in the grade of lieutenant colonel. Upon mobilization (prior to a declaration of war), this authority is granted to commander of MACOMs and may not be further delegated. In the above circumstances (declaration of war or mobilization), suspension of transportation physical security requirements will be coordinated promptly with HQDA (DAMO–ODL and DALO–TSP) and with the Commander (CDR), Military Traffic Management Command (MTMC).

g. The Army's inventory of AA&E is a vital part of its readiness posture. Loss or theft of such material can foster fear in the public sector and create an image of the Army's inability to secure its assets. The degree of security to provide AA&E is contingent upon many variables. It is impractical, therefore, to prescribe definitive DA physical security standards to cover all anticipated conditions that could impose a threat to the security of the items to be protected. Minimum physical security standards are prescribed in this regulation. As the criminal or other type threats to these materials increase at the local level, security measures at that level may need to be more stringent than those prescribed in this regulation. Commander will notify Headquarters, Department of the Army (HQDA) immediately through commander channels local resources are inadequate to provide necessary protection.

1–2. References

Required and related publications and prescribed and related forms are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the consolidated glossary.

Section II
Responsibilities

1–4. The Deputy Chief of Staff for Operations and Plans

The Deputy Chief of Staff for Operations and Plans (DCSOPS) will develop policies, standards, and procedures on the physical security of sensitive conventional AA&E.

1–5. HQDA staff agencies, MACOMs, and installation commanders

Heads of HQDA staff agencies, MACOMs, and installation commanders will support the AA&E physical security program per prescribed responsibilities in AR 190–13, paragraph 1–5 and this regulation.

a. All commanders will apply enough human resources and funds to A&E physical security programs at all levels.

b. MACOM commanders will identify resource needs in the planning, programming and budgeting system, and allocate necessary resources to support their AA&E physical security program. Installation commanders will ensure funds identified for physical security are used as intended.

1–6. The Chief, National Guard Bureau

The Chief, National Guard Bureau (NBG), will issue appropriate regulations, consistent with policies and procedures of this regulation, for the physical security of AA&E in the custody of the non-Federalized Army National Guard (ARNG).

1–7. The Chief of Engineers

The Chief of Engineers (COE) will ensure that construction plans for new or modified AA&E storage facilities meet the minimum standards prescribed by this regulation.

1–8. The Commanding General, U.S. Army Materiel Command

The Commanding General, U.S. Army Materiel Command (CG, AMC) will prescribe policies, procedures, and standards to physically secure AA&E manufacturing and production facilities and those AA&E under research, development or being tested and evaluated under DA jurisdiction. Implementing instructions issued by CG, AMC will be according to the philosophy and policies in this regulation. AMC, through tri-Service coordination, will use the Decision Logic Tables (see para B–3) and will determine the appropriate risk categories for AA&E items. Security requirements for conventional ammunition and explosives during production and manufacturing operations at Government-owned, contractor-operated (GOCO) facilities are prescribed by the JOCG (DOD 5160.65–M, chap 12). Security requirements for AA&E in the custody of or being manufactured at contractor-owned, contractor-operated (COCO) facilities are established in appendix H.

1–9. Commanding General, U.S. Army Criminal Investigation Command

The CG, U.S. Army Criminal Investigation Command (USACIDC) will—

a. Conduct preliminary investigation into losses of all Category I and II AA&E items, regardless of dollar value, to determine if a crime was committed.

b. Conduct preliminary investigation into losses of Category III and IV items meeting the quantities listed in appendix E, regardless of dollar value, to determine if a crime was committed.

c. Conduct investigations of actual or attempted break-ins or armed robberies of AA&E storage facilities.

d. Provide copies of USACIDC Serious/Sensitive Incident (SSI) reports which may be prepared pertaining to *a, b,* and *c* above to HQDA (DAMO–ODL–S), 400 ARMY PENTAGON, WASH DC 20310–0400.

e. If a crime was committed, conduct a complete investigation and provide HQDA (DAMO–ODL–S), upon request, copies of such investigation reports.

f. If needed, coordinate with the proper law enforcement activity (LEA), provost marshal office (PMO), or security office, to ensure assignment of a physical security specialist to the investigation.

g. Using the results of completed investigations, assist HQDA (DAMO–ODL) and the commander concerned in evaluating existing security measures and recommending corrective action to improve security of such items.

1–10. Commanders and custodians of AA&E

Commanders and custodians of AA&E will—

a. Comply with this regulation.

b. Ensure necessary measures are taken to safeguard AA&E at all times. This includes providing specific instructions on individual responsibility for AA&E during operational or field training conditions, care and maintenance, competitive marksmanship meet, and storage on, or when mounted on, vehicles and aircraft.

c. Ensure timely submission of serious incident reports (SIR) per AR 190–40, paragraph 4–9.

d. Report all losses (actual or suspected) or recoveries within 2 hours of initial detection to the proper law enforcement agencies.

e. Conduct prompt investigation of losses after a decision of the USACIDC that criminal acts were not involved.

f. Fix responsibility when negligence is determined and take proper corrective action to prevent further loss.

g. Publicize AA&E security and loss prevention through command information and unit training programs.

h. Plan, program, budget, and allocate resources for the implementation of required policies outlined in this regulation.

i. Ensure that AA&E storage facilities are checked, inventoried, and inspected as required by this regulation.

1–11. Active Army installation commanders, Reserve Component commanders, and unit commanders

Active Army installation commanders, Reserve Component (RC) commanders, and ROTC unit commanders will—

a. Coordinate physical security plans with local LEAs and supporting military intelligence (MI) and USACIDC elements.

b. Set up liaison at the local level with the agencies per chapter 3.

c. Ensure that agreements governing consolidated AA&E storage facilities and the storage of AA&E property of Federal, State, contractor agencies, and foreign government agencies contain definite assignment in writing of responsibility for the items stored.

d. Conduct unannounced inspections as often as deemed necessary by the commander concerned.

e. Ensure construction programming documents involving AA&E facilities have been coordinated with the responsible provost marshal or security officer.

1–12. Commanders or directors of activities, installation planning boards, and responsible or accountable officers

a. Commanders or directors of activities, and units on Active Army installations, or subinstallations, will coordinate physical security plans for standard operating procedures (SOPs) once a year with the installation PMO or Security Office. They will—

(1) Ensure their security procedures are current and in keeping with the command and HQDA physical security directives.

(2) Include provisions in security procedures for applying physical security measures for storage areas in keeping with the host commanders assessment.

b. Commanders or directors of tenant activities (located both on and off the installation) must identify their security requirements to the host installation. They will ensure funding provisions are considered in proper budget programs.

c. Installation planning boards will include a physical security representative from the LEA, PMO or Security Office as a voting member on all actions. The representatives will ensure that provisions of this regulation are considered and made a matter of record during the planning process.

d. This regulation does not relieve responsible or accountable officers of this responsibility to account for property.

e. Persons issued or holding AA&E are responsible for properly securing such property while it is charged or entrusted to their care.

1–13. Security of nonsensitive AA&E

AA&E that does not meet the criteria in this regulation for "sensitive" items must be safeguarded from pilferage, theft, and wrongful destruction when stored or deployed in the field. Although this regulation does not prescribe security criteria for these items, AR 190–13, paragraph 1–5, assigns commanders the responsibility to ensure reasonable security measures are taken to safeguard property and facilities that may be vulnerable to criminal acts or other disruptive activities. Commanders and security personnel involvement is necessary to ensure that the security measures taken provide

enough security based on an assessment of the threat and vulnerability of the items concerned. Such security measures can include use of fences, lighting, locks and key control, security patrols, and any other measures deemed suitable by the commander responsible for the security of the items involved.

1–14. Transportation security

Responsibilities pertaining to transportation security standards and procedures are discussed in paragraph 7–2 for: the Commander, Military Traffic Management Command (MTMC), (para 7–2*a* and *b*), overseas theater commanders (para 7–2*a*), the Military Airlift Command (MAC) (para 7–2*c*), and the Military Sealift Command (MSC) (para 7–2*d*).

Chapter 2
Policy

2–1. General

a. Systems should incorporate technology and equipment available within the Federal Government and the private sector to provide cost effective protection, automated accountability, and inventory control. Physical security equipment management policy is established in AR 190–13, chapter 4. Security criteria will be included in initial plans for research and development, as well as all new or modified construction projects.

b. To minimize the cost of physical security and inventory control, and to reduce theft vulnerability, the quantities of AA&E and the number of storage facilities for AA&E should be reduced. Storage should be consolidated to the maximum extent consistent with operational, safety, and training requirements.

(1) AA&E should be removed from designated storage areas as briefly as possible. The quantity to be removed should be as small as possible to support specific missions or projects. Storage areas should be as small as possible consistent with safety standards, security, and mission requirements.

(2) Further reduction of costs for protection and inventory control can be effected by grouping the consolidation of AA&E into smaller storage areas by assigned risk category, and providing the degree of physical security protection needed for that category. Priority attention will be given to demilitarization or disposal of obsolete and unserviceable AA&E to avoid unnecessary storage, security, and inventory-related costs.

(3) The provisions of this regulation are intended to provide adequate storage security for AA&E at most DA activities. There may be a few unusual activities, such as large depots or remote storage areas without existing electrical service, where not all criteria in this regulation can be directly applied in a cost effective manner. At these unusual or unique facilities, local conditions must be carefully evaluated, and the security system must be tailored to the local conditions, based on practicability and cost, rather than specific security requirements prescribed herein. In these instances, waivers or exceptions should conform to the requirements provided in paragraph 2–4.

2–2. Construction of facilities

a. The provisions of this regulation are mandatory for new construction of permanent land-based installations for storage of sensitive AA&E. Modification to existing facilities will be accomplished in accordance with the criteria set forth in this regulation.

b. The tearing down and rebuilding of facilities will not be undertaken unless the concerned MACOM has determined that existing security measures cannot be supplemented to provide the required degree of protection. When nonstandard structures or facilities provide equivalent or better protection, modifications will not be undertaken. Exceptions to this policy will be granted under paragraph 2–4.

c. Upgrading of existing storage structures must be consistent with approved plans for future development and new construction plans. The type, planned use, modification costs, and remaining economic life of storage structures must be considered. Additionally, in determining upgrade requirements, ammunition and explosives will be consolidated by risk category to the maximum extent consistent with operational, safety, and training requirements. Compensatory security measures will be established for AA&E storage structures that do not meet minimum construction standards. Definitive drawings and specifications for new construction, upgrade, or modification of AA&E storage structures will be coordinated with the engineer office, safety office, and LEA, PMO, or security police office to ensure safety and physical security requirements are met.

d. Qualified engineer personnel will verify the structure composition of AA&E storage facilities (e.g., walls, ceilings, roofs, floors, and doors). Statements will be prepared on DA Form 4604–R (Security Construction Statement). Statements will indicate the highest construction category met for storage of AA&E, e.g., Category I, II, III, or IV AA&E items and date of applicable regulation. (See para 2–4 for procedures when structural deficiencies exist.) The DA Form 4604–R will be posted in each AA&E storage facility. The DA Form 4604–R will be locally reproduced on 8½- x 11-inch paper. A copy for reproduction purposes is located at the back of this publication. A blanket statement on DA Form 4604–R may be issued at an installation for all facilities, such as ammunition magazines, constructed according to the same specifications. Under these circumstances a copy of the DA Form 4604–R need not be posted in each individual storage structure, but must specifically identify the facilities by number and location, and be readily available for inspection. Security construction statements will be reviewed during physical security surveys and inspections. The statements normally will be revalidated by engineer personnel every 5 years.

e. Physical security personnel will monitor construction of new facilities and renovation of existing facilities. Engineer personnel will coordinate new construction and renovation projects with the local provost marshal or security officer. In addition to meeting construction standards, storage of AA&E will meet physical security criteria, such as Intrusion Detection System (IDS), locks and hasps, lighting, and security patrols, as necessary, for the particular category of AA&E involved.

2–3. Priority lists

The MACOMs will establish a priority list for meeting the security requirements. Requirements will be listed in priority sequence by category for planning, programming, and budgeting purposes. Priority of installation of IDS is as follows:

a. Facilities storing Category I items, when protection is inadequate. Those having the largest quantity will receive initial attention.

b. Facilities storing Category II items.

c. Facilities storing Category III items.

d. Facilities storing Category IV items.

e. Deviations from these priorities will be permitted only when MACOMs have determined that a local threat dictates these deviations.

2–4. Waivers and exceptions

Commanders are authorized 10 percent deviation from the physical security construction standards established by this regulation for existing facilities. Otherwise waivers and exceptions to the physical security requirements of this regulation must be granted by the DCSOPS or his or her delegated authority in accordance with the procedures established by HQDA (DAMO–ODL) under the following provisions:

a. Waiver and exceptions will be considered individually; blanket waivers and exceptions will not be authorized. Requests for waivers or exceptions applying to commercial carrier's transportation minimum security standards (chap 7), together with compensatory measures taken, will be forwarded through the Commander, Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041, to HQDA (DAMO–ODL–S), 400 ARMY PENTAGON, WASH DC 20310–0400.

b. Waivers normally may be granted for a period of 1 year and may be extended only after a review of the circumstances necessitating the extension. Waivers will not exceed 2 years when resource considerations clearly indicate a continued waiver requirement beyond the normal 1 year waiver period. Justification for such waivers will be required. Each extension will state first extension, second extension, and so forth.

c. Exceptions will be granted only when correction of a deficiency is not feasible or when the security afforded is equivalent to or better than that afforded under the standard criteria.

d. Requests for waivers and exceptions will contain compensatory measures in effect or recommended. Approvals for waivers and exceptions will specify required compensatory measures. Equivalent protection exceptions do not require compensatory measures.

e. Deficiencies that will be corrected within 60 days will not require a waiver or exception; however, compensatory measures will be taken during the interval.

f. Authority to grant waivers and exceptions constituting standards below those prescribed in this regulation must be approved by the DCSOPS or his or her designated authority. U.S. Army Reserve Command requests for waivers and exceptions will be submitted through command channels through the Commander, U.S. Forces Command, Fort McPherson, Georgia 30330–6000, to HQDA (DAMO–ODL–S), 400 ARMY PENTAGON, WASH DC 20310–0400.

g. Requests for physical security waivers or exceptions will be coordinated between the LEA, PMO, or security office of the installation or activity. When structural deficiencies exist, requests also will be coordinated with the supporting engineer.

h. A request for a physical security waiver or an exception will include—

(1) A statement of the problems or deficiencies that constitute standards below those cited in this regulation.

(2) Compensatory measures in effect at AA&E storage facilities to make up for noncompliance with required standards of protection.

(3) Reasons the unit, facility, or installation cannot comply with the requirements of this regulation.

(4) The commander's statement of corrective action taken or planned to correct the deficiencies for which the waiver or exception is required.

(5) Each successive command's recommendation.

i. The unit and the approving headquarters will retain on file the approved waiver or exception, including the documents listed in *c* above.

j. Exceptions will be regarded as generally permanent; however, they will be reviewed at least once every 2 years to determine if they need to be continued. The review will be conducted by the authority who approved the exception.

k. Exceptions previously granted under the criteria of the previous AR 190–11 remain valid under the provisions of this regulation. Such exceptions need not be resubmitted for approval. However, such exceptions will be reviewed as indicated in paragraph *j* above.

2–5. Security of AA&E during training, and aboard ships

Specific criteria and standards for protection of AA&E during training and in shipboard armories or otherwise on board ships will be developed by the MACOM concerned, based on the security philosophy in this regulation. AA&E deployed in the field for training or operational purposes will be secured at all times. The deploying commander will establish and enforce procedures for securing deployed AA&E based on an assessment of the threat, objectives, location, and duration of the deployment. The following guidelines apply:

a. AA&E will be under continuous positive control.

b. AA&E will not be left unattended or unsecured.

c. Persons charged with custody of AA&E will have the capability to sound the alarm if a forceful theft is attempted.

d. A response force will be available to protect the AA&E.

e. A system of supervisory checks will be established to ensure all personnel comply with security procedures. Supervisory checks of the AA&E holding area will be made to ensure the AA&E being guarded have not been tampered with.

f. Control of ammunition and explosives during field training or range firing will be monitored closely by all officers, noncommissioned officers (NCOs), or civilian equivalents. Upon completion of training, the area(s) will be policed and unused ammunition and explosives collected for turn-in. Personnel will be checked closely to ensure unused ammunition and explosives are not retained. Close supervision by officers, NCOs, or civilian equivalents can eliminate most security problems in the training area.

g. Selection of personnel to perform guard duties at AA&E holding areas will be closely monitored by commanders to ensure only responsible individuals are assigned duty.

2–6. Inspections and audits

Security measures including theft or loss reporting and inventory and accountability procedures for AA&E will be examined during inspections and audits. The status of existing waivers and exceptions will be examined for compliance and continuing necessity.

a. Physical security surveys/inspections will be conducted per AR 190–13, paragraphs 2–7 and 2–8, on facilities in which AA&E governed by this regulation are stored. Additionally, conduct physical security surveys/inspections as follows:

(1) For new AA&E storage facilities, before and immediately after occupancy.

(2) On significant change in facility structure.

(3) After a forced entry or attempted forced entry with or without theft.

(4) When units have received an unsatisfactory rating on their physical security survey/inspection, reinspection will be within 6 months. A copy of an unsatisfactory physical security survey or inspection concerning RC and ROTC units will be furnished the installation commander providing logistical report. The followup report will include written comments to show what elements have received copies.

b. Physical security inspections of AA&E deployed in the field for training and operations will be conducted to ensure these items are properly protected.

c. Results of physical security inspections and surveys will be briefed to the commander responsible for the security of the facility or area inspected.

d. Inventory, accountability, issue and turn-in procedures will be included in physical security inspections/surveys to ensure the procedures support the physical security program. AR 710–2, chapter 2, applies to supply operations below the wholesale level. AR 740–26, chapter 2, establishes physical inventory controls at the wholesale level. Chapter 4, this regulation, applies regarding accountability requirements for contractor owned and commercial arms and ammunition.

e. When custody of arms storage facilities is transferred between authorized persons, they will conduct a physical count of the weapons and ammunition stored therein, per requirements in AR 710–2, paragraphs 2–12 and 2–53; and DA Pam 710–2–1, paragraph 9–11. The inventory and change of custody will be conducted and recorded per AR 710–2, paragraphs 2–12 and 2–53; and DA Pam 710–2–1, paragraph 9–11.

2–7. Prohibition

Reserve Officers Training Corps (ROTC/JROTC) units, gun clubs, and activities under the responsibility of the Director of Civilian Marksmanship are not authorized to possess or store Category I or Category II AA&E. ROTC units may use Category II AA&E during authorized training with active DA Components. National Guard and reserve units will not be permitted to store Category I AA&E. However, these units may be given temporary custody of Category I AA&E for training on military installations in accordance with specific security instructions provided by the commander of the installation. ROTC units, gun clubs, and activities

under the auspices of the Civilian Marksmanship Program are not authorized to store Category I and II AA&E. Active Army installations and RC facilities may provide support to ROTC units when requested.

2–8. Requisition

HQDA (DALO–SMP–S) will establish procedures for item managers to ensure necessary requisition verification of AA&E items. Commanders will include instructions to ensure AA&E requisitions are authorized by designated personnel and released only to properly identified authorized personnel. The procedures will include positive steps for rejecting excess and unauthorized requisitions. (See AR 710–2, para 2–52, for policy on requisitioning.)

2–9. Investigations

A thorough investigation will be made of lost, stolen, or missing AA&E to determine the circumstances surrounding the loss or theft and to fix responsibility as necessary. Inventory and accountability losses will be investigated thoroughly. Before any loss can be attributed to any inventory or accountability discrepancy, it must be determined through investigation that the loss was not the result of theft or misappropriation, per AR 735–5, chapter 13, as appropriate.

a. Guidance on actions to be taken. Active Army and RC commanders, or their designated representatives, having direct responsibility for AA&E lost, stolen or missing or the receiving unit or agency will—

(1) Notify the supporting LEA, PM, or security office as soon as the incident is discovered. The notice will be as complete as possible but will not be delayed because of incomplete data. USAR will notify the PMO or LEA responsible for the geographical area. In CONUS, this notice will include the proper FBI field office having area jurisdiction. Civil authorities in overseas areas will be notified according to local policy.

(2) When sensitive AA&E are reported lost, a preliminary investigation will be conducted by the USACIDC to determine criminality before beginning any administrative action (see para 1–4)

(3) Start administrative action per AR 735–5, chapter 13, if the USACIDC investigation determines a crime was not committed. The report of survey or an equal procedures will not be used as a disciplinary or punitive measure. The use of this administrative procedure will not prevent recourse to disciplinary measures when proper. Therefore, the survey will not be used instead of a criminal investigation when one is warranted.

(4) Determine accountability for recovered property per AR 735–5, paragraphs 14–16 and 14–17. A person may be held responsible and be required to pay for a loss. If so, he or she will not be allowed to claim title or obtain ownership of the item if it is recovered.

(5) Consider relative investigative findings in violation of this or other applicable regulations. Take proper punitive action if events warrant.

(6) Request, through channels, that an AR 15–6 investigation be initiated for AA&E in appendix E. This may be used instead of a Report of Survey per AR 735–5, paragraph 13–2.

b. Property overages. Property overages will be handled in the same way as stated in *a* above.

c. The investigation. Facts must be presented by the requesting person. The installation, depot, or community commander may then direct that an investigation by initiated. The officer appointed to conduct the investigation will follow procedures per AR 15–6, chapters 3, 4, and 5. and this regulation.

d. In-transit losses. Consignees of AA&E shipments will report in-transit losses to the supporting LEA, PMO, or security office.

e. Inventory adjustments. Inventory losses or overages may be determined as administrative, computer, or other type accountability errors and not actual losses. This determination will be made only after investigative action has established the cause of the discrepancy. (In no case may a weapon, ammunition, or explosive loss or overage be attributed to inventory error unless the responsible agency, unit, or activity conducts an investigation that, beyond a doubt, excludes the possibility of theft or loss.) When such a decision has been made, DA Form 3056 (Report of Missing/Recovered Firearms, Ammunition and Explosives) will be submitted (fig 2–1). The form will explain—

(1) The rationale for such a decision.

(2) The type of inventory adjustment action taken.

(3) The name, grade, and duty position of the approval authority.

f. Transportation losses. Transportation officers, or their designated representatives, will inform the supporting LEA, PMO, or security office when claims or other data reflect the loss of AA&E from shipment or storage. This report will include household goods and losses of privately-owned weapons.

g. Competitive marksmanship weapons. Members of the Civilian Marksmanship Program will report the loss of AA&E to the local police or Federal Bureau of Investigation (FBI), and the director of the program.

h. Criminal investigation reports. The CG, USACIDC will provide HQDA (DAMO–ODL–S), upon request, copies of completed criminal investigation reports. The reports will describe the loss or theft of AA&E. Reports prepared by the FBI will be included as attachments or as received.

2–10. Training

a. Commanders responsible for AA&E will establish a training program for those personnel responsible for the accountability of these items. The training program will be designed to—

(1) Provide training in inventory and accountability procedures as outlined in applicable 700-series Army regulations.

(2) Fit the requirements of different groups of personnel responsible for accountability.

(3) Indoctrinate personnel in the principles, criteria, and procedures for accountability and inventory, including disciplinary actions against individuals responsible for violating security requirements as prescribed in this regulation.

b. Commanders will initiate an aggressive training program to ensure all unit personnel are aware of their responsibilities for the security and accountability of AA&E. A training program will also be established to ensure requirements of AR 190–56, chapter 4, are kept and to ensure continued proficiency of the guard force. As a minimum, this training will include—

(1) Care and use of weapons, to include qualification firing with assigned weapons within the past 12 months.

(2) Legal authority, responsibility, and jurisdiction of guards on duty, to include apprehension, search and seizure, and use of force.

(3) Physical fitness training.

(4) Guard orders, to include communications and duress procedures.

(5) Duties in the event of emergencies, such as alerts, fire, explosion, civil disturbance, intrusion, attempted seizure, or terrorist incident.

(6) Current criminal threat to AA&E.

(7) Crime prevention.

(8) Common forms of sabotage and espionage, to include current threat situation.

(9) Location of hazardous and vulnerable equipment and materiel, to include high security risk AA&E requiring special attention or more frequent security checks.

(10) Location of fire protection equipment, decontamination stations, electrical switches, and first aid facilities.

(11) Operation and monitoring of intrusion detection system.

(12) Additional training subjects are listed in AR 190–13, paragraph 2–5.

c. Commanders will take continuing action through annual update refresher briefings to ensure that all personnel are aware of their responsibilities for the control and safeguarding of AA&E.

2–11. Personnel

a. Commanders will be selective in assigning personnel to duties involving control of AA&E. Only personnel who are mature, stable, and have shown a willingness and capability to perform assigned

especially vulnerable to theft or sabotage. Commanders will prescribe necessary security measures to protect items located in open storage. Ammunition and explosives in temporary open storage will be secured under the following procedures:

(a) Perimeter barrier, either temporary or permanent.

(b) Guard surveillance (post guards or on-duty personnel).

(c) Security lighting during hours of darkness or reduced visibility.

(d) Inventory, accountability, and control.

(e) Posted restricted limited area.

(f) Access control (see para 5–9).

(g) Communication systems.

(6) When more than one unit uses the same area, stocks will be separated and identified by unit. One unit will be designated as responsible for the security of the entire area, including access control.

(7) When the threat or other conditions dictate, responsible commanders will decide the advisability of separate storage of battery coolant units (BCU) from the REDEYE weapon. Threat conditions, operational requirements for BCU, and other mission criteria are factors that will determine container location.

5–9. Entry control

a. Vehicular and personnel gates will be secured and strict key control accountability will be observed. A pass, badge, or access roster plus a registration system, will be used to admit properly identified authorized personnel to storage areas.

(1) Vehicle and personnel gates will be secured except when it is necessary to allow authorized entry into or exit from, the area.

(2) Keys and locks to gates will be controlled and accounted for per paragraph 3–8.

(3) Entry and exit procedures will include checks of personnel and vehicles for unauthorized material.

(4) Persons requiring frequent recurring entrance to the area will either be listed on an entry control roster prepared by the responsible storage commander or issued a photographic security badge which clearly establishes the authority to enter. The roster will contain as a minimum, the name, grade, and unit or organization of each authorized person.

(5) Privately owned vehicles and leased vehicles will not be permitted inside storage facilities and areas except those authorized for use by Government officials and DOD contract personnel. Such vehicles entering secure areas will be tagged with a pass card and recorded.

(6) Upon exiting, all vehicles will be thoroughly inspected to ensure that only authorized material is being removed.

(7) Vehicles leased by Government agencies are considered to be Government vehicles for the contracted period. Rental vehicles obtained by Government employees for official use during periods of temporary duty will be allowed entry when the employee's official duties require such entry.

b. Personnel, including guards or host country guards, whose duties require unescorted access to storage facilities containing classified missiles and rockets, or other classified items, will have a security clearance commensurate with the classification of the items involved.

c. A two-person rule will be established for access to storage facilities containing Category I missiles and rockets. Two authorized persons will be required to be present during any operation which affords access to these facilities. Commanders will establish appropriate lock and key control procedures to preclude defeat of the two-person rule concept.

5–10. Restricted areas

Areas in which sensitive missiles, rockets, explosive, or ammunition are stored will be designated and posted as restricted areas per AR 190–13, chapter 6.

5–11. IDS signs

Signs clearly announcing the presence of an IDS will be displayed on ammunition storage rooms, magazines, or perimeter barriers using such a system. Signs will be affixed at eye level, when possible. They will be affixed on the exterior walls containing an entrance to the ammunition or explosives storage room, vault, building, or magazine or, in the case of alarmed barrier fences, on the outside of the fence at about 100-meter intervals. Signs will be placed at a location where they will not hinder observation or fields of fire. Signs will not be placed where they may be used by intruders to gain entry. Alarm signs will not create nuisance alarms. Otherwise, the signs will be posted outside the perimeter fence. IDS signs meeting the specifications of appendix F will be used.

5–12. Storage of classified items

Classified AA&E storage facilities will comply with standards set forth in paragraph 4–2 or AR 380–5, appendix H. Classified missiles and rockets, or other classified items, will be segregated from unclassified items stored in the same storage facility. Strict access and accountability control procedures will be established by the commander. See paragraph 5–9 for two-person rule requirement for access to Category I missiles and rockets. Personnel whose duties require access to above storage facilities will have a security clearance commensurate with the classification of the items involved. Classified AA&E material manuals and documents should normally be stored separately from the ordnance items per AR 380–5, paragraph 5–102.

5–13. Additional security measures for igloos and magazines

King Tut blocks may be used to enhance the overall security of ammunition and explosives stored in unalarmed igloos and magazines (see IDS requirements in this chapter) in plants, depots, and ammunition supply points, at the option of the commander.

Chapter 6
Accountability, Disposition, Disposal, and Demilitarization

6–1. Nonnuclear missiles and rockets (Category I)

a. Each Commander having custody of nonnuclear missiles and rockets establish and maintain records which will provide for continuous accountability. This will include those issued for training by requiring the return of unexpended missiles and expended residue. When possible, such records will be maintained by serial number. Incoming shipments will be inventoried promptly after receipt to ensure that all items have been received. All contracts for the procurement of nonnuclear missiles and rockets will provide for individual serialization.

b. In addition to the inventory requirements in AR 740–26, chapter 2, and AR 710–2, paragraphs 2–12, 2–53, and 3–43, the following apply:

(1) Unit level. A 100 percent physical count will be taken monthly. A 100 percent physical inventory by serial number will be taken quarterly.

(2) Depot, post, or base level. A 100 percent inventory will be taken semiannually.

6–2. Arms

a. Arms Serial Number Registration and Reporting.

(1) *DOD Central Registry.* A DOD Central Registry will be maintained to record, by serial number, the ownership account of all arms. AR 710–3, chapter 4, establishes policies and prescribes responsibilities and procedures for serial number registration and reporting of arms belonging to Army units, organizations, activities, and installations which maintain property books and stock record

accounts. MACOMs will emphasize the necessity for strict compliance with the prescribed reporting requirements. Questions concerning registry operations will be referred to the DOD Central Registry at: Commander, U.S. Army Armament, Munitions and Chemical Command, ATTN: AMSMC-MMD-LW, Rock Island, Illinois 61299-6000. DSN 793-4678/4977/6519 or commercial (309) 782-4678/4977/6519.

(2) *Delineation of responsibilities.*

(a) The Department of the Army is the assigned agency responsible for operating and maintaining the DOD Central Registry. This registry maintains control over serial numbers of arms and a file of those arms that have been lost, stolen, demilitarized, or shipped outside the DOD. The DOD Central Registry will be updated by tapes, forwarded to it monthly from the MACOM registries which contain in serial sequence the most recent list of serial numbers of arms for which the MACOM maintains accountability. The tape will also include a history file of arms reported lost, stolen, demilitarized, or shipped outside the control of the DOD.

(b) Each MACOM is responsible for maintaining a mechanized registry for serial numbers of arms in their inventory. The registry will be updated based on transaction reporting, i.e., receipts, issues, and turn ins.

(c) When the DOD Central Registry receives an inquiry concerning a lost, stolen, or recovered weapon that is listed with the registry as DOD property, or as missing from a DOD activity, the Central Registry will inform the affected MACOM registry. Commanders will establish procedures to ensure that such losses, thefts, or recoveries are, or have been, appropriately investigated per paragraph 2–9, and reported as outlined in chapter 8 of this regulation. Commanders will also ensure that MACOM AA&E recovered by police or investigative agencies are returned to MACOM control for disposition upon completion of investigative and prosecutive action.

(3) *Exclusions.* Privately-owned arms and arms purchased with nonappropriated funds are exempt from being reported to the DOD Central Registry. However, each post, camp, or station having nonappropriated fund arms will establish procedures to identify such weapons by type and serial number.

(4) *Registration and reporting procedures.*

(a) The arms serial number registration and reporting procedures will ensure control over all arms serial numbers in the following situations: from the manufacturers to depot; in storage; in transit to requisitioners; in post, camp, or station custody; in the hands of users during turn-ins; in renovation; and during disposal or demilitarization.

(b) The DOD Central Registry will maintain records of: serial number adjustments; shipments to flag rank officers; foreign military sales (FMS) and grant aid; activities outside the control of the Department of Defense; and transfers between DOD components. Incoming shipments will be inventoried promptly after receipt to ensure that all items have been received and entered into the DOD Central Registry or the MACOM registry, as appropriate.

(c) National or DOD Component-assigned stock numbers will be used by the MACOMs for the initial load and all later transactions to the DOD Central Registry.

(d) All arms, regardless of origin, that are accounted for in unclassified property records, will be reported. Automatic weapons will be reported on a priority basis.

(e) Arms with national stock numbers (NSN) or serial numbers, with missing, obliterated, mutilated, or illegible serial numbers, when discovered, will be reported to the DOD Central Registry by the MACOM registry, by message or letter for assignment of NSN and management control number serial number. Request must contain:

1. NSN or "None" if unknown.
2. Serial number or "None" if unknown.
3. Description, to include make, model, caliber, and any or other nomenclature data.

(f) When the DOD Central Registry identifies duplicate serial numbers by weapon type in the MACOMs, instructions will be provided by the U.S. Army Armament Munitions and Chemical Command (AMSMC–MMD–LW) for the modification of the serial numbers. Movement and shipment of weapons will not occur prior to correction of serial numbers.

(g) To ensure the DOD Central Registry is properly maintained, the following is required for small arms shipments: two weapon serial number (WSN) control cards for each weapon in shipment will be attached to the supply documentation; when operational procedures restrict compliance with the two WSN control card requirement, a listing of WSNs will be attached to the supply documentation; and incoming shipments will be opened by a designated receiver and the receipt of each item verified by check of the serial number. However, incoming shipments from new procurement received at depots that are preservation packaged need not be individually checked if the contract provides for a 100 percent serial certification by the contractor which is checked by government contract representatives based upon acceptable sampling techniques. In this latter case, the receiving activity randomly will sample to verify the accuracy of serial numbers in each shipment from new procurement.

(h) The DOD Component registries will reconcile inter-Service transfers of weapons on a transaction-by-transaction basis. Follow-up procedures will be established to ensure that the loop is closed on inter-Service transfers.

b. Physical inventory control.

(1) All items included in the definition of the term "arms" will be subjected to physical inventory control per AR 740–26, chapter 4. All provisions requiring a high degree of protection and inventory control specified for sensitive items, apply.

(2) Policy and procedures for physical inventory control are per AR 740–26, chapter 4.

(a) The nature and sensitivity of arms control dictates strict adherence to the provisions of AR 740–26, chapter 4, with respect to physical inventories, research of potential inventory adjustments, reversal of inventory adjustments, retention of accountable documentation, quality control, and inventory effectiveness reporting.

(b) The special provisions for controlled inventory items are important to the control of arms. In addition to AR 740–26, the following minimum requirements will be met—

1. Unit level. A 100 percent physical count will be taken monthly and an inventory by serial number will be taken quarterly, except for boxed and banded arms. In this latter case, the count and inventory will consist of a 100 percent count as reflected by the number of items listed on the boxes. Any evidence of tampering will be cause for that box to be opened and 100 percent count to be taken of the weapons in the box. The inventory records will be maintained for a minimum of 2 years for inventories that do not reflect discrepancies. Records of inventories that reflect discrepancies will be maintained for a minimum of 4 years.

2. Depot, post or base level. Those arms not already entered into the DOD Central Registry will be completely inventoried in conjunction with the serialization reporting program. Therefore, the inventory will be taken once each FY at depot and semiannually at post or base level. These inventories will consist of a 100 percent count as reflected by the number of items listed on the boxes. A complete count will be made of the contents of every box that is opened or damaged. The inventory records will be maintained as required in *1* above.

6–3. Ammunition and explosives

a. All items included in the definition of the terms "Ammunition" and "Explosives" will be subject to physical inventory control procedures per AR 740–26, chapter 4, and AR 710–2, paragraphs 2–12, 2–53 and 3–43. All provisions of AR 740–26, chapter 4, and AR 710–2, chapter 2, requiring a high degree of protection and inventory control specified for sensitive items, apply. Upon receipt a check will be made to verify that all items shipped have been received.

b. Detailed policy and procedures for physical and inventory control of ammunition and explosives are per AR 740–26, chapter 4, and AR 710–2, chapter 2. The nature and sensitivity of ammunition control dictates strict adherence to all provisions with respect to the following:

(1) Physical inventories.
(2) Research of potential inventory adjustments.
(3) Reversal of inventory adjustments.
(4) Retention of accountable documentation.
(5) Quality control.
(6) Inventory effectiveness reporting. The special provisions for controlled inventory items are important in the control of ammunition and explosives.

6–4. Inventory losses

Accounting and inventory losses of AA&E will be processed per AR 735–5, chapter 13, as applicable.

6–5. Inventory effectiveness review

Inventory effectiveness reviews will be conducted by the MACOM concerned on an unannounced basis.

6–6. Disposal and demilitarization

AA&E undergoing demilitarization must be transported and stored in accordance with this regulation until demilitarization is completed. AA&E being disposed of without demilitarization (FMS, transfer to law enforcement agencies, and the like) will be transported and stored in accordance with this regulation until accountability is transferred. The following applies:

a. Arms. A report (transaction) by serial number will be made to the DOD Central Registry upon the demilitarization of each arm that has been previously entered into the DOD central registry.

(1) A report (transaction) will be furnished to the DOD Central Registry in the case of each arm disposed of other than by demilitarization.

(2) A demilitarization certificate will be completed by a technically qualified U.S. Government representative before residue from the demilitarization process is released from U.S. control.

b. Ammunition. Defense Reutilization Marketing Offices (DRMO) are not permitted to receive live ammunition items. DRMO may receive inert ammunition components.

(1) In the United States, ammunition will be demilitarized by a DOD Component activity having such a capability.

(2) Overseas, where U.S. forces do not have the capability to demilitarize ammunition items, demilitarization may be performed by approved contractors who are licensed or controlled by the government of the country in which the contractor operates.

(3) The Military Departments are responsible for the economical and effective demilitarization of ammunition under their accountability. A certificate will be executed by a technically qualified U.S. Government representative for all items demilitarized. (DOD 4160.21–M–1, chapter 2)

c. Explosives. In addition to the requirements above, sales of surplus explosives in the United States are limited to individuals and companies holding a valid user's or dealer's license issued by the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. Overseas sales are limited to companies controlled or licensed by the respective government. Purchasers of explosives must provide a Certificate Regarding End Use of Explosive Materials. (DOD 4160.21–M, chapter 2) Each MACOM will establish procedures to ensure that accountability of items shipped to DRMOs are retained until documents from the DRMO and the transaction records are reconciled.

6–7. Disposal of abandoned and confiscated privately-owned firearms

The Anniston Army Depot, ATTN: SDSAN- DSP–PPC, Anniston, Alabama 36201, is the continental United States (CONUS) disposal facility for shipping abandoned and confiscated privately-owned firearms. The following procedures apply:

a. Prior to shipment, register firearms in the DOD Central Registry per TM 38–214.

b. Use DD Form 1348–1 (DOD Single Line Item Release/Receipt Document) to accomplish supply turn-in transactions with Anniston Army Depot.

c. Ship firearms via registered mail, return receipt requested.

d. Prior to shipment, clear firearms from provost marshal registry files.

Chapter 7
Transportation

7–1. General

This chapter prescribes transportation security standards and procedures to be used in safeguarding categorized AA&E as described in appendix B and for safeguarding uncategorized Class A and B ammunition and explosives. AA&E which are classified will be stored and transported in accordance with this regulation and per AR 380–5, chapters 5 and 8; where specific individual requirements differ between these two documents, the more stringent requirement will be followed.

a. MACOMs will establish security criteria for the intra-installation and unit training movement of AA&E consistent with the philosophy in this chapter.

b. Explosive ordnance disposal teams responding to off-station accidents or incidents will transport necessary explosive ingredients in accordance with requirements established by the MACOM concerned, based on the philosophy contained in this chapter.

c. Commanders will ensure that DOD-procured AA&E items transported from contractor facilities to DOD facilities are shipped in accordance with this chapter. Provisions of AR 55–355, chapter 33, apply concerning shipments of DOD-procured AA&E from contractor facilities to DOD facilities.

7–2. Responsibilities relating to transportation

a. Within their respective areas of responsibilities, overseas theater commanders, and the Commander, MTMC, are responsible for:

(1) Ensuring that the transportation protective measures used for AA&E items are established in applicable tariffs, government tenders, agreements or contracts.

(2) Negotiating with commercial carriers for establishment of transportation protective measures to meet shipper requirements.

(3) Determining the adequacy of the services provided by commercial carriers for movement of AA&E items.

(4) Routing when requested by shipper.

b. In addition, the Commander, MTMC, will—

(1) Develop, administer, and maintain joint transportation security procedures for the commercial movement of AA&E.

(2) Serve as the DOD focal point for security and performance monitoring and oversight relative to the security of AA&E in transit in the custody of commercial carriers.

c. The Military Airlift Command (MAC) is responsible for ensuring the adequacy of the services provided for movement of AA&E items by military airlift, worldwide, and by commercial airlift procured by MAC.

d. The Military Sealift Command (MSC) is responsible for ensuring the adequacy of the services provided by military and commercial ocean carriage for movement of AA&E items.

e. This chapter does not relieve accountable officers of their responsibility to safeguard and account for property.

7–3. Standards

The following transportation security policy and standards for AA&E by category, as set forth in appendix B, are required to adequately protect such items during shipment. Follow minimum security provisions for commercial transportation of AA&E per AR

(b) Written receipt from ship's officer at POE and written release to carrier at POD.

c. Categories III, IV and Uncategorized Classes A and B Ammunition and Explosives.

(1) *Motor — TL:*

(a) SM and DD (W/NAC)[1].

(b) Locked and sealed by shipper[2].

(c) Trip lease not authorized.

(d) Single line-haul preferred.

(2) *Motor — LTL*[6/7].

(a) SM and DD (W/NAC)[3].

(b) CONEX, dromedary, or similar container authorized.

(c) Cargo packaged to a weight of at least 200 lbs. and banded (sealed if practicable) or container locked and sealed by shipper[2/8].

(d) Trip lease not authorized.

(e) Single line-haul preferred.

(3) *Rail.*

(a) RSS[4].

(b) MTX[4].

(c) Locked and sealed by shipper[2/5].

(d) Immediate notification to consignee of delivery.

(e) Use appropriate category III or IV motor security for any associated motor movement.

(f) Use load divider doors when available.

(4) *Rail.*

(a) In rail phase, same as for rail category III and IV; in motor phase, same as motor category III and IV.

(b) Use only approved shipping containers and place on railcar door-to-door to prevent unauthorized access; e.g., MILVAN, SEAVAN.

(5) *Air.*

(a) DOD CSS.

(b) Shipments by Air Freight, Air Taxi, LOGAIR, QUICKTRANS, or MAC.

(c) Shipper escort to carrier and immediate pickup at destination.

(d) For air freight, banded or locked and sealed required. For all other methods, banded or locked and sealed if practicable.

(e) Seals applied by shipper[9].

(6) *Water.*

(a) Pier service only.

(b) Written receipt from ship's officer at POE and written release to carrier at POD.

Chapter 8
Reports, Investigative Aids, and Disposition of Records

8–1. General

The provisions of this chapter do not preclude the submission of other reports, such as the requirements in AR 55–38/NAVSUPINST 4610.33B/AFR 75–18; MCOP 4610.19C/DLAR 4500.15, chapters 2 and 3. The provisions of this chapter do not apply to privately-owned weapons.

8–2. Incident reports to components

a. Each MACOM will establish procedures to ensure receipt of a report of arms, ammunition, and explosives stolen, lost, unaccounted for, or recovered, including gains or losses due to inventory adjustments. Notification will be furnished in a manner commensurate with the seriousness or nature of the incident. The loss, theft, recovery, or inventory adjustment of the following will be reported.

(1) Missiles, rockets, and arms as set forth in appendix B.

(2) One-thousand rounds or more of ammunition smaller than 40mm and 1,000 rounds or more of 40mm automatic weapon ammunition.

(3) Individual rounds of 40mm and larger nonautomatic weapon ammunition.

(4) Individual mortar, grenade, and missile rounds.

(5) Individual land mines, demolition charges, and blocks of bulk explosives.

(6) Other items with 10 or more pounds of net explosive weight.

(7) Any Category I or Category II item not otherwise included above.

(8) Commanders will—

(a) Submit a serious incident report (SIR) if required by AR 190–40, paragraph 4–9.

(b) Within 72 hours provide a report on DA Form 3056 (Report of Missing/Recovered Firearms, Ammunition, and Explosives) (RCS Just-1010)) on incidents meeting criteria in *a* above. Inventory and in-transit losses or discrepancies of AA&E, not due to theft, recovered within 12 days, need not be reported on DA Form 3056.

(c) Initiate a report of recovery on DA Form 3056 for AA&E items held as evidence by any local, State, or Federal law enforcement agency in the area. Notify the commander having lost the items.

(d) Promptly submit appropriate report to the NCIC and DOD Central Registry (see para 8–3).

(e) Ensure the dollar value of the loss or recovery is included in section H, DA Form 2819 (Law Enforcement and Discipline Report) per AR 190–45, paragraph 6–3.

(f) Conduct investigations per AR 15–6, chapters 3 through 5, as specified in paragraph 2–9 when losses equal or exceed the amounts shown in appendix E. AR 15–6 investigations may be conducted for lesser amounts.

(g) Reports will include incidents involving arms and ammunition meeting criteria in *a* above, in the custody of a nonappropriated fund activity (such as an exchange, rod and gun club, or recreational marksmanship activity).

b. The Director, Security Plans and Programs, Office of the DUSDP (ODUSDP), will be provided advice by telephone from the HQDA of all significant incidents of theft, loss, or unaccounted for AA&E as soon as possible but not later than 72 hours after occurrence or discovery. Loss or theft of the following A&E will be considered significant (see AR 190–40, para 4–9, for further guidance).

(1) One or more missile or rocket rounds.

(2) One or more machine guns.

(3) Five or more automatic or semiautomatic weapons.

(4) Five or more manually operated weapons.

(5) Ammunition.

(a) .50 caliber and smaller — 5,000 rounds or more, except 20,000 rounds or more of .38 caliber ammunition.

(b) Larger than .50 caliber — five rounds or more of nonautomatic weapon ammunition.

(c) Larger than .50 caliber — 1,000 rounds or more of automatic weapon ammunition.

(d) Five or more fragmentation, concussion, or high explosive grenades.

(6) One or more mines (antipersonnel and antitank).

(7) Demolition charges, blocks of explosives, and other explosives — 100 pounds or more net weight.

c. Also reportable are:

(1) Armed robberies or attempted armed robberies.

(2) Forced entries or attempted forced entries in which there is physical evidence of the attempt.

(3) Any evidence of terrorist involvement.

(4) Incidents that cause significant news coverage, or appear to have the potential to cause such coverage.

(5) Any evidence of trafficking, such as bartering for narcotics or taking AA&E across international borders, regardless of the quantity of AA&E involved.

d. Procedures for reporting significant loss, theft, and recovery of AA&E and for reporting of actual or attempted break-ins of AA&E storage facilities are per AR 190–40, paragraph 4–9. Commanders will ensure timely submission of SIR. Significant initial and follow-up data must be provided to answer questions who, what, where, when, how, and why concerning the incident. Provide information on physical security measures taken to prevent recurrence of similar incident. Additionally, if any loss or recovery involved inventory or

accountability standards, list procedures in effect. If actual or attempted forced entry is involved, show—

(1) Time of discovery.

(2) Method of entry or attempted entry.

(3) Measures used to neutralize or bypass security measures.

(4) AA&E or other items missing, if any.

(5) Physical security posture of facility at time of incident, use of guards, IDS, barriers, and other security measures.

(6) Date of last survey or inspection.

(7) Compliance with regulatory physical security requirements.

e. MACOMs will maintain records including, at the very minimum, all instances of thefts, losses, and recoveries of AA&E, including any reported under a above. Requirement also applies to ARNG and Civilian Marksmanship Program (CMP). These records will include:

(1) A summary of the circumstances in each instance.

(2) Dates, locations, and units such as Regular, Reserve, National Guard, or Director of Civilian Marksmanship.

(3) A statement regarding the loss or recovery based on the investigation, such as inventory, theft, in-transit, training, operational, or other.

f. HQDA will provide the Director, Security Plans and Programs, ODUSP, follow-up information, in writing, of significant incidents until the investigation is complete. MACOMs, ARNG, and CMP will provide the follow-up information to HQDA (DAMO–ODL–S).

8–3. Investigative aids

HQDA will establish procedures to ensure that appropriate information is submitted to the NCIC and to the DOD Central Registry promptly upon the discovery of the loss or theft of DOD arms. Information also will be submitted to the NCIC and the DOD Central Registry upon recovery of DOD arms. Appropriate information on the theft or suspected theft of AA&E also will be provided to local Federal Bureau of Investigation (FBI) officers and local police. The following procedures apply:

a. Lost, stolen, or recovered weapons will be entered in the NCIC per AR 190–27, section 2, paragraph 6.

b. USACIDC will provide the Bureau of Alcohol, Tobacco and Firearms (BATF) Intelligence Division, BATF Headquarters, Department of the Treasury, Washington, DC 20226, information concerning theft or loss of AA&E falling within their investigative purview, within 72 hours of confirmed theft or loss.

c. CONUS installation commanders, provost marshals (PMs), or their designated representatives, will send DA Form 3056 to the NCIC Army Field terminal responsible for the geographical area in which the installation is located. Proper entry will be made in the NCIC. OCONUS installation commanders, PMs, or their designated representatives, will send the completed DA Form 3056 to Director, Crime Records Center (CRC), 2301 Chesapeake Avenue, Baltimore, MD 21222–4099. Lost, stolen, or recovered weapons entries into the NCIC from overseas commands will be made by Director, CRC.

d. CONUS Army field terminals, after making entry into the NCIC, will annotate Item 11 of DA Form 3056 and distribute the form per instructions on the form.

e. Ammunition and explosive losses or recoveries will not be entered in the NCIC files.

f. Lost, stolen, or recovered weapons will be promptly entered in the DOD Central Registry per AR 710–3, chapter 4. Information on the source of the weapon report will be included. Recovered weapons will be cleared from the NCIC files.

g. Military weapons will be accepted from civil (local, State, and Federal) law enforcement agencies. A weapon will be accounted for per AR 735–5, chapter 14, if both of the following apply:

(1) The weapon can be identified as a military weapon. If the weapon satisfies the general specifications for a military weapon, assume that it is a military weapon; a serial number or other identification is desirable, but not required.

(2) The weapon is no longer required for evidence in criminal or administrative proceedings.

h. To identify weapon ownership, personnel may contact the DOD Central Registry at: Commander, U.S. Army Armament Munitions and Chemical Command, ATTN: AMSMC–MMD–LW, Rock Island, Illinois 61299–6000, DSN 793–4678/4977/6519 or commercial (309) 782–4678/4977/6519. Recovered weapons identified as property of another DOD agency will be returned to that agency only upon request of the agency concerned. Normally, the weapons will be considered Army property and treated as such. Serviceable weapons should be returned immediately to normal use if required by the activity. The weapon may be excess or not authorized to support the mission of the activity. If so, the weapon will be reported to the proper national weapons inventory manager for redistribution or reuse. If the national weapons inventory manager provides disposal instructions, the activity will dispose of the weapon according to existing disposal and demilitarization procedures.

i. Address inquiries on loss, theft, or recovery of firearms, ammunition, and explosives to HQDA (DAMO–ODL–S).

8–4. Disposition of records

a. DA Components (MACOMs, ARNG, and CMP) will establish procedures to ensure that records reflect the final disposition of investigative action, including recoveries and disciplinary action, as appropriate.

b. Information pertaining to the final disposition of investigative action will be made to the Director, Security Plans and Programs, ODUSDP, by HQDA, per paragraphs 8–2*b* and 8–2*c*. MACOMs, ARNG, and CMP will provide the information to HQDA (DAMO–ODL–S).

Appendix A
References

Section I
Required Publications

AR 12–1
Security Assistance—Policies, Objectives, and Responsibilities (Cited in para 7–12).

AR 15–6
Procedures for Investigating Officers and Boards of Officers Conducting Investigations (Cited in paras 2–9 and 8–2).

AR 50–6–1
Chemical Agent Security Program (Cited in para B–2).

AR 55–38
Reporting of Transportation Discrepancies in Shipments (NAVSUPINST 4610.33B/AFR 75–18/MCOP 4610.19C/DLAR 4500.15). (Cited in para 8–1).

AR 55–355
Defense Traffic Management Regulation (NAVSUPINST 4600.70/AFR 75–2/MCO P4600.14B/DLAR 4500.3). (Cited in paras 1–1, 4–5, 7–3, 7–5, 7–10, 7–13, and 7–14).

AR 190–13
The Army Physical Security and Crime Prevention Program. (Cited in paras 1–4, 1–5, 2–1, 2–6, 2–10, 3–1, 3–2, 3–5, 4–2, 4–7, 4–8, and 6–3).

AR 190–22
Searches, Seizures, and Disposition of Property. (Cited in para 4–5).

AR 190–27
Army Participation in National Crime Information Center (NCIC). (Cited in para 8–3).

AR 190–40
Serious Incident Report. (Cited in paras 1–4 and 8–2).

AR 190–45
Military Police Law Enforcement Reporting. (Cited in para 8–2).

AR 190–51
Security of Army Property at Unit and Installation Level. (Cited in paras 4–1, 3–13, and 4–6).

AR 190–56
The Army Civilian Police and Security Guard Program. (Cited in para 2–10).

AR 380–5
Department of the Army Information Security Program. (Cited in paras 1–1, 3–6, 3–8, 4–3, 5–6, 5–12, 7–1, 7–12, and F–1).

AR 380–67
Personnel Security Program. (Cited in paras 2–12, and 3–6).

AR 385–64
Ammunition and Explosives Safety Standards. (Cited in paras 1–1, 5–2, and 5–4).

AR 700–99
Acquisition, Accounting, Control, and Disposal of Captured Enemy Equipment and Foreign Materiel. (Cited in para 4–12).

AR 710–2
Supply Policy Below the Wholesale Level. (Cited in paras 2–6, 2–8, 4–1, 4–5, 6–1, and 6–3).

AR 710–3
Asset and Transaction Reporting System. (Cited in paras 4–13, 6–2, and 8–3).

AR 735–5
Policies and Procedures for Property Accountability. (Cited in paras 2–9, 6–4, and 8–3).

AR 740–26
Physical Inventory Control. (Cited in paras 2–6, 5–2, 6–1, and 6–3).

DA Pam 710–2–1
Using Unit Supply System Manual Procedures. (Cited in paras 2–1, 2–2, and 2–6).

Section II
Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.

AR 11–2
Internal Control Systems

AR 708–1
Cataloging and Supply Management Data

AR 870–20
Museums and Historical Artifacts

CDA Pam 18–1
Code Reference Guide (This publication is available upon request from Chief, U.S. Army Materiel Command, Catalog Data Activity, ATTN: AMXCA–DL, New Cumberland Army Depot, New Cumberland, PA 17070–5010.)

DA Pam 385–64
Ammunition and Explosives Safety Standards

DA Pam 710–2–2
Supply Support Activity Supply System Manual Procedures

DOD 4000.25–8–M
Military Assistance Program Address Directory System (MAPAD)

DOD 4145.26–M
Department of Defense Contractors Safety Manual for Ammunition and Explosives

DOD 4160.21–M
Defense Utilization and Disposal Manual

DOD 4160.21–M–1
Defense Demilitarization Manual

DOD 4500.32–R
Military Standard Transportation and Movement Procedures (MILSTAMP), Volume I

DOD 5160.65–M
Single Manager for Conventional Ammunition Implementing Joint Conventional Ammunition Policies and Procedures

DOD 5200.1–R
Information Security Program Regulation

DOD 5200.2–R
Department of Defense Personnel Security Program

DOD 5220.22–M
Industrial Security Manual for Safeguarding Classified Information

DOD 5220.22–R
Industrial Security Regulation

DOD 6055.9–STD
DOD Ammunition and Explosives Safety Standards

DOD 7200.10–M
Department of Defense Accounting and Reporting of Government Property Lost, Damaged, or Destroyed

DOD Directive 3224.3
Physical Security Equipment: Assignment of Responsibility for Research, Engineering, Procurement, Installation, and Maintenance

DOD Directive 5100.76
Physical Security Review Board

DOD Directive 5210.65
Chemical Agent Security Program

DOD Instruction 4150.35
Physical Inventory Control for DOD Supply System Materiel

DOD Instruction 5200.30
Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities

FM 19–30
Physical Security

JCS Pub. 1
Department of Defense Dictionary of Military and Associated Terms

MIL–HDBK–1031/1
Military Handbook, Design Guidelines for Physical Security of Fixed Land-Based Facilities

Title 18, United States Code, 842(J) (27 CFR 55, subpart k, sections 207 and 208)

Title 49, United States Code, Sections 1801-1805 (49 CFR 177)

TM 9–1300–206
Ammunition and Explosives Standards

TM 38–214
DOD Small Arms Serialization Program (DODSASP): Functional Users Procedures

Section III
Prescribed Forms

Authority is given for the exact duplication of any DA or DD Forms prescribed in this regulation that are generated by the automated Military Police Management Information System in place of the official printed version of the form.

Forms that have been designated, "Approved for electronic generation (EG)," must replicate exactly the content (wording), format (layout), and sequence (arrangement) of the official printed form. The form number of the electronically generated form will be shown as "-R-E" and the date will be the same as the date of the current edition of the printed form.

DA Form 3056
Reporting of Missing/Recovered Firearms, Ammunition, and Explosives (Prescribed in paras 2–10, 7–2, and 7–3. Approved for EG.)

DA Form 4604–R
Security Construction Statement (Prescribed in para 2–2. Approved for EG.)

DA Form 4930–R
Alarm/Intrusion Detection Record (Prescribed in para 3–6. Approved for EG.)

DA Form 7281–R
Command Oriented Arms, Ammunition, and Explosives (AA&E) security Screening and Evaluation Record (Prescribed in para 2–11. Approved for EG.)

DA Form 5513–R
Key Control Register and Inventory. (Prescribed in para 3–8.)

Section IV
Referenced Forms

DA Form 2028
Recommended Changes to Publications and Blank Forms

DA Form 2609
Historical Property Catalog

DA Form 2819
Law Enforcement and Discipline Report

DA Form 3749
Equipment Receipt

DD Form 1348–1
DOD Single Line Item Release/Receipt Document

SF 700
Security Container Information

Appendix B
Sensitive Arms, Ammunition, and Explosives (AA&E) Security Risk Categorization

B–1. Application

The requirements of this regulation apply only to rounds of 40mm and larger, conventional, guided missile and rocket ammunition weighing 100 pounds or less per round, and 1,000 or more rounds of ammunition smaller than 40mm. Blank ammunition, .22 caliber rimfire ammunition, and inert training ammunition are excluded from the requirements of this regulation. Further, artillery, tank, mortar ammunition, 90mm and larger are excluded from the requirements of this regulation.

a. On the basis of their relative utility, attractiveness, and availability to criminal elements, all AA&E will be categorized according to the risks involved. As a general rule, only arms, missiles, rockets, explosive rounds, mines, and projectiles that have an unpacked unit weight of 100 pounds or less will be categorized as sensitive for purposes of this regulation. Any single container that contains a sufficient amount of spare parts that, when assembled, will perform the basic function of the end item will be categorized the same as the end item.

b. The categories of missiles, rockets, and arms will be as stated in paragraph B–2. Nonnuclear missiles and rockets similar to those listed under Category I will automatically be included in that category as they come into the inventory.

APPENDIX B



MILITARY PERSONNEL AND EQUIPMENT

Active Duty
Personnel 15

Texas National Guard
Personnel 13

Equipment
Track Vehicles

	Model #	Quantity
Bradley fighting vehicle	(OMZ)	9
Combat Engineer vehicles	(M728)	5
Tank Retrieval vehicle	(M88)	1
Abrams Tanks	(M1A1)	2
	TOTAL	17

Additional Military Equipment

Equipment	Model #	Quantity
Helicopters	UH-1	2
Night Vision Goggles	PVF7B5	100
Tents	GP Medium	4
Generators	3KW	2
Generators	15KW	1
Cots	NA	66
Sand Bags	NA	1,400
Spotlights (portable)	NA	2
Mine Detectors	PSS11	2
Gas Masks	M17	34
Vehicles	M151A2	2
Search Lights	VSS-Xenon (6 million candlepower)	2

HEADQUARTERS, TEXAS NATIONAL GUARD
PO Box 5218
STARC JAG
Austin, Tx. 78763-5218

9 February, 2000

MEMORANDUM FOR AGTX-CS, ATTN: Mr. Thomas G. Bowman, Senior Counsel, Committee on Government Reform

FROM: AGTX-JA

RE: TXARNG RECORDS FROM MOUNT CARMEL; BRANCH DAVIDIAN INCIDENT

Dear Mr. Bowman:

Thank you for your consideration in our conversation this date; if you need additional information, just call.

The matters enclosed consist of:

Request of NGB Chief Counsel for our original 6 volumes
The front cover of our first volume
The index of all 6 volumes
A request for information from Senator Danforth
A study of Col Gordon Wise as to lea requests to Counter-Drug operations
The SOP of General James (Texas TAG) based on the foregoing study'
Waco after action report by LTC William Pettit
PAO media talking paper on Waco incident
Alphabetical list of personnel from TXARNG
Equipment loaned and used during incident

If we can do anything to provide further assistance, we stand ready to aid you in any way.

Bill M. Reimer
LTC TXARNG
AGR, SJA, STARC



TEXAS NATIONAL GUARD PERSONNEL INVOLVED WITH THE MATTER OF THE BRANCH DAVIDIANS

ROSTER BY ON-SITE STARTING DATE

* 100000

Last Name	First Name	MI	SSN	Rank	Unit	Role	Branch	Start Date	End Date
[redacted]					AGTX-CD	Command Post	Texas Air National Guard	2/24/93	3/4/93
					AGTX-CD	Camera Operator	Texas Army National Guard	2/24/93	3/16/93
					AGTX-CD	Pathfinder	Texas Army National Guard	2/26/93	3/1/93
					AGTX-CD	Pathfinder	Texas Army National Guard	2/26/93	3/9/93
					AGTX-CD	OH-58 Crew	Texas Army National Guard	2/27/93	2/28/93
					AGTX-CD	UH-60 Crew Chief	Texas Army National Guard	2/27/93	3/4/93
					AGTX-CD	OH-58 Pilot	Texas Army National Guard	2/27/93	4/19/93
					AGTX-CD	OH-58 Pilot	Texas Army National Guard	2/27/93	2/28/93
					AGTX-CD	OH-58 Pilot	Texas Army National Guard	2/27/93	4/9/93
					AGTX-CD	UH-60 Pilot	Texas Army National Guard	2/27/93	3/4/93
					AGTX-CD	Commander	Texas Air National Guard	2/27/93	4/24/93
					AGTX-CD	OH-58 Crew	Texas Army National Guard	2/27/93	2/28/93
					AGTX-CD	UH-60 Pilot	Texas Army National Guard	2/27/93	3/4/93
					AGTX-CD	OH-58 Pilot	Texas Army National Guard	2/27/93	2/28/93
					AGTX-CD	Photo Interpreter	Texas Air National Guard	2/27/93	2/28/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	4/11/93
					CoB(-) 249th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/14/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					HHC 49th ARMD DISCOM	Equipment Recovery	Texas Army National Guard	2/28/93	3/2/93
					HHT (-DET 1) 1-124 CAV	Maintenance	Texas Army National Guard	2/28/93	3/21/93
					AGTX-CD	Command Post	Texas Army National Guard	2/28/93	3/6/93
					CoD 249th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					HHD 111th SPT BN	Equipment Recovery	Texas Army National Guard	2/28/93	3/7/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					CoD 249th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					HHC 111th SPT GP	Maintenance	Texas Army National Guard	2/28/93	3/4/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/4/93
					HHC 2-112 ARMOR	Equipment Recovery	Texas Army National Guard	2/28/93	3/7/93
					CoE 249th SPT BN (Main)	Equipment Recovery	Texas Army National Guard	2/28/93	3/7/93
					CoF 249th SPT BN	Equipment Recovery	Texas Army National Guard	2/28/93	3/2/93
					Det 2 HHC 3-141 INF	Maintenance	Texas Army National Guard	2/28/93	3/10/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					Det 2 HHC 3-141 INF	Maintenance	Texas Army National Guard	2/28/93	3/4/93
					HHC 1-112 ARMOR	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					HHD 249th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					CoD 249th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/4/93
					AGTX-CD	Command Post	Texas Army National Guard	2/28/93	3/1/93
					CoB 111th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					CoB(-) 111th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/21/93
					CoD 249th SPT BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/10/93
					Det 2 HHC 3-141 INF	Maintenance	Texas Army National Guard	2/28/93	3/15/93
					AGTX-CD	Command Post	Texas Army National Guard	2/28/93	3/2/93
					CoA(-) 386th ENGR BN	Maintenance	Texas Army National Guard	2/28/93	3/2/93
					736th HEMCO	Maintenance	Texas Army National Guard	2/28/93	3/4/93
					736 HEMCO	Maintenance	Texas Army National Guard	2/28/93	4/21/93
					AGTX-CD	Command Post	Texas Army National Guard	2/28/93	4/22/93
						OH-58 Recovery Crew	Texas Army National Guard	3/1/93	3/1/93
					AGTX-CD	OH-58 Crew	Texas Army National Guard	3/1/93	3/2/93
						OH-58 Recovery Crew	Texas Army National Guard	3/1/93	3/2/93
					TRP B 1-124 CAV	Bus Driver	Texas Army National Guard	3/3/93	3/3/93
					TRP B 1-124 CAV	Bus Driver	Texas Army National Guard	3/4/93	4/18/93
					HHT (-DET 1) 1-124 CAV	Fueler	Texas Army National Guard	3/4/93	4/27/93
					HHT (-DET 1) 1-124 CAV	Fueler	Texas Army National Guard	3/4/93	3/28/93
					AGTX-CD	Command Post	Texas Army National Guard	3/4/93	3/19/93
					AGTX-CD	Command Post	Texas Army National Guard	3/6/93	3/12/93
					AGTX-CD	Command Post	Texas Army National Guard	3/6/93	4/23/93
					AGTX-CD	Command Post	Texas Army National Guard	3/6/93	4/23/93
					AGTX-CD	Command Post	Texas Army National Guard	3/7/93	3/10/93
					CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	3/8/93	3/21/93
					AGTX-CD	Command Post	Texas Army National Guard	3/8/93	3/8/93
					AGTX-CD	Command Post	Texas Army National Guard	3/10/93	5/8/93
					CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	3/10/93	3/19/93
					HHC(-) 4-112	Maintenance	Texas Army National Guard	3/10/93	4/23/93
					AGTX-CD	Command Post	Texas Army National Guard	3/12/93	3/14/93

TEXAS NATIONAL GUARD PERSONNEL INVOLVED WITH THE MATTER OF THE BRANCH DAVIDIANS

ROSTER BY ON-SITE STARTING DATE

109000

[redacted]	TRP B 1-124 CAV	Bus Driver	Texas Army National Guard	3/12/93	3/14/93
	AGTX-CD	Command Post	Texas Army National Guard	3/12/93	3/14/93
	AGTX-CD	Command Post	Texas Army National Guard	3/14/93	4/20/93
	AGTX-CD	Command Post	Texas Army National Guard	3/14/93	3/16/93
	AGTX-CD	Command Post	Texas Army National Guard	3/15/93	4/8/93
	AGTX-CD	Command Post	Texas Army National Guard	3/16/93	4/23/93
	AGTX-CD	Command Post	Texas Army National Guard	3/16/93	3/16/93
	HHC 3-112 ARMOR	Equipment Recovery	Texas Army National Guard	3/16/93	3/21/93
	AGTX-CD	Command Post	Texas Army National Guard	3/16/93	3/16/93
	AGTX-CD	Command Post	Texas Army National Guard	3/20/93	4/16/93
	736th HEMCO	Maintenance	Texas Army National Guard	3/21/93	4/25/93
	TRP A 1-124 CAV	Maintenance	Texas Army National Guard	3/21/93	3/28/93
	736th HEMCO	Maintenance	Texas Army National Guard	3/21/93	3/28/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	3/21/93	3/28/93
	HHC 111th SPT GP	Public Affairs	Texas Army National Guard	3/26/93	3/26/93
	AGTX-CD	Command Post	Texas Army National Guard	3/27/93	3/28/93
	AGTX-CD	Command Post	Texas Army National Guard	3/27/93	4/23/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	3/28/93	4/4/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	Det 1 CoB 249th SPT BN	Maintenance	Texas Army National Guard	3/28/93	4/18/93
	TRP B 1-124 CAV	Maintenance	Texas Army National Guard	3/28/93	4/11/93
	TRP B 1-124 CAV	Maintenance	Texas Army National Guard	3/28/93	4/4/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	3/28/93	3/28/93
	HHT (-DET 1) 1-124 CAV	Maintenance	Texas Army National Guard	3/29/93	4/4/93
	736th HEMCO	Maintenance	Texas Army National Guard	4/4/93	4/11/93
	736th HEMCO	Maintenance	Texas Army National Guard	4/4/93	4/11/93
	CoC(-) 249th SPT BN	Equipment Recovery	Texas Army National Guard	4/4/93	4/11/93
	736th HEMCO	Maintenance	Texas Army National Guard	4/6/93	4/6/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	4/6/93	4/6/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	4/6/93	4/6/93
	CoE 249th SPT BN (Main)	Equipment Recovery	Texas Army National Guard	4/6/93	4/6/93
	736th HEMCO	Maintenance	Texas Army National Guard	4/6/93	4/6/93
	Det 1 CoB 536th SPT BN	Maintenance	Texas Army National Guard	4/10/93	4/18/93
	149th MP Det	Equipment Recovery	Texas Army National Guard	4/11/93	4/23/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	4/11/93	4/23/93
	SVC BTRY 3-132 FA	Maintenance	Texas Army National Guard	4/11/93	4/18/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	4/11/93	4/18/93
	TRP B 1-124 CAV	Bus Driver	Texas Army National Guard	4/18/93	4/23/93
	736th HEMCO	Maintenance	Texas Army National Guard	4/18/93	4/23/93
	CoB(-) 536th SPT BN	Maintenance	Texas Army National Guard	4/18/93	4/25/93
	AGTX-CD	Command Post	Texas Army National Guard	4/20/93	4/30/93
	MATES	Equipment Recovery	Texas Army National Guard	4/21/93	4/21/93
	HHC 49th ARMD DISCOM	Equipment Recovery	Texas Army National Guard	4/21/93	4/23/93
	MATES	Equipment Recovery	Texas Army National Guard	4/21/93	4/21/93
	MATES	Equipment Recovery	Texas Army National Guard	4/21/93	4/21/93
	MATES	Equipment Recovery	Texas Army National Guard	4/21/93	4/21/93
	MATES	Equipment Recovery	Texas Army National Guard	4/21/93	4/21/93
	USPFO-TX	Equipment Recovery	Texas Army National Guard	4/21/93	4/22/93
	AGTX-L	Equipment Recovery	Texas Army National Guard	4/21/93	4/22/93
	HQ(-) STARC	Maintenance	Texas Army National Guard	4/29/93	5/3/93
	AGTX-CD	Command Post	Texas Army National Guard	5/3/93	5/4/93
	147th FG	C-26 Pilot	Texas Army National Guard	NOT ON SITE	
	147th FG	C-26 Pilot	Texas Army National Guard	NOT ON SITE	
	147th FG	C-26 Pilot	Texas Army National Guard	NOT ON SITE	
	147th FG	C-26 Pilot	Texas Army National Guard	NOT ON SITE	
	147th FG	C-26 Pilot	Texas Army National Guard	NOT ON SITE	
	HQ(-) STARC	Maintenance	Texas Army National Guard		
	CoA 249th SPT BN	Maintenance	Texas Army National Guard		
	CoA 249th SPT BN	Maintenance	Texas Army National Guard		
	HHT 1-124 CAV	Command Post	Texas Army National Guard		
	HHC 49th ARMD DISCOM	Equipment Recovery	Texas Army National Guard		

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
400 ARMY PENTAGON
WASHINGTON DC 20310-0400

REPLY TO ATTENTION OF

DAMO-ODS

14 July 1995

MEMORANDUM THRU DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
DIRECTOR OF THE ARMY STAFF
ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS AND ENVIRONMENT)

FOR SECRETARY OF THE ARMY

SUBJECT: Audit Trail of Army Support to Law Enforcement Agencies in Waco, Texas--INFORMATION MEMORANDUM

1. This memorandum captures Army support to the Bureau of Alcohol, Tobacco, and Firearms (BATF) and Federal Bureau of Investigation (FBI) during their operations directed at the Branch Davidians near Waco, Texas. The Texas Army National Guard (TXARNG) initiated Army involvement on December 11, 1992, and support terminated on April 27, 1993. Data presented includes support provided by Active Army including Special Operations Forces supporting Joint Task Force-6 (JTF-6) and the Texas Army National Guard.

2. An overview of Army assistance is detailed below. Special Access support is detailed in a separate classified enclosure.

a. Active component support under Title 10(TAB A):

(1) two utility helicopters (UH-1);

(2) two main battle tanks (M1 Abrams);

(3) two support vehicles for the main battle tanks (one High Mobility Multi-wheeled Vehicle (HMMWV) and one 2 1\2 ton truck);

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SUBJECT: Audit Trail of Army Support to Law Enforcement Agencies in Waco, Texas--INFORMATION MEMORANDUM

(4) 24 soldiers in liaison and maintenance roles (all were briefed on the legal restrictions when in support of civilian law enforcement agencies);

(5) [redacted] (Chief Life Sciences Department, U.S. Army Edgewood Research, Development, and Engineering Center (ERDEC), Aberdeen Proving Ground, Maryland) provided expert advice on the employment of CS gas to Ms. Janet Reno, Attorney General of the United States;

(6) and, miscellaneous night vision goggles, tents, generators, light sets, cots, and sandbags (TAB C).

b. The Texas Army National Guard provided Reserve Component support to the BATF and FBI in Title 32 status, prior to, during, and after the initial assault 28 Feb 1993 in the vicinity of Waco, Texas (TAB B). Of the sixteen approved missions in NGR 500-2, the Texas Army National Guard performed eight. Highlights of support:

(1) support missions performed were: Surface Transportation, Aerial Reconnaissance, Aerial Surveillance, Aerial Transportation, Coordination, Liaison and Management, Photo Processing, Administrative and Logistical Support, and Aerial Interdiction.

(2) ten Bradleys (M2A2 Infantry Fighting Vehicles);

(3) two Combat Engineer Vehicles (M728 Combat Engineer Vehicles);

(4) the following equipment was operated and maintained by the Texas Army National Guard under auspices of an approved Department of Defense/National Guard Bureau counterdrug plan:

- UC-26 Aircraft 1
- OH-58 Helicopters 2
- UH-60 Helicopters 1
- CUCV (M-1009) 12

DAMO-ODS
SUBJECT: Audit Trail of Army Support to Law Enforcement Agencies in Waco, Texas--INFORMATION MEMORANDUM

(5) Texas National Guard personnel support varied on a day-to-day basis, ranging from a minimum of five to a maximum of 35 for a total expenditure of 896 mandays;

(6) additional state (Title 32) operational support consisting of one fuel truck, three buses, one van, three 1/4 ton trailers, two utility helicopters (UH-60s) on stand-by, and miscellaneous tents, body armor, and night vision goggles, etc at TAB B.

3. Combat vehicles were loaned without operable weapons systems, and all crews were BATF or FBI personnel trained by Army personnel prior to equipment being loaned. FBI crews for utility helicopters were trained and certified to Army standards.

4. The U.S. Army trained agents of the Bureau of Alcohol, Tobacco, and Firearms (BATF) prior to the assault on the Branch Davidian, outside Waco, Texas on 28 February 1993. Their limited training involvement was an authorized counterdrug training mission in support of a law enforcement agency. A ten member Active Component, Special Forces, Rapid Support Unit, in support of Joint Task Force Six, deployed to Fort Hood, Texas, 22 to 28 February 1993. The team's overall mission, number JT002E-93, was to establish a short term training site for BATF. Specific training authorized included tactical (company level) communications net training, PZ/LZ operations training, and tactical vehicle dismount training.

[redacted] GS
Director, Operations,
Readiness and Mobilization

Department of Defense

DIRECTIVE

NUMBER 5525.5

January 15, 1986

Administrative Reissuance Incorporating Change 1, December 20, 1989

ASD(FM&P)

SUBJECT: DoD Cooperation with Civilian Law Enforcement Officials

References: (a) through (ll), see enclosure E1.

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update uniform DoD policies and procedures to be followed with respect to support provided to Federal, State, and local civilian law enforcement efforts; and assigns responsibilities.

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as DoD Components). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2.2. DoD policy on assistance to law enforcement officials in foreign governments is not governed by this Directive except as specified by other DoD issuances.

3. DEFINITIONS

3.1. Civilian Agency. An agency of one of the following jurisdictions:

3.1.1. The United States (other than the Department of Defense, but

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including the U.S. Coast Guard). This includes U.S. agencies in international areas dealing with U.S. flag vessels or aircraft in violation of U.S. law.

3.1.2. A State (or political subdivision of it) of the United States.

3.1.3. Commonwealth, Territory, or Possession (or political subdivision of it) of the United States.

3.2. Civilian Law Enforcement Official. An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

3.3. DoD Intelligence Component. An organization listed in subsection 3.4. of DoD Directive 5240.1 (reference (b)).

4. POLICY

It is DoD policy to cooperate with civilian law enforcement officials to the extent practical. The implementation of this policy shall be consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law, as developed in enclosures E2. through E7.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

5.1.1. Coordinate with civilian law enforcement agencies on long range policies to further DoD cooperation with civilian law enforcement officials.

5.1.2. Provide information to civilian agencies and The National Narcotics Border Interdiction System (NNBIS) to facilitate access to DoD resources.

5.1.3. Coordinate with the Department of Justice, the Department of Transportation (U.S. Coast Guard), and the Department of the Treasury (U.S. Customs Service) and represent the Department of Defense on interagency organizations regarding matters involving the interdiction of the flow of illegal drugs into the United States.

5.1.4. Develop guidance and, as required, take other actions as specified in enclosures E2. through E7., taking into account the requirements of DoD intelligence components and the interests of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) and the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)).

5.1.5. Inform the ASD(RA) of all requests for and taskings concerning National Guard and Reserve personnel and resources in support of civilian law enforcement.

5.1.6. Modify the sample report formats at enclosures E6. and E7.

5.1. The Director General of the Department of Defense (IG, DoD) shall issue guidance on coordination with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated under DoD Directive 5106.1 (reference), subject to coordination with the General Counsel.

5.1. The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) shall:

[illegible] the ASD(FM&P) in the development of guidance for use by [illegible] evaluating the impact on milit[illegible] preparedness of any request [illegible] of the National Guard and Reserve.

[illegible] request of the Secre[illegible] or the ASD(FM&P), [illegible] military pr[illegible] request for military assis[illegible] National Guard [illegible]

[illegible] Departments and the Directors [illegible] shall:

[illegible] minate the guidance issued by the ASD(FM[illegible] er paragraph

[illegible] training and operational programs to det[illegible] how and where [illegible] provided civilian law enforcement officials [illegible] sistent with the [illegible] ve. This review should identify those programs under which [illegible] be required under enclosure E5.

[illegible] plementing documents incorporating the guidelines and [illegible] tive, including the following:

5.4.3.1. Procedures for prompt transfer of relevant information to law enforcement agencies.

5.4.3.2. Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, and local civilian law enforcement officials.

5.4.3.3. Guidelines for evaluating requests for assistance in terms of impact on national security and military preparedness.

5.4.4. Inform the Joint Chiefs of Staff (JCS), through ASD(FM&P) of all requests for and taskings in support of civilian law enforcement that involve the resources of a Unified or Specified Command, which, if provided, could have significant impact on military preparedness or national security.

5.5. The Director, National Security Agency/Chief, Central Security Service (DIRNSA/CHCSS) shall establish appropriate guidance for the National Security Agency/Central Security Service (NSA/CSS).

5.6. The Joint Chiefs of Staff shall:

5.6.1. Assist the ASD(FM&P) in the development of guidance for use by approving authorities in evaluating the impact of requests for assistance on national security and military preparedness.

5.6.2. Provide advice on the impact on national security and military preparedness of any request for military assistance at the request of the Secretary of Defense, the ASD(FM&P), the Secretaries of the Military Departments, the Directors of Defense Agencies, or the Commanders of the Unified and Specified Commands.

6. INFORMATION REQUIREMENTS

A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the Secretaries of the Military Departments and the Directors of Defense Agencies to the ASD(FM&P), the General Counsel, the ASD(HA), and the ASD(RA), not later than 30 days after the end of each quarter. The report will show action taken (approval, denial, or pending) and other appropriate information. This information requirement has been assigned Report Control Symbol DD-FM&P(Q)1595. Actions involving the use of classified information or techniques may be exempted from such

report with the concurrence of the ASD(FM&P) if it is impractical to prepare an unclassified summary. The sample format at enclosure will be used to record all aviation assistance.

7. RELEASE OF INFORMATION

7.1. Release of information to the public concerning law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. The Military Departments and the Directors of the Defense Agencies may release such information, however, when approved under the procedures established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned. To the extent possible, the affected civilian law enforcement agencies shall be consulted before releasing such information.

7.2. When assistance is provided under this Directive, such assistance may be conditioned upon control by the Secretaries of the Military Departments and Directors of the Defense Agencies before information is released to the public.

8. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

8.1. MISCELLANEOUS *The provisions of paragraph E4.1.3. of enclosure E4. of Department of Defense Directive 5525.5, entitled "Restrictions on Direct Assistance," will continue to apply to all actions conducted by military personnel within the territorial boundaries of the United States. With regard to military actions conducted outside the territorial jurisdiction of the United States, however, the Secretary of Defense or the Deputy Secretary of Defense will consider for approval, on a case by case basis, requests for exceptions to the policy restrictions against direct assistance by military personnel to execute the laws. Such requests for exceptions to policy outside the territorial jurisdiction of the United States should be made only when there are compelling and extraordinary circumstances to justify them.*

William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 7

1. References
2. Use of Information Collected During Military Operations
3. Use of Military Equipment and Facilities
4. Restrictions on Participation of DoD Personnel in Civilian Law Enforcement Activities
5. Funding
6. Sample Format for Preparing, "Report on Support to Civilian Law Enforcement (RCS DD-FM&P(Q)1595)"
7. Aviation Assistance to Law Enforcement Agencies (Sample Format)

E1. ENCLOSURE 1

REFERENCES

(a) DoD Directive 5525.5, subject as above, March 22, 1982 (hereby canceled)
(b) DoD Directive 5240.1, "Activities of DoD Intelligence Components that Affect U.S. Persons," December 3, 1982
(c) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
(d) Title 10, United States Code (10 U.S.C.), §§331-334, 337, 371-378, 2576, and 2667; and Chapter 47 (Uniform Code of Military Justice)
(e) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980
(f) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, authorized by reference (b)
(g) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982
(h) DoD 4515.13-R, "Air Transportation Eligibility," January 1980, authorized by DoD Directive 4515.13, June 26, 1979
(i) Public Law, "The Economy Act, " (31 U.S.C. §1535)
(j) Public Law, "The Intergovernmental Cooperation Act of 1968," (40 U.S.C. §§531-535 and 42 U.S.C. §§4201, 4211-4124, 4221-4225, 4231-4233, 4241-4244)
(k) Public Law, "Federal Property and Administrative Services Act of 1949," (40 U.S.C. §§471-476, 481, 483, 483c, 484-492, 512, 514, 531-535, 541-544, 751-759; 41 U.S.C. §§5, 251-255, 257-260; 44 U.S.C., Chapters 21, 25, 29, 31; and 50 U.S.C. Appendix 1622)
(l) DoD Directive 3025.12, "Employment of Military Resources in the Event of Civil Disturbances," August 19, 1971
(m) DoD Instruction 4160.23, "Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies," January 27, 1981
(n) DoD Instruction 4160.24, "Disposal of Foreign Excess Personal Property for Substantial Benefits or the Discharge of Claims," July 24, 1981
(o) DoD Directive 4165.6, "Real Property Acquisition, Management and Disposal," December 22, 1976
(p) DoD Directive 4165.20, "Utilization and Retention of Real Property," January 31, 1985
(q) DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-Impacted Communities," April 21, 1973

(r) DoD Instruction 7230.7, "User Charges," January 29, 1985
(s) DoD Instruction 7310.1, "Disposition of Proceeds from Sales of DoD Excess and Surplus Personal Property," November 15, 1984
(t) DoD Instruction 7730.53, "Specialized or Technical Services Provided to State and Local Government," December 23, 1982
(u) DoD Directive 5030.46, "Assistance to the District of Columbia Government in Combating Crime," March 26, 1971
(v) Public Law, "Posse Comitatus Act," (18 U.S.C. §1385)
(w) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes," January 22, 1985
(x) Title 5, United States Code, Appendix 3, Section 8(g)
(y) Title 16, United States Code, §§23, 78, 593, and 1861(a)
(z) Title 18, United States Code, §§112, 351, 831, 1116, 1751, and 3056; "Presidential Protection Assistance Act of 1976," Public Law 94-524, 90 Stat. 2475
(aa) Title 22, United States Code, §§408 and 461-462
(bb) Title 25, United States Code, §180
(cc) Title 42, United States Code, §§97, 1989, and 3789
(dd) Title 43, United States Code, §1065
(ee) Title 48, United States Code, §§1418, 1422, and 1591
(ff) Title 50, United States Code, §220
(gg) Public Law, "The Controlled Substances Act," (21 U.S.C. §801 et seq.)
(hh) Public Law, "The Controlled Substances Import and Export Act," (21 U.S.C. §951 et seq.)
(ii) Public Law, "The Immigration and Nationality Act," (8 U.S.C. §§1324-1328)
(jj) Title 19, United States Code §1401 (The Tariff Act of 1930) and §1202 (Tariff Schedules of the United States)
(kk) Title 21, United States Code §873(b)
(ll) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Directive 7220.9

E2. ENCLOSURE 2

USE OF INFORMATION COLLECTED DURING MILITARY OPERATIONS

E2.1. ACQUISITION AND DISSEMINATION

Military Departments and Defense Agencies are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials. The Secretaries of the Military Departments and Directors of the Defense Agencies shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

E2.1.1. The assistance provided under this enclosure shall be in accordance with 10 U.S.C. §371 (reference (d)) and other applicable laws.

E2.1.2. The acquisition and dissemination of information under this enclosure shall be in accordance with DoD Directive 5200.27 (reference (e)), DoD Directive 5240.1 (reference (b)), and DoD 5240.1-R (reference (f)).

E2.1.3. Military Departments and Defense Agencies shall establish procedures for "routine use" disclosures of such information in accordance with DoD Directive 5400.11 (reference (g)).

E2.1.4. Under guidance established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned, the planning and execution of compatible military training and operations may take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training performed for a military purpose. In this regard, the needs of civilian law enforcement officials may be considered when scheduling routine training missions. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens. Local law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with DoD 4515.13-R (reference (h)).

E2.1.5. Under procedures established by the Secretaries of Military Departments and the Directors of the Defense Agencies concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under this provision (reference (f)) may be provided to the El Paso Intelligence Center.

E2.1.6. Nothing in this section modifies DoD policies or procedures concerning dissemination of information for foreign intelligence or counterintelligence purposes.

E2.1.7. The Military Departments and Defense Agencies are encouraged to participate in Department of Justice Law Enforcement Coordinating Committees situated in each Federal Judicial District.

E2.1.8. The assistance provided under this enclosure may not include or permit direct participation by a member of a Military Service in the interdiction of a vessel, aircraft, or a land vehicle, a search or seizure, arrest, or other similar activity unless participation in such activity by the member is otherwise authorized by law. See enclosure E4.

E2.2. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if it could adversely affect national security or military preparedness.

E2.3. FUNDING

To the extent that assistance under this enclosure requires Military Departments and Defense Agencies to incur costs beyond those that are incurred in the normal course of military operations, the funding provisions of enclosure E5. apply.

E3. ENCLOSURE 3

USE OF MILITARY EQUIPMENT AND FACILITIES

E3.1. EQUIPMENT AND FACILITIES

Military Departments and Defense Agencies may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with this enclosure.

E3.1.1. The ASD(FM&P) shall issue guidance to ensure that the assistance provided under this enclosure is in accordance with applicable provisions of 10 U.S.C. §§372, 2576, and 2667 (reference (d)); the Economy Act (reference (i)); the Intergovernmental Cooperation Act of 1968 (reference (j)); the Federal Property and Administrative Services Act of 1949 (reference (k)); and other applicable laws.

E3.1.2. The guidance in subsection E3.1.1., above, shall ensure that the following Directives are complied with: DoD Directive 3025.12 (reference (l)); DoD Instruction 4160.23 (reference (m)); DoD Instruction 4160.24 (reference (n)); DoD Directive 4165.6 (reference (o)); DoD Directive 4165.20 (reference (p)); DoD Directive 5410.12 (reference (q)); DoD Instruction 7230.7 (reference (r)); DoD Instruction 7310.1 (reference (s)); DoD Instruction 7730.53 (reference (t)); and other guidance that may be issued by the ASD(FM&P) and the Assistant Secretary of Defense (Comptroller) (ASD(C)).

E3.1.3. The assistance provided by DoD Intelligence Components is subject to DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

E3.2. LIMITATIONS ON THE USE OF PERSONNEL

E3.2.1. A request for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under section E3.1., above, shall be considered under the guidance in subsection E4.1.6. (enclosure E4.).

E3.2.2. Personnel in DoD intelligence components also are subject to the limitations in DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

E3.3. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if such assistance could adversely affect national security or military preparedness. The implementing documents issued by the Secretaries of the Military Departments and the Directors of the Defense Agencies shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military preparedness.

E3.4. APPROVAL AUTHORITY

Requests by civilian law enforcement officials for DoD assistance in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this section.

E3.4.1. Approval authority for military assistance if there is a civil disturbance or related matters requiring immediate action is governed by DoD Directive 3025.12 (reference (l)).

E3.4.2. Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46 (reference (u)).

E3.4.3. The following governs approval for assistance to civilian law enforcement officials in other circumstances:

E3.4.3.1. Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded for consideration under section E4.5.of enclosure E4.

E3.4.3.2. Requests for DoD intelligence components to provide assistance shall be forwarded for consideration under DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

E3.4.3.3. Loans under the Economy Act (reference (i)) are limited to agencies of the Federal Government. Leases under 10 U.S.C. 2667 (reference (d)) may be made to entities outside the Federal Government.

E3.4.3.3.1. Requests for arms, ammunition, combat vehicles, vessels, and aircraft are subject to approval by the Secretaries of the Military Departments and the Directors of Defense Agencies. A notice of approval or denial shall be reported to the ASD(FM&P) within 48 hours after such action.

E3.4.3.3.2. Requests for loan or lease or other use of equipment or facilities are subject to approval by the Secretaries of the Military Departments and the Directors of the Defense Agencies, unless approval by a higher official is required by statute or DoD Directive applicable to the particular disposition. This authority may be delegated. The Secretaries of the Military Departments and the Directors of the Defense Agencies shall issue rules for taking action on requests for loan, lease, or other use of equipment or facilities that are not governed by paragraphs E3.4.3.1. through E3.4.3.3., above, subject to the following:

E3.4.3.3.2.1. Such rules shall ensure compliance with applicable statutes and DoD Directives requiring specific levels of approval with respect to particular dispositions.

E3.4.3.3.2.2. The ASD(FM&P) shall be notified within 48 hours after action is taken approving or denying a request for a loan, lease, or other use of equipment or facilities for more than 60 days.

E3.4.3.4. Requests for the use of equipment or facilities outside the Continental United States (CONUS) other than arms, ammunition, combat vehicles, vessels, and aircraft shall be approved in accordance with procedures established by the applicable Military Department or Defense Agency.

E3.4.3.5. Requests from Federal agencies for purchase of equipment (permanent retention) that are accompanied by appropriate funding documents may be submitted directly to the Military Departments or Defense Agencies. Requests for transferring equipment to non-Federal agencies must be processed under DoD Instruction 4160.23 (reference (m)) or DoD Directive 4165.20 (reference (p)).

E3.4.3.6. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(FM&P). Requests will be forwarded and processed according to the urgency of the situation.

E3.5. FUNDING

Funding requirements for assistance under this enclosure shall be established under the guidance in enclosure E5.

E4. ENCLOSURE 4

RESTRICTIONS ON PARTICIPATION OF DoD PERSONNEL IN CIVILIAN LAW ENFORCEMENT ACTIVITIES

E4.1. STATUTORY REQUIREMENTS

E4.1.1. Posse Comitatus Act. The primary restriction on military participation in civilian law enforcement activities is the Posse Comitatus Act (reference (v)), which provides:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years or both."

E4.1.2. Permissible direct assistance. The following activities are not restricted by reference (v).

E4.1.2.1. Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision must be used with caution, and does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of reference (v). Actions under this provision may include the following, depending on the nature of the DoD interest and the authority governing the specific action in question:

E4.1.2.1.1. Investigations and other actions related to enforcement of the Uniform Code of Military Justice (UCMJ) (reference (d)).

E4.1.2.1.2. Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding. See DoD Directive 5525.7 (reference (w)) with respect to matters in which the Departments of Defense and Justice both have an interest.

E4.1.2.1.3. Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility.

E4.1.2.1.4. Protection of classified military information or equipment.

E4.1.2.1.5. Protection of DoD personnel, DoD equipment, and official guests of the Department of Defense.

E4.1.2.1.6. Such other actions that are undertaken primarily for a military or foreign affair's purpose.

E4.1.2.2. Audits and investigations conducted by, under the direction of, or at the request of IG, DoD, 5 U.S.C., Appendix 3, §8(g) (reference (x)), subject to applicable limitations on direct participation in law enforcement activities.

E4.1.2.3. Actions that are taken under the inherent right of the U.S. Government, a sovereign national entity under the U.S. Constitution, to ensure the preservation of public order and to carry out governmental operations within its territorial limits, or otherwise in accordance with applicable law, by force, if necessary. This authority is reserved for unusual circumstances, and will be used only under DoD Directive 3025.12 (reference (l)), which permits use of this power in two circumstances:

E4.1.2.3.1. The emergency authority authorizes prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disaster, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situation.

E4.1.2.3.2. Protection of Federal property and functions authorizes Federal action, including the use of military forces, to protect Federal property and Federal Government functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

E4.1.2.4. Actions taken pursuant to DoD responsibilities under 10 U.S.C. §§331-334 (reference (d)), relating to the use of the military forces with respect to insurgency or domestic violence or conspiracy that hinders the execution of State or Federal law in specified circumstances. Actions under this authority are governed by DoD Directive 3025.12 (reference (l)).

E4.1.2.5. Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct military participation in civilian law enforcement, include the following:

E4.1.2.5.1. Protection of national parks and certain other Federal lands. See 16 U.S.C. §§23, 78, and 593 (reference (y)).

E4.1.2.5.2. Enforcement of the Fishery Conservation and Management Act of 1976. See 16 U.S.C. §1861(a) (reference (y)).

E4.1.2.5.3. Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons. See 18 U.S.C. §§112 and 1116 (reference (z)).

E4.1.2.5.4. Assistance in the case of crimes against members of Congress. See 18 U.S.C. §351 (reference (z)).

E4.1.2.5.5.5. Assistance in the case of crimes involving nuclear materials. See 18 U.S.C. §831 (reference (z)).

E4.1.2.5.6. Protection of the President, Vice President, and other designated dignitaries. See 18 U.S.C. §§1751 and the Presidential Protection Assistance Act of 1976 (reference (z)).

E4.1.2.5.7. Actions taken in support of the neutrality laws. See 22 U.S.C. §§408 and 461-462 (reference (aa)).

E4.1.2.5.8. Removal of persons unlawfully present on Indian lands. See 25 U.S.C. §180 (reference (bb)).

E4.1.2.5.9. Execution of quarantine and certain health laws. See 42 U.S.C. §97 (reference (cc)).

E4.1.2.5.10. Execution of certain warrants relating to enforcement of specified civil rights laws. See 42 U.S.C. §1989 (reference (cc)).

E4.1.2.5.11. Removal of unlawful inclosures from public lands. See 43 U.S.C. §1065 (reference (dd)).

E4.1.2.5.12. Protection of the rights of a discoverer of a guano island. See 48 U.S.C. §1418 (reference (ee)).

E4.1.2.5.13. Support of territorial governors if a civil disorder occurs. See 48 U.S.C. §§1422 and 1591 (reference (ee)).

E4.1.2.5.14. Actions in support of certain customs laws. See 50 U.S.C. §220 (reference (ff)).

E4.1.3. Restrictions on Direct Assistance. Except as otherwise provided in this enclosure, the prohibition on the use of military personnel "as a posse comitatus or otherwise to execute the laws" prohibits the following forms of direct assistance:

E4.1.3.1. Interdiction of a vehicle, vessel, aircraft, or other similar activity.

E4.1.3.2. A search or seizure.

E4.1.3.3. An arrest, apprehension, stop and frisk, or similar activity.

E4.1.3.4. Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.

E4.1.4. Training

E4.1.4.1. The Military Departments and Defense Agencies may provide training to Federal, State, and local civilian law enforcement officials. Such assistance may include training in the operation and maintenance of equipment made available under section E3.1. of enclosure E3. This does not permit large scale or elaborate training, and does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this enclosure.

E4.1.4.2. Training of Federal, State, and local civilian law enforcement officials shall be provided under the following guidance:

E4.1.4.2.1. This assistance shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns.

E4.1.4.2.2. Such assistance may not involve DoD personnel in a direct role in a law enforcement operation, except as otherwise authorized by law.

E4.1.4.2.3. Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

E4.1.5. Expert Advice. Military Departments and Defense Agencies may provide expert advice to Federal, State, or local law enforcement officials in accordance with 10 U.S.C. §§371-378 (reference (d)). This does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this enclosure.

E4.1.6. Use of DoD Personnel to Operate or Maintain Equipment. The use of DoD personnel to operate or maintain or to assist in operating or maintaining equipment shall be limited to situations when the training of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns.

E4.1.6.1. In general, the head of the civilian law enforcement agency may request a Military Department or Defense Agency to provide DoD personnel to operate or maintain or assist in operating or maintaining equipment for the civilian agency. This assistance shall be subject to the following guidance:

E4.1.6.1.1. Such assistance may not involve DoD personnel in a direct role in a law enforcement operation (see subsection E4.1.3., above), except as provided in paragraph E4.1.6.3., below, or as otherwise authorized by law.

E4.1.6.1.2. Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

E4.1.6.1.3. The use of military aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials may be provided only in accordance with DoD 4515.13-R (reference (h)).

E4.1.6.2. Additional provisions concerning drug, customs, immigration, and certain other laws: a request under this provision for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under section E3.1. of enclosure E3. may be made by the head of a civilian agency empowered to enforce the following laws:

E4.1.6.2.1. The Controlled Substances Act (reference (gg)) or the Controlled Substances Import and Export Act (reference (hh)).

E4.1.6.2.2. Any of Sections 274 through 278 of the Immigration and Nationality Act (reference (ii)).

E4.1.6.2.3. A law relating to the arrival or departure of merchandise, as defined in Section 1401 of the Tariff Act of 1930 (reference (jj)), into or out of the Customs territory of the United States, as defined in the Tariff Schedules of the United States, (reference (jj)) or any other territory or possession of the United States; or

E4.1.6.2.4. Any other law that establishes authority for DoD personnel to provide direct assistance to civilian law enforcement officials. In addition to the assistance authorized under this paragraph, the following assistance may be provided:

E4.1.6.2.4.1. DoD personnel may be assigned to operate or assist in operating equipment to the extent the equipment is used for monitoring and communicating to civilian law enforcement officials the movement of air and sea traffic with respect to any criminal violation of the laws specified in paragraph E4.1.2.5., above. This includes communicating information concerning the relative position of civilian law enforcement officials and other air and sea traffic.

E4.1.6.2.4.2. In an emergency circumstance, equipment operated by or with the assistance of DoD personnel may be used outside the land area of the United States (or any Commonwealth, territory, or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law in subparagraph E4.1.2.3.1., above, and to transport such law enforcement officials in connection with such operations, subject to the following limitations:

E4.1.6.2.4.2.1. Equipment operated by or with the assistance of DoD personnel may not be used to interdict or interrupt the passage of vessels or aircraft, except when DoD personnel are otherwise authorized to take such action with respect to a civilian law enforcement operation.

E4.1.6.2.4.2.2. There must be a joint determination by the Secretary of Defense and the Attorney General that an emergency circumstance exists under 10 U.S.C. §374(c) (2) (reference (d)). An emergency circumstance may be determined to exist for purposes of this subparagraph only when the size and scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and enforcement of laws in paragraph E4.1.2.5., above, would be impaired seriously if the assistance described in this subparagraph were not provided.

E4.1.6.2.4.3. The emergency authority in this subparagraph may be used only with respect to large scale criminal activity at a particular point in time or over a fixed period. It does not permit use of this authority on a routine or extended

basis.

E4.1.6.2.4.4. Nothing in this subparagraph restricts the authority of military personnel to take immediate action to save life or property or to protect a Federal function as provided in paragraph E4.1.2.2., above.

E4.1.6.3. When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph E4.1.2.5., above, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by the Secretary of Defense, the ASD(FM&P), or the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned.

E4.1.7. Other Permissible Assistance. The following forms of indirect assistance are not restricted by the Posse Comitatus Act (reference (d)) (see enclosure E3.):

E4.1.7.1. Transfer of information acquired in the normal course of military operations. See enclosure E2.

E4.1.7.2. Such other actions, approved in accordance with procedures established by the Secretaries of the Military Departments and the directors of the Defense Agencies concerned, that do not subject civilians to use military power that is regulatory, prescriptive, or compulsory.

E4.2. EXCEPTIONS BASED ON STATUS

The restrictions in section E4.1., above, do not apply to the following persons:

E4.2.1. A member of a Reserve component when not on active duty, active duty for training, or inactive duty for training.

E4.2.2. A member of the National Guard when not in the Federal Service.

E4.2.3. A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a military officer, assistance will not be provided unless it would be permitted under section E4.3., below.

E4.2.4. A member of a Military Service when off duty, and in a private capacity. A member is not acting in a private capacity when assistance to law enforcement

officials is rendered under the direction or control of DoD authorities.

E4.3. EXCEPTIONS BASED ON MILITARY SERVICE

DoD guidance on the Posse Comitatus Act (reference (v)), as stated in enclosure E3., is applicable to the Department of the Navy and the Marine Corps as a matter of DoD policy, with such exceptions as may be provided by the Secretary of the Navy on a case-by-case basis.

E4.3.1. Such exceptions shall include requests from the Attorney General for assistance under 21 U.S.C. §873(b) (reference (kk)).

E4.3.2. Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft, a law enforcement search or seizure, an arrest, apprehension, or other activity that is likely to subject civilians to use military power that is regulatory, prescriptive, or compulsory. Such approval may be granted only when the head of the civilian agency concerned verifies that:

E4.3.2.1. The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States and enforcement of a law within the jurisdiction of the civilian agency would be impaired seriously if the assistance were not provided because civilian assets are not available to perform the missions; or

E4.3.2.2. Civilian law enforcement assets are not available to perform the mission and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

E4.4. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if such assistance could adversely affect national security or military preparedness. The implementing documents issued by the Secretaries of the Military Departments and the Directors of the Defense Agencies shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military preparedness.

E4.5. APPROVAL AUTHORITY

Requests by civilian law enforcement officials for use of DoD personnel in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this section.

E4.5.1. The use of DoD personnel in civil disturbances and related matters is governed by DoD Directive 3025.12 (reference (l)), which includes the approval authorities.

E4.5.2. Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46 (reference (u)).

E4.5.3. The following governs approval for assistance to civilian law enforcement officials in other circumstances.

E4.5.3.1. The Secretary of Defense is the approval authority for requests that involve assignment of 50 or more DoD personnel or a period of assignment of more than 30 days.

E4.5.3.2. The Secretaries of the Military Departments and Directors of Defense Agencies may approve the following types of assistance, except as provided in E4.5.3.1., above:

E4.5.3.2.1. Use of DoD personnel to provide training or expert advice in accordance with subsections E4.1.4. and E4.1.5., above.

E4.5.3.2.2. Use of DoD personnel for equipment maintenance in accordance with subparagraph E4.1.6.2.1., above.

E4.5.3.2.3. Use of DoD personnel to monitor and communicate the movement of air and sea traffic in accordance with subparagraph E4.1.6.2.1., above.

E4.5.3.3. The ASD(FM&P) is the approval authority for other requests for assignment of personnel. This authority may be delegated to the Secretaries of the Military Departments and the Directors of the Defense Agencies with respect to specific categories of assistance.

E4.5.3.4. Requests that involve DoD intelligence components are subject to the limitations in DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)), and are subject to approval by the Secretary of Defense.

E4.5.3.5. The views of JCS shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(FM&P) or that otherwise involve personnel assigned to a Unified or Specified Command.

E4.5.3.6. The view of the ASD(RA) shall be obtained on all requests that are to be considered by the Secretary of Defense or the ASD(FM&P) that involve Reserve component personnel or equipment.

E4.5.3.7. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(FM&P). Requests will be forwarded and processed according to priority.

E4.6. FUNDING

Funding requirements for assistance under this enclosure shall be established by the ASD(FM&P) under the guidance in enclosure E5.

E5. ENCLOSURE 5

FUNDING

E5.1. ESTABLISHMENT OF GUIDANCE

Funding requirements and related reporting procedures shall be established by the ASD(FM&P), after consultation with the Assistant Secretary of Defense (Comptroller) (ASD(C)), subject to the guidance of this enclosure.

E5.2. PROCEDURAL REQUIREMENTS

E5.2.1. As a general matter, reimbursement is required when equipment or services are provided to agencies outside the Department of Defense. The primary sources of law for reimbursement requirements are the Economy Act (reference (i)) for Federal agencies and the Leasing Statute, 10 U.S.C. §2667 (reference (d)). Other statutes may apply to particular types of assistance. (See section E3.1. of enclosure E3.)

E5.2.2. If reimbursement is not required by law for a particular form of assistance, the authority to waive reimbursement is delegated to the ASD(FM&P). The ASD(FM&P) may delegate to the Secretaries of the Military Departments and the Directors of the Defense Agencies (or designees) the authority to waive reimbursement on matters within their approval authority. See 10 U.S.C. §377 (reference (d)). The dollar value of a waiver shall be determined in accordance with Chapter 26 of DoD 7220.9-M (reference (ll)). A request for waiver may be granted if reimbursement is not otherwise required by law and:

E5.2.2.1. Is provided as an incidental aspect of the activity that is conducted for military purposes.

E5.2.2.2. Involves the use of DoD personnel in an activity that provides DoD training operational benefits that are substantially equivalent to the benefit of DoD training or operations.

E5.2.3. The Secretary of the Military Department or the Director of the Defense Agency (or his or her designees) may request the views of the Joint Chiefs of Staff when acting on a request for waiver of reimbursement when such waiver may adversely affect military preparedness.

E5.2.4. In evaluating requests for waiver of reimbursement, consideration shall be given to the budgetary resources available to civilian law enforcement agencies.

E5.3. MILITARY PREPAREDNESS

Reimbursement may not be waived if deletion of such funds from a DoD account could adversely affect the national security or military preparedness of the United States.

E6. ENCLOSURE 6

Sample Format for Preparing, "Report on Support to Civilian Law Enforcement (RCS DD-FM&P (Q) 1595)"

The quarterly report shall contain the following information for each request considered:

1. Number and type of assistance requested.
    a. Facilities.
    b. Information.
    c. Equipment.
        (1) Aircraft
        (2) Vehicles
        (3) Vessels
        (4) Special (night vision goggles, weapons, etc.)
        (5) Miscellaneous
    d. Aviation Mission Support.
        (1) Surveillance
        (2) Identification aircraft support
        (3) Logistics
        (4) Miscellaneous
    e. Surface Mission Support.
        (1) Surveillance

(2) Ship services (towing, tactical law enforcement teams TACLETs, etc.)

(3) Logistics

(4) Miscellaneous

f. Ground-based Mission Support.

(1) Radar/Sensor Surveillance

(2) Aerostats

(3) Transportation of law enforcement personnel

(4) Border air and ground surveillance

(5) Logistics

(6) Miscellaneous

g. Explosive Ordnance Disposal.

h. Training provided to law enforcement agencies.

i. Personnel.

j. Other support not specifically addressed.

2. The length of time for which assistance is requested, if appropriate (if the request is for information or support for a brief time, enter "NA").

3. Status of the requests:

a. Number approved.

b. Number denied.

c. Number pending.

4. A brief discussion of the reason for any denial.

5. Manhours/mandays expended to support law enforcement agencies.

E7. ENCLOSURE 7

AVIATION ASSISTANCE TO LAW ENFORCEMENT AGENCIES
(Sample Format)

Surveillance

Aircraft	Region State	Sorties	Flight Hours	Detections Gained	Passed to LEA's	Remarks
E-2C	Pacific	18	76	10A	9	No CS support available
E-2C	Atlantic	23	88	13A	10	CHET successful intercept of one acft. Flown by Reserves.
P-3C	Atlantic	103	712	32S	28S	CG seized 3 vessels.

Identification

Aircraft	Region State	Sorties	Flight Hours	Visual/IRDS Attempts	Detections Successful	Remarks
OV-10	New Mexico	17	35	3A	1	Handover to USCS, 1200# Marijuana seized.

Logistics/Miscellaneous Support

Aircraft	Region State	Sorties	Flight Hours	Remarks
UH-1N	Bahamas	332	299	Bahamas police seized 12,200# marijuana, 2000# cocaine.
RF-4C	Texas	4	7	Reconnaissance of remote airfields

Abbreviation Key:

A - Airborne	SS - Secret Service
Acft- Aircraft	Res - Reserve
S - Surface	ANG - Air Nat'l Guard
L - Land	ARNG - Army Nat'l Guard
C S - U.S. Customs Service	LEA - Law Enforcement Agency
CG - U.S. Coast Guard	CHET - Customs High Endurance Tracker (aircraft)
D - DEA	IRDS - Infrared Detection System

Attachments - 1

1. Aid for Completing Aviation Assistance Portion of Quarterly Report 7-1.

E7.A1. ENCLOSURE 7, ATTACHMENT 1

AID FOR COMPLETING AVIATION ASSISTANCE PORTION OF QUARTERLY REPORT

Aviation assistance is the largest area of DoD support to law enforcement agencies. This section is used to report to DoD the Services' aviation assistance. The following is an aid to complete this section.

Acft	-	Aircraft," if flown by other than active duty units, indicate in the "Remarks" column (e.g., Res, ANG, ARNG).
Region State	-	Where sorties were flown. (e.g., Pacific, Caribbean, GA, TX, Bahamas, etc.).
Sorties	-	Number of flights flown by the platform aircraft during the quarter.
Flt Hrs.	-	Number of flight hours flown by the aircraft during the quarter.
Detections	-	Number of "raw data" detections against suspect air Gained or surface vessels.
Detections Gained	-	The number of detections passed to law enforcement agency for possible investigation.
Remarks	-	Used for comments to specify sorties flown by Reserve, ARG, ARNG units; amplify support contributing to known law enforcement success or failure, etc.
Visual/IRDS	-	Applies to visual or infrared detection to identify suspect vessel.
Identification	-	Aircraft (e.g., OV-10, OV-1) used to identify suspect aircraft prior to handover To the U.S. Customs Service tracker/interceptor aircraft.

MINORITY VIEWS OF HON. HENRY A. WAXMAN, HON. TOM LANTOS, HON. MAJOR R. OWENS, HON. EDOLPHUS TOWNS, HON. PAUL E. KANJORSKI, HON. CAROLYN B. MALONEY, HON. ELEANOR HOLMES NORTON, HON. CHAKA FATTAH, HON. ELIJAH E. CUMMINGS, HON. DENNIS J. KUCINICH, HON. ROD R. BLAGOJEVICH, HON. DANNY K. DAVIS, HON. JOHN F. TIERNEY, HON. JIM TURNER, AND HON. HAROLD E. FORD, JR.

I. INTRODUCTION

The committee's Waco investigation began as many of the committee's other investigations have begun: with a false accusation. In August 1999, after the media reported that the FBI had used pyrotechnic tear gas rounds at Waco, Representative Dan Burton accused Attorney General Janet Reno of covering up key facts and said that she should be removed from office. On one nationally broadcast radio program, Mr. Burton said that Attorney General Reno "should be summarily removed, either because she's incompetent, number one, or, number two, she's blocking for the President and covering things up, which is what I believe." [1]

In September 1999, Mr. Burton renewed his accusations of a cover-up by asserting that the Justice Department did not provide Congress with documents detailing the FBI's use of military tear gas rounds near the Branch Davidian compound on April 19, 1993. In particular, he accused the Justice Department of deliberately concealing the 49th page of an FBI lab report, which contained a reference to a spent military tear gas round. Prior to conducting any meaningful investigation, Mr. Burton said on national television, "With the 49th page of this report not given to Congress, when we were having oversight hearings into the tragedy at Waco, and that was the very definitive piece of paper that could have given us some information, it sure looks like they were withholding information. And she's responsible." [2]

Mr. Burton's allegations turned out to be untrue. Representative Henry A. Waxman pointed out that the Justice Department had produced documents to the committee in 1995 that contained numerous explicit references to military tear gas rounds.[3] Former Senator John C. Danforth then thoroughly investigated the matter as Special Counsel. He found that there was no cover-up by the Attorney General. In fact, Senator Danforth found that the 49th page had never been missing at all. According to Senator Danforth's report: "[T]he Committees were provided with at least two copies of the lab report in 1995 which did contain the 49th page. *The Office*

[1] "Morning Edition," NPR (Aug. 31, 1999).
[2] "Fox News Sunday," Fox News (Sept. 12, 1999).
[3] Letter from Representative Henry A. Waxman to Senator John C. Danforth (Sept. 13, 1999) (attached as exhibit 1).

of Special Counsel easily located these complete copies of the lab report at the Committees' offices." [4]

This committee's investigation into Waco should have ended on September 9, 1999, when Attorney General Reno appointed Senator Danforth to serve as Special Counsel to investigate lingering questions related to the Branch Davidian standoff in 1993. Since that date, Mr. Burton's investigation has been unnecessary, expensive, and fruitless. He has required Federal agencies to produce nearly 800,000 pages of documents, called more than 80 witnesses to appear for interviews, and dispatched committee staff across the country from Puerto Rico to Texas. And despite the duration and cost to the Federal Treasury, his investigation has contributed virtually nothing to the public's understanding of the Waco tragedy.

On the substance of this investigation, we concur with the major findings of Senator Danforth and with the findings of fact issued by Judge Walter S. Smith, Jr., of the U.S. District Court for the Western District of Texas.[5] Senator Danforth and Judge Smith both concluded that the government did not cause the fire at the Branch Davidian complex and did not direct gunfire at the Branch Davidian complex on April 19, 1993. We also concur with Senator Danforth's conclusion that the government did not improperly employ U.S. armed forces during the Waco standoff and that senior Justice Department and FBI officials—including Attorney General Janet Reno and FBI Director William Sessions—did not knowingly make false statements about the FBI's use of pyrotechnic tear gas rounds on April 19, 1993.[6]

Although one can with hindsight second guess decisions made at virtually all levels of the FBI and Justice Department, the fact remains that the Federal officials involved in the Waco standoff acted lawfully and with great restraint under difficult circumstances. As both Senator Danforth and Judge Smith concluded, the responsibility for the Waco tragedy lies with certain Branch Davidians and particularly their leader, David Koresh.[7]

II. MR. BURTON BEGAN HIS INVESTIGATION WITH ERRONEOUS CHARGES

Mr. Burton, in a pattern that has become typical of this committee, first alleged wrongdoing by a Clinton administration official and then proceeded to investigate.[8] In August 1999, the press reported that pyrotechnic tear gas rounds had been used at Waco, contrary to statements made by Attorney General Reno and other

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[4] John C. Danforth, Special Counsel, "Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas" (July 21, 2000) (hereinafter "Danforth report") (attached as exhibit 2).

[5] Amended findings of fact and conclusions of law, *Andrade* v. *United States,* No. W–96–CA–139 (W.D. Tex. filed Sept. 27, 2000) (hereinafter "findings of fact and conclusions of law") (attached as exhibit 3).

[6] Danforth report at 51. The minority has no information to substantiate or refute Senator Danforth's interim findings that a staff attorney for the FBI failed to disclose that an FBI agent used pyrotechnic tear gas rounds and gave conflicting information to Senator Danforth's investigators. Committee staff interviewed this individual, Jacqueline Brown, on Jan. 7, 2000. The minority staff found her to be cooperative and truthful in her responses to the questions posed by committee staff.

[7] Danforth report at 5; findings of fact and conclusions of law at 10.

[8] A report recently released by Representative Waxman describes many similar allegations that have occurred over the last 6 years. See "Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration," Minority Staff Report, Committee on Government Reform (Oct. 2000) (attached as exhibit 4).

officials that the FBI had only used nonpyrotechnic tear gas rounds.[9] Mr. Burton immediately attacked the Attorney General, stating on one nationally broadcast television program, "I think she either misled Congress and covered this up or she was totally incompetent. . . . [S]he should be removed because she's just not doing her job." [10]

Mr. Burton soon renewed his accusations of a cover-up, alleging that the Justice Department failed to provide Congress documents describing the FBI's use of pyrotechnic tear gas rounds. In particular, Mr. Burton accused the Justice Department of concealing from Congress the 49th page of an FBI lab report. This page, the last in the document, contained the following reference to the FBI's use of a military-style tear gas round: "Specimen Q1237 (B160) is a fired U.S. Military 40 mm shell casing which originally contained a CS gas round." [11] To a person with specialized knowledge of tear gas projectiles, this would indicate the use of a pyrotechnic projectile, capable of igniting a fire.

Mr. Burton charged that Justice Department officials, including the Attorney General of the United States, were involved in a cover-up. Mr. Burton wrote in a September 10, 1999, letter to Attorney General Reno:

> It is difficult for me to believe that the Department had multiple copies of a document, produced only one copy of the document to Congress, and then managed to lose the one critical page of the document mentioning the use of pyrotechnic tear gas. Had page 49 of the FBI report been produced to Congress when it was originally requested years ago, it would have cast doubt onto the testimony of a number of Department officials. The Department's failure to produce this document when it was originally requested raises more questions about whether this Committee was intentionally misled during the original Waco investigation.[12]

Over the following weekend, Mr. Burton repeated his accusation of a cover-up by the Attorney General, stating on one nationally broadcast television program, "that was the very definitive piece of paper that could have given us some information, it sure looks like they were withholding information. And she's responsible." [13]

Mr. Burton's allegations were not only unsupported by the evidence, they were directly contradicted by information in his own files.

In 1995, a subcommittee of the Government Reform and Oversight Committee and a subcommittee of the House Judiciary Committee conducted an investigation into the activities of Federal law enforcement agencies toward the Branch Davidians. As part of that inquiry, the subcommittees issued document requests to the White House and the Departments of Justice, Treasury, and Defense. The records produced in response to these requests were stored in over

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[9] "FBI Reverses Its Stand on Waco," Washington Post (Aug. 26, 1999).
[10] "Hannity & Colmes," Fox News (Aug. 30, 1999).
[11] Memorandum from FBI Laboratory to Sergeant James Miller, Texas Rangers (Dec. 6, 1993).
[12] Letter from Representative Dan Burton to Attorney General Janet Reno (Sept. 10, 1999).
[13] "Fox News Sunday," Fox News (Sept. 12, 1999).

40 boxes in congressional archives until August 1999, when they were recalled by Mr. Burton.

At the time Mr. Burton alleged that the Attorney General had withheld information on the use of military-style tear gas rounds, he had documents in his own possession that explicitly discuss the use of military-style tear gas rounds at Waco. Many of these documents were located by Representative Waxman's staff in boxes in Mr. Burton's offices within a few days of Mr. Burton's allegations.[14] One document provided to Congress in 1995, for example, was a report of an interview of the FBI agent who co-piloted the surveillance aircraft flying above the Branch Davidian compound on the morning of April 19, 1993. According to this document, the pilot reported hearing "a high volume of [Hostage Rescue Team] traffic and Sniper [Tactical Operations Center] instructions regarding . . . the insertion of gas by ground units," including "one conversation relative to utilization of some sort of military round to be used on a concrete bunker." [15]

Another document produced to Congress in 1995 was a typewritten chart prepared by Justice Department prosecutors in connection with the criminal trial of surviving Branch Davidians. The chart, which summarizes interviews with potential witnesses for the prosecution, identifies each Hostage Rescue Team member interviewed, the name of the interviewer, a summary of significant observations made by the witness, and whether each witness would be placed on the prosecution's witness list for trial. According to the chart, one witness, who was later identified as Special Agent Dave Corderman, was expected to testify that "smoke on film came from attempt to penetrate bunker w/1 military and 2 ferret rounds." [16] In addition, the document indicates that the witness described the appearance of the military round, stating: "Military was grey bubblehead w/green base." [17]

Also among the documents produced by the Justice Department to House investigators in 1995 were handwritten notes clearly describing the use of military rounds in the Waco operation and describing that such rounds were "incendiary." One set of notes read, "Smoke from bunker—came when these guys tried to shoot gas into the bunker. (Military gas round) . . . grey bubblehead w/green base." The term "military" or "military round" appears twice again in the same paragraph, and an arrow points from the word "military" to the word "incendiary." [18] Notes on the following page read, "Obj[ective]: to keep people from fleeing into bunker." [19]

Not only were there numerous references to the use of military tear gas at Waco in Mr. Burton's own files, but those files also contained the 49th page of the FBI lab report that Mr. Burton alleged had never been produced to Congress. After thoroughly investigating this issue, Senator Danforth found:

> Attorneys from the Department of Justice who produced documents to the United States House of Representatives

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[14] Letter from Representative Henry A. Waxman to Senator John C. Danforth (Sept. 13, 1999).
[15] Interview of Special Agent R. Wayne Smith, Federal Bureau of Investigation FD–302 (June 9, 1993).
[16] Unidentified handwritten notes.
[17] Id.
[18] Unidentified handwritten notes.
[19] Id.

> Committee on Government Reform and Oversight and the Committee on the Judiciary in advance of the 1995 hearings have come under public scrutiny for producing the FBI laboratory report containing the reference to the military tear gas round without the 49th page, which contains the relevant reference. *In fact, however, while one copy of the report did not contain the 49th page, the Committees were provided with at least two copies of the lab report in 1995 which did contain the 49th page. The Office of Special Counsel easily located these complete copies of the lab report at the Committees' offices when it reviewed the Committees' copy of the 1995 Department of Justice document production.* . . . The Special Counsel has concluded that the missing page on one copy of the lab report provided to the Committees is attributable to an innocent photocopying error and the Office of Special Counsel will not pursue the matter further.[20]

Mr. Burton has never apologized for making these unsubstantiated allegations of a government cover-up. To the contrary, in the majority's report, he renews the false accusation, suggesting that Justice Department and FBI officials deliberately delayed production of these documents to this committee in 1995 in order to conceal the truth.[21] The majority writes, "Sadly, the Justice Department did not produce the requested documents until three days before the start of the hearings."[22] In fact, however, the Justice Department received broad document requests 6 weeks before this committee held joint hearings with the Judiciary Committee in 1995 and, by agreement with the committee, produced 250,000 pages on a prioritized basis.[23] The Justice Department produced two complete copies of the FBI lab report to the committees on July 6, 1995.[24] The committees thus received the FBI lab report not 3 days ahead of the 1995 hearings, but 13 days before the start of the hearings, 26 days before the conclusion of the hearings, and 392 days before the committees issued their joint report on August 2, 1996.

III. Mr. Burton's Investigation Was Unnecessary and Wasteful

Since September 1999, the committee has conducted an unnecessary and wasteful investigation of Waco. Virtually every document the committee has obtained and virtually every witness interviewed by committee staff was examined by Senator Danforth in the course of his detailed Waco investigation.

A. SENATOR DANFORTH THOROUGHLY INVESTIGATED WACO

Despite a voluminous public record that had been developed on the Waco tragedy between 1993 and 1997, three developments oc-

[20] Danforth report at 54.
[21] See majority report at 30 n. 106, 31.
[22] Id. at 30 n. 106.
[23] See letter from Kent Marcus, Acting Assistant Attorney General for Legislative Affairs, to Chairman William H. Zeliff, Jr., and Chairman William McCollum (July 6, 1995).
[24] See id.; letter from Jon P. Jennings, Principal Deputy Assistant Attorney General, to Chairman Dan Burton (Oct. 22, 1999).

curring in August and September 1999 generated public interest in whether the government caused or contributed to the deaths of Branch Davidians at Waco and whether government officials had engaged in a cover-up. First, the FBI acknowledged on August 25, 2000, that it used a limited number of pyrotechnic tear gas projectiles on April 19, 1993.[25] Second, on September 2 and 3, 1999, the FBI released videotapes taken the morning of April 19, 1993, by an FBI surveillance aircraft using Forward Looking Infrared Radar (FLIR).[26] Prior to that time, the FBI and Justice Department had maintained that they only had FLIR tapes beginning later in the morning.[27] Third, news stories around the country reported that the Justice Department had evidence of the use of pyrotechnic tear gas rounds but failed to produce it to Congress in 1995.[28]

These developments caused a number of Republican leaders in the House and Senate to call for investigations, including Representative Henry Hyde, Representative Dan Burton, Senator Orrin Hatch, and Senator Arlen Specter.[29]

Attorney General Reno quickly responded to concerns raised by Members of Congress and by the media. On September 9, 1999, she appointed John Danforth, a highly respected former Republican U.S. Senator, as Special Counsel. As part of his mandate, Senator Danforth agreed to investigate five principal issues: (1) whether the government caused or contributed to the fire on April 19, 1993; (2) whether the government directed gunfire at the Branch Davidians on April 19, 1993; (3) whether the government used any incendiary or pyrotechnic device on April 19, 1993; (4) whether the government illegally employed the armed forces at Waco; and (5) whether government officials made false statements or concealed information about the events on April 19, 1993.[30] After receiving his appointment, Senator Danforth said that he planned to conduct an aggressive inquiry into whether there were "bad acts, not whether there was bad judgment."[31]

Attorney General Reno's appointment of Senator Danforth received wide praise. Republican Senator Fred Thompson said that Senator Danforth "has an excellent reputation and the highest integrity."[32] House Majority Leader Dick Armey questioned the need for any congressional hearings and expressed confidence in Senator Danforth, calling him "a man of impeccable integrity."[33] Mr. Bur-

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[25] "Branch Davidian Compound—Waco, Texas," press release, U.S. Department of Justice, Federal Bureau of Investigation (Aug. 25, 1999) (on line at http://www.fbi.gov/pressrm/pressrel/pressre199/presswaco2.htm).

[26] "FBI Releases Waco Videotape," press release, U.S. Department of Justice, Federal Bureau of Investigation (Sept. 2, 1999) (on line at http://www.fbi.gov/pressrm/pressrel/pressre199/wacorel.htm); "FBI Releases Second Waco Videotape," press release, U.S. Department of Justice, Federal Bureau of Investigation (Sept. 3, 1999) (on line at http://www.fbi.gov/pressrm/pressrel/pressrel199/wacorel2.htm).

[27] Danforth report at 141.

[28] E.g. "Burton Opens Investigation of Waco Tactics," CNN.com (Aug. 30, 1999) (on line at: http://www.cnn.com/allpolitics/stories/1999/08/30/tbi.waco); "FBI Suggests Outside Probe of Waco Siege," Washington Times (Sept. 1, 1999); "Marshals Acting on Reno's Orders Seize FBI Tape," New York Times (Sept. 2, 1999).

[29] "FBI Admits Using Tear Gas at Waco," Associated Press (Aug. 25, 1999).

[30] Danforth report at 2–3.

[31] "Aggressive Waco Probe Is Promised: Danforth Takes Over, Reno Recuses Herself," Washington Post, (Sept. 10, 1999).

[32] "Reno Picks Waco Head," Baltimore Sun (Sept. 9, 1999).

[33] "Armey Questions Need for New Hearings On Davidian Siege," Dallas Morning News (Oct. 8, 1999).

ton said, "He's a fine man, and I think Senator Danforth is going to do a commendable job."[34]

Senator Danforth proceeded to conduct a thorough and professional investigation of Waco. He hired over 70 staff to assist him in the investigation. As of July 2000, the Office of Special Counsel had interviewed 849 witnesses, reviewed over 2 million pages of documents, and examined thousands of pounds of physical evidence.[35]

Senator Danforth released an interim report on his investigation on July 21, 2000.[36] The report found, among other things, that government agents did not start or spread the fire that consumed the Branch Davidian compound, did not direct gunfire at the Branch Davidians, and did not unlawfully employ U.S. armed forces at Waco. The report was widely regarded as thorough and accurate. An editorial in the Washington Post called it "a welcome clarification of the record on this seemingly endless saga" and concluded that it was "time, finally, for Waco to recede into history."[37]

B. CHAIRMAN BURTON'S INVESTIGATION DUPLICATED THE DANFORTH INVESTIGATION

Despite the appointment of Senator Danforth as Special Counsel, Representative Burton persisted in conducting his own investigation. This investigation was substantial. It involved considerable staff resources, required Federal agencies to produce hundreds of thousands of pages of documents, resulted in extensive staff travel, and included many witness interviews. And in almost every respect, it duplicated the work of Senator Danforth and his staff.

As part of the investigation, Mr. Burton issued subpoenas to the Department of Justice, the FBI, the White House, and the Defense Department. Among the categories of documents required by committee subpoenas, Mr. Burton demanded all documents related to munitions issued to the Hostage Rescue Team; the various forms of tear gas used at Waco; all briefings given by the FBI during the siege; audio surveillance devices at Waco; contacts between the Department of Justice and the White House; contacts between the FBI and the Department of Defense; infrared imagery and analysis; the use of aircraft, helicopters, or armored vehicles; all photographs of the Branch Davidian compound; military involvement at Waco; military personnel at Waco; and "military personnel who provided advice or assistance of any sort" to the Justice Department, the FBI, or the White House.[38]

To comply with these subpoenas, Federal agencies have produced over 795,000 pages of documents. According to Attorney General Janet Reno:

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[34] "Hannity & Colmes," Fox News (Oct. 19, 1999).

[35] Danforth report at 4.

[36] Although Senator Danforth released his principal findings in his interim report, his investigation of certain issues is ongoing to date.

[37] "Waco: Case Closed," Washington Post (July 23, 2000).

[38] See subpoena duces tecum to Director Louis Freeh, Federal Bureau of Investigation (Sept. 1, 1999); subpoena duces tecum to Attorney General Janet Reno, U.S. Department of Justice (Sept. 1, 1999); subpoena duces tecum to the Executive Office of the President (Sept. 1, 1999); subpoena duces tecum to William S. Cohen, Secretary of Defense (Sept. 1, 1999); subpoena duces tecum to Federal Bureau of Investigation (Sept. 15, 1999); subpoena duces tecum to U.S. Department of Justice (Feb. 16, 2000).

> Just on Waco alone we provided 724,169 pages of documents, 12 looseleaf binders of FBI lab reports, 18 diskettes of documents, 101 videotapes, 729 audio tapes, 2,161 photographs, slides, charts, drawings, 8 CD ROMs of color photographs.[39]

This extensive document production was costly and redundant. According to representatives of the Justice Department, the FBI, and the Defense Department familiar with both investigations, the committee received few, if any, documents that were not also provided to Senator Danforth and his staff. In an October 19, 2000, letter to Representative Burton, Assistant Attorney General Robert Raben noted that the Justice Department had made over 80 separate productions of materials to the committee. He estimated that the cost of producing Waco-related materials to this committee and other congressional committees exceeded $800,000.[40]

The committee's witness interviews were also duplicative of Senator Danforth's efforts. Despite the ongoing efforts of Senator Danforth, this committee conducted more than 80 interviews of government employees and private citizens with knowledge on various aspects of the Waco standoff. The majority conducted 77 interviews jointly with the minority staff. Five witnesses appeared for interview twice before the minority and majority staff. Two other known witnesses were interviewed outside the presence of minority staff. Most of these interviews lasted 2 or more hours and required the subject of the interview to leave work and appear at the committee's offices. On several occasions, committee staff traveled to conduct interviews outside the District of Columbia, including trips to Florida, New York, North Carolina, Pennsylvania, Puerto Rico, and Texas.

In a September 22, 2000, letter, Representative Waxman provided a list of joint interviews to Senator Danforth and asked how many witnesses interviewed by the committee had been interviewed by the Office of Special Counsel.[41] Senator Danforth responded on September 26, 2000, and identified only six individuals who were not interviewed by the Office of Special Counsel.[42] These six individuals provided no significant information that is not addressed in Senator Danforth's report.[43]

III. The Investigation Contributed Virtually Nothing to the Public's Understanding of the Waco Tragedy

Although the majority report spans 100 pages and includes approximately 1,390 pages of exhibits, it contributes virtually nothing to the public's understanding of Waco. To the extent that the ma-

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[39] Interview of Attorney General Reno at 29 (Oct. 5, 2000). By October 19, the number of documents the Justice Department had produced increased to 730,000. Letter from Robert Raben, Assistant Attorney General for Legislative Affairs, to Chairman Dan Burton (Oct. 19, 2000).

[40] Letter from Robert Raben, Assistant Attorney General for Legislative Affairs, to Chairman Dan Burton (Oct. 19, 2000).

[41] Letter from Representative Henry Waxman to Senator John Danforth (Sept. 22, 2000).

[42] These individuals were David Binney, Gregory Johnson, James Lockner, David Margolis, Peter Proach, and Rod Rosenstein.

[43] The six witnesses provided information about the adequacy of the Justice Department's internal investigation and the provision of military assistance at Waco. Both subjects were extensively discussed by Senator Danforth. See Danforth report at 51–52, 29–41.

jority's conclusions differ from those of the Office of Special Counsel, they consist largely of unsupported allegations of wrongdoing.

A. THE MAJORITY REPORT REPEATS MANY OF THE CONCLUSIONS OF SENATOR DANFORTH

Many of the majority report's findings mimic those of Senator Danforth's report. The Office of Special Counsel concluded that government agents did not direct gunfire at the Branch Davidian compound;[44] that a Hostage Rescue Team (HRT) member fired three pyrotechnic tear gas rounds on April 19, 1993, but those rounds had nothing to do with the fire that consumed the compound;[45] that certain government attorneys and the former commander of the HRT had reason to know about the use of pyrotechnic tear gas rounds on April 19, 1993, but failed to correct an inaccurate public record;[46] that the Justice Department's internal review failed adequately to investigate evidence that pyrotechnic rounds had been fired on April 19, 1993;[47] and that the government did not improperly or unlawfully employ the U.S. military as part of its law enforcement operation at Waco.[48]

All these findings are echoed in the majority report. This committee's recitation of similar facts and conclusions does not make a meaningful contribution to the public record.

B. THE MAJORITY REPORT MAKES UNSUBSTANTIATED ALLEGATIONS OF WRONGDOING

The majority report departs from Senator Danforth's report primarily in its conclusions that Attorney General Reno and certain current and former Justice Department employees engaged in wrongdoing. But, as is discussed below, these conclusions are nothing more than unsupported allegations.

1. Allegations Involving Attorney General Reno

In its report, the majority makes several unsubstantiated allegations regarding the Attorney General. The majority concludes that Attorney General Reno was uninterested in learning or disclosing the true facts about Waco, that she "reversed" her decision disapproving of the FBI's tear gas plan without any basis, and that she misrepresented that the military approved or endorsed the FBI's tear gas plan. These allegations are unsupported by the facts and have no merit.

a. Allegation That the Attorney General Was Not Interested in Disclosing the Truth about Waco

The majority unfairly concludes that the Attorney General and the Justice Department had no interest in learning or disclosing the facts surrounding Waco. The majority writes that "[a]ll of the actions taken by the Justice Department were consistent with an

[44] Id. at 4.
[45] Id. at 4–5.
[46] Id. at 47, 52–53, 56.
[47] Id. at 52.
[48] Id. at 29.

organization that was not eager to learn the full truth about what happened on April 19, 1993."[49] The majority also states:

> It is troubling that the Waco tragedy did not seem to merit a "vigorous and thorough investigation." President Clinton called for such an inquiry. Attorney General Reno promised such an inquiry would take place. Neither took the steps necessary to make sure it would happen again.[50]

In fact, the Attorney General tried hard to investigate the events at Waco. After the Waco fire on April 19, 1993, Attorney General Reno directed her assistant Richard Scruggs, a career Federal prosecutor, to begin an investigation to find out what happened in order to avoid a similar tragedy in the future. According to Mr. Scruggs, the Attorney General did not limit the scope of the inquiry in any way.[51] Moreover, Mr. Scruggs received significant Justice Department resources in conducting this investigation. Mr. Scruggs was assisted by senior Justice Department attorneys and the Assistant Director of the FBI's Inspection Division. According to Mr. Scruggs, the Inspection Division made use of an army of FBI agents from several offices around the country.[52]

In addition, Attorney General Reno asked a distinguished outside attorney, Edward Dennis, Jr., to conduct an independent evaluation of the Justice Department's and FBI's conduct at Waco.[53] Mr. Dennis had served in several senior Justice Department positions, including Acting Deputy Attorney General and Assistant Attorney General for the Criminal Division during the Bush administration, and, during the Reagan administration, U.S. Attorney for the Eastern District of Pennsylvania.[54]

It is true that there were deficiencies in these investigations. For example, the investigations should have discovered and disclosed the FBI's use of pyrotechnic tear gas rounds and indicated that the pyrotechnic tear gas rounds did not contribute to the fire in the Branch Davidian compound. But these deficiencies cannot be fairly attributed to the Attorney General. The Attorney General was not involved in the details of either investigation. In fact, Mr. Scruggs, who was primarily responsible for developing the factual record, made a conscious decision not to report to the Attorney General because she was a fact witness.[55]

Senator Danforth specifically addressed whether the Attorney General made knowing misstatements about the use of pyrotechnic tear gas rounds and whether she took adequate steps to determine the true facts. He concluded that Attorney General Reno was without fault and that she made diligent efforts to learn the truth. In his report, he writes:

> The Office of Special Counsel has concluded that Attorney General Reno did not knowingly cover up the use of pyro-

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[49] Majority report at 6.
[50] Id. at 27.
[51] Interview of Richard Scruggs (Jan. 5, 2000).
[52] Id.
[53] See Edward S.G. Dennis, Jr., "Evaluation of the Handling of the Branch Davidian Stand-Off in Waco, Texas By the United States Department of Justice and the Federal Bureau of Investigation" (Sept. 24, 1993); interview of Edward S.G. Dennis, Jr. (Jan. 14, 2000).
[54] Interview of Edward S.G. Dennis, Jr. (Jan. 14, 2000).
[55] Interview of Richard Scruggs (Jan. 5, 2000).

> technic tear gas rounds by the FBI. The evidence is overwhelming that, prior to the execution of the gassing plan, she sought and received assurances from the FBI that it would not use pyrotechnic tear gas rounds. The evidence is equally conclusive that the briefing materials and other information she received after the fact stated that the FBI had not used pyrotechnic tear gas rounds at Waco. *Any misstatement that she made was inadvertent and occurred after diligent efforts on her part to learn the truth.* The Office of Special Counsel has completed its investigation of Attorney General Reno, [and] found her to be without direct fault for any false statements that she may have made.[56]

Attorney General Reno first learned about the use of pyrotechnic tear gas rounds in August 1999. She reacted with surprise and anger to the revelation and acted quickly to determine the facts.[57] By September 9, she had completed a search for an impartial outside investigator and appointed John Danforth, a respected Republican former Senator, as Special Counsel. As is detailed in the Danforth report, the Attorney General gave Senator Danforth extensive resources and prosecutorial power to determine the truth.[58]

b. Allegation that the Attorney General Failed to Disclose Her Reasons for Approving the FBI's Tear Gas Plan

As part of the efforts to end the siege at Waco, the Attorney General approved an FBI plan to insert tear gas into the Branch Davidian compound after initially withholding her approval of the use of tear gas.[59] In another unsubstantiated allegation, the majority asserts that the Attorney General has failed to disclose her reasons for "reversing" herself and allowing the use of the tear gas. The majority states that her purported failure to explain her actions is inconsistent with President Clinton's directive to make all of the facts public.[60]

In fact, however, Attorney General Reno has explained on numerous occasions why she decided to approve the FBI's plan to use tear gas.[61] Indeed, the Attorney General has explained her decision at least twice to members of this committee.[62] As recently as Octo-

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[56] Danforth report at 51.

[57] See, e.g, "Waco's New Question: Who Knew? Two Days After Blaze, Information on Grenades Was Withheld or Overlooked," Washington Post (Sept. 3, 1999).

[58] See Danforth report at 2–3.

[59] The tear gas approved by the Attorney General and used inside the Branch Davidian residence was not delivered by means of a pyrotechnic projectile. Rather, the tear gas used in the residence was sprayed from the nozzle of Model V Projecto-Jet canisters installed on combat engineering vehicles or fired from M–79 grenade launchers in "ferret rounds." Ferret rounds disperse the CS gas on impact, without using a pyrotechnic mixture. See interview of Monty Jett (Feb. 1, 2000).

[60] Majority report at 47.

[61] E.g. "Press Conference on Branch Davidian April 19, 1993 Crisis" (Apr. 19, 1993) (Bates Stamp No. CNG 3691272–300); House Committee on the Judiciary, "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas," 103d Cong., 21–39, 48–51, 80–82 (Apr. 28, 1993); interview of Attorney General Janet Reno, Federal Bureau of Investigation FD–302 (Aug. 2, 1993); deposition of Attorney General Janet Reno, *Andrade* v. *Chojnacki,* No. H–94–0923, 89–96 (W.D. Tex).

[62] See House Committee on Government Reform and Oversight and House Committee on the Judiciary, hearings on "Activities of Federal Law Enforcement Agencies Toward the Branch Davidians," 104th Cong., vol. 3, 371–72 (Aug. 1, 1995) (hereinafter "joint hearings"); interview of Attorney General Janet Reno at 78–83.

ber 5, 2000, Attorney General Reno repeated to committee members why she decided to approve the FBI's plan. She said:

> We were faced with a dangerous situation that was becoming more dangerous . . . Branch Davidians who had killed four Federal agents had refused to yield to lawful authority for 51 days. The Branch Davidians held children in conditions that were clearly unhealthful and deteriorating. I had reviewed the gas plan carefully and received the advice of the experts that the gas, although uncomfortable, would cause no lasting harmful effects for children or adults. Koresh's repeated failures to abide by his promises led the negotiators, and ultimately me, to conclude that he would not come out. This conclusion was buttressed by the fact that none of the occupants had come out since March 21st and the fact that the Davidians had food and water sufficient to last at least a year. I think this was one of the deciding factors. The HRT was in immediate need of retraining. This need for retraining was so severe that it did not appear that they could continue to control the perimeter for significant time. They then, that day that I gave the authority to go forward, said that . . . the threat of cataclysmic end was there. He had talked about Armageddon, and the conclusion of the FBI was that he could do it at any time, with or without us, . . . and that they were in the best position to control it at this point that they would be [in] for some foreseeable future.[63]

Despite the mystery that the majority attempts to ascribe to the Attorney General's decisionmaking process, it appears that she decided to approve the plan after senior FBI officials persuaded her that the chances for a successful resolution would only diminish with the passage of time.[64] The facts recited by Senator Danforth support this conclusion. He writes:

> After further considering the issue, Attorney General Reno changed her mind. She indicated that she was inclined to approve the plan, but wanted to see an even more detailed discussion of the plan and substantial supporting documentation setting out the conditions inside the complex, the status of negotiations, and the reasoning behind the plan. According to Attorney General Reno, she ultimately changed her mind because she was convinced that the Davidians would not come out voluntarily. She felt that the FBI would eventually have to go forward with some plan, and that it was better to proceed when the FBI was ready and best able to control the situation.[65]

c. Allegation That the Attorney General and President Clinton Deceived the American Public by Representing That the Military Endorsed the FBI's Tear Gas Plan

In another unsupported allegation, the majority writes that "President Clinton and Attorney General Reno have deceived the

[63] Interview of Attorney General Reno at 81–82 (Oct. 5, 2000).
[64] Joint hearings at 372.
[65] Danforth report at 108.

American people for over seven years by misrepresenting that the military endorsed, sanctioned or otherwise approvingly evaluated the [FBI's tear gas] plan."[66] According to the majority, the Attorney General's and President Clinton's statements about the military's opinions stand in "stark contrast" to the recollections of two senior Army officers.[67]

The "stark" differences cited by the majority are largely semantic, however. They reflect a range of subjective impressions of the same meeting. The statements made by the Attorney General are consistent with those of at least three other civilian participants at the meeting and do not differ in any significant factual detail from the recollections of the military officers involved.

After the FBI had proposed the use of tear gas to end the standoff, FBI Director Sessions convened a meeting on April 14, 1993, to address Attorney General Reno's concerns. Among others present were two senior Army officers, who were asked a number of questions about the proposed plan.[68] In statements made after Waco, the Attorney General recalled that the Army officers present at the meeting had viewed the FBI's plan as "excellent" or "sound."[69] In her October 5, 2000, interview, the Attorney General reiterated:

> The military representatives stated the plan to introduce tear gas into the compound was reasonable and practical. . . . My sense was that they thought it was a reasonable and practical plan, but they couldn't be the judge and nobody was asking them to be the judge of a law enforcement initiative where rules of engagement would apply that would be different than the military.[70]

President Clinton also made similar comments, stating:

> And so I asked if the military had been consulted. The Attorney General said that they had, and that they were in basic agreement that there was only one minor tactical difference of opinion between the FBI and the military—something both sides thought was not of overwhelming significance.[71]

These statements are entirely consistent with the recollections of others who attended the same meeting on April 14, 1993. For example, Mary Incontro, a career Justice Department prosecutor, told the FBI in 1993:

> [The Army unit commander] outlined his views of the plan and an overall assessment of the plan appeared to be that it had been carefully and wisely reviewed. The military personnel advised that although the plan utilizing a specialized gas was not similar to any type of military attack, it appeared to be carefully constructed and the highest de-

[66] Majority report at 6–7.
[67] Id. at 81.
[68] Danforth report at 105.
[69] "60 Minutes" (May 12, 1995); House Committee on the Judiciary, "Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas," 103d Cong., 15–16 (Apr. 28, 1993).
[70] Interview of Attorney General Janet Reno at 79, 80 (Oct. 5, 2000).
[71] Majority report at 76 (quoting remarks by President Clinton on Apr. 20, 1993).

> gree of confidence was given to the Hostage Rescue Team.[72]

Ms. Incontro confirmed this recollection to committee staff on April 14, 2000. She said that the senior Army officers at the meeting viewed the plan as militarily sound and well conceived. She said that while the military representatives may have said that the military would do it differently, she heard no dissent from the military representatives.[73]

A second individual present at the April 14, 1993, meeting gave an account that is also similar to the account given by Attorney General Reno. Jack Keeney, who was acting Assistant Attorney General for the Criminal Division in 1993, told committee staff that the military officers present at the meeting said they would do the plan differently if it were a military operation, but the two military officers seemed generally to endorse the FBI plan.[74]

A third Justice Department official had a similar impression that the military officers present at the April 14 meeting had given a positive review of the proposed plan. According to the FBI's record of the interview of Webster Hubbell, then Associate Attorney General, Mr. Hubbell said:

> The military representatives stated that the FBI plan to introduce tear gas into the compound was reasonable and practical. The only aspect of the plan that the military would do differently concerned the timing of the gas insertion. . . . Hubbell recalls the military representatives indicated they believed the FBI plan as presented would work and that after the gas was inserted people in the [Branch Davidian Compound] would come out.[75]

The majority's allegation that the Attorney General and the President misrepresented the military's role is based on the majority's interpretation of the comments of the two senior Army officers who attended the April 14 meeting. It is true that both recall that they never expressed support for or endorsed the proposed tear gas plan.[76] But the underlying facts described by these Army officers closely resemble the accounts given by Attorney General Reno, Ms. Incontro, Mr. Keeney, and Mr. Hubbell.

In a 1993 memorandum written to his commander, one of the military participants described the meeting. He wrote that he and the other senior Army officer told the group that the proposed FBI operation was not and could not be assessed as a military operation.[77] In the same memorandum, he further stated:

> The plan which was executed at Waco was an FBI plan which neither [Army officers] helped prepare. *At the same time, I did believe that they had a reasonable chance of ac-*

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[72] Interview of Mary Incontro, Deputy Chief, Terrorism and Violent Crimes Section, Criminal Division, U.S. Department of Justice, Federal Bureau of Investigation FD–302 (July 22, 1993).

[73] Interview of Mary Incontro, Assistant U.S. Attorney (Apr. 14, 2000).

[74] Interview of Jack Keeney, Principal Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice (Apr. 26, 2000).

[75] Interview of Webster Hubbell, Associate Attorney General, Federal Bureau of Investigation FD–302 (Aug. 3, 1993).

[76] Interview of General Peter Schoomaker, Commander in Chief, U.S. Special Operations Command (Jan. 13, 2000); interview of Special Operations General Officer No. 1 (Jan. 13, 2000).

[77] Memorandum from Army Colonel to Commander, U.S. Army Special Operations Command (May 13, 1993).

> *complishing their objective of forcing the occupants out of the building.* Their approach was substantially different than anything that I have encountered. . . . I did not believe that the FBI and the Attorney General were trying to force us to support or defend the plan. It was my belief that they simply wanted any observations that we felt comfortable providing.[78]

In short, the majority grossly exaggerates the significance of what is largely a difference in semantics and subjective impressions. Attorney General Reno's impressions of the April 14 meeting were shared by at least three others who attended the same meeting. The majority's assertion that she or President Clinton deceived the American public is without any merit.

2. Allegations Regarding the Internal Justice Department Review

The majority criticizes as negligent the internal Justice Department investigation led by Richard Scruggs.[79] Mr. Scruggs was the leader of a team of Justice Department attorneys and FBI inspectors who conducted approximately 950 interviews in the aftermath of Waco and drafted a 368-page report to the Deputy Attorney General.[80] The primary basis for the majority's criticism is that the Justice Department investigation did not discuss the use of pyrotechnic tear gas rounds at Waco.

In hindsight, it is clear that the Justice Department investigation should have disclosed the use of the pyrotechnic tear gas rounds, as well as the fact that the use of these rounds did not contribute to the fatal fire at the Branch Davidian compound. But there is an irony in the majority's criticism. The majority writes:

> Had Scruggs and his colleagues thoroughly reviewed all the documents available to them, they would have found references to "military" rounds. Scruggs and his colleagues failed to do so. The failure of the Scruggs team to come to an understanding that pyrotechnic rounds were used was, as discovered in 1999, a significant shortcoming.[81]

As was discussed in part II above, the majority had access to these very same documents for 5 years. Thus, the "significant shortcoming" attributed to the Justice Department's investigation also applies to the majority's own investigation. The fact is, like almost everyone else involved in Waco-related investigations, lawsuits, and criminal proceedings, the majority failed to notice the significance of the documents referring to the use of "military" rounds. Indeed, as noted above, the majority did not even know that their own files contained the documents referring to these rounds until Representative Waxman pointed this out in a September 13, 1999, letter.[82]

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[78] Id.

[79] Id. at 57.

[80] Richard Scruggs, "Report to the Deputy Attorney General on the Events at Waco, Texas," Feb. 28–Apr. 19, 1993, 14 (Oct. 8, 1993) (unredacted version) (hereinafter "Scruggs report").

[81] Majority report at 60.

[82] The majority attempts to explain its failure to recognize the significance of these documents by suggesting the Justice Department intentionally delayed giving the committee the key documents 3 days before the start of hearings in 1995. The majority has pointed to no evidence, how-

Continued

The majority also makes the assertion that "[p]ressure from senior Justice Department officials, including then-Deputy Attorney General Phil Heymann, caused the Scruggs team to rush to conclude their investigation and to publish their report, thus failing to uncover and disclose facts."[83] According to the majority, "the Scruggs investigation . . . was improperly rushed to its conclusion solely for political purposes."[84]

The record of this investigation, however, contains no support for these assertions of political pressure. Committee staff interviewed Mr. Heymann on July 19, 2000. Mr. Heymann said that he wanted the review completed within 6 months to prevent the review from becoming a never-ending investigation, a familiar phenomenon in law enforcement. He said that no one complained to him that the investigation was incomplete or inadequate.[85] Not a single witness interviewed by the committee suggested that the Justice Department's investigation was cut short for political purposes. Senator Danforth, who was critical of aspects of the Department's investigation in his interim report, did not find any evidence of pressure to complete the investigation.

3. Unsubstantiated Allegations Against Marie Hagen

The majority accuses Marie Hagen, a Justice Department trial attorney, of reckless conduct and concludes that if she had "followed up" on a certain request for information to an FBI attorney, "the time consuming investigations started in 1999 would not have been necessary."[86] But these conclusions are unsupported by any documentary evidence, including the documents cited by the majority, and they directly conflict with the findings of Senator Danforth. The evidence gathered by this committee and Senator Danforth shows that Ms. Hagen took diligent steps to determine the truth and is in no way responsible for this committee's Waco investigation.

Ms. Hagen was a trial attorney working on *Andrade* v. *United States,* a consolidated lawsuit brought by seven groups of Branch Davidians and relatives of deceased Branch Davidians. The plaintiffs in that case alleged that government agents used excessive force, failed to provide adequate emergency services, and intentionally or negligently committed other acts that harmed the Branch Davidians in 1993.[87] In 1996, the plaintiffs in that lawsuit filed the declaration of their fire expert, Richard Sherrow (Sherrow declaration). The Sherrow declaration alluded to documents the plaintiffs had obtained from the FBI prior to January 1996, which indicated that the FBI had fired at least one military pyrotechnic munition into the Branch Davidian complex.[88]

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ever, that supports its assertion that the Justice Department deliberately delayed production of documents to this committee. For example, as is discussed in part II above, the Justice Department provided the committee an FBI lab report mentioning the use of military tear gas rounds 13 days before the start of joint committee hearings in 1995, 26 days before the conclusions of those hearings, and 392 days before the committees issued their joint report.

[83] Majority report at 6.

[84] Id. at 5.

[85] Interview of Philip Heymann, professor of law, Harvard University Law School (July 19, 2000).

[86] Majority report at 56–57.

[87] See Danforth report at 142.

[88] Declaration of Richard L. Sherrow at 6, *Andrade* v. *Chojnacki,* No. H–94–0923 (S.D. Tex.) (Jan. 17, 1996) (majority exhibit 47).

According to the Office of Special Counsel, Ms. Hagen took several affirmative steps to determine the basis for Mr. Sherrow's mention of military pyrotechnic munitions. In January 1996, Ms. Hagen asked an FBI attorney, Jacqueline Brown, for help in responding to the Sherrow declaration.[89] She also forwarded a relevant pleading to Ms. Brown for review before filing it with the court.[90] She took these steps even though numerous Justice Department and FBI officials had, by that time, concluded that the FBI had used no pyrotechnic munitions at Waco.[91]

According to the Office of Special Counsel, Ms. Brown faxed the Sherrow declaration to an FBI chemical agent specialist. Someone (possibly Ms. Brown) also faxed the document to Supervisory Special Agent Robert Hickey, a member of the Hostage Rescue Team. On February 15, 1996, Mr. Hickey drafted an internal FBI memorandum (Hickey memorandum) that responded in detail to the Sherrow declaration. Mr. Hickey clearly acknowledged the harmless use of military rounds on April 19, 1993, and wrote, in pertinent part:

> Shortly after the operation commenced on 4/19/93, the HRT (Charlie Team) determined, after two (2) or three (3) ferret rounds, that they were unable to penetrate the underground shelter roof which was their first target. Charlie Team then requested to use 40mm military CS rounds in an effort to penetrate the roof. Charlie Team was granted authority to fire the military CS rounds. A total of two (2) or three (3) rounds were fired at the underground shelter roof. These rounds hit the roof, bounced off and landed in the open field well behind the main structure. This occurred shortly after 6:00 am. These were the only military rounds utilized.[92]

According to the Office of Special Counsel, Mr. Hickey faxed his memorandum to Ms. Brown on February 16, 1996, and discussed it with her the same day. Ms. Brown made notations on the section of the memorandum relating to the use of military rounds.[93]

The majority's charges against Ms. Hagen hinge on whether Ms. Brown informed Ms. Hagen about the Hickey memorandum. The majority asserts that Ms. Hagen was informed by Ms. Brown about the use of the military rounds. The Office of Special Counsel, however, specifically concluded that she was not informed.[94]

The evidence supporting the majority's view is scant. Ms. Brown maintains that she provided information on the FBI's use of military rounds to her supervisor and Ms. Hagen.[95] But apart from Ms. Brown's assertion that she provided the Hickey memorandum to

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[89] Danforth report at 56.
[90] Id. at 57.
[91] Senator Danforth recites a list of statements by various Justice Department and FBI officials indicating that no pyrotechnic munitions were used at Waco. These include statements by FBI Special Agent in Charge Robert Ricks, Attorney General Janet Reno, FBI Director William Sessions, and the Scruggs report. Danforth report at 46–47. Ms. Hagen had no reason to know at the time that these reports had overlooked evidence indicating the use of military rounds on Apr. 19, 1993.
[92] Memorandum from Robert Hickey, Supervisory Special Agent, Federal Bureau of Investigation, to Jacqueline F. Brown, Office of General Counsel (Feb. 15, 1996).
[93] Danforth report at 57.
[94] Id. at 57–58.
[95] Id. at 57.

Ms. Hagen, the committee has no documentary or other evidence that Ms. Brown provided the Hickey memorandum to Ms. Hagen.

The majority asserts in its report:

> Documents made available to Committee staff indicate that Brown did in fact share the Hickey memorandum with her supervisor, Virginia Buckles, and Hagen. For example, Brown, who maintained a daily checklist of action items, recorded on February 19, 1996, the fact that she spoke with Hagen and other Justice Department officials regarding the Hickey memorandum and showed them the document: "meet w/DOJ re dec[laration] memo to M[arie] H[agen]."[96]

This is simply incorrect. Ms. Brown's daily to-do list does not read, "meet w/DOJ re dec[laration] memo to M[arie] H[agen]," as the majority contends. It actually contains three relevant entries, which, if anything, suggest that Ms. Brown did not provide the Hickey memorandum to Ms. Hagen. One entry reads, "Waco-gas memo." Another reads "Meet w/ DOJ re dec (ask to review final copy of reply)." And another reads "Sherrow Dec memo to MH." Of those three entries, the only one checked off and presumably completed is the second: "Meet w/ DOJ re dec (ask to review final copy of reply)."[97] The Sherrow declaration was 22 pages long and raised a number of possible fact issues relating to the cause of the fire.

Senator Danforth and his staff read precisely the opposite meaning from this document as does the majority. And they arrive at the opposite conclusion about Ms. Hagen. The Danforth report states:

> [T]he documentary evidence also indicates that Brown did not give the information to Hagen. As stated above, neither Brown nor the Office of Special Counsel was able to locate a fax cover sheet indicating that she had faxed the Hickey memo to Hagen. Hagen's files contain no copy of the Hickey memo. In addition, Brown's "To Do" list in her calendar for February 19, 1996, contains the notation, "Sherrow Declaration Memo to M[arie] H[agen]." Unlike some diary entries, this "To Do" item is not checked off. Moreover, Brown placed a number on the Hickey memorandum which would result in its being placed in an FBI litigation file that would not be disclosed to the Department of Justice.[98]

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[96] Majority report at 55.

[97] Calendar of Jacqueline Brown, Assistant General Counsel, Federal Bureau of Investigation (Feb. 19, 1996).

[98] Danforth report at 59. In addition to this journal entry, the majority distorts the meaning of two other documents in an effort to show that Ms. Brown provided information on the Hickey memorandum to Ms. Hagen. Referring to Virginia Buckles, Ms. Brown's supervisor, the majority writes in its report: "Buckles' own memoranda to then-FBI General Counsel Howard Shapiro detailing the status of then-ongoing FBI civil litigation referenced Buckles' and Brown's involvement in assisting Hagen and the Justice Department to clarify the Sherrow Declaration." Although these memoranda mention the Sherrow declaration, they address elements of the declaration that have nothing to do with its reference to military tear gas rounds. One memorandum relates to a claim that a combat engineering vehicle caused the fire after it tipped over a lantern and a claim that the FBI violated its own internal regulations. The second memorandum relates to Mr. Sherrow's analysis of "hot spots" on the FLIR video. While these documents tend to show that Ms. Brown assisted in the preparation of the Justice Department's reply brief, they give no insight into whether Ms. Brown provided information on the Hickey memorandum to Ms. Hagen.

4. Allegations Regarding the Posse Comitatus Act

The majority alleges that White House officials and senior law enforcement officials sought advice from senior military officers that, if given, would have violated the Posse Comitatus Act.[99] Although the majority recites the history of the act and the enactment of related statutes, it provides no support for its conclusion. To the contrary, the relevant statute and its legislative history suggest the opposite conclusion.

The Posse Comitatus Act prohibits the use of Army and Air Force personnel to execute the civil laws of the United States, except under circumstances prescribed by Congress.[100] The act has generally been interpreted to permit military support of law enforcement short of actual search, seizure, arrest or similar confrontation with civilians.[101]

In 1981, Congress enacted chapter 18 of title 10 of the United States Code to clarify the law on permissible forms of military assistance to civilian law enforcement agencies.[102] Among other things, this statute expressly authorizes the Secretary of Defense to make military personnel available to provide "law enforcement officials with expert advice relevant to the purposes of this chapter," subject to the limitation that the Secretary of Defense prevent "direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity."[103]

The majority apparently takes the view that the advice sought by Justice Department and FBI officials is outside the scope of permissible expert advice and constitutes prohibited direct participation in an arrest. The majority, however, offers no legal support for this conclusion, which runs contrary to the legislative history of the applicable law. J. Michael Luttig, an Assistant Attorney General during the Bush administration, explained:

> It is evident from the legislative history of these amendments that Congress intended to codify the distinction—articulated by the district court in United States v. Red Feather—between "indirect passive" assistance and "direct active" involvement in law enforcement activity. . . . Significantly, Congress understood Red Feather to prohibit only activity that entailed direct, physical confrontation between military personnel and civilians.[104]

The input sought from the military personnel at the April 14, 1993, meeting related to their area of professional expertise. The law expressly authorizes such provision of military expert advice to civilian law enforcement. In addition, Justice Department and FBI officials sought this expert advice during the formative stages of a law enforcement plan. This would not constitute the direct, active

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[99] Majority report at 61 n. 225, 61; 18 U.S.C. § 1385.

[100] 18 U.S.C. § 1385; see generally U.S. Army Judge Advocate General School, "Operational Law Handbook," 22–1 (1996) (hereinafter "operational law handbook").

[101] Operational law handbook at 22–1.

[102] See generally 1 Op. Off. Legal Counsel 36, 1991 WL 49985 (Feb. 19, 1991) (concluding that Congress intended only to prevent searches likely to result in a direct confrontation between military personnel and civilians).

[103] 10 U.S.C. §§ 373, 375.

[104] 15 Op. Off. Legal Counsel at 42.

use of the military to execute the law. It thus would not have violated the Posse Comitatus Act or any other applicable statute.

Senator Danforth thoroughly investigated the role of the military at Waco. He found that there was no violation of the Posse Comitatus Act and no other illegal or improper use of the armed forces. Senator Danforth wrote that the two senior Army officers present at the April 14, 1993 meeting:

> discussed the effects of CS gas on people, whether the delivery of tear gas could start of fire, whether the HRT personnel were fatigued or in need of retraining, and they described how the military would conduct the operation. They emphasized the differences between military and civilian law enforcement operations. This advice was within the areas of their expertise and did not constitute direct participation in law enforcement activity.[105]

IV. CONCLUSION

The committee's 13-month investigation of Waco was unnecessary, expensive, and fruitless. Although the majority report spans 100 pages and includes nearly 1,400 pages of documentary exhibits, it contributes virtually nothing to the public's understanding of Waco. Many of the report's findings duplicate those of the Special Counsel, former Senator John C. Danforth. In his report, Senator Danforth determined, among other things, that government agents did not cause or contribute to the fire that consumed the Branch Davidian compound on April 19, 1993, did not direct gunfire at the Branch Davidians on April 19, and did not unlawfully employ U.S. armed forces at any time during the standoff. To the extent the majority report deviates from Senator Danforth's findings, it consists largely of unsupported allegations of wrongdoing by the Attorney General and Justice Department officials.

HON. HENRY A. WAXMAN.
HON. TOM LANTOS.
HON. MAJOR R. OWENS.
HON. EDOLPHUS TOWNS.
HON. PAUL E. KANJORSKI.
HON. CAROLYN B. MALONEY.
HON. ELEANOR HOLMES NORTON.
HON. CHAKA FATTAH.
HON. ELIJAH E. CUMMINGS.
HON. DENNIS J. KUCINICH.
HON. ROD R. BLAGOJEVICH.
HON. DANNY K. DAVIS.
HON. JOHN F. TIERNEY.
HON. JIM TURNER.
HON. HAROLD E. FORD, JR.

[The exhibits referred to follow:]

[105] Danforth report at 37.

EXHIBIT 1

DAN BURTON, INDIANA,
CHAIRMAN
BENJAMIN A. GILMAN, NEW YORK
CONSTANCE A. MORELLA, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
STEPHEN HORN, CALIFORNIA
JOHN L. MICA, FLORIDA
THOMAS M. DAVIS III, VIRGINIA
DAVID M. McINTOSH, INDIANA
MARK E. SOUDER, INDIANA
JOE SCARBOROUGH, FLORIDA
STEVEN C. LATOURETTE, OHIO
MARSHALL "MARK" SANFORD, SOUTH CAROLINA
BOB BARR, GEORGIA
DAN MILLER, FLORIDA
ASA HUTCHINSON, ARKANSAS
LEE TERRY, NEBRASKA
JUDY BIGGERT, ILLINOIS
GREG WALDEN, OREGON
DOUG OSE, CALIFORNIA
PAUL RYAN, WISCONSIN
JOHN T. DOOLITTLE, CALIFORNIA
HELEN CHENOWETH, IDAHO

ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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PAUL E. KANJORSKI, PENNSYLVANIA
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DENNIS J. KUCINICH, OHIO
ROD R. BLAGOJEVICH, ILLINOIS
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
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HAROLD E. FORD, JR., TENNESSEE
JANICE D. SCHAKOWSKY, ILLINOIS

BERNARD SANDERS, VERMONT,
INDEPENDENT

September 13, 1999

The Honorable John C. Danforth
Special Counsel
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Senator Danforth:

When you were appointed special counsel to investigate Waco, you stated that you will focus on "whether there were bad acts" committed by the Department of Justice or the FBI, such as covering up evidence that pyrotechnic rounds of tear gas were used by the FBI at Waco. I have obtained documents that appear relevant to your inquiry into these issues.

The events at Waco reemerged as a national story on August 26, 1999, based on reports that "military rounds" of tear gas, which may have some potential to ignite a fire, were used during the law enforcement operation at Waco on April 19, 1993. These reports have led Republican leaders in Congress to accuse the Attorney General of a cover-up. For example, Rep. Dan Burton, the Chairman of the Government Reform Committee, has stated that Attorney General Janet Reno "should be summarily removed, either because she's incompetent, number one, or, number two, she's blocking for the President and covering things up, which is what I believe."[1]

These accusations of a cover-up have been fueled by a front-page story in the *Washington Post* that the Department of Justice did not transmit to Congress the 49th page of an FBI lab report, which contained a reference to the use of "a fired U.S. military 40 mm shell casing which originally contained a CS tear gas round."[2] Responding to this report, Chairman Burton stated on national television: "it sure looks like they were withholding information, and she's responsible."[3]

My staff has begun to examine whether evidence about the use of military tear gas rounds

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[1] NPR's Morning Edition (Aug. 31, 1999).

[2] "Hill Got Incomplete Report on Waco Gas," Washington Post (Sept. 11, 1999).

[3] Fox News Sunday (Sept. 12, 1999).

was, in fact, withheld from Congress during Congress' 1995 investigation into Waco. Although this staff investigation is still on-going, the minority staff has already found several documents that were provided by the Justice Department to Congress in 1995 that explicitly describe the use of military tear gas rounds at Waco on April 19, 1993.

One document provided to Congress in 1995, for example, was a report of an interview of the FBI agent who co-piloted the surveillance aircraft flying above the Branch Davidian compound on the morning of April 19, 1993. According to this document, the pilot reported hearing "a high volume of [Hostage Rescue Team] traffic and Sniper [Tactical Operations Command] instructions regarding ... the insertion of gas by ground units," including "one conversation relative to utilization of some sort of military round to be used on a concrete bunker."

Another document provided to Congress in 1995 contained interview summaries of FBI agents. One summary in particular explicitly states that "smoke on film came from attempt to penetrate bunker w/1 military and 2 ferret rounds." The document further describes the military round as follows: "Military was ... bubblehead w/ green base."

Other documents produced to Congress in 1995 contain handwritten notes that make repeated reference to military rounds fired on April 19, 1993. For example, one page states that "smoke from bunker came when these guys tried to shoot gas into the bunker (military gas round)," while another states, "military tear gas round ... rounds bounced off."

Ironically, the documents containing these statements are in the Committee files controlled by Chairman Burton, the Attorney General's most vociferous critic. They appear to conflict fundamentally with the assertions by Chairman Burton, his Committee staff, and other Republican leaders in Congress that evidence about the use of military tear gas rounds was deliberately withheld from Congress. There is no indication that Chairman Burton or his staff thought to review these documents before accusing the Attorney General of a cover-up.

The following discussion provides additional detail about the recent allegations of cover-up and the significance of the documents provided to Congress. Copies of the relevant documents that my staff has found are enclosed with this letter.

I. Allegations of a Waco Cover-Up

Since the Waco story became a national news story on August 26, 1999, there have been repeated allegations by Republican leaders that the Department of Justice -- and in particular Attorney General Janet Reno -- have engaged in a cover-up. These allegations, coupled with calls for the Attorney General's resignation, have been widely repeated in front-page articles in national newspapers and on network news programs.

The day of the "revelation" that military tear gas rounds were used at Waco, one of

Chairman Burton's Committee staff members stated: "It's just a shock to hear . . . that this fact -- which was obviously material to what we were investigating -- was not volunteered, or was deliberately withheld."[4] During one of numerous talk show appearances, Chairman Burton said: "I think [the Attorney General] either misled Congress and covered this up or she was totally incompetent. ... [S]he should be removed because she's just not doing her job."[5]

Republican leaders reiterated their allegations of a cover-up when the FBI released a Forward-Looking Infrared Radar (FLIR) tape recorded by a surveillance airplane on April 19, 1993. This tape contained an audio track in which an FBI Hostage Rescue Team member could be heard asking permission to use military tear gas rounds to penetrate a concrete bunker adjacent to the main Branch Davidian residence. This tape has been repeatedly characterized in the media as new information that should have been disclosed to Congress.[6]

Yet another round of cover-up allegations was prompted by the Justice Department's production of a December 1993 FBI Lab Report. This 49-page report was accompanied by a letter that explained that the last page of the report, which contained the report's only reference to "a fired military 40 mm shell casing," may have been omitted from the copy transmitted to Congress in 1995. This omission led a majority staffer to state: "It boggles my mind that they would have withheld that from us. ... It suggests to me that there was a concerted effort on the part of the FBI or the Justice Department or both to cover up damning facts."[7] Similarly, Chairman Burton stated on national television: "with the forty-ninth page of this report not given to Congress, when we were having oversight hearings into the tragedy at Waco, it sure looks like they were withholding information, and she's responsible."[8]

II. The Evidence Presented to Congress in 1995

Although there have been numerous allegations of cover-up, it appears that virtually no one has examined what was actually transmitted to Congress in 1995. My staff has begun this investigation. What it shows is surprising: contrary to the allegations of cover-up, substantial evidence of the use of military tear gas rounds was, in fact, provided to Congress in 1995.

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[4] Washington Post (Aug. 26, 1999).

[5] Hannity & Colmes, Fox News (Aug. 30, 1999).

[6] *See, e.g.,* "Outside probe of Waco Assault to be Authorized," Washington Times (Sept. 4, 1999); "Hill Got Incomplete Report on Waco Gas," Washington Post (Sept. 11, 1999).

[7] "Hill Got Incomplete Report on Waco Gas," Washington Post (Sept. 11, 1999).

[8] Fox News Sunday (Sept. 12, 1999).

In 1995, the House Government Reform and Oversight Committee and the House Judiciary Committee jointly conducted an extensive investigation into the activities of federal law enforcement agencies toward the Branch Davidians at Waco, Texas. As part of that inquiry, the Committees issued document requests to the White House and the Departments of Justice, Treasury, and Defense. In addition to taking sworn testimony from nearly 100 witnesses over ten days, the Committees dispatched staff on fact-finding trips to Fort Bragg, North Carolina, and to Austin and Waco, Texas. Staff also conducted extensive interviews with officials of the Texas Rangers, McLennan County Sheriff's office, as well as the Departments of Justice, Treasury, and Defense. These included interviews with representatives of the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, and Firearms, and Drug Enforcement Administration.

The records produced to the Committees have been stored in over 40 boxes in congressional archives until recently, when they were recalled by Chairman Burton. These records are currently being held in majority offices of the Government Reform Committee.

At my request, the minority staff has begun to review these records. This review has revealed that the Department of Justice turned over to Congress in 1995 several documents that explicitly discussed the use of military tear gas rounds at Waco on April 19, 1993. These documents are described in detail below.

A. Report of Interview of Special Agent R. Wayne Smith

As discussed above, considerable attention has been given to the discovery of FLIR tapes that record a senior FBI agent authorizing the use of military rounds. What has been ignored, however, is that the Department of Justice turned over to Congress in 1995 notes of an interview with the co-pilot of the FLIR plane. These interview notes disclose the FBI's use of military rounds, the same purportedly new information revealed in the FLIR tapes.

Among the documents produced by the Department of Justice to House investigators in 1995 is a typewritten report of an interview conducted by Supervisory Special Agent Paul E. Storer of Special Agent R. Wayne Smith on June 9, 1993. SA Smith was an FBI pilot who, during the morning hours of April 19, 1993, co-piloted a fixed-wing aircraft conducting aerial surveillance of the Branch Davidian compound. According to the FBI, the widely publicized FLIR recording was made aboard the aircraft co-piloted by SA Smith.

On April 19, SA Smith and the pilot-in-command began their surveillance at approximately 7:30 a.m., which lasted for a period of approximately three hours. According to the interview notes, SA Smith recalled several observations that were recorded during his April 19 flight. In particular, he specifically recalled one conversation about the use of a military round to be used on a concrete bunker. The last page of these interview notes transmitted to Congress read:

Regarding radio transmissions heard on April 19, 1993, SA Smith advised that there was a

high volume of HRT traffic and Sniper TOC instructions regarding the requests for the insertion of gas by ground units. SA Smith recalls one conversation, relative to the utilization of some sort of military round to be used on a concrete bunker.[9]

B. Prosecutors' Interview Notes for Criminal Trial

Another document produced to Congress in 1995 is a typewritten chart prepared by Justice Department prosecutors in connection with the criminal trial of surviving Branch Davidians. Dated November 9, 1993, these notes summarize interviews with potential witnesses for the prosecution. The chart identifies each member of the FBI Hostage Rescue Team interviewed, the name of the interviewer, a summary of significant observations made by the witness, and whether each witness will be placed on the prosecution's witness list for trial.

On the sixth page of the chart is an entry that reflects an interview taken by Assistant U.S. Attorney Bill Johnston and Reneau Longoria on November 9, 1993. Although the name of the potential witness was redacted in the version produced to House investigators in 1995, a version of the same document produced to Congress on September 8, 1999, identifies the witness as Dave Corderman, a member of the Hostage Rescue Team. According to the document produced in 1995, the witness could be expected to testify that "smoke on film came from attempt to penetrate bunker w/1 military and 2 ferret rounds." In addition, the document indicates that the witness described the appearance of the military round, stating: "Military was grey bubblehead w/ green base."[10]

The identity of the film to which the chart alludes is unclear, but it appears to refer to news footage taken the morning of April 19, 1993. A preceding reference in the same chart suggests that the notes may refer to the video documentary entitled *Waco: The Big Lie*.

C. Handwritten Notes Describing Military Gas Round

Also among the documents produced by the Justice Department to House investigators in 1995 were handwritten notes clearly describing the use of military rounds in the Waco operation. One set of notes read: "Smoke from bunker – came when these guys tried to shoot gas into the bunker. (Military gas round) ... grey bubblehead w/ green base." The term "military" or "military round" appears twice again in the same paragraph. Notes on the following page read, "Obj[ective]: to keep people from fleeing into bunker."[11]

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[9]Interview of Special Agent R. Wayne Smith, Federal Bureau of Investigation FD-302 (June 9, 1993)(Attachment A).

[10] Unidentified handwritten notes produced by the Department of Justice (Attachment B).

[11]Unidentified handwritten notes Produced by the Department of Justice (Attachment C).

Another set of handwritten notes provided to the House investigators contains additional discussion of the use of the military rounds, including a discussion of the motive for using them. Specifically, the notes state:

> 1 military tear gas round
> goal - to deny that area
> to chanel exit.
> – did not want to send
> men into tunnel to
> flush out.
> – rounds bounced off.[12]

III. Conclusion

I have not reached any conclusions about the recent questions raised about Waco. Like you, I am reserving judgment until additional facts have been gathered. While the documents appear to cast doubt on the likelihood of a cover-up, I believe that there are questions that need additional investigation, such as whether all relevant information has been made public.

Unfortunately, this is not the approach taken by Chairman Burton and other Republican investigators. As has been repeatedly -- and regrettably -- demonstrated over the last few years, they accuse first and investigate later. In this instance, Chairman Burton has made the extraordinarily serious accusation that the Attorney General of the United States has participated in a cover-up. He made this allegation without reviewing even the contents of the files contained in his own offices. This is embarrassing to Congress and, more importantly, profoundly unfair to the Attorney General.

The American people deserve a fair and independent investigation of these matters. That is why I am pleased that the Attorney General has asked you to investigate and why I am transmitting these documents to you. Sadly, it appears that the Congress is once again approaching an important investigation as a chance to score partisan political points, not as an impartial search for the truth.

Sincerely,

Henry A. Waxman
Ranking Minority Member

cc: Members of the Committee on Government Reform

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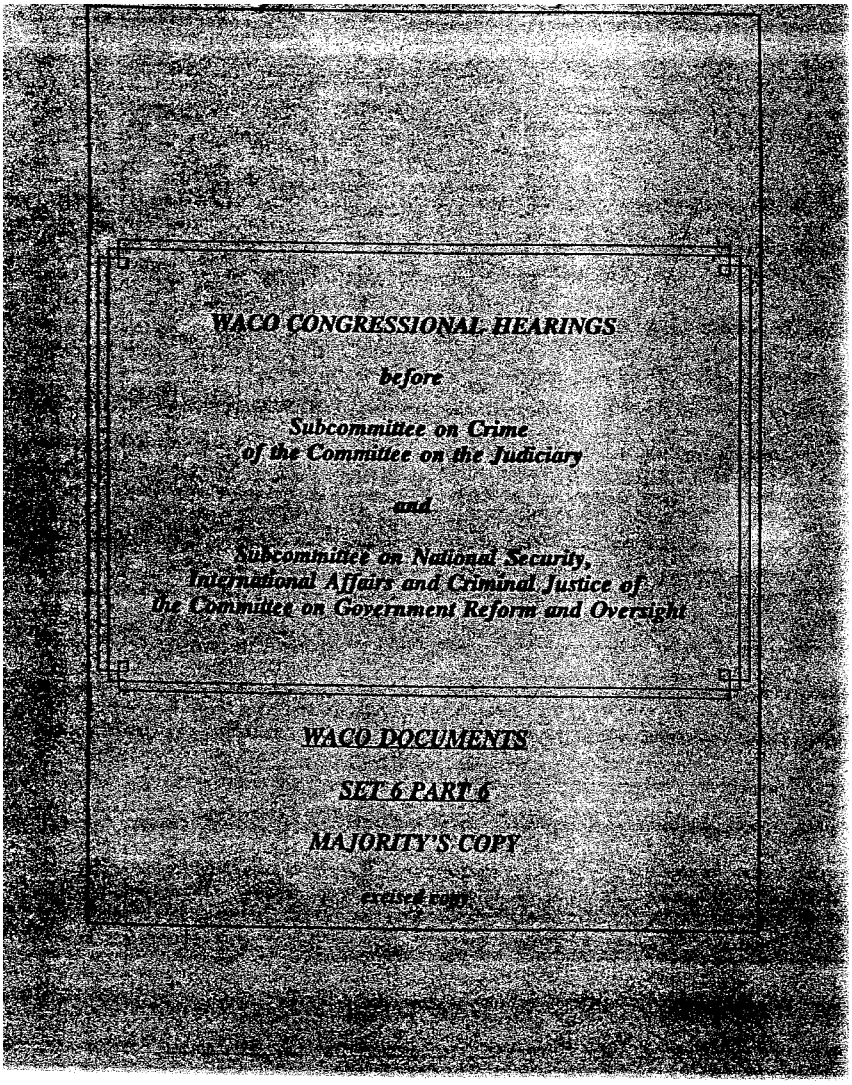
[12]Unidentified handwritten notes produced by the Department of Justice (Attachment D).

ATTACHMENT A


WACO CONGRESSIONAL HEARINGS
before
Subcommittee on Crime
of the Committee on the Judiciary
and
Subcommittee on National Security,
International Affairs and Criminal Justice of
the Committee on Government Reform and Oversight
WACO DOCUMENTS
SET 6 PART 6
MAJORITY'S COPY
revised copy

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/15/93

P

Special Agent (SA) R. WAYNE SMITH, SSAN [redacted] of the Richmond Office of the Federal Bureau of Investigation (FBI) was interviewed. SA SMITH was aware of interviewing agent's identity and was advised that the interview pertained to his travel to Waco, Texas. SA SMITH was further advised that the interview was being conducted as a result of an inquiry requested by the DEPARTMENT OF JUSTICE (DOJ) into the Branch Davidian Compound incident.

SA SMITH entered on duty with the FBI on September 24, 1973, and has been assigned to the Cincinnati and New York Field Offices, Monterey, California, Boston Field Office and currently is assigned to the Richmond FBI Office. SA SMITH currently holds a commercial aircraft pilot's license for single engine aircraft, has an instrument rating, and flew as Pilot-In-Command (PIC) for the Boston Office Surveillance Squad for six years prior to becoming Richmond's PIC and Aviation Coordinator.

SA SMITH advised that on approximately March 31, 1993, he was advised by FBI Headquarters, that he, SA CREASY and Richmond's aircraft would be required in Waco, Texas, sometime during the middle of April, 1993, to participate in air surveillance over the Branch Davidian Compound. On April 13, 1993, SA SMITH, accompanied by SA CREASY, departed Richmond, H Virginia, [redacted] arriving in Waco, Texas, at TCTI AIRPORT on April 14, 1993, at approximately 5:15 p.m. local Waco time.

Upon arrival at TCTI AIRPORT he immediately went to the Air Operations Command Post located in the hanger at TCTI AIRPORT and met with SA [redacted] who is assigned to the H Hostage Rescue Team (HRT) as a helicopter pilot. SA [redacted] provided three packages of printed material regarding the Waco air operations which spelled out the duties and responsibilities, shifts to be worked, agents who were working the shifts, brief background of the Branch Davidian Compound situation, and radio channels utilized for the operation. SA SMITH further advised that the frequency on which air operations communicated with

F

Investigation on 6/9/93 at Richmond, Virginia File # [redacted]

by SSA PAUL E. STORER/jf Date dictated 6/14/93

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;

FD-302a (Rev. 11-15-83)

F [redacted]

Continuation of FD-302 of SA WAYNE R. SMITH, On 6/9/93, Page 2

ground operations was the one utilized by the sniper Tactical Operation Center (TOC). Any communications from aircraft to aircraft would be done via aircraft frequencies as opposed to Bureau frequencies. SA [redacted] also provided topographical maps with designations marked on the maps showing landing zones for helicopters, all FBI positions, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS positions, as well as symbols depicting the location of sensors placed on one side of the Branch Davidian Compound. The Branch Davidian Compound locations were color coded as follows: white indicated the front of the compound; green indicated the left side of the compound; red indicated the right side of the compound, and black indicated the rear or back of the compound. Additionally, SA [redacted] identified several color aerial photographs of the Branch Davidian Compound that were tacked to the Air Operations Command Post wall. SA SMITH advised that he and SA CREASY were assigned a 6:00 a.m. to 2:00 p.m. workshift with aerial surveillance to occur from 7:00 a.m. to 11:00 a.m. SA SMITH indicated that this initial briefing lasted approximately forty-five minutes. After receiving the briefing from SA [redacted] SA SMITH was released for the day and told that his first shift would begin in the morning hours of April 15, 1993.

SA SMITH also noted that he and SA CREASY brought with them two Motorola Saber hand-held radios that had been reprogrammed specifically to be compatible with the Branch Davidian Compound operation.

As part of his duties and responsibilities, SA SMITH advised that as part of the air surveillance, he was to communicate with the Sniper TOC and was, in fact, responsible to the Sniper TOC for operational instructions and directions. Also, prior to departing TCTI AIRPORT, SA SMITH was instructed to contact the FBI "Night Stalker" aircraft to inform the aircraft that his aircraft was taxiing and ready for departure. SA SMITH understood his mission to be one of observing the Branch Davidian Compound from approximately [redacted] feet but to go no lower than [redacted] feet; however, as the airspace around the Branch Davidian Compound had been restricted and only FBI controlled aircraft permitted in the area, lower altitudes could have been utilized. SA SMITH indicated that his mission was to observe any person or persons entering or leaving the Branch Davidian Compound and to report such activity to the Sniper TOC. In the event he made such an observation he was to remain on station

until helicopter support could be directed to the location where the individual might have been observed. SA SMITH also pointed out that the aircraft was to act as a relay point for communications, if such became necessary.

From April 15 until April 18, 1993, SA SMITH observed only Bradley Fighting Vehicles (BFV) servicing the gasoline generators that were necessary for perimeter lighting of the Branch Davidian Compound and observed nothing out of the ordinary.

On April 19, 1993, at approximately 6:00 a.m., he and SA CREASY arrived for duty at TCTI AIRPORT anticipating a flight departure at approximately 6:45 a.m. Due to low ceiling cloud cover conditions, launching of the aircraft was delayed. SA SMITH proceeded to the Air Operations Command Post and spoke to SA WALT GARCIA, a PIC of the FBI's Washington Metropolitan Field Office, who was filling in at the command post for SA [redacted] SA GARCIA advised SA SMITH that an tactical operation was underway in an attempt to resolve the situation, that began at approx- imately 6:00 a.m. wherein Combat Engineer Vehicles (CEV) were penetrating the Branch Davidian Compound perimeter walls and inserting gas. SA GARCIA advised that agents were being fired upon from individuals inside the compound at the time of the initial penetration. SA GARCIA advised that the weather was not conducive to safe flying conditions and recommended a delayed launching of the Richmond aircraft crew. SA GARCIA left the final decision to SA SMITH and SA CREASY and their judgment as to the weather conditions and safety of the aircraft and personnel.

H

With respect to the operation itself, SA SMITH advised that he had heard from other FBI pilots and personnel on the scene, that an operational plan had been on the Attorney General's desk, and if the Attorney General approved the plan it would be implemented as early as Monday, April 19, 1993. However, SA SMITH had no first-hand knowledge of the details of the operation prior to arriving for duty on April 19, 1993.

While checking weather conditions for a launch on April 19, 1993, FBI Special Agent in Charge (SAC) RICKS entered the Air Operations Command Post to check on the status of air surveill- ance aircraft. SAC RICKS was advised that as soon as weather permitted, SA SMITH and SA CREASY would depart TCTI AIRPORT to

FD-302a (Rev. 11-13-83)

[redacted]

Continuation of FD-302 of SA WAYNE R. SMITH, On 6/9/93, Page 4

initiate air surveillance. Prior to departing Air Operations Command Post, SA GARCIA warned SA SMITH that weapons were being fired and reminded SA SMITH that it was believed that the individuals in the Branch Davidian Compound were in possession of a .50 caliber rifle. Additionally, SA SMITH advised that Richmond's aircraft had experienced mechanical difficulties and he was assigned another FBI Field Office's aircraft [redacted] for the air surveillance mission on April 19, 1993.

During pre-flight preparations, SA SMITH recalled that "Night Stalker" landed prior to his departure with the "Night Stalker" pilot advising that the weather was bad, including high winds and a low ceiling. To the best of SA SMITH's recollection there was no air surveillance over the Branch Davidian Compound for approximately thirty minutes. At approximately 7:15 a.m., SA SMITH and SA CREASY determined that the cloud cover was sufficiently high to permit a safe takeoff, and air surveillance was initiated over the compound at approximately 7:30 a.m., April 19, 1993. SA SMITH advised that he was flying in the co-pilot position, while SA CREASY was in the PIC position.

Upon arriving on scene, SA SMITH observed BFVs at the corners of the compound and a CEV moving slowly up to the compound exterior walls, inserting a boom and penetrating the "white" side of the building. At the time he observed this boom penetration he was flying at approximately 2000 to 2500 feet and was utilizing gyro stabilized binoculars. SA SMITH advised that the boom penetrations appeared to occur approximately every one-half hour and observed numerous penetrations of the boom into the compound walls during the entire surveillance period of approximately three hours, from 7:30 a.m. to 10:30 a.m. While on station, SA SMITH observed an unknown individual leave the front side of the compound and return to the compound's interior. Although SA SMITH could not observe what the individual was doing he understood from radio traffic that the individual was picking up a telephone. This individual's activity was consistent with such movement. SA SMITH indicated that he was relieved on station by the Omaha FBI Office flight crew, and he and SA CREASY returned to TCTI Airport. SA SMITH cannot recall whether "Night Stalker" was flying at the time he was relieved of duty. Upon arrival at TCTI AIRPORT, SA SMITH returned to the Air Operations Command Post and was debriefed regarding observations made during his tour of duty. SA SMITH became aware of the fire at the

[redacted]

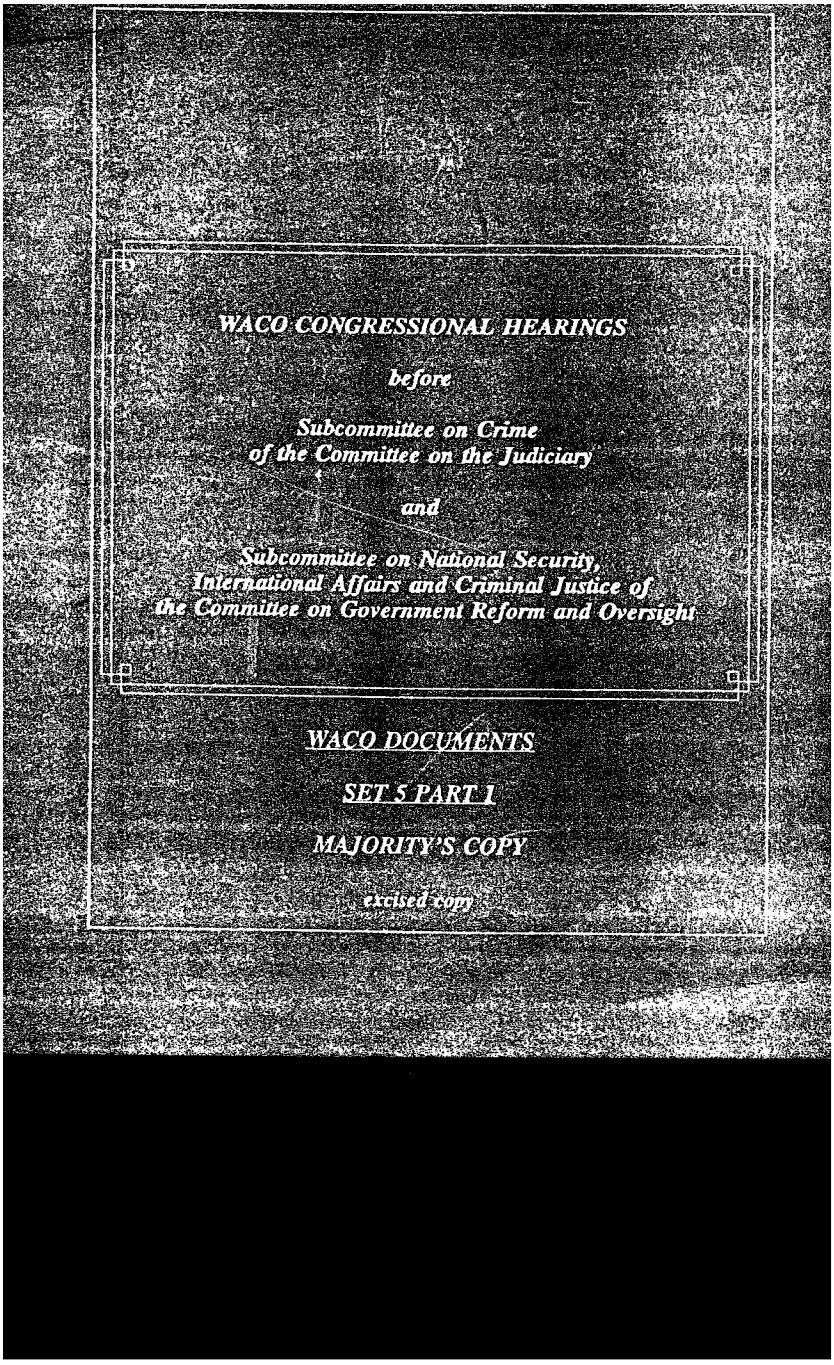
Branch Davidian Compound while listening to commercial radio news coverage.

Regarding radio transmissions heard on April 19, 1993, SA SMITH advised that there was a high volume of HRT traffic and Sniper TOC instructions regarding requests for the insertion of gas by ground units. SA SMITH recalls one conversation, relative to the utilization of some sort of military round to be used on a concrete bunker and additional traffic pertaining to the need for additional gas rounds for the M-79 grenade launchers. SA SMITH also recalled radio traffic regarding the coordination and eventual approval of gas insertions at the compound by the Sniper TOC.

SA SMITH advised that routine aircraft pilot logs containing the dates, type of aircraft flown, tail number of the aircraft flown, airport of departure, airport of return, total number of hours flown, number of landings made, name of person or persons aboard, category of the flight hours, was maintained. SA SMITH also filled out the standard FBI flight record, copies of which were sent to the San Antonio FBI Office, with the originals maintained in the Richmond FBI Office. There were no video or audio recordings made. Photographs were taken by SA CREASY and SA SMITH by 35 millimeter cameras, and some photographs taken of the Branch Davidian Compound were subsequently enlarged to 8"x10" photographs and sent to FBI Headquarters, Unit Chief MIKE HAGEN, of the Aviation Unit.

SA SMITH could provide no further information.

ATTACHMENT B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Re: summary of interviews from

- WACMUR F.B.I. H.R.T. INTERVIEW SCHEDULE 11/9/93

	DATE/TIME INTERVIEWED	INTERVIEWER	SIGNIFICANT OBSERVATIONS: DURING 51 DAYS & ON THE 19TH	WITNESS LIST YES/NO B.U.)
		WHITE SIDE		
BLUE SNIPERS		RAY JAHN AND JOHN PHINIZY		
[redacted]	11/8 AND 11/9 1993		-BEES NEST OF PEOPLE RUNNING	YES
	NO INTERVIEW			NO
	11/8 AND 11/9			NO
	11/8 AND 11/9			NO
	11/8 AND 11/9		-GUN BELT AND BLACK VEST CAME FROM ONE OF THE THREE ALSO SAYS ONE OF THE THREE WAS TOTALLY LOADED WITH MILITARY GEAR	YES
	11/8 AND 11/9		-SEES WHAT HE BELIEVES TO BE A GUN BARREL -LOOKED FOR THE AVRAAM MAGS BUT COULD NOT FIND -1 OF 4 HAD A BLACK SKI CAP AND A HOLSTER-HE ALSO SAW 2 CAMO JACKETS AND DESCRIBES A DISTINCTION	YES
	11/8 AND 11/9		-GOOD DESCRIPTION OF THE FIRE	NO
	11/8 AN 11/9		-SPOTTED AVRAAM & CALLS IT OUT -NOT 50 CAL MAGS BC TOO SMALL	MAYBE
	11/8 AND 11/9			NO
		GOLF TEAM		
	NO INTERVIEW	BILL JOHNSON AND RENEAU LONGORIA ON 11/9 AND RAY JAHN AND JOHN PHINIZY ON 11/10		NO
MORRISON	11/8 AND 11/9		-SEES MAN IN FOYER W/ MASK BEHIND PIANO WITH SWINGING MOTION(GOLF) AND THEN KNEEL AND 'WASH HANDS' -COULD HAVE SHOT BUT DIDN'T -SEES WHITE SIDE EVENTS FROM S-1 -DESCRIBES MARJORIE & THE 4 -BELIEVES MAN AT FRONT DOOR MAY BE AVRAAM BUT NOT ONE OF 3	YES
B.V.#2				

[redacted]	11/8 AND 11/9	-ONE OCCASION FLASHBANG FIRED -FIRING PORTS OBSERVED W/THERM IMG -BRIEF CHRONOLOGY FROM THE TEAM: [redacted] SHOT 1ST ROUNDS INTO TOWER AND THEN PUT THREE APIECE INTO EACH WINDOW-TOTAL 120 90% IN -AROUND 10:00 SEE GUY CRAWLING -NEXT SEE PHONE GUY OUT FRONT -NEXT TAKE DEBREE OFF TANK -12:00 CEV MAKES 10-15 FT HOLE TO EXIT SEE BEES NEST OF PEOPLE -SEE MAN IN FOYER CROUCHING AND WALKING BACKWARD-. [redacted]SEES	NO
	11/8 AND 11/9	-DESCRIBES DIFFICULTY IN OPENING THE FRONT DOOR DUE TO FORTIFICATIONS	NO
[redacted]	11/8 AND 11/9	-ASKED FOR PERMISSION TO BURY DOGS AND PICKED UP FLASHLIGHT AND BODY BUNKER -GRABBED ATF BAG THE DAY THEY REMOVED THE ATF VEHICLES -NEVER BUMPED THE BUILDING BEFORE THE 19TH -THEY BROUGHT A TECH OUT TO TAKE PHOTOS OF FRONT -GOOD DESCRIPTION OF 19TH/FIRE EVENTS INC. M79S DO NOT MAKE A POPP SOUND & THEY DID NOT HEAR FIRING -PULLS DEBREE OFF TANK AFTER DEEP PENETRATION ON WHITE SIDE -WHITE CLOUD CREATED WHEN GAS INSERTED & THEN DISSIPATES NO FIRE-FIRE STARTED A LONG TIME AFTER PENETRATION [redacted] JACK SEE MAN SHORTLY BEFOG FIRE ON WHITE SIDE WITH M-16 WALKING BACKWARDS WITH SOMETHING IN HER HANDS[redacted]SAYS THEY WERE LESS THAN 40 YARDS AWAY AND HE WAS NOT PAYING ATTENTION TO THEM. -ARRESTS CRADDOCK, TAKES FOR MED OVERHEARS INTERVIEW W[redacted]	YES

[redacted]	11/8 AND 11/9			-SEES WINDOW ON W/R SIDE W/ PRODUCE BOX AND MATTRESS & BINOCULARS DURING DAY -IN THE SECOND WEEK THEY PICK UP THE INDIVIDUAL IN THE WINDOW USING NIGHT VISION AND SHINE THE LIGHTS ON HIM -BEFORE FBI BEGAN MUSIC THERE WAS ONE DAY WITH LOUD MUSIC -ON 19TH SEE MAN DIGGING IN BEDROOM -DESCRIPTION OF THERMAL IMAGING -DESCRIBES THE DISMANTLING PROCESS	YES
	11/8 AND 11/9			-RECUES MARJORIE WITH [redacted] -HEARS SHOTS AND MINUTES LATER IT WAS OVER	YES
ATHERTON			LEROY JAHN JOHN LANCASTER		YES
					MAYBE
					YES
					YES
					MAYBE
	11/9		BILL JOHNSON AND RENEAU LONGORIA	-HAND CUFFED DOYLE	NO
	11/9			-SAW A CHANGE OF GUARDS, W/LOADING OF MAGS AND SAND BAGS (THERM IMG.) -TOOK HRT PICTURES DURING FIRE	NO
	10/9/93 A.M.		ALL TEAM		NO
					REBUTTLE
	11/9		JOHNSON & LONGORIA	-LISTENING TO 3 CHANELS IN [redacted] TANK DURING19TH -VISITED GARAGE TO CHANGE BATTERY	NO
				BLACK SIDE	
			JOHNSON & LONGORIA.	-HEARS SHOTS FIRED WHILE AT SAW 1	NO

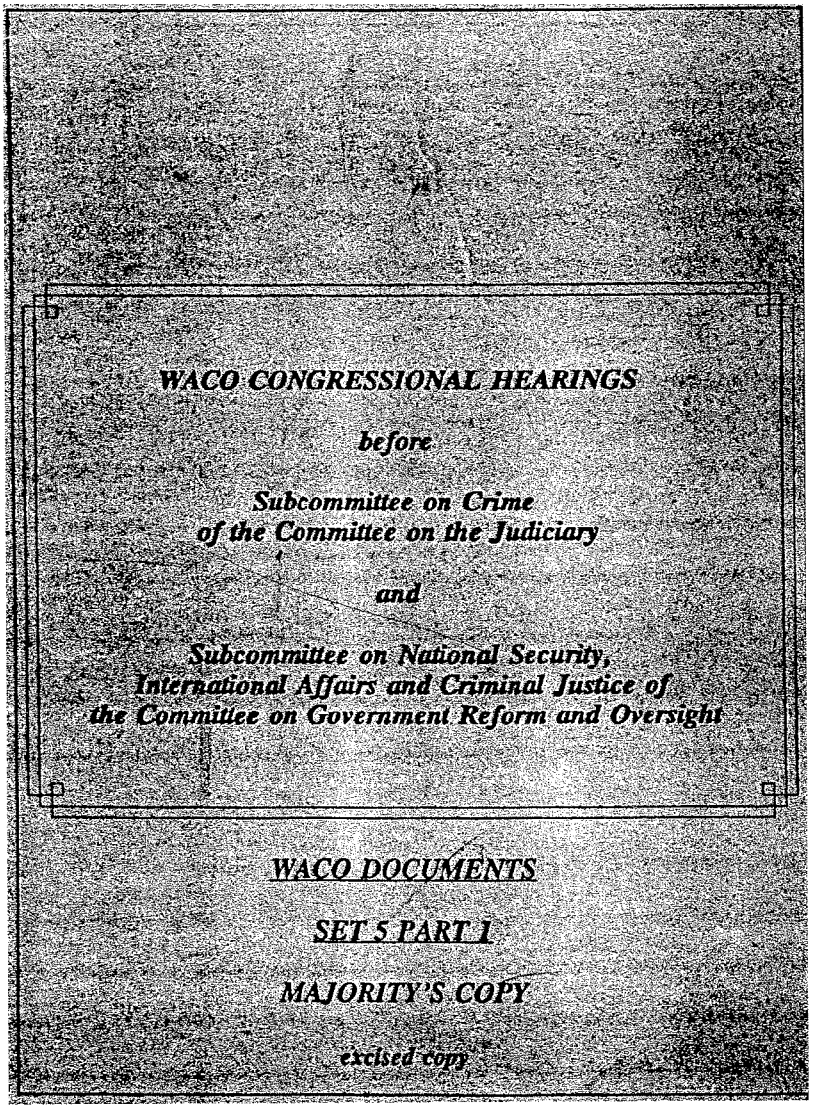
[redacted]			BILL JOHNSON AND RENEAU LONGORIA		
	11/9			4/19 [redacted] IN M-60 FOX HOLE BY BUS	NO
	11/9			4/19 [redacted] ON S-2 SAW	NO
	11/9			-THINKS 50 CAL WAS USED JUST AFTER FIRE STARTED & HEARS FIRE OVER HEAD -SAYS [redacted] UNSUCESSFUL ATTEMPT TO PUT GAS IN THE BUNKER=SMOKE IN BIG LIE FILM -WHEN FIRE STARTED THEY WERE UP CLOSE W/ ENGINE OFF & HEARD SHOOTING INSIDE IN A DISTINCT RYTHM THOUGHT THEY WERE SHOOTING EACH OTHER [redacted] HEARS A ROUND OVER HIS HEAD LARGER THAN A 300-POSS 50 CAL	NO
	11/9				NO
TOM ROWEN	11/9		BILL JOHNSON AND RENEAU LONGORIA	[redacted] TOM [redacted] IN TANK [redacted] DROVE-TOM SHOT [redacted] TC & SPOTER] -SAW PORT HOLES -CLOSE AS 20 YARDS IN BRADLEY -GUY DRESSED AS GIRL DUMPING WASTE INTO POND-DEAD GUY -SHOT FLASHBANGS AT PEOPLE COMMING OUTSIDE W/O AUTHORIZATION -SAW SCHNIEDER & 2 OTHERS & PICKED UP LETTER DURING SMOKE CAN INCID. -TOM HAS SOMEONE LEANING OUT AND SHOTING AT HIM HE RETURNS FERRETS ONLY BACK AND FORTH POPPING/FLASHE -HEARS CRACKING OVERHEAD WHILE AT BLACK WHITE CORNER	YES
[redacted]	11/9			-BLACK D-1 FIRST TO SEE FIRE ALSO SAW FIRE FROM GD-1 [redacted] SAW FLASH B-D-1] -GOOD ON FIRE PROGRSSION ON BLACK -RECIEVING FIRE DURING THIS TIME -SAW HANDGUN, GASMASK ETC FROM CRADDOCK	NO

[redacted]	11/9			-WERE TO HIDE B/H LIGHTS UNTIL COMP -1ST CEV NOT SEEN -IF COMPROMISE THEY WERE TO SHOT TEAR GAS AT DOG HOUSE, THEN TOWER, THEN 1ST & 2ND FLOORS[1ST WAVE] THEN 2ND WAVE EMPHASIS WAS ON KITCHEN(RECIEVED MUCH FIRE BY THIS TIME) -NOT SUCCESSFULPEN. DOG H B/C STURDY -WOULD NOT CONFUSE FERRETS W/GUN FIRE B/C NO POPPING,NO FLASH, WINDOWS KNOCKED OUT	YES
	11/8		BILL JOHNSON LEROY JAHN JOHN LANCASTER		NO
	11/8				NO
	11/8				MAYBE
	11/8				NO
TOULOUSE	11/8				YES
					BACK-UP
	NO INTERVIEW				
			RED SIDE		
				-	
[redacted]	11/9		ALL RED SIDE MEETING ALSO LEROY JAHN JOHN LANCASTER	-FEMALE CAME OUT WANDERED AND WENT BACK INTO BLACK SIDE -LOVELOCK-BLUE JACKET,GAS MASK,GUN HOLSTER BELT, SKI CAP -DROPPED (ALSO [redacted] VINCENT) -CASTILLO BLACK LOAD BEARING VEST, THEN YOU COULD SEE ARMS(ALSO VINCENT) -THIBADEAU-15 20 YDS BEHIND, BLACK GUNBELT, DID HIS STUFF EDARLY AND QUICKLY ON WAY OUT -SWEATSHIRT, CAMO JACKET, GREEN BELT W/ HOLSTER(VINCENT [redacted]	YES
	11/9				MAYBE
VINCENT	11/9				YES
	11/9				BACK-UP
	11/9				BACK-UP

[redacted]	11/9			YES
		GREEN SIDE		
	11/9	BILL JOHNSON AND RENEAU LONGORIA	-51 DAYS FLASH BANGED IF CAME OUT NOTHING WAS PICKED UP -FERRET SHOOTER ON 19TH S-2 BRADLY -SMOKE ON FILM CAME FROM ATTEMPT TO PENETRATE BUNKER W/ 1 MILITARY AND 2 FERRET ROUNDS -MILITARY WAS GREY BUBBLEHEAD W/GREEN BASE [redacted] FIRES 3 ROUNDS INTO KITCHEN AND LESS THAN 30 SEC LATER SEES SMOK	NO UNLESS REBUTTLE
	11/9		-TANK COMMANDER-DESCRIBES COMPROMISE -SAW BARRACADES BOXES AND MATTRES	NO
	11/9		-LOADER ON 19TH	NO
	11/10		-DRIVER ON 19TH -HEARS GUNFIRE DURING THE TIME THE GUY WAS ON THE ROOF-SEES A VRAAM -GOOD DESCRIP OF FIRE FROM THAT PT -GOOD ON BUNKER INC. W/OPENING OFBACK AND SHOOTING AT ANGLE -BEST DESCRIP OF MISTY RESCUE(1ST SEE STANDING IN A DAZE 20-30 FT FROM BLDG ALSO TIES IN LOOKING FOR MAN WITH A GUN-OUTSIDE THE WIRE-CRADDOCK COULD BE SAME MAN IF HE STAYED INSIDE WIRE HELPS ARREST CRADDOCK **-HE ASKS AND CRADDOCK TELLS HIM HOW HHHE GOT THERE**	MAYBE REBUTTLE
[redacted]	11/9		-SAW BARREL AND SCOPE OF 50 CAL -RIFLE COVER ON 19TH -HEARS GUBFIRE WHEN FIRE STARTS-BACK OPEN FROM INSIDE	NO
		WHITE/GREEN CORNER		
CRAIG				
[redacted]				
		WHITE SIDE		
CHARLIE TEAM				
[redacted]	11/9			NO
	11/9			NO

HELO					
[redacted]	11/9				NO
	11/9			-LAST 3 WKS IN BLUE HELO-STOP INGRES -DID NOT SEE BODY ON WATER TANK & THINKS HE WOULD HAVE IF IT WAS THERE -19TH MISSION MEDIVAC NO PICTURES	NO
	11/10				NO
	11/9			-HANDLED SUPPLIES & LOGISTICS	NO
	11/9				NO
	11/10				NO
	NOT NTERVIEWED				NO

ATTACHMENT C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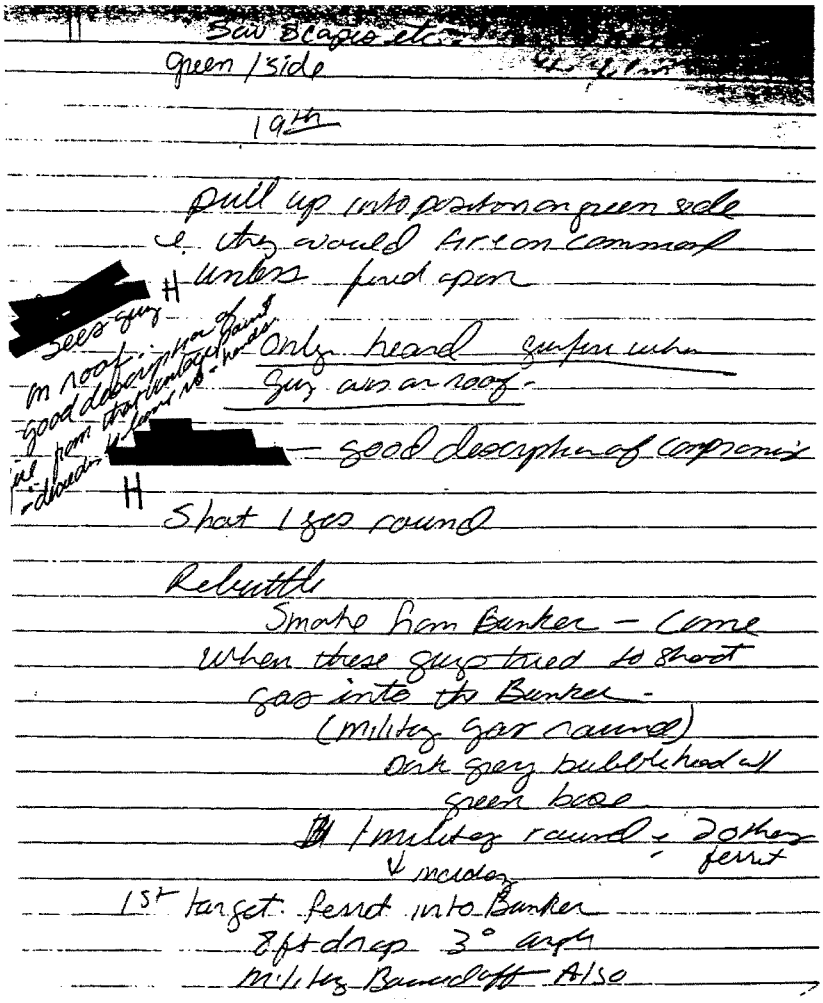


Saw Scapes etc [redacted]

Green / side

19th

pull up into position on green side
i.e. they would fire on command
unless fired upon

[redacted] H
sees guy
on roof. good description of
[illegible] from that vantage point
[illegible] - [illegible]

Only heard guy fire when
guy was on roof.

[redacted] — good description of compromise

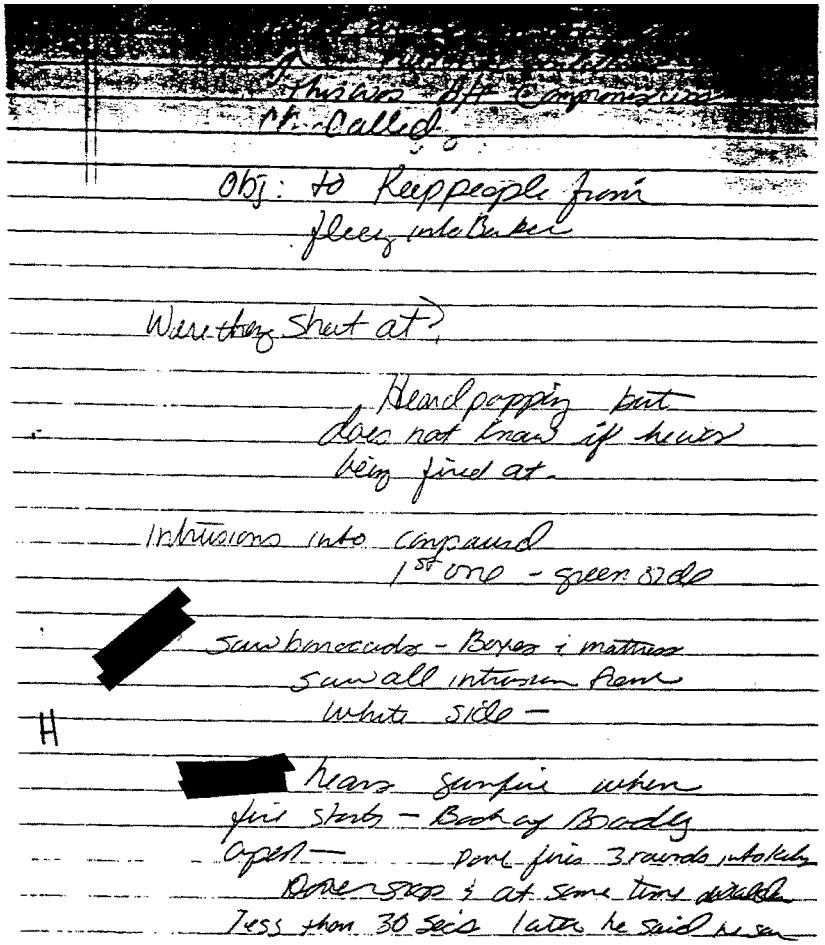
H

Shot 1 gas round

Rebuttle

Smoke from Bunker - Come
When these guys tried to shoot
gas into the Bunker -
(Military gas round)
Dark grey bubblehead w/
green base
1 military round - 20 other
↓ marking ferret

1st target ferret into Bunker
8 ft drop 3° angle
Military Bounced off Also



[illegible]
This was AFT Compromise
Ch. Called

Obj: to Keep people from
fleeing into Barker

Were they shot at?

Heard popping but
does not know if he was
being fired at.

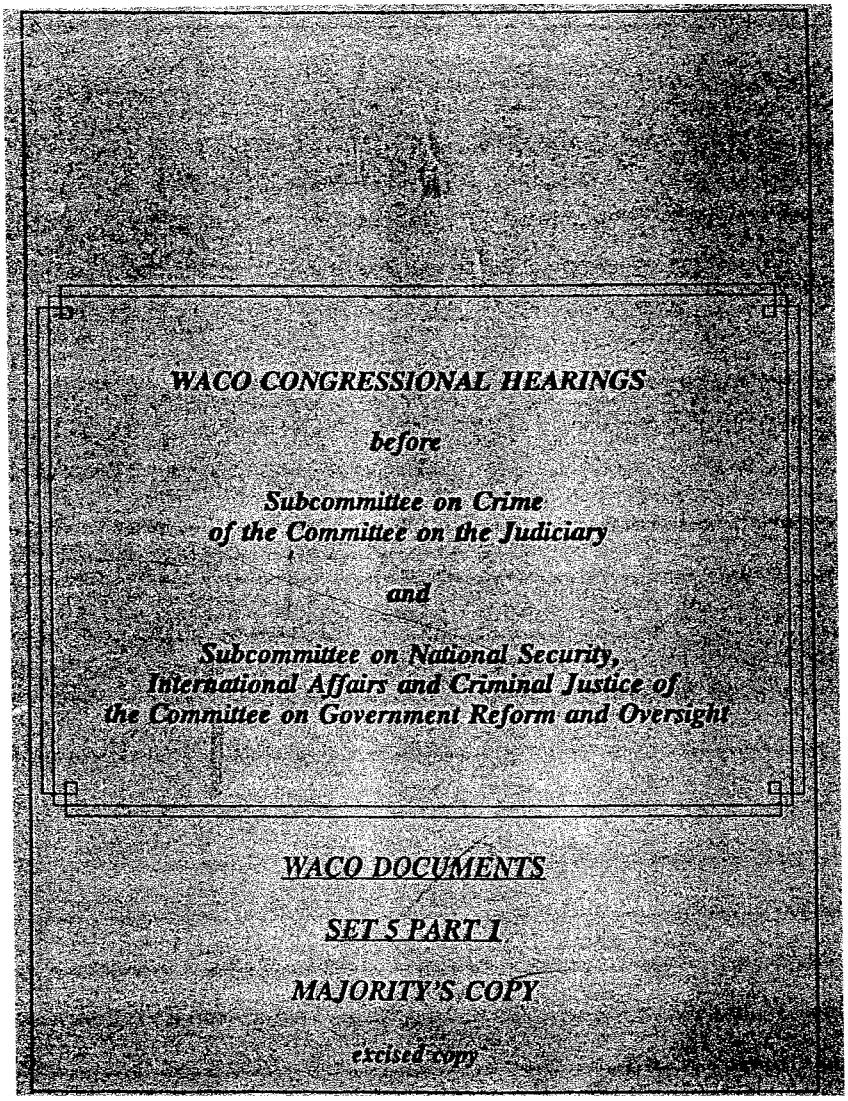
Intrusions into compound
1st one - green side

[redacted] saw bonocuds - Boxes & mattress
saw all intrusion from
white side -

H

[redacted] hears gunfire when
fire starts - Back of Bradley
open - Dove fires 3 rounds into Kelly
Dove stops & at some time [illegible]
less than 30 secs later he said he saw

ATTACHMENT D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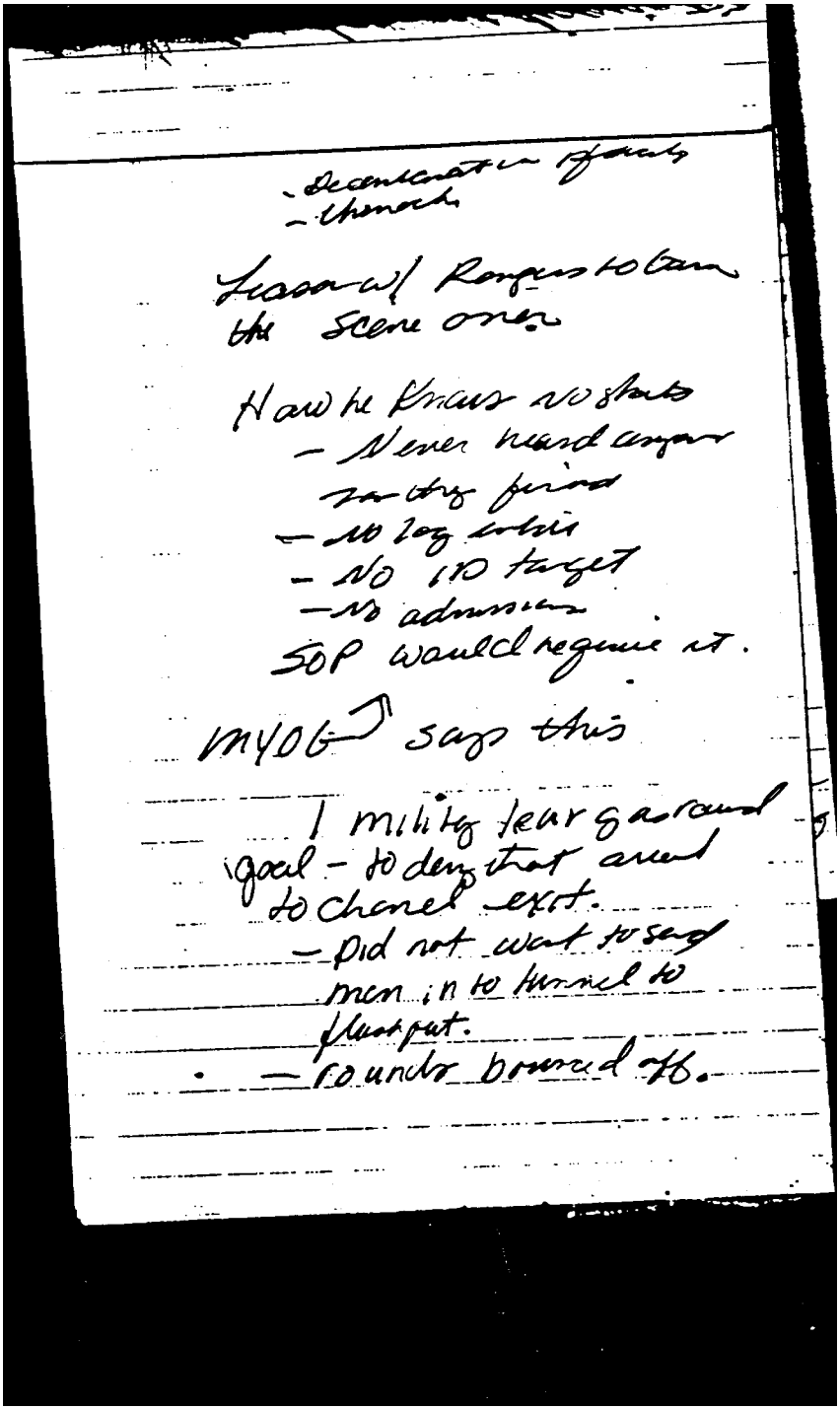

- Decontamination of [illegible]
- [illegible]

Lieson w/ Rangers to [illegible] the scene over.

How he knows no shots
- Never heard anyone [illegible] firing
- No log entries
- No ID target
- No admission
SOP would require it.

MYOG says this

1 military tear gas round
goal - to deny that area
to channel exit.
- Did not want to send
men in to tunnel to
flush out.
- rounds bounced off.

EXHIBIT 2

INTERIM REPORT TO THE DEPUTY ATTORNEY GENERAL

CONCERNING THE 1993 CONFRONTATION AT THE MT. CARMEL COMPLEX

WACO, TEXAS

JULY 21, 2000

PURSUANT TO ORDER NO. 2256-99
OF THE ATTORNEY GENERAL

John C. Danforth
SPECIAL COUNSEL

Preface

On the day that Attorney General Reno appointed me Special Counsel, I said that this investigation would examine whether government agents engaged in bad acts, not whether they exercised bad judgment. It is an important distinction. A free society cannot tolerate a government that commits bad acts such as killing citizens because they pose a nuisance, or because they express unpopular ideas, or even because they are dangerous. While charges of deliberate governmental misconduct justify a far-reaching investigation of this type, there are good reasons why poor judgment– conduct alleged to be careless or imprudent– does not. Established mechanisms, including civil lawsuits, are available and sufficient to resolve such claims against the government.

Make no mistake: the bad acts alleged in this case are among the most serious charges that can be leveled against a government– that its agents deliberately set fire to a building full of people, that they pinned children in the burning building with gunfire, that they illegally employed the armed forces in these actions and that they then lied about their conduct. I took such charges very seriously and began this investigation with my own mind totally open as to the issues before me. I required all members of my investigative staff to affirm in writing their commitment to objectivity. This Interim Report summarizes the exhaustive efforts undertaken to date to investigate every lead and to test every theory. There is no doubt in my mind about the conclusions of this report. Government agents did not start or spread the tragic fire of April 19, 1993, did not direct gunfire at the Branch Davidians, and did not unlawfully employ the armed forces of the United States.

In fact, what is remarkable is the overwhelming evidence exonerating the government from the charges made against it, and the lack of any real evidence to support the charges of bad acts. This lack of evidence is particularly remarkable in light of the widespread and persistent public belief that the government engaged in bad acts at Waco. On August 26, 1999, for example, a *Time* magazine poll indicated that 61 percent of the public believed that federal law enforcement officials started the fire at the Branch Davidian complex.

This is a matter of grave concern. Our country was founded on the belief that government derives its "just powers from the consent of the governed." When 61 percent of the people believe that the government not only fails to ensure "life, liberty and the pursuit of happiness" but also intentionally murders people by fire, the existence of public consent, the very basis of government, is imperilled.

The readiness of so many of us to accept as true the dark theories about government actions at Waco deserves serious attention by all of us. To that end, I offer the following thoughts.

We all carry the horror of the Waco tragedy with us. We have reviewed the events of February 28 and April 19, 1993 so many times, and they will not leave us alone: the sight of ATF agents carrying their dead and wounded from the Branch Davidian complex, the image of that same complex burning against the sky and the sound of the wind whipping the flames. In the face of such

calamity, we have a need to affix blame. Things like this can't just happen; they must be the government's fault. We are somehow able to ignore the contrary evidence– never mind the fact that the FBI waited for 51 days without firing a shot, never mind the evidence that Davidians started the fire, never mind that FBI agents risked their own lives in their efforts to rescue the Davidians– and we buy into the notion that the government would deliberately kill 80 people in a burning building.

Ample forums exist to nurture our need to place blame on government. Sensational films construct dark theories out of little evidence and gain ready audiences for their message. Civil trial lawyers, both in the public and private sectors, carry the duty of zealous representation to extremes. The media, in the name of "balance," gives equal treatment to both outrageous and serious claims. Congressional committees and Special Counsels conduct their own lengthy investigations, lending further credence to the idea that there are bad acts to investigate. There is even pressure on them to find some bad act to justify their effort and expense. Add to all of this the longstanding public cynicism about government and its actions, and the result is a nearly universal readiness to believe that the government must have done *something* wrong.

The only antidote to this public distrust is government openness and candor. Instead, and tragically, just the opposite occurred after Waco. Although the government did nothing evil on April 19, 1993, its failure to fully and openly disclose to the American public all that it did has fueled speculation that it actually committed bad acts on that day. Even in their dealings with this investigation, some government officials have struggled to keep a close hold on information. More important, the government did not disclose to the public its use of pyrotechnic devices at Waco until August 1999– six years after the fact. This non-disclosure is especially puzzling because the use of these pyrotechnics had nothing to do with the fire. They were used four hours before the fire began, 75 feet from the Branch Davidian residence, and in a manner that could cause no harm. Yet the failure to disclose this information, more than anything else, is responsible for the loss of the public faith in the government's actions at Waco, and it led directly to this investigation. The natural public reaction was that, if the government lied about one thing, it lied about everything.

The issues that remain open in this investigation concern the reasons why the government did not disclose this information. We have not found evidence of a massive government conspiracy. The team of agents who fired the pyrotechnics told the truth about it from the very beginning. Many government officials, including the Attorney General and the Director of the FBI, did not know that pyrotechnics had been used at all. Unfortunately, a few individuals within the Department of Justice and the FBI, including a few attorneys, had this information and did not tell.

Lawyers in private practice often volunteer as little information as possible. But playing it close to the line is not acceptable for people representing the United States government. Government lawyers have responsibilities beyond winning the cases at hand. They are not justified in seeking victory at all costs. A government lawyer should never hide evidence or shade the truth, and must always err on the side of disclosure.

Government lawyers carry on their shoulders responsibility for not only the prosecution of specific cases, but also for public confidence in our system of government– the "consent of the governed" enshrined in the Declaration of Independence. Indeed, this responsibility rests heavily on the shoulders of all government officials. The actions of these few government employees who failed to

disclose the use of pyrotechnics are reprehensible because they undermined the public confidence with which they were entrusted.

In today's world, however, it is perhaps understandable that government officials are reluctant to make full disclosures of information for fear that the result of candor will be personal or professional ruin. Any misstep yields howls of indignation, calls for resignations, and still more investigations. Several Department of Justice personnel told Office of Special Counsel investigators that they viewed the 1995 Congressional hearings as a partisan effort to attack Attorney General Reno. An FBI official complained about the "us against them" atmosphere and said "when [Congress] started government by subpoena, I stopped sending e-mails." Reacting to exposés, investigations and lawsuits, government officials develop a bunker mentality and protect rather than disclose information, and in the process do immeasurable damage to public confidence in government.

Breaking this vicious circle of distrust and recrimination is essential if we are to rebuild the consent of the governed on which our system depends. We all have the responsibility to distinguish between healthy skepticism about government and the destructive assumption that government is an evil force engaged in dark acts. Government, in turn, has a responsibility to be open and candid, so that light might dispel all suspicion of darkness.

This is why the Waco investigation is the most important work I have ever done. It was important to unearth the facts about Waco, one way or the other, and to set those facts out as clearly and openly as possible. It is my hope that, in so doing, this investigation will not only resolve the dark questions of Waco, but will also begin the process of restoring the faith of the people in their government and the faith of the government in the people.

John C. Danforth
St. Louis, Missouri
July 21, 2000

INTRODUCTION

THIS INTERIM REPORT contains an overview of the findings to date of the Special Counsel in response to the questions directed to him by Attorney General Janet Reno in Order No. 2256-99, dated September 9, 1999. The questions pertain to the 1993 confrontation between federal law enforcement officials and the Branch Davidians at the Mt. Carmel Complex near Waco, Texas. The Interim Report is issued pursuant to Section (e) of Order No. 2256-99 which provides, in relevant part, that the Special Counsel may issue "such interim reports as he deems appropriate."

The Office of Special Counsel has organized the Interim Report in the following format:

(I) a description of the Issues investigated by the Special Counsel;

(II) the Conclusions of the Special Counsel to date;

(III) a description of the Investigative Methods used by the Special Counsel; and

(IV) a Statement of Facts relevant to the Special Counsel's investigation.

The Special Counsel emphasizes that this report is interim in nature. The Final Report, which the Special Counsel expects to deliver to the Deputy Attorney General later this year, will contain conclusions concerning those issues which the Interim Report indicates are still under investigation, copies of documents and other evidence supporting the conclusions of the Special Counsel, and such other information and analysis as the Special Counsel considers appropriate.

I. Issues Investigated by the Special Counsel

On September 9, 1999, the Attorney General appointed former United States Senator John C. Danforth as Special Counsel to investigate the 1993 confrontation between federal agents and the Branch Davidians ("Davidians") that resulted in the deaths of four agents of the Bureau of Alcohol, Tobacco and Firearms ("ATF") and at least 80 Davidians.[1] Senator Danforth and his staff negotiated the terms of the Order directly with the Attorney General and her staff from September 5 to September 8, 1999. Senator Danforth and the Attorney General agreed that the investigation should determine whether representatives of the United States committed bad acts, not whether they exercised bad judgment.[2] Therefore, they drafted a very specific Order that identified five principal issues:[3]

(1) whether agents of the United States started or contributed to the spread of the fire that killed members of the Branch Davidian group on April 19, 1993;

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[1]The figure of "at least 80" dead is based upon recovered bodies, including six Davidians killed on February 28, 1993, but excluding two unborn children, one of which was near term. The Office of Special Counsel cannot state with certainty the exact number of deaths because of the extensive burning and commingling of bodies that occurred during the tragic fire on April 19, 1993, especially in the concrete bunker area of the complex where the bodies of most of the women and children were found.

[2]For example, the Office of Special Counsel was not tasked with and will not address the issue of whether it was appropriate for ATF to execute a raid on February 28 or for the Federal Bureau of Investigation ("FBI") to execute its gas insertion plan on April 19, 1993. These issues require an evaluation of judgment; an evaluation that is outside the scope of the Attorney General's mandate.

[3]A copy of Order No. 2256-99 is attached hereto as Exhibit A. The Order lists six issues to investigate. For ease of organization, this Report has combined the two "coverup" issues into one. In addition, the Order refers to the Mt. Carmel "compound." Certain members of the Branch Davidian group interviewed by the Office of Special Counsel objected to this characterization. In deference to them, this Interim Report refers to their place of residence and the surrounding structures as the Branch Davidian complex.

(2) whether agents of the United States directed gunfire at the Branch Davidian complex on April 19, 1993;

(3) whether agents of the United States used any incendiary or pyrotechnic device at the Branch Davidian complex on April 19, 1993;[4]

(4) whether there was any illegal use of the armed forces of the United States in connection with the events leading up to the deaths occurring at the Branch Davidian complex on April 19, 1993;[5] and

(5) whether any government representative made or allowed others to make false or misleading statements, withheld evidence or information from any individual or entity entitled to receive it, or destroyed, altered or suppressed evidence or information concerning the events occurring at the Branch Davidian complex on April 19, 1993.[6]

At Senator Danforth's request, the Order of the Attorney General gave Senator Danforth and his staff the power to prosecute federal crimes concerning the above issues and any criminal attempt to interfere with his investigation. Finally, the Order required that Senator Danforth issue a Final Report and such interim reports as he deems appropriate.[7]

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[4]The first three issues– fire, gunfire and pyrotechnic device– relate only to events occurring on April 19, 1993.

[5]The fourth issue, the use of the armed forces of the United States, encompasses events "leading up" to April 19, 1993. This language specifically permits Senator Danforth to investigate actions of the military that preceded April 19, 1993. Senator Danforth requested this language so that he could investigate allegations that the armed forces had operated inside the Branch Davidian complex prior to April 19, 1993.

[6]The fifth issue, the "coverup" issue, relates principally to activities that post-date April 19, 1993, although the Office of Special Counsel did investigate whether any actions of April 18 and 19, 1993, constituted an effort to cover up crime scene evidence of the initial ATF operation of February 28, 1993, an issue that is only marginally related to the Attorney General's Order. The Office of Special Counsel uncovered no evidence of acts committed by the FBI to cover up the events of February 28, so this Interim Report does not address that issue further.

[7]The Order further indicated that the provisions of 28 CFR §§ 600.4 through 600.10 would apply to the administration of the Office of Special Counsel. Note that certain provisions of the Special

II. Conclusions of the Special Counsel

The Office of Special Counsel has undertaken an exhaustive investigation into allegations of grave misconduct by employees of the United States government. In essence, the charges are that on April 19, 1993, federal agents caused the fire which destroyed the Branch Davidian complex and killed many Davidians who remained in it, directed gunfire at the complex, illegally employed the armed forces of the United States to assault the complex, and then covered up the alleged misconduct.

To date, the investigation has lasted ten months, employed 74 personnel, and cost approximately $12 million. The Office of Special Counsel has interviewed 849 witnesses, reviewed over two million pages of documents, and examined thousands of pounds of physical evidence. As a result of this effort, the Office of Special Counsel states the following conclusions with certainty:

The government of the United States and its agents are not responsible for the April 19, 1993, tragedy at Waco. The government:

(a) did not cause the fire;

(b) did not direct gunfire at the Branch Davidian complex; and

(c) did not improperly employ the armed forces of the United States.

Counsel regulations (28 CFR §§ 600.1-3) were omitted from the Charter. Senator Danforth believed that inclusion of these provisions would have indicated that his investigation was purely criminal in nature, which, at least arguably, could have prohibited the public disclosure of part or all of a written report. Instead, Senator Danforth negotiated language indicating that he intended to submit his report in a form that would permit, to the maximum extent possible, public dissemination of his findings.

Responsibility for the tragedy of Waco rests with certain of the Branch Davidians and their leader, David Koresh, who:

(a) shot and killed four ATF agents on February 28, 1993, and wounded 20 others;

(b) refused to exit the complex peacefully during the 51-day standoff that followed the ATF raid despite extensive efforts and concessions by negotiators for the Federal Bureau of Investigation ("FBI");

(c) directed gunfire at FBI agents who were inserting tear gas into the complex on April 19, 1993;

(d) spread fuel throughout the main structure of the complex and ignited it in at least three places causing the fire which resulted in the deaths of those Branch Davidians not killed by their own gunfire; and

(e) killed some of their own people by gunfire, including at least five children.

While the Special Counsel has concluded that the United States government is not responsible for the tragedy at Waco on April 19, 1993, the Special Counsel states with equal certainty that an FBI agent fired three pyrotechnic tear gas rounds at 8:08 a.m. on April 19, 1993, at the concrete construction pit approximately 75 feet from the living quarters of the Davidian complex. The pyrotechnic tear gas rounds did not start the fire that consumed the complex four hours later. The failure of certain government officials to acknowledge the use of the pyrotechnic tear gas rounds until August of 1999 constitutes, at best, negligence in the handling of evidence and information and, at worst, a criminal effort to cover up the truth. As more fully described below, the Special Counsel has made substantial progress in resolving the coverup issue, but the investigation is not yet complete.

The following sub-parts set forth the conclusions of the investigation to date. The Final Report will contain the conclusions to the open issues and any relevant supplemental information.

1. Did agents of the United States start or contribute to the spread of the fire that caused the death of Branch Davidians on April 19, 1993?

Government agents did not start or materially contribute to the spread of the fire. During the morning of April 19, 1993, several Davidians spread accelerants throughout the main structure of the complex, and started fires in at least three locations. The evidence indicates that many of the Davidians did not want to escape the fire.[8] Indeed, while government agents risked their lives to save Davidians from the fire, one Davidian tried to re-enter the burning complex to die. When an FBI agent questioned this Davidian regarding the location of the children, the Davidian refused to answer. A Davidian who exited the complex during the fire stated that he witnessed others make no effort to leave the complex. Another Davidian expressed remorse that she had not perished in the fire with the rest of the group.

The following evidence demonstrates that the Davidians started the fire:

(a) Title III Intercepts.[9] Davidian conversations intercepted through the use of concealed listening devices inside the complex from April 17 to April 19 indicate that the Davidians

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[8]There is evidence that structural debris, which resulted from an FBI vehicle breaching the complex, interfered with a potential escape route by blocking the trapdoor leading to an underground bus which was located on the west end of the complex. However, the breaching operations also created three avenues of possible exit at the base of the main tower, at the front door, and on the east side of the chapel.

[9]"Title III intercepts" are court authorized recorded interceptions of conversations, obtained through the use of concealed listening devices. The content of these Title III intercepts may be publicly released pursuant to order of the United States District Court for the Western District of Texas. In order to obtain accurate transcriptions of the recordings, the Office of Special Counsel utilized the assistance of both its retained expert and its own investigators.

started the fire. An April 17 intercept records Davidians discussing how they could prevent fire trucks from reaching the complex. An April 18 intercept records a conversation between Steven Schneider[10] and other Davidians indicating a conspiracy to start a fire. During that conversation, Schneider joked that another Davidian had always wanted to be a "charcoal briquette." Another Davidian stated that, "I know there's nothing like a good fire . . ." On April 19, between the beginning of the gas insertion operation at approximately 6:00 a.m. and approximately 7:25 a.m., the Title III intercepts recorded the following statements: "Need fuel;" "Do you want it poured?;" "Have you poured it yet?;" "Did you pour it yet?;" "David said pour it right?;" "David said we have to get the fuel on;" "We want the fuel;" "They got some fuel around here;" "Have you got the fuel . . . the fuel ready?;" "I've already poured it;" "It's already poured;" "Yeah . . . we've been pouring it;" "Pouring it already;" "Real quickly you can order the fire yes;" "You got to put the fuel in there too;" "We've got it poured already;" "Is there a way to spread fuel in there?;" "So we only light it first when they come in with the tank right . . . right as they're coming in;" "That's secure . . . we should get more hay in here;" "You have to spread it all so get started ok?" These statements precede the sighting of fire by several hours, which is further proof that the Davidians intended to set fire to the complex well in advance of actually lighting the fires.

Much closer to the time of the fire, from approximately 11:17 a.m. to 12:04 p.m., Title III intercepts recorded the following statements from inside the complex: "Do you think I could light this

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[10]An Office of Special Counsel investigator who has become familiar with Steven Schneider's voice through the review of known samples of Schneider's voice identified Schneider's voice in this conversation. This voice identification is confirmation of a prior voice identification made by an FBI Title III monitor who became familiar with Schneider's voice while monitoring Title III recordings throughout the standoff.

soon?;" "I want a fire on the front . . . you two can go;" "Keep that fire going . . . keep it."[11] The only plausible explanation for these comments is that some of the Davidians were executing their plan to start a fire.

(b) Admissions of Branch Davidians. Davidians who survived the fire have acknowledged that other Davidians started the fire. Graeme Craddock, a Davidian who survived the fire, told the Office of Special Counsel in 1999 that he observed other Davidians pouring fuel in the chapel area of the complex on April 19, 1993. He further stated that he saw another Davidian, Mark Wendel, arrive from the second floor yelling: "Light the fire." Davidian Clive Doyle told the Texas Rangers on April 20, 1993, that Davidians had spread Coleman fuel in designated locations throughout the complex, although he declined to state who specifically lit the fires.

(c) Statements of Government Witnesses. Observations by government witnesses support the conclusion that the Davidians started the fire. FBI agents who had the opportunity to observe activity within the Branch Davidian complex on April 19, using field glasses or spotting scopes, saw Davidians engaged in activity which they later concluded to be pouring fuel to start a fire. Some of these sightings were noted contemporaneously by the agents in FBI logs. Also, an FBI agent observed

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[11] These statements, which are intelligible on the enhanced versions of the Title III tapes, provide compelling evidence that the Davidians carefully planned and then systematically set the fire. The Office of Special Counsel also conducted a detailed investigation into allegations that the overhears should have prompted the FBI commander to call off the gassing plan when the FBI monitors heard the Title III intercepts indicating that the Davidians intended to start a fire. Having reviewed the tapes and interviewed the relevant witnesses, the Office of Special Counsel concludes that the intercepts were largely incomprehensible until the FBI later enhanced the tapes and, therefore, that the FBI agents monitoring the intercepts did not hear or understand the statements until after the fire.

an unidentified Davidian ignite a fire in the front door area of the complex shortly after noon. This observation was also reported contemporaneously.

(d) Expert Fire Analysis. Fire experts also agree that Davidians started the fire. The Office of Special Counsel interviewed the experts who performed the original, on-scene fire investigation and analysis. The Office of Special Counsel also retained two fire experts, one to review the work product of the previous investigators and to examine independently the photographic and physical evidence, and the other to analyze the spread of the fire throughout the complex. In addition, the Office of Special Counsel retained an expert to determine whether the tear gas, a combination of methylene chloride and ortho-chlorobenzylmalonitrile (commonly referred to as "CS gas"), reached concentration levels in the complex that were sufficiently high to have caused or contributed to the rapid spread of the fire.[12]

Relying upon photographs, records of previous on-site investigative activity (such as the use of an accelerant detection dog), physical evidence, computer models and Forward Looking Infrared ("FLIR") tapes, the experts concluded without question that people inside the complex started the fire in at least three places– the second floor of the southeast corner of the main structure of the

[12]The Office of Special Counsel also questioned federal agents who drove vehicles into the complex and shot tear gas into the complex to determine if they may have accidentally started the fire by knocking over a lantern or by other means. The Office of Special Counsel has determined that they did not start the fire, and Davidian Clive Doyle recently testified in the civil litigation between the United States and the Davidians and their families that there were no lit lanterns in the complex at the time of the fire.

complex, the stage area at the rear of the chapel, and the kitchen/cafeteria area.[13] The experts further concluded that the CS and methylene chloride did not start or contribute to the spread of the fire.[14] Finally, the Office of Special Counsel addressed the decision of the FBI to delay allowing firefighting equipment to arrive at the scene. The Office of Special Counsel has concluded that the Davidians were shooting at outsiders, which would have endangered the lives of any firefighters who approached the scene. In fact, a Title III intercept from April 17, 1993, records Davidians indicating that they intended to prevent firefighters from approaching the complex: "You're definitely right . . . I think all the time he knows it . . . nobody comes in here;" "Bring the fire trucks and they couldn't even get near us;" "Exactly." Furthermore, the evidence indicates that many of the Davidians did not want to leave the burning building.

(e) Medical Analysis. Autopsy and other medical reports on the victims of the fire provide additional information confirming that Davidians started the fire. For example, Raymond

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[13]The Attorney General's Order asked the Office of Special Counsel to determine not only if federal agents started the fire, but also whether they "contributed to the spread of the fire." Like the other parts of the Attorney General's Order, this portion of the Order was intended to refer to intentional wrongdoing by the government. As to whether government agents committed intentional wrongdoing which contributed to the spread of the fire, the answer is clearly no. The openings in the complex made by the Combat Engineering Vehicles ("CEV's") did allow for greater ventilation, which could have accelerated the spread of the fire in some areas, but they were made with the intent to create exits and to deliver gas. Moreover, the openings created by the CEV's, and the consequent accelerated spread of the fire, did not contribute to the deaths of the Davidians. In fact, in most cases, the openings made additional avenues of exit for the Davidians had they wanted to avoid the fire, and some Davidians in fact used these openings to escape the fire.

[14]The Office of Special Counsel also retained toxicology experts to assist in determining whether the CS or methylene chloride killed any Davidians. The Office of Special Counsel has concluded that the CS and methylene chloride did not kill any Davidians.

Friesen, a Davidian found deceased in the complex after the fire, had very high benzene levels in his system, which may be indicative of inhaling petroleum-based accelerants, and therefore is consistent with the theory that the Davidians spread fuel and started the fire. A surviving Davidian, Clive Doyle, had accelerants on his coat sleeves as well as burn wounds on his hands that the expert retained by the Office of Special Counsel believes to be consistent with wounds that would have occurred when his accelerant-soaked hands came in contact with a flame.

(f) Physical Evidence. The Office of Special Counsel and its experts conducted a detailed review of the physical evidence that relates to the fire. During its review, the Office of Special Counsel located Coleman and other fuel cans containing numerous puncture marks. Expert tool mark examiners confirmed that someone had deliberately punctured several of the cans– a common tactic among arsonists who wish to spread fuel. Investigators also found a handmade torch among the debris in the kitchen/cafeteria, one of the fire's points of origin. Canine searches from 1993, confirmed by later lab analysis of portions of the remains of the building, identified accelerants in areas where the FLIR tapes and other evidence indicate that the fires started. Lab analysis also found accelerants on clothing and shoes of Davidians.

(g) Beliefs of the Davidians. The teachings of Koresh are consistent with the overwhelming eyewitness and physical evidence that the Davidians started the fire. The Office of Special Counsel interviewed Davidians, religious experts and writers to determine whether the Davidians would start a fire for any reason. Based on these interviews, the Office of Special Counsel concluded that the Davidians considered death by fire justified– even desirable– under circumstances in which they were under attack by forces that they considered to be evil, including the government.

Koresh taught the Davidians that fire would "transcend" or "translate" them immediately to heaven. Davidian survivors Marjorie Thomas and Graeme Craddock specifically recalled Koresh teaching that fire is an acceptable means of death for Davidians. Thomas remembers Koresh stating during Bible study that fire would transcend the Davidians to heaven during the "battle" with Babylon, and that Koresh considered the U. S. government to be Babylon. Davidian Kathy Schroeder recalled that, shortly after the confrontation with ATF on February 28, 1993, Koresh told the Davidians that he had a dream that the Davidians would burn in a great fire, their skin would burn off, and they would "transcend" to heaven. Consistently, Davidians referred to their complex as "Ranch Apocalypse" and on April 16, 1993, several federal agents observed a Davidian hold a sign outside a window of the complex that read "the flames await: Isaiah 13."

An alternative explanation, that of Dr. J. Phillip Arnold of Houston's Reunion Institute, is that Koresh may have ordered the Davidians to set the fires as protection from government forces in a manner similar to the protection discussed in the Book of Daniel, with the story of Shadrach, Meschach and Abednego in the fiery furnace. Dr. Arnold further stated that Koresh and the Davidians would not have run from the fire, but rather may have viewed the fire as a fulfillment of prophecy.

Whether the Davidians set the fires to cause their deaths and transcend to heaven, or set them in an attempt to create a shield of fire, once the fire was set, it became a fulfillment of Koresh's prophecy, and, in accordance with his religious teachings, was an acceptable and even desirable way of dying for the Davidians. Consequently, there exist strong bases in the Davidians' religious beliefs and conduct to support the conclusion that the Davidians started the fire on April 19, 1993.

As the foregoing discussion indicates, the evidence is conclusive that the Davidians started the fire. While actions of the government may have contributed incidentally to the spread of the fire, these actions (or inactions) did not cause the tragic loss of life on April 19, 1993. The Special Counsel will provide expert reports and additional evidence supporting his fire conclusions in the Final Report.

2. *Did agents of the United States direct gunfire at the Branch Davidian Complex on April 19, 1993?*

No employee of the United States fired a gunshot at the Branch Davidian complex on April 19, 1993.[15] To the contrary, while the Davidians fired upon government agents throughout the morning of April 19, government agents did not return gunfire. Indeed, the FBI had the authority to return fire under the law and its deadly force policy, but did not do so.

In arriving at these conclusions, the Office of Special Counsel relied upon the following evidence:

(a) FLIR Testing and Analysis. Virtually the only evidence cited by those claiming government agents fired shots into the complex on April 19, 1993, are the FLIR videos recorded by the FBI Nightstalker aircraft from approximately 10:42 a.m. to 12:41 p.m. on that day. In fact, however, this evidence strongly supports the conclusion that no employee of the United States fired a shot on April 19.

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[15]For the purposes of this report, the term "gunshot" does not encompass the firing of tear gas from M-79 grenade launchers, which occurred repeatedly at Waco on April 19, 1993.

The FLIR tapes show 57 flashes, emanating principally from alleged Davidian positions inside or on top of the complex. Eighteen of the flashes occur on the back side of the complex, with some occurring around government vehicles that were operating near the complex. During the past three years, representatives of the Davidians and several independent experts retained by the media and Congress have concluded that gunfire could have caused or did cause these flashes. The FBI and its experts have claimed that the flashes are reflections or "glint" coming from debris scattered in and around the complex.

The Office of Special Counsel retained two teams of experts to analyze the FLIR tapes from April 19. Working with the United States District Court judge in the civil litigation brought by some of the Davidians and their families against the United States government, the Office of Special Counsel and its expert, Vector Data Systems (U.K.) Ltd., conducted a field test of FLIR technology at Fort Hood, Texas on March 19, 2000. The purpose of the test was to identify the thermal signature, if any, that gunfire and debris would leave on a FLIR recording. The Office of Special Counsel conducted the test under a protocol agreed to and signed by both the attorneys and experts for the government and the attorneys and experts for the Davidians and their families. The protocol identified the FLIR equipment, the weapons, and the other conditions that would best approximate the scene at Waco in 1993.

Based on a detailed analysis of the shape, duration and location of 57 flashes noted on the 1993 FLIR tapes, and a comparison of those flashes with flashes recorded on the March 2000 FLIR test tape, the expert retained by the Office of Special Counsel concluded with certainty that each of the flashes noted on the 1993 tapes resulted from a reflection off debris on or around the complex.

These conclusions are supported by color photographs which show the reflective debris at the exact location of many of the flashes noted on the 1993 tapes. Lena Klasèn, a second independent expert retained by the Office of Special Counsel also concluded that thermal activity caused by human movement or motion did not exist near or around the area of the flashes noted on the FLIR tapes. Moreover, she concluded that photographs show no people at the points from which the flashes emanated. After performing a relational analysis of the Nightstalker's movement and sensor position, Klasèn, like Vector, has concluded that the flashes on the 1993 tapes were from debris. The FLIR test and the expert analyses prove conclusively that the FLIR tapes do not evidence gunfire directed at the Davidians from government positions.

(b) Ballistics Testing. The ballistics expert retained by the Office of Special Counsel further supports the conclusion that there was no government gunfire on April 19, 1993. The Office of Special Counsel conducted ballistics testing on 36 shell casings found at the "Sierra-1" government sniper position to determine if FBI agents fired these shots. The expert concluded with certainty[16] that these casings came from weapons the Office of Special Counsel identified as ATF weapons fired on February 28, 1993.[17] The casings do not, therefore, evidence FBI gunfire on April 19.

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[16]After the Office of Special Counsel conducted the ballistics tests, counsel for the parties in the civil litigation also conducted similar testing. Experts for both the plaintiffs and the defendants reached identical conclusions– that the shell casings from the Sierra-1 sniper position did not match the FBI weapons of April 19. As a result, counsel for the Davidians in the civil litigation dropped their claims against FBI sniper Lon Horiuchi, who had been stationed at Sierra-1.

[17]The Office of Special Counsel could not test four additional shells found near Sierra-1 (three .45 caliber and one .22-250 caliber). The casings appeared to be old, predating the standoff, and not of the manufacture or caliber utilized by the FBI or ATF.

(c) Statements of Davidian Witnesses. The interviews of Davidians further establish that no government agent fired on April 19. The Office of Special Counsel interviewed 13 Branch Davidians, six of whom were in the complex on April 19, 1993.[18] Attorneys and investigators for the Office of Special Counsel questioned each of these witnesses in detail about the standoff. None of the Davidians who were in the complex on April 19 indicated that he or she saw or heard government gunfire, nor did any Davidian provide other evidence that the government fired at the complex or at the Davidians.

The evidence indicates that the Davidians who died from gunfire either committed suicide or were shot by other Davidians. One surviving Davidian, Kiri Jewell, testified before Congress that Koresh had taught her how to use a gun to kill herself. Moreover, Dena Okimoto, a former Davidian, reported to the government on March 3, 1993, that Koresh had instructed his followers that, if he died before they did, the women should kill themselves or receive assistance from the men, who were to go on a shooting spree before they died. Title III intercepts indicate that on March 16, 1993, a Davidian, possibly Koresh, discussed committing suicide by shooting himself. These statements further support the conclusion that the Davidians shot themselves and did not die as the result of government gunfire.

(d) Statements of Government Witnesses. The United States government has maintained consistently since April 19, 1993, that no government agent fired a single shot at the

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[18]A total of nine Branch Davidians survived the fire but only six of them agreed to speak with the Office of Special Counsel.

Davidian complex on April 19. Every government witness interviewed by the Office of Special Counsel confirmed this contention. The Office of Special Counsel conducted detailed interviews with federal government personnel who were in the vicinity of the complex on April 19, 1993, or otherwise involved with the Waco incident. These included 472 FBI personnel, four United States Secret Service agents, 35 ATF agents, and 82 members of the active duty armed forces of the United States, including members of the Army Special Forces. The Office of Special Counsel also interviewed state and local government officials, including 27 members of the Texas and Alabama National Guards, and 38 Texas Rangers. The Office of Special Counsel informed certain key witnesses that the charter of the Office of Special Counsel permitted criminal prosecution of anyone who lied to representatives of the Office of Special Counsel, and, where appropriate, that the Office would in fact prosecute any person found to have made false statements to its investigators.

Office of Special Counsel attorneys and investigators asked government representatives who were present at the complex on April 19 (or otherwise involved in the Waco confrontation) not only whether they fired weapons, but also whether they saw any other government person fire a weapon, and whether they even heard discussion or rumor that any government agent engaged in gunfire. Not a single one of the hundreds of government witnesses stated that he or she had any knowledge suggesting that any government agent fired at the Davidians on April 19.

Numerous government witnesses did, however, see or hear gunfire emanating from the complex toward government positions at various times during the morning of April 19. In addition, shortly after the start of the fire, at least four witnesses heard rhythmic bursts of gunfire coming from within the complex, which is consistent with the conclusion that the Davidians were deliberately shooting

each other. The eyewitness accounts of government personnel, therefore, indicate that the government did not fire at the Davidians, but that the Davidians fired at the government and shot themselves.

(e) Statements of other people claiming that the government engaged in gunfire. Several other parties have claimed that the government engaged in gunfire on April 19, but none of them provided credible evidence to support this contention. The Office of Special Counsel interviewed filmmakers, writers, and advocates for the Davidians. None of them had witnessed any government gunfire on April 19. Further, none of them provided evidence supporting their contention of government gunfire on April 19, other than the flashes that appear on the 1993 FLIR tapes and the shell casings found at the Sierra-1 sniper position.[19] As stated above, the FLIR tapes and shell casings do not provide evidence of government gunfire on April 19.

(f) Polygraph Testing. Polygraph testing reinforces the conclusion that no government agent fired a shot on April 19.[20] During the course of conducting classified interviews with members of the Army Special Forces, the Office of Special Counsel obtained conflicting information on the exact whereabouts of one Army Special Forces member who was at Waco on April 19, 1993, although no witness suggested that this soldier had entered the perimeter of the complex or fired a weapon. This conflicting testimony also surfaced in the civil litigation between the Davidians and their families and the government, which led to speculation among counsel for the Davidians and their families

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[19]Some of them provided names of alleged witnesses but either those witnesses could not be located because too little information was given to find them or the information provided by the witnesses did not support the contention that the government fired into the complex on April 19.

[20]In instances where conflicts in testimony occurred, or where there was no other corroborative evidence, the Office of Special Counsel made limited use of polygraph testing.

and the press that this individual may have fired a weapon into the complex. Consequently, the Office of Special Counsel engaged the services of two polygraph examiners from the United States Postal Inspection Service to help determine whether this individual had entered the perimeter of the complex at any time or fired a weapon on April 19. These examiners concluded that this individual was "not deceptive" in saying that he neither entered the perimeter nor fired a weapon at the complex on or before April 19.

(g) Document Review. The Office of Special Counsel has reviewed an extensive documentary record relating to events of April 19, 1993. The documents have included FBI sniper logs, FBI "302" memoranda of interviews, and handwritten notes of meetings. Only one document– a June 2, 1993, FBI 302 memorandum of an interview of FBI Special Agent Charles Riley– contained a statement[21] that could be interpreted to mean that a government agent fired on the complex. When interviewed, Riley stated to the Office of Special Counsel that the FBI 302 (which he did not author and did not review at the time) should have stated only that he heard agents stationed at Sierra-1 report gunfire emanating from the complex. Riley noted further that he had corrected the June 2, 1993, 302 memorandum by authoring his own 302 memorandum on November 19, 1996, after the FBI brought the erroneous statement to his attention.[22] Consistently, FBI logs of the activity on April 19 indicate no government gunfire, but they record numerous instances of Davidian gunfire.

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[21]The 302 states: "SA Riley related that he heard shots fired from Sniper 1 position."

[22]The author of the Riley 302 also told the Office of Special Counsel that she may have misinterpreted what Agent Riley said when she drafted it. Moreover, the FBI 302's of the other agents who were with Agent Riley at the Sierra-3 sniper position on April 19 make no mention of government gunfire.

(h) Videos, Photographs and Recordings. The videos taken by witnesses and the media on April 19 do not indicate government gunfire.[23] None of the thousands of photographs from April 19 shows people in the places from which government gunfire allegedly emanated.[24] The Title III intercepts do, however, contain sounds that may be consistent with Davidians firing at government agents from within the complex.[25] Video taken by an FBI agent also contains audible evidence of gunfire coming from inside the complex at the time of the fire.

(i) Autopsy/Pathology Results. Autopsy reports and anthropological work support the conclusion that those Davidians who died of gunshot wounds were killed by other Davidians, not by the government. The 1993 pathology studies concluded that at least 20 Davidians[26] were shot and one was stabbed[27] on April 19. According to the anthropological work, five of the victims were children under the age of 14. The 1993 studies indicated that many of those who died of gunshot injuries were

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[23]The film *Waco: A New Revelation* portrays video of a helicopter allegedly shooting at the complex on April 19. Vector Data Systems (U.K.) Ltd., the Office of Special Counsel's independent expert, has determined that the flashes shown in the film are merely reflected sunlight, and that the helicopter doors were not even open to permit gunfire from the aircraft.

[24]During the civil litigation, an issue arose as to the authenticity of certain photographic and video evidence. The Final Report will discuss these allegations in the "coverup" section.

[25]Gunfire at close range to a Title III intercept device will mute all sound from the intercept microphone for a brief period of time. Many such "mutings" occur on the intercept recordings. In fact, at 6:07 a.m., the same time HRT reported receiving gunfire from the complex, the Title III listening devices recorded these mutings inside the complex.

[26]The figure "at least 20" is used because the forensic pathologists could not rule out gunshot injuries for several of the Davidian adults and children due to the extensive damage to their bodies by the fire.

[27]The only stabbing victim, three year old Dayland Gent, was stabbed in the chest.

shot in the head or mouth, which is consistent with suicide or execution by the Davidians. Furthermore, information provided to the Office of Special Counsel by those who conducted the 1993 studies indicates that none of the Davidians was shot with a high velocity round[28] on April 19, which would be expected had they been shot from outside of the complex by government sniper rifles or other assault weapons.

The Office of Special Counsel tested these conclusions thoroughly. While the bodies of the deceased Davidians are no longer available to be examined, the Office of Special Counsel did retain a forensic pathologist with specific expertise in gunfire deaths to conduct a thorough review of the 1993 autopsy reports, the extensive photographic and X-ray record from the initial pathology studies, the DNA findings, and the anthropological work of the Smithsonian Institution on the Davidians' remains. The Office of Special Counsel also interviewed the members of the 1993 pathology team. Based upon this expert analysis and interviews with the original pathology team and the anthropologists from the Smithsonian Institution, the Office of Special Counsel has confirmed that 20 Davidians died of gunshot wounds on April 19. While it is impossible to determine what type of round killed some of the victims, several of the Davidians who died on April 19 had residual evidence indicating that they had been shot with low velocity rounds, either within inches of or in contact with their heads. None of the Davidians who died on April 19 displayed evidence of having been struck by a high velocity round. The expert retained by the Office of Special Counsel concluded that many of the gunshot wounds are "consistent

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[28]Dr. Doug Owsley of the Smithsonian Institution informed the Office of Special Counsel that none of the gunshot injuries to the head exhibited evidence of the damage which would be caused by "high velocity rounds."

with suicide or consensual execution (suicide by proxy)." Therefore, the autopsy evidence, while not conclusive as to the gunfire issue for all victims, fully supports the theory that the Davidians shot themselves.

(j) Tactical Analysis. The Office of Special Counsel also discussed with several witnesses the tactical implications of the allegations that government agents fired guns on April 19 in the manner alleged. The allegations are that government agents exited their armored vehicles in close proximity to the complex, thereby exposing themselves to Davidian gunfire from fortified and elevated Davidian positions within the complex. To have done so would have unreasonably and unnecessarily risked the agents' lives. For example, FBI snipers at one point observed a .50 caliber weapon high in the tower trained directly on their sniper position. As one FBI agent said, being on foot without the cover of an armored vehicle on April 19 under such circumstances "would be sheer madness."

(k) Lack of Evidence of Ill Motive. The theory that the government deliberately shot or otherwise harmed the Davidians runs contrary to the overwhelming evidence, before, during, and after the fire, that the government officials occupied themselves with resolving the standoff in a peaceful manner that would preserve life if at all possible. FBI agents negotiated patiently with the Davidians for 51 days. They developed their tactical plan with input from behavioral psychologists and doctors whose paramount concern was the safety of the children in the complex. They had doctors located at forward positions near the complex on April 19, including a doctor at the Sierra-2 sniper position and additional medical support at a location near the intersection of roads (the "T-intersection") outside the complex, waiting to provide the Davidians medical assistance. The FBI also set up a field hospital.

Military doctors and law enforcement medics treated all nine of the Davidians who escaped on April 19.

One FBI agent even risked his life by going into the complex to rescue a Davidian who had exited and then ran back into the burning complex. The Davidian resisted the agent's efforts to pull her from the fire, but the agent did save her. Former FBI Director William Sessions provided compelling testimony before Congress in 1993 describing the acts of FBI agents, not only in rescuing Davidians from the burning complex, but also in attempting to rescue Davidians whom the FBI hoped had escaped into an underground bus near the complex. Agents, including HRT commander Richard Rogers, waded into the concrete construction pit, waist deep in water containing human waste and rats, in an unsuccessful effort to find children in the bus. It is simply not credible to suggest that while agents on the front side of the complex were risking their lives to rescue the Davidians, other agents on the back side were shooting at them to pin them in the burning structure.

In summary, those claiming that government gunfire did occur have presented an unsupportable case based entirely upon flawed technological assumptions. The FLIR tapes and testing, witness interviews, including those of Davidians, documentary evidence, audio and video evidence, photographs, autopsy reports, polygraph examinations, ballistics testing, and basic tactical and behavioral considerations provide conclusive evidence that no agent of the United States fired gunshots at Waco on April 19, 1993.[29]

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[29]During the late afternoon or early evening hours of February 28, Davidians Michael Dean Schroeder, Norman Allison and Woodrow Kendrick, attempted to gain entry into the Mt. Carmel

The eyewitness evidence and physical evidence are equally overwhelming that the Davidians shot repeatedly at the government on April 19 and that 20 Davidians either committed suicide or were shot by other Davidians as the fire broke out just after noon on April 19. The Office of Special Counsel will provide expert analysis of the evidence supporting its conclusions regarding gunfire in its Final Report.

3. Did agents of the United States use an incendiary or pyrotechnic device at the Branch Davidian complex on April 19, 1993?

An FBI agent shot three pyrotechnic military tear gas rounds at the plywood covering of the concrete construction pit[30] on the west or "green" side of the complex at approximately 8:08 a.m.

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complex. They approached the complex from the rear or black side of the complex in an area commonly referred to as the Perry Barn or Perry Barn catch pen. The Davidians were confronted by a group of 14 ATF agents who were attempting to withdraw from the area. A shootout ensued during which Schroeder fired at least 18 shots at the agents. Schroeder was killed, Allison was arrested, and Kendrick escaped. Since the death of Schroeder, allegations have been made that Schroeder may have been wounded during the initial shootout and subsequently executed by ATF agents before the agents completed their withdrawal. The theory of Schroeder's execution is based upon the claim that Schroeder died from two gunshot wounds to the back of the skull. A review of the autopsy results of Schroeder by an expert retained by the Office of Special Counsel does not support this claim. Although Schroeder suffered two entry gunshot wounds to the skull, both wound tracks indicate Schroeder was facing forward at the time he was shot, which is consistent with a gun battle, not an execution. The two entry wounds are in the front of his head. The projectiles exited from the rear of his head. The autopsy results support the statements and subsequent criminal trial testimony of the ATF agents involved in this confrontation and are not, therefore, indicative of the alleged execution-style shooting.

[30]This structure is alternatively referred to as a construction pit and a tornado shelter by many commentators and witnesses. Some also refer to it as a bunker, which has a tendency to confuse this structure with the storage area below the tower inside the complex, which is also referred to as a bunker by numerous sources. For the purposes of this report, the Office of Special Counsel will refer to the structure at which the FBI fired military tear gas rounds as the concrete construction pit and the storage area within the complex as the concrete bunker.

on April 19, 1993.[31] The rounds failed to penetrate the covering, bounced off, and landed harmlessly outside the living quarters of the complex. There is no evidence that any government agent fired a pyrotechnic device at the living quarters of the Davidians, nor is there any evidence that any government agent fired pyrotechnic devices after 8:08 a.m. Because the FBI fired the pyrotechnic tear gas rounds nearly four hours before the fire started, at a concrete construction pit partially filled with water, 75 feet away and downwind from the main living quarters, it is certain that the pyrotechnic tear gas rounds did not start or contribute to the spread of the fire. In support of these conclusions, the Office of Special Counsel relied upon the following evidence:

(a) Witness Interviews and Statements. Members of the FBI's Hostage Rescue Team ("HRT") have repeatedly acknowledged that one member of the HRT fired pyrotechnic tear gas rounds on April 19 in an attempt to penetrate the concrete construction pit. In November 1993, the agents who knew that the rounds had been fired discussed their use with the Department of Justice trial team which was preparing to prosecute certain of the surviving Davidians. The interview notes taken and trial summaries prepared by trial team members clearly reflect discussion of "military" tear gas rounds fired at the concrete construction pit. The notes reflect that one witness described these rounds (incorrectly) as incendiary. Also in 1993, an FBI pilot told investigators preparing a report to the

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[31]The rounds were pyrotechnic but not incendiary. An incendiary round is designed to start a fire. A pyrotechnic round is not designed to start a fire, but contains a composite of materials which burn, creating heat which can start a fire under certain conditions. The FBI has recently advanced an argument that military tear gas rounds of the type fired by the FBI at the concrete construction pit on April 19, 1993, are not pyrotechnic. Because this tear gas was delivered with a charge that burns, the Office of Special Counsel rejects the FBI's contention. Military tear gas rounds are clearly pyrotechnic in nature, as numerous government documents (including the FBI's own Manual of Investigative Operations and Guidelines) and witnesses acknowledge.

Deputy Attorney General that he had heard radio transmissions on the morning of April 19 discussing the use of a "military round" at the concrete construction pit. In February 1996, the HRT again confirmed the use of pyrotechnic military tear gas rounds in response to an inquiry from the FBI's Office of General Counsel made during the course of the civil case brought by the Davidians and their families against the government. In 1999 and 2000, HRT agents openly acknowledged using the military tear gas rounds to the Office of Special Counsel.

(b) Photographic and Video Evidence. News footage obtained by the Office of Special Counsel shows FBI Special Agent David Corderman firing pyrotechnic tear gas rounds at the concrete construction pit on the west side of the complex. Film and video footage show a white cloud of tear gas emanating from the area around the concrete construction pit immediately thereafter. An aerial photograph also shows a white cloud around the concrete construction pit, which is a distinctive feature of the type of pyrotechnic tear gas round fired by the HRT. The FLIR tapes contain audio of the conversation at 7:48:52 a.m. in which HRT commander Rogers gave permission to fire these rounds and the conversation at 8:08:59 a.m. in which the HRT Charlie Team Leader notified Rogers that a member of his team had fired rounds, which had hit the concrete construction pit and bounced off. All of these sources indicate that the FBI fired the pyrotechnic rounds early in the morning away from the living quarters of the complex.

(c) Physical Evidence. The Texas Rangers placed one expended military tear gas shell casing which they found during the crime scene search in an evidence locker which the Rangers maintained until the United States District Court for the Western District of Texas ordered the transfer of the evidence to the federal courthouse at Waco. A Texas Department of Public Safety

photographer took a photograph of an expended military tear gas projectile on April 30, 1993. This projectile is missing,[32] but the photograph is with the Rangers' evidence at Waco. In addition, FBI explosives expert Wallace Higgins told the Office of Special Counsel that he saw two other pyrotechnic tear gas projectiles on or about April 20, 1993,[33] adjacent to the concrete construction pit. None of the three projectiles was logged into evidence by the Rangers, and the Office of Special Counsel has not located them.

(d) Polygraph Testing. Special Agent Corderman voluntarily submitted to and passed a polygraph test. The testing confirmed the Office of Special Counsel's conclusion that Agent Corderman was truthful in saying that he fired pyrotechnic tear gas rounds only at the concrete construction pit and not at the living quarters of the complex.

(e) Shaped Charge Allegation. The Office of Special Counsel also investigated allegations made by a filmmaker and a former United States Army Special Forces soldier (who was not at Waco on April 19, 1993) that government operatives allegedly entered the complex and placed explosive devices, known as shaped charges, on the concrete bunker at the complex and the propane tank near the tower. Those alleging that the government placed the shaped charges within the complex claim that the massive explosion that occurred during the fire at 12:26 p.m. on April 19 was the

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[32]The photographer's log indicates that the evidence search team originally found the projectile approximately 200 yards northwest of the water tower, a location consistent with Corderman's description of the angle at which he shot.

[33]The spent cartridge, which would likely be found near the site where it was fired, is commonly called a "shell" or a "shell casing." The used "projectile" would be found near the target. In this report, the Office of Special Counsel will use the term "round" to describe the whole device, the term "shell" to describe the spent cartridge, and the term "projectile" to describe what is actually shot at the target.

detonation of one of the shaped charges. They also point to photographs taken after the fire which show a hole in the roof of the concrete bunker, which they claim resulted from the detonation of the shaped charge.

The Office of Special Counsel found these allegations totally meritless. Experts retained by the Office of Special Counsel concluded that the explosion seen at 12:26 p.m. is a propane tank exploding due to heat from the fire. Ignoring the near tactical impossibility of placing shaped charges at the locations alleged, the Office of Special Counsel and its experts analyzed the physical evidence relating to the hole in the concrete bunker and determined: (1) the debris remaining near the hole in the roof is inconsistent with the use of shaped charges or similar highly explosive devices, (2) none of the bodies recovered from the bunker presents evidence of a blast injury, (3) the metal rebar from the bunker is not covered with residue from a shaped charge, and (4) fragments from hand-grenades (which the Davidians had in their arsenal) are spread across the roof of the concrete bunker. Based upon this, and other evidence, the Office of Special Counsel and its experts concluded that the hole in the concrete bunker was caused by a combination of heat damage and a low-order grenade detonation. The grenade detonation was also caused by the heat of the fire. Significantly, counsel for the families of the Davidians who perished on April 19 did not make the allegation that the government used shaped charges against the Davidians.

The Final Report of the Special Counsel will contain expert reports and other information concerning the Special Counsel's conclusions with respect to the use of pyrotechnic or incendiary devices by the government at Waco on April 19, 1993.

4. Was there any illegal or improper use of the armed forces of the United States in connection with events leading up to the deaths of the Branch Davidians on April 19, 1993?

The Office of Special Counsel investigated allegations that members of the armed forces of the United States violated the law by participating directly in the Waco law enforcement operation. Allegations made against the armed forces included claims that its members shot at the Davidians from helicopters on February 28, 1993, infiltrated the complex during the standoff, placed explosive devices in the complex, offered to kidnap Koresh, and shot at the Davidians from positions around government vehicles on April 19, 1993. These allegations proved entirely meritless.

The armed forces of the United States[34] did not violate any civil or criminal statute in connection with their activities at Waco in 1993. While the armed forces of the United States provided extensive support for law enforcement agencies, including reconnaissance, equipment, training, advice, and medical assistance, they were careful in their conduct and well-advised legally as they determined exactly what support to provide. In fact, in at least two instances, law enforcement agencies solicited assistance from the armed forces that the armed forces either rejected or scaled back due to concern about remaining within the bounds of federal law.

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[34]The phrase "armed forces of the United States" customarily does not include the National Guard unless ordered into federal service, which did not occur at Waco. However, the Office of Special Counsel has chosen to read "armed forces of the United States" to include "armed forces of a state of the United States" so as to give the American public complete disclosure of military activity at Waco.

The primary issue with respect to the armed forces is whether the use of the active duty[35] military violated the *Posse Comitatus* Act, 18 U.S.C. §1385, which prohibits the use of the Army "as a *posse comitatus* or otherwise to execute the laws." The *Posse Comitatus* law arose out of post-Civil War concerns that the armed forces had become an instrumentality of federal law enforcement in the occupied southern states. The overriding purpose of the legislation was to preclude the military from direct participation in arrests, searches and seizures. While the law establishes the important principle of separation of civil and military actions, it has never been the basis of a successful prosecution. The *Posse Comitatus* Act does not prohibit all military support to civilian law enforcement, but only support that directly involves the military in law enforcement functions. Supplementing the *Posse Comitatus* Act, the Military Assistance to Law Enforcement Act, 10 U.S.C. §§ 371-378, precludes direct participation by active duty forces in searches, seizures, and arrests, but permits indirect support to law enforcement operations such as loaning equipment, training in the use of the equipment, offering expert advice, and providing equipment maintenance. These laws do not apply to the National Guard unless it is federalized by being ordered to active duty by the President.

In arriving at its conclusions regarding the use of the armed forces at Waco, the Office of Special Counsel considered the legality of armed forces support in five principal areas: (a) operations support, (b) equipment, (c) training, (d) expert advice, and (e) National Guard.

(a) Operations Support. In its investigation of the active duty military, the Office of Special Counsel focused on the level of participation by military personnel in law enforcement

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[35]The term "active duty" means full-time duty in the active military service of the United States. See 32 U.S.C. §101(12).

operations. In concluding that all active duty military support was legal, the Office of Special Counsel analyzed the support provided during three time periods: (1) preparation for the ATF operation of February 28, 1993, (2) the 51-day standoff, and (3) the activities of April 19, 1993.

1. Pre-February 28, 1993. Members from a detachment of the Rapid Support Unit ("RSU"), Operational Detachment "Alpha" 381 ("ODA 381"), which was comprised of nine U.S. Army Special Forces soldiers, provided assistance to ATF during its training at Ft. Hood, Texas, during February 1993. Specifically, ODA 381 reserved a facility at Ft. Hood that represented the complex, constructed a portable door entry and a reusable window for the facility, outlined part of the Davidian complex with engineering tape using photographs, facilitated the use of the ranges at Ft. Hood, and served as human "silhouettes" of Davidians during ATF room-clearing exercises. This support is "indirect" military assistance that is within the bounds of applicable law and regulations.

In addition, the Office of Special Counsel has investigated the allegation that members of ODA 381 were present during the ATF's attempt to execute warrants at the Davidian complex. The Office of Special Counsel has concluded that no member of ODA 381 was present during the ATF's raid of the Branch Davidian complex. The evidence, including witness statements, a travel voucher, and a hotel receipt, indicates that four members of ODA 381 were late returning to McGregor Range, New Mexico, due to a flat tire and a severe thunderstorm and not because they had disobeyed orders and become participants in the ATF raid.

2. Support During the Standoff. Most of the active duty military support provided to the FBI during the 51-day standoff consisted of repair and maintenance of the equipment loaned to the FBI. This type of operations support is clearly legal. Generally, FBI personnel brought equipment to

rear positions around the complex for repair and maintenance, or in the case of the loaned military helicopters, the FBI brought the helicopters to Ft. Hood. However, on at least two occasions military personnel deviated from this standard procedure. On one occasion, a tank driven by an FBI agent broke down within sight of the Davidian complex, and some of the tank's maintenance crew drove in a Bradley vehicle to its location to correct the problem. On the other occasion, a member of the Army Special Forces went to a forward position to help replace a battery in surveillance equipment the FBI had placed on a water tower on the east side of the complex. These deviations from the standard procedure did not constitute a "direct role" in law enforcement operations and the actions were, therefore, within the bounds of the law.

Throughout the standoff and on April 19, 1993, members of the Army Special Forces were at Waco as observers and technicians. During the standoff there were a total of 10 Army Special Forces personnel– seven equipment technicians and three observers– present at Waco. Typically, there were three or four present at any one time, one or two of whom were observers. The main purpose of the observers was to allow the Army Special Forces to learn how the FBI conducted a barricaded hostage operation using Special Forces equipment. Despite allegations to the contrary, the Office of Special Counsel has concluded that these Army Special Forces personnel did not penetrate the Davidian complex, did not offer to kidnap Koresh, did not place a shaped charge in the complex, did not wear clothing immune to infrared or thermal imaging detection, did not fire any weapons into the complex (and were not even armed), did not run their own separate Tactical Operations Center ("TOC"), and did not engage in any other action that violated the *Posse Comitatus* Act or any other

criminal or civil statute. The Army Special Forces observation and equipment maintenance activities were well within the bounds of the law.

3. April 19 Support. The only active involvement of the military in the FBI operations on April 19, 1993, was to provide medical support to injured Davidians and government personnel. Several former Army lawyers expressed to the Office of Special Counsel some reservation about the propriety of the medical support provided by the active duty armed forces on April 19, because, by treating Davidians who may have been involved in the fire, military doctors may have become involved in crime scene activity and the chain of custody of evidence. Indeed, such reasoning may have been behind the decision to preclude Army Special Forces medics from being present during the ATF operation on February 28. Nevertheless, the Office of Special Counsel concludes that the humanitarian provision of medical support did not violate any law. To the contrary, such support is justifiable within the relevant law, military regulations and policy.

(b) Equipment Support. From the evening of February 28 until after the fire on April 19, law enforcement agencies solicited and received large amounts of military equipment from the armed forces, including the United States Army Special Operations Command and the United States Air Force. The equipment included, among other things, two tanks, a transport aircraft, helicopters, ammunition, surveillance "robots," classified television jamming equipment, classified thermal imagers, classified ground sensing systems, classified remote observation cameras, mine detectors, search lights, gas masks, night vision goggles, concertina wire, tents, cots, generators, and medical supplies. In the case of the two tanks, among other equipment, the military commanders required that the offensive capability of the equipment be disabled before providing it to the law enforcement agency. While the

level of support was extensive, there is no legal restriction on the amount of equipment the active duty military may supply civilian law enforcement agencies, provided that the level of support does not adversely affect national security or military preparedness. Since providing equipment to the FBI at Waco did not adversely affect national security or military preparedness, it was proper under the law.[36]

(c) Training of Law Enforcement Personnel. The active duty military provided training to law enforcement agencies both prior to and during the standoff stages of the Waco incident. Most of the training occurred in three discrete areas: (1) training of ATF personnel by a detachment of the RSU, ODA 381, prior to February 28, 1993, (2) training of FBI personnel in the use of unclassified equipment such as tanks and other vehicles during the 51-day standoff, and (3) training of FBI personnel by Army Special Forces personnel in the use of classified surveillance equipment during the 51-day standoff.

The relevant statutes[37] and Department of Defense directive[38] permit the active duty armed forces to train law enforcement personnel, but the directive precludes "large scale" or "elaborate" training.[39] In February 1993, ATF requested extensive training from the active duty military in several areas, including close quarters battle training. Due to the law, military regulations and policy, the active duty armed forces scaled back the training requested by ATF. ODA 381 refused to provide

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[36]10 U.S.C. § 372(a).

[37]10 U.S.C. § 373(1); P.L. 101-510, div. A, title X, § 1004(b)(5).

[38]DoD Directive 5525.5, paragraph E4.1.4.

[39]The Office of Special Counsel found no established standard for what qualifies as "large scale" or "elaborate" training.

the close quarters battle training[40] requested by ATF because such training is highly complex and was beyond the capabilities of the RSU at that time. The armed forces properly limited the areas of training to range safety, communications, and medical evacuation. With respect to the training of FBI agents in the use of military vehicles and classified surveillance equipment during the 51-day standoff, such training is explicitly permitted under the relevant laws and regulations and was, therefore, proper.

(d) Expert Advice. The active duty armed forces of the United States provided expert advice to other government entities involved with the events at Waco, and all such advice was in accordance with law. Government entities requested advice from members of the active duty military on four occasions. In December 1992 and January 1993, ATF sought and received advice from the Department of Defense liaison to ATF regarding what military support was available to assist ATF's operation. From February 3 to 27, 1993, ATF requested through Joint Task Force Six ("JTF-6") (a military organization responsible for coordinating counter-drug activity) that a detachment from the RSU provide advice concerning the planning and execution of the raid on the Davidian complex. From February 28 to March 1, the Governor of Texas requested and received advice from a general at Ft. Hood on what federal agencies to contact and how to respond to requests for Texas National Guard support. Finally, on April 13 and 14, the FBI and the Department of Justice requested and received advice from present and former members of the Army Special Forces on the effects of the tear gas that the FBI planned to insert into the complex.

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[40]Of the six detachments within the RSU, ODA 381 was specifically chosen to work with the ATF because none of its members were trained in close quarters battle.

The relevant statute[41] and Department of Defense directive provide that the active duty military may provide "expert" advice to law enforcement agencies, but the directive precludes "regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations."[42] The relevant active duty military authorities were well aware of this legal standard. With respect to ODA 381's involvement with ATF prior to February 28, the appropriate military authorities prohibited ODA 381 from providing some of the advice requested by ATF including evaluating ATF's plan of operations. The military legal authorities determined that critiquing ATF's operations plan could constitute direct participation in law enforcement activity. Specifically, the commander of JTF-6 ordered ODA 381 "not [to] become directly involved in BATF operational planning, nor assume responsibility for the BATF plan." The commander did authorize ODA 381 to assist ATF in setting up its practice area and critiquing the safety aspects of ATF's rehearsal. This activity was legal.

The advice given to the Governor of Texas on February 28, 1993, consisted of discussing ATF's request for the loan of Bradley vehicles and informing the Governor of the capabilities of the FBI's HRT. The general gave very limited advice in an area of his expertise, and this advice was, therefore, permissible under the law.

Finally, the present and former members of the Army Special Forces whom the FBI flew to Washington D.C. on April 14, 1993, to advise Attorney General Reno on the proposed tear gassing plan, explicitly told FBI and Department of Justice officials that they could not "grade your

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[41] 10 U.S.C. § 373 (2).

[42] See DoD Directive 5525.5, paragraph E4.1.5.

paper," meaning that they could not endorse or critique the gassing plan. Rather, they discussed the effects of CS gas on people, whether the delivery of tear gas could start a fire, whether the HRT personnel were fatigued or in need of retraining, and they described how the military would conduct the operation. They emphasized the differences between military and civilian law enforcement operations. This advice was within the areas of their expertise and did not constitute direct participation in law enforcement activity.

(e) National Guard Support. The National Guard, in its state status,[43] also provided extensive support to ATF and the FBI at Waco. Prior to the February 28 operation, the Texas National Guard flew five reconnaissance flights over the Davidian complex. In addition, the Alabama National Guard made one surveillance flight in support of the Texas National Guard's counter-drug program. ATF sought and received the support of three Texas National Guard helicopters, flown by Guard personnel, to act as a diversion during the February 28 operation. These helicopters were hit by Davidian gunfire early in the ATF operation. Throughout March and April, Texas National Guard personnel were present at Waco and served primarily in maintenance, liaison, and support positions. On April 19, members of the Texas National Guard were present at Waco in their capacity as maintenance and support technicians, but none became directly involved in the law enforcement operation. Finally, the Texas National Guard provided substantial military equipment to the FBI beginning on the evening of February 28. Specifically, the Guard provided, among other equipment, 10

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[43]The National Guard provided personnel support under the counter-drug provisions of 32 U.S.C. §112. Most of the equipment loaned by the Texas National Guard was loaned in accordance with the requirements of National Guard Regulation ("NGR") 500-1, Military Support to Civil Authorities.

Bradley vehicles, five Combat Engineering Vehicles ("CEV's"), one M88 tank retrieval vehicle, 12 M1009 wheeled vehicles, two heavy trucks, and various military supplies.

None of this support violated the *Posse Comitatus* Act because that Act does not apply to the National Guard in its state status. The Office of Special Counsel also considered, however, whether this support violated any other laws or the applicable National Guard regulations ("NGR's").[44] The Office of Special Counsel has concluded that the Texas National Guard's decision to accede to ATF's request by flying three National Guard helicopters near the complex on February 28, 1993, may have resulted in an inadvertent violation of guidance in NGR 500-2 which states that "pilots in command will not fly into or land in areas where the aircraft is likely to be fired upon"[45] and commanders "will also ensure that Guard members are not knowingly sent or directed to enter into a hostile environment where there is a probability of encountering small arms fire or life threatening situations."[46] Although the pilots indicated that they did not expect to be fired upon, the pilots knew that the Davidians were a dangerous group, and they did in fact take heavy fire from the Davidians during the ATF operations. Except for this possible inadvertent violation of guidance in NGR 500-2, the Office of Special Counsel has concluded the Guard's support was entirely in accordance with law and regulation.

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[44]The National Guard relied upon both NGR 500-1 and NGR 500-2, National Guard Counterdrug Support to Law Enforcement Agencies, Military Support to Civil Authorities to provide the support it did to the law enforcement agencies. Moreover, two versions of NGR 500-2 were used with the latter taking effect March 1, 1993.

[45]See NGR 500-2 dated October 1, 1992 at paragraph B-4 in Appendix B.

[46]See NGR 500-2 dated October 1, 1992 at paragraph B-5 in Appendix B.

The Office of Special Counsel has concluded that the allegation that National Guard helicopter crews fired at the Davidians on February 28 is without merit. Interviews with each of the crew members indicate that the Davidians fired at the helicopters but that the helicopter crews did not return fire. Instead, the crews immediately terminated the mission and landed their aircraft.

(f) Procedural and Administrative Issues. The Army conditions the loan of equipment on the execution of a loan agreement prior to delivery of the equipment. With respect to the equipment provided by the Army at Ft. Hood to the FBI after the February 28 ATF operation, the Army did not execute the lease agreement until June 30, 1993. The Office of Special Counsel considers this delay to be a procedural matter requiring no further action or investigation.

In addition, there has been extensive prior investigation into the issue of whether ATF fabricated information concerning drug use and production by the Davidians in order to obtain military support of the counter-drug resources of the active duty armed forces and the National Guard in preparation for the original raid on the complex, with sharply conflicting conclusions.[47] The issue is relevant to the charter of the Office of Special Counsel if the lack of a drug nexus would have precluded otherwise permissible activity of the armed forces of the United States.[48] It is important to

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[47]There is no legal standard for how strong the drug nexus needs to be in order to obtain military support. Clearly there was some investigation by ATF into possible drug activity at the complex, and ATF sought some assistance from the United States Drug Enforcement Administration ("DEA"). Moreover, there is no requirement that the military independently investigate the accuracy of the drug nexus alleged by a law enforcement agency soliciting military support.

[48]The issue of a drug nexus also goes to the question of whether the active duty military and National Guard had to be reimbursed for providing support to law enforcement agencies. If there is a drug nexus, then support provided by the armed forces premised on that drug nexus does not have to be reimbursed. See the National Defense Authorization Act of 1991, P.L. 101-510, div. A. Title 10 §

note that the vast majority of military support provided at Waco was not premised on any alleged drug nexus. Only the limited training provided to the ATF by ODA 381 before February 28 and some of the National Guard support were based on the drug allegations. None of the support provided by the active duty military to the FBI from February 28 through April 19, 1993 was in any way dependent on drug allegations. Thus, the drug nexus is a very minor issue with respect to this investigation.

Although the Office of Special Counsel did not extensively investigate the basis for ATF's assertion that there was a drug nexus, there is some evidence prior to February 28, 1993, connecting "drug activity" with the complex which could form the basis of a drug nexus (although ultimately federal agents found no evidence of illegal drugs at the complex).[49] Even if there had been no such nexus, the Office of Special Counsel has concluded that law enforcement agencies could have obtained the same level of support from the armed forces. While ATF would not have been permitted to make use of the counter-drug administrative resources of JTF-6 had there not been a drug nexus, the active duty military could have provided virtually the same support through other means even without a drug nexus. Similarly, the National Guard could have supported law enforcement in the manner it did

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1004, November 5, 1990, 104 Stat. 1485 and 32 U.S.C. §112. In the case of Waco, the vast majority of costs were reimbursed, and the issue of reimbursement was accurately addressed in the Report of the General Accounting Office of August 1999. Therefore, the Office of Special Counsel did not re-investigate this matter.

[49]The apparent drug nexus included four prior drug arrests and one drug conviction of Davidians, a "hot spot" detected in the complex during the Guard's surveillance flights which purportedly was an indicator of an active methamphetamine lab, and the alleged presence of a methamphetamine lab at the complex in the late 1980's. However, others have noted that there was no evidence of active use of drugs at the complex in 1993 and that Koresh had allegedly removed the methamphetamine lab when he took control of the Davidian group.

without a drug nexus, although obtaining such support may have been somewhat difficult under the relevant law and regulations.[50] Regardless of the level of drug nexus present, therefore, the Office of Special Counsel has concluded that the active duty military and National Guard lawfully provided their support.

In sum, the armed forces conducted themselves properly and commendably at Waco. The Office of Special Counsel will provide additional documentary and legal support for its analysis of the military issue in its Final Report.

5. Did any employee of the United States make or allow others to make false or misleading statements, or withhold evidence or information from any individual or entity entitled to receive it, or destroy, alter, or suppress evidence or information relative to the events occurring at the Branch Davidian complex on April 19, 1993?

Attorney General Reno gave the Special Counsel a broad mandate to investigate whether employees of the United States covered up material information concerning the government's actions at Waco on April 19, 1993. Public concerns about a potential coverup stemmed principally from several revelations in August and September of 1999: (1) that the FBI had fired pyrotechnic tear gas rounds on April 19, 1993, contrary to the repeated public denials of the FBI and Department of Justice for over six years; (2) that a previously undisclosed FLIR video recorded during the early

[50]If there were no drug nexus, all of the National Guard's support would have been provided under NGR 500-1. Obtaining the same support may have been difficult (but not illegal) because some of the support such as surveillance flights is not directly addressed in NGR 500-1, as it is in NGR 500-2.

morning of April 19, 1993, contained confirmation that the FBI fired such pyrotechnic tear gas rounds; and (3) that the 49th page of a key FBI lab report, which indicated that a shell from one of the pyrotechnic tear gas rounds was found near the Branch Davidian complex after April 19, 1993, was omitted from the document production made to Congress prior to the 1995 hearings.[51] The Office of Special Counsel, therefore, focused its coverup investigation on determining whether employees of the FBI or Department of Justice deliberately concealed the FBI's use of pyrotechnic tear gas rounds from Congress, the courts, counsel for the Davidians, and the American public. While the Special Counsel's investigation of this question is not yet complete, the Office has made substantial progress toward resolving this question. To the extent it is appropriate to reveal publicly, the status of the coverup investigation into the use of pyrotechnic tear gas rounds is discussed below.

Consistent with its mandate, the Office of Special Counsel also pursued numerous other coverup allegations and leads ranging from inconsistencies among witnesses' accounts, to claims of broad government-wide conspiracies to cover up activities that occurred at Waco other than the firing of the pyrotechnic tear gas rounds. None of these allegations resulted in any credible evidence of misconduct by any government employee. To the extent that any of these issues merit public discussion, they will be covered in the Special Counsel's Final Report. Three of these issues, however, have generated significant public concern, and the Special Counsel therefore feels it is appropriate to put these concerns to rest in this Interim Report. These issues are: (1) whether the FBI deceived

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[51]There was also substantial public concern over the revelation that military Special Forces personnel had been present at Waco and were alleged to have participated in the operation. The Office of Special Counsel has definitively laid to rest the allegations concerning the activities of the military Special Forces, as previously discussed in Section 4 above.

Attorney General Reno about the conditions in the complex and the status of negotiations prior to her approval of the tear gas plan; (2) whether any FBI employee intentionally removed audio from the FLIR tape recorded by the FBI Nightstalker aircraft from 10:42 a.m. until 12:26 p.m. on April 19; and (3) whether the FBI commanders at Waco lied to Congress in 1995 and to the Office of Special Counsel when they stated that they ordered a CEV to penetrate the complex on April 19 in order to create escape routes for the Davidians and deliver tear gas. As described below, the Special Counsel has concluded that: (1) the FBI did not deceive Attorney General Reno prior to her approval of the tear gas plan; (2) the FBI did not remove the sound or otherwise alter the FLIR tape covering the period 10:42 a.m. to 12:26 p.m.; and (3) the FBI commanders were truthful in their testimony about the purpose for breaching the complex.

(a) Did government officials intentionally conceal the FBI's use of pyrotechnic tear gas rounds from Congress, the courts, counsel for the Davidians, and others from April 1993 until August 1999? As detailed earlier, the FBI fired three pyrotechnic tear gas rounds at the concrete construction pit outside the main structure of the complex shortly after 8:00 a.m. on April 19, 1993. The firing of these rounds neither started nor contributed to the spread of the fire that consumed the complex four hours later. However, until August of 1999, FBI and Department of Justice officials repeatedly denied that the FBI had used *any* such device during the tear gassing operation. These statements were false, and the failure to acknowledge the use of pyrotechnic tear gas rounds for more than six years has greatly undermined public confidence in government.

The Special Counsel has investigated whether these false statements resulted from an intentional coverup, the negligent processing of evidence, or a series of unfortunate miscommunications and lack of communication among Department of Justice and FBI officials. While the Special Counsel has made substantial progress toward resolving this question, the investigation into this matter is ongoing.

However, the Special Counsel feels that it is appropriate at this time to (i) define the issue with specificity, (ii) note the misleading statements and missing evidence that are the subject of the investigation; and (iii) state the status of the "coverup" investigation.

(i) Terminology Issues. Whether or not there was a coverup is in many respects dependent upon nuances in terminology. The first issue relates to the difference between "pyrotechnic" and "non-pyrotechnic" tear gas rounds. In March and early April of 1993, as the FBI developed its tear gassing plan, several people– from the FBI, the Department of Justice, and the military– raised the concern that the gassing operation could cause a fire. Throughout consideration of the plan, the FBI gave its assurances to anyone who asked that the tear gas would be delivered through non-pyrotechnic means, meaning that the tear gas would not be spread with a charge that burns. However, the plan approved by Attorney General Reno did not use the words "pyrotechnic" or "non-pyrotechnic," stating only that the FBI was to deliver tear gas to the complex through booms on CEV's or, if the Davidians fired upon the FBI, through "ferret rounds" fired from M-79 grenade launchers. Canisters attached to booms spray CS without any sort of pyrotechnic charge to effectuate the delivery of the gas. A Ferret projectile, a plastic bulb with fins, breaks open on impact and disperses the CS in a liquid form without using a pyrotechnic charge. While the plan authorized the use of two forms of non-pyrotechnic gas, it

did not expressly preclude the use of pyrotechnic means of delivery. However, there is no dispute that Attorney General Reno expressly prohibited the use of pyrotechnics during her discussions of the plan with the FBI.

Further complicating the issue is that the word "pyrotechnic" is often, but mistakenly, used synonymously with the word "incendiary." The purpose of an incendiary device is to cause a fire. Technically, therefore, a pyrotechnic tear gas round is not "incendiary." Pyrotechnic tear gas rounds can cause a fire under certain circumstances, but they are not designed to do so and are, therefore, non-incendiary. Statements that the FBI did not fire "incendiary" devices at Waco on April 19 are, therefore, technically true, but could be misleading.

Further still, HRT commander Rogers, who authorized the use of the pyrotechnic rounds, asserted that the prohibition against pyrotechnics applied only to the introduction of gas at the living quarters of the Davidians, and did not apply to the concrete construction pit 75 feet from the living area of the complex. Attorney General Reno believes her exact words prohibited pyrotechnics "at the compound," which in her mind included the concrete construction pit. However, she has fully acknowledged that there was no discussion of what the "compound" was, and that others might not have understood the concrete construction pit to be part of the "compound." Attorney General Reno had the impression that the FBI would not use pyrotechnic devices during any phase of the operation, but Rogers did not share that belief, so there was no meeting of the minds.

This situation creates semantic difficulties in determining whether the FBI or Department of Justice covered up the FBI's use of pyrotechnic devices. Some of the statements that led the public to believe that the FBI had not used any pyrotechnic devices on April 19 suggest only that no

pyrotechnic devices were fired at the "compound" and arguably do not encompass the concrete construction pit. Another misleading statement, contained in a Department of Justice report on Waco, states that the FBI used only "non-incendiary" devices at Waco, which is, again, technically true because pyrotechnic tear gas rounds are not incendiary, although some government personnel used the terms "pyrotechnic" and "incendiary" interchangeably.

The issue is even further complicated by the various alternative names given to pyrotechnic tear gas rounds. In addition to the official designation of XM651E1 and abbreviated designation of M651, pyrotechnic tear gas rounds have been commonly referred to as "military rounds." At least one FBI agent allegedly referred to them as "cupcake rounds." Some government employees have used the term "bubblehead" during the past seven years to describe the appearance of pyrotechnic tear gas projectiles. Much of the documentary and testimonial evidence from 1993 and 1994 confirming that the FBI fired three pyrotechnic rounds at Waco on April 19 makes no mention of the word "pyrotechnic," but rather refers to M651 casings, military rounds, cupcake rounds, or bubbleheads. Some individuals with access to this information, who nonetheless failed to inform Congress, the public, or the courts that the FBI used the pyrotechnic gas rounds, have told the Office of Special Counsel that they did not understand that military tear gas rounds, bubbleheads, or cupcake rounds were pyrotechnic.

(ii) The Misleading Statements and Missing Evidence. The following trail of public statements led the American people to believe that the FBI had not used pyrotechnic tear gas rounds on April 19, 1993. Immediately following the fire, FBI Special Agent-in-Charge and spokesperson Robert Ricks stated at a press conference that the FBI had not used any pyrotechnic devices during the entire tear

gassing operation. In a prepared statement, Ricks stated, "the gas used was non-pyrotechnic; CS gas which does not cause a spark or flame. Also the delivery system utilized is non-pyrotechnic." In this same statement, Ricks later stated, "there was no gas being inserted into the building at the time of the fire. No pyrotechnics were used at any time." A few days later, Attorney General Reno told Congress that in discussions prior to her approval of the plan she "asked for and received assurances that the gas and its means of use were not pyrotechnic." Director Sessions told the same congressional committee that a critical factor in the FBI's choice of CS gas was that it "can be used without pyrotechnics." The "Report to the Deputy Attorney General on the Events at Waco, Texas February 28 to April 19, 1993" (the "Scruggs Report") issued by the Department of Justice on October 8, 1993, stated that "a nationally recognized team of arson experts has also concluded that … the gas delivery systems that the FBI used were completely nonincendiary."

During the preparation for the criminal prosecution of the Davidians in 1994, although HRT witnesses had told prosecutors that the FBI had fired "military rounds," "cupcake rounds" and "bubbleheads," (and the prosecutors' and paralegal's notes include the term "incendiary" to describe the rounds), prosecutors formally advised the defense counsel that there was "no evidence government agents fired gunshots on April 19, 1993 *other than ferret tear gas rounds*." (Emphasis supplied.) Under the case of *Brady v. Maryland*, prosecutors are required to provide the defense with exculpatory evidence, and, even though the question of who started the fire was an issue in the case, the prosecutors failed to disclose in their *Brady* submission to the defense the FBI's use of the pyrotechnic tear gas rounds.

During the joint hearings in 1995 by the House Committee on Government Reform and Oversight and the Committee on the Judiciary, the Committees issued a request for documents to the Department of Justice, specifically asking for "a listing of all pyrotechnic and incendiary devices" used at the Davidian complex. The Department of Justice provided no such list in its response to Congress. Rather, Department of Justice employee Richard Scruggs has acknowledged that during several informal briefings he told members of the Committees that the FBI used no pyrotechnic devices at Waco on April 19, 1993. Additionally, a member of the criminal trial prosecution team, Ray Jahn, submitted a written statement to the Committees stating that the FBI fired nothing on April 19 "other than the non-lethal ferret rounds which carried the CS gas." He has admitted that this statement is false but claims that he was merely "negligent" in not disclosing that rounds other than Ferret rounds had been used.

Several internal Department of Justice and FBI documents demonstrate how some of these incorrect statements to Congress originated. In preparation for its response to the congressional request for documents, Scruggs received a memo in June of 1995 from FBI headquarters staff specifically stating that "there were no incendiary or pyrotechnic devices used against the Branch Davidians on 4/19/93." The Department of Justice later assembled a briefing book for Attorney General Reno which included a section on the flammability of CS gas. It concluded "[p]yrotechnic rounds are not used by the FBI."

During the pre-trial phase of the civil lawsuit filed against the United States, counsel for the Davidians and their families filed the affidavit of an expert who received information from a Davidian attorney, Kirk Lyons, that a round referred to as a "bubblehead" was fired at the complex on April 19.

The expert noted that "military pyrotechnic munitions" may have been used by the FBI against the Davidians. Later, after more evidence of the use of such a round was advanced by the Davidians, the civil trial team filed a pleading incorrectly implying that the Davidians had fired a pyrotechnic round at the FBI.

Adding to the concerns raised by this series of misleading statements is that, to this day, no one can locate any of the three expended pyrotechnic tear gas projectiles, and no one has located two of the three shells. An FBI explosives expert has told the Office of Special Counsel that he saw two military tear gas projectiles on April 20, 1993, lying next to the concrete construction pit, and on April 30 a photographer photographed the third projectile which had been marked for evidence collection by a Texas Department of Public Safety highway patrolman. One of the Texas Rangers who was on the scene recalls collecting one expended shell, and discussing the shell with an FBI agent, who said he would have it examined, and later confirmed that it was a military tear gas shell. This shell casing is the only one in evidence. In addition, an FBI lab report detailing some of the evidence contains a reference only to this one M651 casing.

Equally disconcerting is the failure of the FBI to release, until September 1999, the early morning FLIR tape on which HRT commander Rogers is heard authorizing the firing of the military tear gas rounds. On the same tape, approximately 18 minutes later, the Charlie Team reports that the military rounds had bounced off the concrete construction pit. The FBI emphatically denied for years preceding its release that any such early morning FLIR tape existed, raising concerns that this FLIR tape remained undisclosed precisely because it contained independent confirmation that the FBI fired pyrotechnic tear gas rounds on April 19.

Finally, in September of 1999, the Department of Justice acknowledged that, in 1995, it produced to Congress an incomplete, 48-page version of the 49-page FBI evidentiary laboratory report. The missing 49th page of the report discloses that a 40 millimeter military tear gas shell was recovered at the Branch Davidian complex.

Considering the large number of misleading statements and omissions, as well as the missing physical evidence, it would appear that there was a coverup. However, there are countervailing considerations. First, all entities which received misleading information– Congress, the courts and counsel for the Davidians– concurrently received other information indicating that the FBI had in fact fired pyrotechnic rounds at Waco. For example, despite the misleading testimony cited above, Congress acknowledged that it received in 1995 several documents that referred to the use of "military rounds" by the FBI at Waco. Similarly, while the prosecutors did not make affirmative disclosure of the pyrotechnic rounds in their *Brady v. Maryland* submission to the Davidians, on December 15, 1993, counsel for the Davidians in the criminal trial received from Assistant United States Attorney LeRoy Jahn the FBI laboratory report that contains the reference to the military tear gas shell and the photograph of the projectile. Further still, some of the lawyers for the Davidians in the civil suit received the FBI lab report, the photograph, and notes from the preparation for the earlier criminal trial in which the Department of Justice trial team made reference to "military rounds" and "bubbleheads."

(iii) Status of the investigation into a possible coverup. The Office of Special Counsel has resolved several issues concerning its coverup investigation. With respect to other issues, the investigation is ongoing. Below is the status of each issue.

A. Statements of the Attorney General. The Office of Special Counsel has concluded that Attorney General Reno did not knowingly cover up the use of pyrotechnic tear gas rounds by the FBI. The evidence is overwhelming that, prior to the execution of the gassing plan, she sought and received assurances from the FBI that it would not use pyrotechnic tear gas rounds. The evidence is equally conclusive that the briefing materials and other information she received after the fact stated that the FBI had not used pyrotechnic tear gas rounds at Waco. Any misstatement that she made was inadvertent and occurred after diligent efforts on her part to learn the truth. The Office of Special Counsel has completed its investigation of Attorney General Reno, found her to be without direct fault for any false statements that she may have made, and will not pursue any action against her.

B. FBI Statements in 1993. The Office of Special Counsel has also concluded that FBI Director Sessions did not knowingly mislead Congress in 1993 regarding the FBI's use of pyrotechnics at Waco. Director Sessions' statement that CS gas was chosen because it could be used without pyrotechnics was true. He simply did not know that three pyrotechnic military tear gas rounds had also been used on the morning of April 19. Similarly, when Ricks gave his press briefing immediately after the fire, he did not know that any pyrotechnic tear gas rounds had been used. The FBI's plan clearly called only for the use of Ferret tear gas rounds which are non-pyrotechnic, and no one had told Ricks that the HRT had used pyrotechnic tear gas rounds that morning.

C. The Scruggs Report and Investigation. As stated earlier, in 1993, a team of Department of Justice lawyers and FBI investigators, led by Richard Scruggs, issued a report on the events at Waco. Although they did not investigate the issue of pyrotechnics, the Scruggs Report indicated that the tear gas used by the FBI at Waco was "non-incendiary." Members of the Scruggs

team went into the project with the assumption that the FBI had done nothing wrong. Former Deputy Attorney General Philip Heymann, who oversaw the entire project, agreed. Therefore, the Scruggs team did not even ask witnesses about the use of pyrotechnic rounds. During interviews of the HRT Charlie Team, the Scruggs investigators failed to ask about the different types of munitions fired on April 19. Even so, one witness told the investigators that he had heard radio transmissions about the use of a "military round" on April 19. The Scruggs team attributed no significance to this term, and did not pursue the matter. The Scruggs team was also aware of the video *Waco: The Big Lie*, produced by Linda Thompson, which contains news footage of "smoke" rising from the concrete construction pit. The film alleges that this "smoke" is evidence that the FBI started the fire. Even though the Scruggs Report discusses the cause of the fire, the Scruggs team never investigated the origin of this "smoke," which was actually tear gas emanating from a pyrotechnic military tear gas round. Lastly, Scruggs' FBI investigators had access to the FBI's photos, including the photo depicting a cloud of "smoke" rising from the area of the concrete construction pit and the photo of the military tear gas round in the field.

The failure of the Scruggs team to discover and report that the FBI used pyrotechnic tear gas rounds was the result of initiating the investigation with the assumption that the FBI had done nothing wrong, was inconsistent with the responsibility to conduct a thorough and complete investigation, and was clearly negligent.

D. The FBI Hostage Rescue Team. In November 1993, the criminal trial team prosecuting the Davidians interviewed members of the HRT at Quantico, Virginia. Those who knew of the use of the military tear gas rounds, including HRT commander Rogers, admitted openly to the criminal trial team that the FBI had fired the military tear gas rounds at the concrete construction pit on

April 19. In addition, HRT agent Robert Hickey acknowledged the use of the military tear gas rounds and their capacity to start a fire in a memorandum to an FBI lawyer in February 1996. HRT members candidly admitted to the Office of Special Counsel that they had used these rounds. There was clearly no attempt on their part to conceal the use of military tear gas rounds.

HRT commander Rogers did, however, sit silently behind Attorney General Reno when she testified to Congress in April 1993 that she had sought and received assurances that the gas and its means of delivery would be non-pyrotechnic. Rogers claims that he was not paying attention and did not even hear her when she made this statement, and Attorney General Reno notes that her statement was technically true because she sought and received the assurances *before* the operation. Similarly, Rogers attended the 1993 testimony of FBI Director Sessions, and did not correct misimpressions left by Sessions' statement that the FBI had chosen CS gas because it could be delivered without pyrotechnics. Rogers' failure to correct the misleading implications of the testimony of Attorney General Reno and Director Sessions was a significant omission that contributed to the public perception of a coverup and that permitted a false impression to persist for several years. Rogers attended the congressional hearings precisely to ensure that Congress was provided with accurate information. Instead, in the terms of the Attorney General's Order to the Special Counsel, Rogers "allow[ed] others

to make . . . misleading statements."[52] The Office of Special Counsel, however, will not pursue any further investigation of Rogers or any member of the HRT.

E. The 1995 Congressional Hearings. Attorneys from the Department of Justice who produced documents to the United States House of Representatives Committee on Government Reform and Oversight and the Committee on the Judiciary in advance of the 1995 hearings have come under public scrutiny for producing the FBI laboratory report containing the reference to the military tear gas round without the 49th page, which contains the relevant reference. In fact, however, while one copy of the report did not contain the 49th page, the Committees were provided with at least two copies of the lab report in 1995 which did contain the 49th page. The Office of Special Counsel easily located these complete copies of the lab report at the Committees' offices when it reviewed the Committees' copy of the 1995 Department of Justice document production. The Department of Justice document production to the Committees also included several other documents that referred to the use of the military tear gas rounds, including the criminal trial team's witness summary chart and interview notes. The Special Counsel has concluded that the missing page on one copy of the lab report provided to the Committees is attributable to an innocent photocopying error and the Office of Special Counsel will not pursue the matter further.

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[52]Nevertheless, the Office of Special Counsel has determined that Rogers' conduct did not constitute a prosecutable offense. The statements of Attorney General Reno and of Director Sessions were technically true, he did not have a *legal* obligation to ensure the accuracy of another person's testimony, and it is impossible to prove that Rogers actually heard and comprehended the Attorney General's or Director's statements. Even if there were sufficient proof to prosecute him, which clearly there is not, the statute of limitations expired in 1998.

The Office of Special Counsel has also investigated the origins of certain internal Department of Justice and FBI documents generated in connection with the 1995 hearings. As mentioned above, in preparation for those hearings, the Department of Justice prepared briefing materials on issues that the Department of Justice expected Congress to raise during the hearings, including the safety and flammability of the CS gas. Several of those documents incorrectly state that the means of delivery of the CS gas at Waco was not pyrotechnic. Also, in response to Congress' request for documents concerning pyrotechnic devices used on April 19, 1993, the FBI indicated to the Department of Justice that it used no such devices. The investigation of the Office of Special Counsel has focused on whether the misstatements in the documents were the product of any intentional wrongdoing. The Office of Special Counsel continues to investigate this matter and declines to comment further at this time.

F. Missing Physical Evidence. The Office of Special Counsel has investigated why the three military projectiles and two of the shells are not among the thousands of pounds of physical evidence stored at Waco. The Office of Special Counsel has developed information concerning this issue, but has not reached definitive conclusions and declines to comment further at this time, other than to state that the investigation continues.

G. Criminal Trial Team. There is no doubt that, in November 1993, FBI HRT members told several members of the criminal trial team that the HRT had fired military tear gas rounds at the concrete construction pit on April 19, 1993. Notes from the meetings and from trial preparation materials refer to "military rounds," a "bubblehead" and "cupcake rounds," and two separate sets of notes describe the rounds as "incendiary." The criminal trial team did not include information about the

pyrotechnic tear gas rounds in its *Brady* submission to the defendants, and instead told the defense lawyers the FBI only shot "nonlethal ferret rounds." This pleading was prepared by Assistant United States Attorney LeRoy Jahn and was signed by the leader of the trial team, Assistant United States Attorney Ray Jahn. Ray Jahn also submitted a written statement to Congress in 1995 where he again stated that the FBI had only fired "nonlethal ferret rounds." Ray Jahn admitted to the Office of Special Counsel that he had learned in November 1993 that a "penetrator round" had been fired at the concrete construction pit on April 19. He claims that he was only "negligent" in not disclosing this to the criminal defense attorneys and to Congress. The Office of Special Counsel is still investigating whether the criminal trial team intentionally concealed HRT's use of pyrotechnic tear gas rounds from counsel for the Davidians and from Congress.

H. Civil Trial Team. In February 1996, an HRT member told an FBI attorney, Jacqueline Brown, about the use of military rounds and their potential for causing fires. The Office of Special Counsel has devoted several months and considerable resources to determining why the responsible government officials did not disclose this information in the civil case or to the public until August of 1999. The short answer is the behavior of one FBI attorney.

In January 1996, Marie Hagen, the Department of Justice attorney responsible for the defense of the civil case, asked Jacqueline Brown, the FBI attorney assigned to the case, for help in responding to a declaration filed by an expert for the Branch Davidians and their families who alleged that the HRT had fired "at least one 'military round' in an effort to penetrate the construction pit." Brown faxed the declaration to the FBI chemical agent specialist. The declaration was also provided to HRT Special Agent Robert Hickey who discussed the particular areas of concern with Brown. On

February 15, 1996, Hickey drafted a memorandum to Brown which clearly stated that the HRT had fired two or three military tear gas rounds at the "underground shelter" early in the morning and explained that these rounds could not be used elsewhere in the complex "due to their potential for causing fire." Brown received a draft of the memorandum on February 16, discussed it with Hickey, and made notations regarding this key passage on her copy of the memorandum.

The Department of Justice did not specifically respond to the plaintiffs' expert's allegations regarding the military rounds in February 1996. In 1997, counsel for the Branch Davidians and their families filed a supplemental declaration by the same expert which reiterated the allegation that the government had fired pyrotechnic tear gas rounds on April 19, 1993. Again, the Department of Justice did not respond factually to the allegation. When the issue was again briefed in 1998, however, Hagen signed a pleading which stated in a footnote that:

> The degree to which plaintiff's expert testimony is based on speculation is demonstrated by Mr. Sherrow's conclusion that the 40 mm ordnance found within the compound "probably was fired by the U.S." because "it could be fired only from a military weapon and civilian possession of these weapons is severely restricted." This statement is extraordinary in that it ignores the virtual arsenal gathered by the Davidians, including two .50 caliber anti-tank guns.

While this footnote is not technically false, it is misleading in that it fails to acknowledge that the HRT did fire military tear gas rounds on April 19. Brown briefly reviewed this pleading before it was filed.

The key question is whether Brown told Hagen or anyone else about the information regarding military tear gas rounds contained in the Hickey memorandum. Although Brown insisted to the Office of Special Counsel that she gave the information regarding the use of military rounds to Hagen and to Brown's supervisor at the FBI, the evidence indicates that she did not.

First, the only evidence that Brown told Hagen about the Hickey memorandum is Brown's own statements. Brown's assertions are contradicted by the clear testimony of numerous witnesses and, more importantly, by her own later statements. The Office of Special Counsel interviewed Brown on four different occasions during which Brown gave several different accounts of her actions with respect to the Hickey memorandum. Even before the appointment of the Special Counsel, Brown asserted to several colleagues at the FBI that she was certain that she had faxed the Hickey memorandum to Hagen, an assertion that was belied by the absence of a fax cover sheet in her meticulously documented files. In a subsequent interview with the Office of Special Counsel, Brown denied having said that she remembered faxing the memo to Hagen. In another interview, Brown claimed that she had read the Hickey memorandum to Hagen word for word over the phone and that they had discussed the memorandum and the use of military tear gas rounds in detail again in 1997 after the Davidians filed the supplemental expert declaration. Hagen had no memory of any such conversations, and ultimately Brown, too, conceded that she had no specific memory of talking to Hagen about pyrotechnic military rounds before August 1999. Brown also claimed that she had discussed the Hickey memo with her immediate supervisor, Virginia Buckles. Buckles denied that Brown had told her about the Hickey memo, and, again, Brown ultimately told the Office of Special Counsel that she did not, in fact, recall speaking to Buckles about the Hickey memo or the FBI's use of military rounds. In short, Brown repeatedly made inconsistent, self-serving, misleading, and false statements to the Office of Special Counsel. Her assertion that she told Hagen or anyone else about the use of military tear gas rounds at Waco therefore lacks credibility.

Second, the documentary evidence also indicates that Brown did not give the information to Hagen. As stated above, neither Brown nor the Office of Special Counsel was able to locate a fax cover sheet indicating that she had faxed the Hickey memo to Hagen. Hagen's files contain no copy of the Hickey memo. In addition, Brown's "To Do" list in her calendar for February 19, 1996, contains the notation, "Sherrow Declaration Memo to M[arie] H[agen]." Unlike some diary entries, this "To Do" item is not checked off. Moreover, Brown placed a number on the Hickey memorandum which would result in its being placed in an FBI litigation file that would not be disclosed to the Department of Justice.

It is clear that Brown lied to the Office of Special Counsel during the course of this investigation. Her efforts to avoid blame in this matter have wrongly and unfairly cast suspicion on Hagen and on Brown's own superiors at the FBI. Her misleading statements have wasted countless hours and investigative resources. What the Office of Special Counsel has found is one FBI attorney's attempt to cover up her own misconduct. While this is reprehensible, it is not the principal focus of this investigation. Barring additional evidence, the Office of Special Counsel declines to pursue a criminal prosecution,[53] but will forward the matter to the appropriate State Bar Association and to the FBI Office of Professional Responsibility for appropriate action.

I. Undisclosed Morning FLIR. Until September 1999, the government repeatedly denied the existence of the early morning FLIR tape which contains the audio of HRT commander

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[53]As mitigating facts, the Office of Special Counsel notes that Brown did not destroy copies of the memorandum, and instead kept at least three copies in FBI files. Nor did she ask Hickey to change his statements about the use of military rounds. Indeed, Brown's diary entry could indicate that she did intend to give the information to Hagen, but simply failed to do so.

Rogers authorizing the firing of the military tear gas rounds and the Charlie Team reporting that the military tear gas rounds bounced off the concrete construction pit. In responding to numerous Freedom of Information Act requests after 1993, the government denied that any FLIR tapes existed from April 19, 1993, prior to 10:42 a.m. However, in early September 1999, after the press ran stories about the use of the pyrotechnic tear gas rounds, government officials located early morning FLIR tapes among materials in the custody of the HRT and the FBI's Aviation and Special Operations Unit. The Office of Special Counsel continues to investigate the issue of the early morning FLIR tapes and declines to comment further at this time.

(b) The FBI did not mislead Attorney General Reno in order to persuade her to approve the tear gas plan. The Office of Special Counsel investigated allegations that the FBI misled Attorney General Reno about the conditions in the complex and the status of negotiations in order to convince her to approve the tear gas plan. These allegations are entirely baseless. The Office of Special Counsel has interviewed all of the witnesses who attended meetings with Attorney General Reno during the days prior to her approval of the plan and has reviewed the documents that were provided to her and her staff. The FBI briefed Attorney General Reno fully and fairly on the conditions at Waco. The FBI provided her all of the information that she requested, and the FBI diligently followed up on the questions that she raised. Indeed, Attorney General Reno maintained during her interview with the Special Counsel that she was apprised of all material facts, and the evidence confirms that she was.

(c) The FBI did not alter the FLIR video. The FLIR tape recorded by the FBI Nightstalker aircraft from 10:42 a.m. to 12:16 p.m. on April 19, 1993, does not contain audio. Attorneys for the Branch Davidians and their families claimed that the FBI removed the audio in the weeks following the fire in order to hide radio communications among the FBI commanders. This allegation took on greater credibility with the discovery of undated handwritten notes that the Office of Special Counsel removed from the office of an FBI attorney. The notes read in part: "the originals had audio on them but when copies were made by FBI HQ, the audio portion was removed."

To investigate this allegation, the Office of Special Counsel had an accomplished audio and video alteration expert conduct a detailed examination of the original FLIR tape. The expert determined that the FLIR tape was recorded in a depth modulated form, meaning that the audio and video signals were intermixed during recording. In this mode of recording, it is not possible to delete the audio from the video tape without also deleting the original video. The expert concluded that, although the entire FLIR tape for the period 10:42 a.m. to 12:16 p.m. contains no audio (and video is off for five minutes and 41 seconds of the tape), no one altered the FLIR tape. Instead, the expert believes it is probable that the crew of the Nightstalker simply failed to activate the audio. This conclusion is buttressed by an audio transmission from the preceding flight of the Nightstalker which indicates that the operator turned off the audio recorder at the conclusion of that flight.

The Office of Special Counsel believes this expert analysis completely resolves the issue and concludes there was no alteration of the late morning FLIR. The Office of Special Counsel will provide an expert report of this issue in its Final Report.

(d) The FBI commanders did not mislead Congress about their reasons for ordering the CEV to breach the gymnasium area of the complex in order to facilitate the introduction of tear gas. The Office of Special Counsel investigated whether the FBI on-scene commander Jamar and HRT commander Rogers were truthful when they testified before Congress that they ordered CEV-3 to breach the gymnasium to clear a path to the base of the tower of the complex for tear gas insertion. Jamar also testified that he wanted to create escape routes for the Davidians. Members of Congress and others have charged that the destruction of the gymnasium was an effort to harm the Davidians or to dismantle the building prematurely.

Rogers and Jamar provided the Office of Special Counsel the same explanation they had provided to Congress. Their statements were fully supported by all of the other agents involved in this aspect of the April 19 operation. These agents confirmed that: (1) earlier in the day, Rogers and Jamar had expressed a desire to create escape routes for the Davidians; (2) Rogers instructed CEV-3 to breach the gymnasium in order to get close enough to the tower to permit the insertion of tear gas; and (3) Jamar and Rogers never indicated an intent to dismantle the complex or to harm the Davidians. Further support for the credibility of the agents' statements is that one of the two HRT agents in CEV-3 had told FBI investigators about Rogers' instructions to make a path to the base of the tower only 24 hours after the fire at Waco– long before the propriety of their activities at the gymnasium came into question.

In addition to the statements of the agents, one of the logs kept on April 19 has a specific entry at 10:57 a.m. which fully supports the statements that CEV-3 was attempting to create a path to the base of the tower for tear gas insertion. It states:

HRT–1 directs delivery to base of the tower– Black.

"HRT-1 " refers to HRT commander Rogers. "Black" refers to the back side of the complex, where the gymnasium was located.

The FLIR video which recorded almost the entire activity of CEV-3 at the gymnasium also provides very significant evidence. While the video clearly shows the collapse of the gymnasium, it also supports the agents' statements that they were attempting to create a path to the tower. CEV-3 made its first penetration of the gymnasium at 11:18 a.m. Between 11:18 a.m. and 11:27 a.m., CEV-3 made nine successive penetrations into the gymnasium. Each penetration was into the same opening and towards the tower. After the ninth penetration, when the gymnasium roof began to collapse, the driver of CEV-3 continued to attempt to penetrate the gymnasium, still aimed toward the tower.[54] If the intent had been to dismantle the gymnasium, there were both safer and quicker means to accomplish that result. In fact, HRT had a CEV with a blade specifically equipped to dismantle the structure if the HRT so desired.

The Office of Special Counsel is also aware of a document dated June 24, 1993, entitled "Recommendation for the Shield of Bravery for the Hostage Rescue Team," which states:

> At mid-morning, [the agents in CEV-3] were given the mission of slowly and methodically beginning the dismantling of the large facility to the rear of the compound commonly called the "gymnasium." Utilizing their CEV in a very deliberate and surgical manner, they began dismantling the gymnasium.

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[54]Eventually, CEV-3 did begin to penetrate the gymnasium in a direction not aimed at the tower. However, the evidence indicates this was done because of concern of a possible threat of a Davidian reported to be in the upper floor of the gymnasium.

The Recommendation was submitted by Jamar and Rogers, although the investigation has not yet determined whether either of them or someone else prepared the document. While the document contradicts the testimony of Jamar and Rogers that the penetration of the gymnasium was for the insertion of tear gas and the creation of escape routes, on March 3, 1994, Jamar resubmitted a revised Recommendation in which the above-quoted language was deleted.

The Office of Special Counsel is continuing to investigate who authored the June 24, 1993 version, but the Office is confident the quoted language is simply incorrect. The FLIR video does not show a "deliberate and surgical . . . dismantling of the gymnasium," and the agents in CEV-3 were fully credible in stating that they were not given the mission to dismantle the gymnasium.

Rather, the evidence to date indicates Jamar and Rogers wanted the Davidians to exit the complex peacefully and they testified truthfully as to their intent in ordering CEV-3 to breach the gymnasium.

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After interviewing 849 witnesses, reviewing two million pages of documents, examining thousands of pounds of physical evidence, studying thousands of photographs, listening to hundreds of hours of audiotapes, viewing hundreds of hours of videotapes, and conducting numerous expert analyses and tests, the Office of Special Counsel concludes with certainty that the government did not start the fire on April 19, that the government did not fire gunshots on April 19, and that the government did not misuse its armed forces during the Waco incident. Rather, the Davidians caused the tragic loss

of life on April 19. The Office of Special Counsel has further concluded that the government did use three pyrotechnic tear gas rounds on April 19. The use of these rounds did not start the fire, nor did it otherwise cause harm to the Davidians.

With respect to the government's handling of inquiries and litigation that followed April 19, 1993, the Office of Special Counsel has concluded that certain employees of the government concealed the FBI's use of pyrotechnic tear gas rounds at the concrete construction pit on April 19 from Congress, the courts, and the public. The Special Counsel continues to investigate whether such concealment was intentional and criminally actionable.

III. Investigative Methods

This Section of the Report describes the investigative methods employed by the Office of Special Counsel to ensure the reliability of the conclusions discussed above.

Prior to the appointment of the Special Counsel, the executive, legislative, and judicial branches of government had already conducted factual inquiries concerning the events at Waco. The Office of Special Counsel studied the 1993 "Report to the Deputy Attorney General on the Events at Waco, Texas February 28 to April 19, 1993" (the "Scruggs Report"); the 1993 "Fire Investigation Report;" the 1993 "Lessons of Waco: Proposed Changes in Law Enforcement" (the "Heymann Report"); the 1993 "Evaluation of the Handling of the Branch Davidian Stand-Off in Waco, Texas by the United States Department of Justice and the Federal Bureau of Investigation" (the "Dennis Report"); the 1993 "Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Howell also known as David Koresh" (the "Treasury Report"); the 1999 Report by the General Accounting Office to the Secretary of Defense, Attorney General and Secretary of the Treasury entitled "Military Assistance Provided at Branch Davidian Incident" (the "GAO Report"); transcripts of the congressional hearings of 1993 and 1995; the 1996 Report on the "Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians" issued by the United States House of Representatives, Committee on Government Reform and Oversight and Committee on the Judiciary (the "House Report"); transcripts of the criminal trial of the Davidians in 1994; and filings and testimony in the civil suit brought by the Davidians and their families against the United States. While the Office of Special Counsel did not rely upon the findings of these inquiries, it adopted a methodology that thoroughly tested the relevant conclusions that they reached.

(1) Staffing. The Office of Special Counsel has employed 74 people, including 16 attorneys, 38 investigators, and 21 support personnel. In hiring attorneys, the Special Counsel sought a balance of experience: prosecutorial, criminal defense, large case management, and writing experience. The supervisory attorneys included Deputy Special Counsel, Edward L. Dowd, Jr.[55] who resigned as the United States Attorney for the Eastern District of Missouri to serve as Senator Danforth's deputy.[56] The remaining attorneys included one criminal defense lawyer, three present and one former Assistant United States Attorneys, two former judge advocates of the United States Air Force, two civil attorneys and one former Department of Justice trial attorney.

The United States Postal Inspection Service ("USPIS") provided most of the investigators. The Office of Special Counsel did not hire agents from the FBI, ATF or any other agency implicated in the investigation. A core of 15 USPIS inspectors assisted in all aspects of investigative operations, and 20 inspectors performed document and evidence review and coding. The USPIS provided its inspectors without seeking reimbursement from the Department of Justice for their

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[55]Other supervisory attorneys included Chief of Staff Thomas A. Schweich, a civil litigator at Bryan Cave LLP and writer with experience in large case management; Director of Investigative Operations, James G. Martin, an Assistant United States Attorney specializing in public corruption cases; and Stuart A. Levey, chief of the Washington Office, who came from the criminal defense firm Miller, Cassidy, Larroca & Lewin LLP. Thomas E. Wack, a civil litigator at Bryan Cave LLP and member of the American College of Trial Lawyers, served as General Counsel. The Office also retained legal scholar Geoffrey Hazard as an ethics consultant.

[56]Concurrently, Mr. Dowd became a partner at the St. Louis office of the law firm Bryan Cave LLP.

salaries.[57] Most inspectors had at least 10 years of investigative experience, many at a supervisory level. The Office of Special Counsel also hired one retired USPIS Deputy Chief Inspector, a retired special agent of the Internal Revenue Service and the resident agent in charge of the U. S. Drug Enforcement Administration office in St. Louis.

Support personnel included secretaries, legal assistants, a receptionist, two administrative officers and three interns. The Office of Special Counsel also hired contractors to assist in matters relating to information technology.

Each employee who did not have an active government security clearance went through a background check conducted by the Office of Federal Investigations,[58] and certain employees designated by the Office of Special Counsel obtained security clearances at the top secret level and special Department of Defense briefings for access to secured, compartmentalized national defense information. Senator Danforth required each employee and expert to sign a statement in which the employee or expert promised complete impartiality and agreed not to communicate publicly on issues concerning the investigation.

(2) Offices. At the outset of the investigation, Senator Danforth determined that he would headquarter the investigation in St. Louis, Missouri, since the witnesses were dispersed across the country. Senator Danforth also believed that he could better conduct an impartial, unimpeded

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[57]The agents were under the supervision of the Director of Investigative Operations, and Assistant Inspector In Charge Robert Stewart and Inspector In Charge Rick Bowdren.

[58]Because the FBI was a subject of the investigation of the Office of Special Counsel, the Office did not permit the FBI to conduct the background checks.

investigation if it were headquartered outside of Washington. However, in the interests of economy and efficiency, Senator Danforth opened a smaller Washington office that interfaces directly with the various federal agencies involved in the investigation and handles matters concerning many witnesses who live in the Washington, D.C. area.

The Office of Special Counsel has also staffed a small office in Waco, Texas, so that investigators have more direct access to the voluminous evidence stored at or near the courthouse. The Waco office generally houses two or three investigators who focus on reviewing the physical evidence and obtaining information from the Texas Rangers.

(3) Document Acquisition and Control. In order to organize the large volume of documentary evidence, the Office of Special Counsel assigned one lawyer, 20 agents, and a paralegal to work on document acquisition, control, and review.

(i) *ACQUISITION*. The Office of Special Counsel established a highly structured system for the acquisition of documentary evidence. The Office has obtained over two million pages of documents, 27,400 photographs, 440 video tapes, 1900 audio tapes, 250 computer diskettes, and 13 computer hard drives. The Office requested documents from the Department of Justice, the FBI, the Central Intelligence Agency ("CIA"), the United States Attorney's Office for the Western District of Texas, ATF, the Department of Defense (including several thousands of pages of classified materials), the Smithsonian Institution, the White House, counsel representing the Davidians and their families in the civil litigation, and several additional sources.

The Office of Special Counsel asked the government entities to produce all documents and other materials related in any way to the Waco matter. The Office of Special Counsel also

reviewed the records compiled by the Texas Rangers, which the Rangers had delivered to the custody of the United States District Court for the Western District of Texas, Waco Division.[59] Initially, the federal agencies provided the Office of Special Counsel with the same documents that the agencies had provided to the Court in the civil litigation, but this production lacked some relevant documents, including privileged, law enforcement sensitive, post-September 1999, and computer-stored documents, among others. The Office of Special Counsel encountered substantial resistance from some federal agencies to the production of some of these records.

The Department of Justice, for example, resisted the production of notes and records of its attorneys that post-dated the appointment of Senator Danforth, even though it acknowledged that it had no right to withhold privileged communications from the Office of Special Counsel (because the Office is technically part of the Department of Justice). Furthermore, the Office of Special Counsel and Department of Justice had numerous disagreements over the production of computer files, hard drives, and e-mail. In addition, the Office of Special Counsel repeatedly received assurances from the Department of Justice that the Department of Justice had produced all hard copy documents, yet witnesses told the Office that certain categories of documents had not been turned over to the Office. Similarly, individual witnesses arrived at interviews with notes, videos and diaries that the Department of Justice had never asked them to provide to the Office of Special Counsel.

Ultimately the parties resolved evidence production issues to the satisfaction of the Office of Special Counsel. However, the Office expended an unnecessarily large amount of time and

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[59]On August 9, 1999, Judge Smith ordered that all federal agencies and the Texas Rangers deliver their Waco-related documents and evidence to the federal courthouse at Waco.

resources negotiating these issues in light of the Attorney General's initial offer of total openness and independence for Senator Danforth.[60] On several occasions, Deputy Attorney General Eric Holder had to intervene to secure the cooperation of certain Department of Justice officials.

Having received information that led the Office to believe that there may have been similar omissions in the FBI's production of documents, the Office of Special Counsel (with the consent and approval of FBI Director Louis Freeh) took the unprecedented step of sending eleven agents and three attorneys to search files within the FBI's Office of General Counsel, and obtained important records in the process.

Similarly, ATF initially resisted the production of records that ATF had promised its agents would be kept confidential. The parties agreed that the Office of Special Counsel would review those documents at ATF and copy only those relevant to the investigation. Ultimately the cooperation of ATF was commendable.

The Office of Special Counsel also obtained commendable cooperation in obtaining documents from the United States Attorney for the Eastern District of Texas, the Department of Defense, and the counsel for the Davidians and their families. As of the date of this report, the Office is satisfied that it has received all documents of relevance except for certain Department of Justice e-mails. The Department of Justice has indicated its intent to produce these e-mails promptly.[61]

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[60]Because she is a material witness, the Attorney General recused herself from interface with the Office of Special Counsel, so she bears no personal responsibility for the difficulty in obtaining records.

[61]Some individuals and agencies raised the issue of whether the Privacy Act would prohibit the public disclosure of the evidence obtained by the Office of Special Counsel. The Office of Special

(ii) *DOCUMENT CONTROL*. Investigators for the Office of Special Counsel put documents obtained from any source, except for classified Department of Defense documents[62] and some documents from the FBI Office of General Counsel, into a computerized database system established and run by Washington, D.C. based Litigation Systems Inc. ("LSI"). LSI, which has developed and utilized digital litigation support technology since 1984, had previously worked on numerous complex civil cases as well as several federal projects, including a major case for the Antitrust Division of the Department of Justice. Ultimately, LSI assisted the Office of Special Counsel in converting over two million pages of documents into an easily accessible electronic form. Cleared LSI personnel performed the initial document coding, entering such fields as author and date. The Office of Special Counsel utilized 20 experienced postal inspectors to review and comment upon each document received.[63] Each lawyer and investigator received mandatory training on how to search for documents, by using specific text, words, and fields within documents. This activity proved valuable in locating a significant number of key documents that previous investigators and parties had not uncovered and that would probably not have come to light were it not for the efforts of the United

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Counsel and the Department of Justice agreed that Department of Justice Privacy Act experts would determine how to comply with the Privacy Act. They determined that the public release of this Interim Report would not violate the Act.

[62]The Office of Special Counsel handled classified Department of Defense information in accordance with Department of Defense security and storage requirements. The findings of this report are in no way limited by the inability of the Office of Special Counsel to disclose certain classified aspects of the Department of Defense's activity at Waco. All such information is immaterial to the questions contained in the Attorney General's Order.

[63]This effort was led by Assistant Special Counsel John J. Sardar and Postal Inspector Frank L. Graham.

States Postal Inspection Service document review team and the sophisticated technology provided by LSI.

(4) Physical Evidence Review. The Office of Special Counsel conducted an exhaustive review of the physical evidence that the Texas Rangers gathered from the complex after the fire. The evidence is located in two places. First, the physical evidence that the Rangers believed might be used in legal proceedings is currently in 214 numbered boxes in the basement of the federal building in Waco. Investigators from the Office of Special Counsel examined and photographed all of this evidence. They then provided a log of the evidence to each Office of Special Counsel attorney and investigator for review.

Second, several thousand pounds of shell casings, fire debris, concrete, etc., which the Department of Justice criminal trial team did not believe would be used in legal proceedings, are in 12 large Conex containers stored two miles from the courthouse at Waco. Several investigators with the Office of Special Counsel, working with the Rangers, went through these containers and found additional physical evidence relevant to the investigation.

(5) Witness Interviews and Reports. As of July 17, 2000, the Office of Special Counsel had interviewed 849 witnesses, including present and former employees of the Department of Justice, the FBI, the Department of Defense, ATF, the CIA, the Texas Rangers, the Texas Department of Public Safety, the Alabama and Texas National Guards, the Smithsonian Institution, the Tarrant County Medical Examiners Office, Davidians, fire and FLIR experts, pathologists, experts on the religious practices and beliefs of the Davidians, and interested third parties. The Office conducted

follow-up interviews of 46 witnesses. In addition, the Office of Special Counsel reviewed statements made by these witnesses in interviews, depositions, testimony, and Congressional hearings.

During the first two weeks of the investigation, the Office of Special Counsel secured agreements with the Department of Justice, the Court, the congressional committees investigating the Waco matter, and counsel for the Davidians that any party interviewing any witness would afford the Office of Special Counsel 10 days prior notice so that the Office could interview the witness first.[64] The Office wanted to interview witnesses before they were prepared for testimony before Congress or in the civil litigation discovery process.

The Office of Special Counsel's Director of Investigative Operations then determined the order of the interviews. When an interview was scheduled, the responsible attorney or agent posted information about the interview on a central board at the office, so that the entire team could provide information to the interviewers that would assist in the interview process. Upon completion of the interview, the agent or lawyer assigned to each interview prepared a detailed memorandum of interview. The interviewers gave brief reports of interviews at staff meetings and distributed the memoranda of interviews to attorneys and agents. The document team then placed the completed memoranda of interviews on a searchable database.

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[64]Senator Arlen Specter, heading a subcommittee of the United States Senate Committee on the Judiciary, agreed in a letter only to hold off on interviews for thirty days after the beginning of the investigation, but in practice generally provided advance notice of any interview that his staff intended to conduct. The parties to the civil litigation did not actually execute a stipulation requiring 10 days notice until March 2000, but agreed to this process from the outset and adhered to it prior to the execution of the stipulation.

The Office of Special Counsel reviewed with several witnesses who requested them copies of their memoranda of interview, and allowed the witnesses to make suggestions or corrections. The Office of Special Counsel permitted other witnesses to go over the notes of the interview with the agent at the end of the interview to ensure that the notes accurately recounted the witness statements. None of the witnesses made any material changes to the notes or memoranda reviewed by them.

(6) Expert Analysis, Field Tests, and Reports. The Office of Special Counsel retained experts in the fields of arson, fire spread analysis, toxicology, chemical engineering, atmospheric gas dispersion, explosives, ballistics, tool mark examination, audio and video enhancement and authentication, forensic phonetics, forensic pathology, air traffic operations, FLIR systems, and FLIR imagery interpretation.[65] The Office of Special Counsel experts reviewed the prior work of other experts and performed independent analyses of physical, audio, video and photographic evidence. The work and findings of these independent experts have been critical to the Office of Special Counsel's investigation. The USPIS administered the retention and payment of experts to prevent the Department of Justice from obtaining insight into the activities of the experts. The USPIS also provided polygraph and forensic document examination (which included both handwriting and indented writing analysis) expertise, forensic photography, computer forensic assistance and video reformatting and reproduction assistance. The Final Report of the Special Counsel will contain the qualifications and detailed findings of the experts.

Experts provided opinions on the following issues:

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[65]These experts worked under the direct supervision of Bradley J. Swenson, Assistant Special Counsel–Experts and Consultants.

(i) *FIRE*. The Office of Special Counsel instructed its fire experts to determine: (A) whether CS or methylene chloride gas caused or contributed to the spread of the fire; (B) the effect of ventilation on the tear gas concentration levels inside the complex; (C) the points of origin and cause of the fire; (D) how fast and in what manner the fire spread; (E) whether having firefighting equipment on the scene would have saved additional lives; and (F) the cause of the explosion observed at 12:26 p.m. on April 19.

(ii) *TOXICOLOGY*. The Office of Special Counsel tasked its two toxicological experts to determine whether CS or methylene chloride gas killed, incapacitated or disoriented any Davidians to the point that they were unable to exit the complex.

(iii) *WEAPONS/BOMB*. The Office of Special Counsel ballistics and tool mark experts determined: (A) whether shell casings collected from FBI sniper positions indicated that the FBI fired shots on April 19, and (B) whether fuel cans collected from the debris contained manmade tool strike holes. Explosives experts from Northern Ireland and the United States also analyzed debris and other evidence to respond to allegations that a shaped charge exploded at the complex on April 19.

(iv) *PATHOLOGY*. A forensic pathologist with special expertise in sudden death due to gunshots, explosion, and fire reviewed the original autopsy files and independently determined the cause of death for each Davidian who died on April 19. For each Davidian who died of a gunshot wound, the pathologist determined the likely type of ammunition used (high versus low velocity) and, if possible, the distance from which the weapon was discharged.

(v) *FLIR*. As stated earlier, the Office of Special Counsel retained two organizations with FLIR expertise to analyze the 1993 FLIR data. Vector Data Systems (U.K.), Ltd. performed an

analysis of the 1993 "flashes" on the FLIR tape and worked jointly with the Office of Special Counsel and the United States District Court for the Western District of Texas to develop the protocol for and to execute the FLIR test at Ft. Hood.[66] The second expert utilized advanced enhancement techniques and computer algorithms and analysis to determine whether the flashes on the 1993 FLIR tape were associated with any human movement or government gunfire. In connection with the execution of the FLIR test, the Office of Special Counsel also retained an air operations expert who controlled the activity of the helicopter and fixed-wing aircraft during the test at Ft. Hood.

(vi) *AUDIO/VIDEO*. The Office of Special Counsel retained three experts to analyze audio and video tapes including the Title III tapes from April 16 to 19, 1993, and the FLIR tapes from April 19, 1993. These experts reviewed the relevant tapes for alteration, erasure, and authenticity. They also transcribed audio tapes.

(7) Civil Proceedings. At the time that Attorney General Reno appointed Senator Danforth and several times thereafter, senior representatives of Department of Justice recommended that the Office of Special Counsel seek a stay of the civil proceedings brought by the Davidians and their families against the government pending the outcome of the Office of Special Counsel investigation. The Office of Special Counsel rejected this recommendation because: (1) Senator Danforth did not want to delay or deprive the Davidians of their day in court; and (2) the legal precedent for such a stay was weak since the investigation was not initially criminal in nature. The Office of Special Counsel developed

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[66]The FLIR test would not have been possible without the direct assistance of Secretary of Defense William S. Cohen and his staff, and the assistance of the Right Honorable Geoffrey Hoon MP, Secretary of State for Defence of the United Kingdom.

early a constructive relationship with the Court that ultimately allowed for such activities as the court-supervised FLIR test and an effective system for the production, maintenance, and storage of evidence. The parties to the civil litigation agreed that the Office of Special Counsel could have *ex parte* communications with the Court.[67] Cooperation between the Court and the Office of Special Counsel has proven beneficial to the truth-seeking process.

(8) Interaction with Congress. The Office of Special Counsel has maintained communications with representatives of both the majority and the minority members of the congressional committees that have been conducting investigations of the Waco incident concurrently with the investigation by the Office of Special Counsel.[68] The Office of Special Counsel did not disclose specific investigative facts to the congressional committees, but it did coordinate the interviews of certain witnesses with the congressional committees. At the request of the Department of Defense, the Office of Special Counsel also allowed the disclosure to Congress of the results of the polygraph test of a former U. S. Army Special Forces soldier who was acting as an observer at Waco on April 19, 1993. In addition, the Office of Special Counsel permitted several congressional staff members to observe both

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[67]After the Office of Special Counsel proposed the joint FLIR test with the Court against the wishes of the Department of Justice, some Department of Justice officials made efforts to have the Department of Justice order the Office of Special Counsel to cease communicating with the Court. The Office of Special Counsel made it clear to the Department of Justice that it would not cease such communications. The Deputy Attorney General agreed with the Office of Special Counsel that the office could continue *ex parte* communications with the Court.

[68]These committees were the United States Senate Committee on the Judiciary chaired by Senator Orrin Hatch, Senator Patrick Leahy, Ranking Minority Member and its special subcommittee headed by Senator Arlen Specter; and the Committee on Government Oversight and Reform of the House of Representatives of the United States chaired by Representative Dan Burton, Representative Henry Waxman, Ranking Minority Member.

the FLIR test at Ft. Hood on March 19, 2000, and the review of evidence in the Conex containers at Waco in November of 1999. The Office of Special Counsel cooperated fully with an audit of its financial controls by the General Accounting Office, the auditing arm of Congress, in April 2000.

(9) Interaction with the Department of Justice and FBI. As Senator Danforth was the first person appointed under the new Department of Justice Special Counsel Regulations, 28 CFR § 600 *et seq.*, the Office of Special Counsel interacted frequently with the Department of Justice to resolve issues concerning the division of administrative responsibility between the Office of Special Counsel and the Department of Justice. The Office of Special Counsel and the Department of Justice also had frequent contact concerning the Department of Justice's compliance with investigative requests made by the Office of Special Counsel during the course of the investigation.

These discussions were often contentious. Employees of the Department of Justice took the position that the Department of Justice could maintain a certain degree of control over the conduct of the investigation, which the Office of Special Counsel considered improper since the Department of Justice was a subject of the investigation. For example, the Department of Justice: (1) attempted to deny the Office of Special Counsel access to internal documents postdating the appointment of Senator Danforth and resisted the production of important e-mail as being too burdensome; (2) claimed to control the power to waive the Department of Justice's attorney-client privilege; and (3) demanded that the Department of Justice be consulted before the Office of Special Counsel took any actions (such as proposing the FLIR test) that might affect the results of the civil litigation. The Office of Special Counsel did not allow these problems to affect the integrity of its investigation, and ultimately obtained all the information that it requested. However, the Office of Special Counsel strongly recommends that the

Department of Justice draft more specific guidelines outlining the relationship between a Special Counsel and the Department of Justice in situations where the Department of Justice is the subject of the investigation, and that the Department of Justice recognize the need for the investigative independence of the Office of Special Counsel in such situations.[69]

IV. Statement of Facts

The following Statement of Facts contains the essential background information needed to understand the conclusions of the Special Counsel's Interim Report on the five issues contained in Order 2256-99 of the Attorney General. It does not attempt to chronicle fully the Waco incident.

A. ATF Commences its Investigation of the Branch Davidians.

1. In May 1992, the McLennan County Texas Sheriff's Department provided information to the Bureau of Alcohol, Tobacco and Firearms ("ATF") that Vernon Howell, also known as David Koresh ("Koresh"), leader of the Branch Davidians religious group at Mt. Carmel (the "Davidians"), had received large shipments of firearms, inert grenades, and black powder at a small structure known as the Mag Bag, located approximately six miles from the main Davidian living quarters outside of Waco, Texas. Investigation by ATF revealed deliveries by United Parcel Service ("UPS") of suspicious firearms components and possible explosive precursor materials. Further investigation revealed that

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[69]The need for more specific guidelines is underscored by the fact that the Office of Special Counsel had numerous problems with the Department of Justice which often required the personal intervention of the Deputy Attorney General and the Director of the FBI to resolve.

upon arrival at the Mag Bag, the UPS driver would be met by a Davidian and escorted to the Mt. Carmel complex. At the complex, the Davidian would make payment, often in cash.

2. Working in consultation with the United States Attorney's Office for the Western District of Texas, Waco Division, ATF began a federal investigation of the Davidians. Over the next several months, ATF agents developed additional information which corroborated their suspicion that the Davidians had produced, and continued to manufacture, illegal weapons and explosives. ATF derived this information from interviews with former Davidians, discussions with a confidential informant, records of UPS shipments to the complex, and reports of experts who had studied the contents of shipments of explosive materials received by the Davidians.

3. In addition to the specific evidence of illegal gun manufacturing, ATF learned that Koresh and his followers harbored strong anti-government views, that he expected confrontation with the federal government, and that he and his followers viewed such confrontation as a means to religious salvation. More detailed information on these beliefs will be included in an Appendix to the Final Report. This information heightened ATF concerns that Koresh had violent intentions that posed a danger to the public.

4. Following a series of internal ATF meetings in December 1992, ATF began an undercover operation intended to develop additional evidence that the Davidians had violated federal firearms laws. ATF rented a house approximately 325 yards from the Davidian complex and, on January 11, 1993,

began surveillance operations. In addition, ATF agents posed as students and made contact with Davidians who worked in and around Waco. In particular, ATF undercover Special Agent Robert Rodriguez made direct contact with Koresh in late January 1993 and continued to visit the complex up to and including February 28, 1993. Koresh conveyed to Agent Rodriguez his disdain for federal gun control laws and ATF in particular. As a result of the information developed during the course of the investigation, ATF concluded that there existed probable cause to believe that the Davidians had violated and continued to violate federal firearms laws. At that point, ATF began preparations for a search of the complex and the arrest of Koresh.

B. ATF Seeks the Support of the Armed Forces of the United States and Claims a Drug Nexus to Its Investigation.

5. In late November or early December 1992, ATF determined that it might be able to supplement its understanding of the Davidian complex by conducting aerial reconnaissance. On December 4, 1992, a representative from the Department of Defense told ATF that it could obtain aerial reconnaissance from the armed forces, but that ATF would have to reimburse the armed forces for the costs of the support that the armed forces provided unless the investigation had a "drug nexus." At that time, ATF informed the Department of Defense representative that there was no drug connection with its investigation.

6. On December 11, 1992, a representative of ATF visited the office of the Texas National Guard counter-drug support program to solicit National Guard support. A National Guard

representative also told ATF that the counter-drug support program would only support ATF if ATF established a drug nexus to its investigation. Nevertheless, on December 14, 1992, ATF wrote a letter to the Texas National Guard counter-drug support program requesting "the use of aerial reconnaissance of the target site in the form of aerial photography," but did not mention the existence of a drug nexus.

7. In mid-December 1992, Special Agent David Aguilera, the ATF case agent for the investigation of the Davidians, began to solicit information from his sources about the possible use of illegal drugs at the complex. A former Davidian reported to ATF that there had been an illegal methamphetamine lab at the Davidian complex when Koresh took over the complex in 1988. ATF learned that some Davidians had histories of drug use, trafficking, and arrests, and that the Davidians had received shipments of chemicals that they could possibly use to manufacture methamphetamine. An ATF agent later reported that Koresh had stated that the complex would be a good site for a methamphetamine lab.

8. Believing that it had developed an adequate "drug nexus" to avail itself of the National Guard's counter-drug program, ATF sent a second request for support to the Texas National Guard dated December 18, 1992. This letter explicitly referenced possible narcotics at the complex. From this point forward, all ATF requests for assistance to the National Guard and the active duty military of the United States in connection with the initial investigation of the Davidians made some reference to the possible use or manufacture of illegal drugs at the complex.

9. The Texas National Guard agreed to support the investigation. On January 6, 1993, it flew an aerial surveillance mission over the Davidian complex using a UC-26 fixed wing aircraft equipped with a thermal imaging system. An informal analysis of the thermal imaging data done by a Guard airman who was not a qualified infrared image interpreter revealed a "hot spot" which he thought to be consistent with the existence of a methamphetamine laboratory at the complex. The Alabama National Guard, working at the request of the Texas National Guard, flew a follow- up mission over the complex on January 14. The Texas National Guard then resumed its surveillance flights, flying missions over the complex on February 3, 6, 18 and 25. The Guard aircraft provided video and photographic reconnaissance to ATF which assisted ATF in planning future operations.

10. As the National Guard provided its surveillance support, ATF stepped up its efforts to obtain support from the active duty armed forces of the United States for a planned search of the complex and arrest of Koresh. On January 22, Department of Defense's liaison to ATF drafted a letter for the signature of ATF's Chief of Special Operations to the Army Regional Logistics Support Office ("RLSO") in El Paso, Texas. The letter requested (a) the use of the Military Operations in Urban Terrain ("MOUT") facility at Ft. Hood, (b) the loan of seven Bradley Fighting Vehicles ("Bradleys") to ATF, and (c) driver training and on-call maintenance support for the Bradleys. The letter referred explicitly to the "continuation of the firearms and drug case" and contained an attachment listing an extensive amount of equipment that it wanted on an on-call basis. The Army RLSO orally informed ATF that it could not meet a request of such magnitude.

11. Despite the initial rejection of its request, ATF continued to solicit military support. On February 2, ATF briefed representatives of Operation Alliance, the Joint Task Force Six ("JTF-6"), and the commander of the Rapid Support Unit ("RSU") on the status of the investigation. Operation Alliance is a coalition of law enforcement and military organizations which coordinates counter-drug support in the Southwest Border Region, including the State of Texas. JTF-6 serves primarily as a "clearing house," linking law enforcement agencies with military units for counter-drug missions. In early 1993, the RSU was comprised of a Special Forces company of Third Special Forces Group from Ft. Bragg, North Carolina, and its function was to carry out the counter-drug missions delegated by JTF-6.

12. On February 2, after the briefing, an ATF coordinator at Operation Alliance prepared requests for military support of the planned operation which were sent to JTF-6 and the Texas National Guard. These letters were signed by a border patrol agent who served as the Operation Alliance Director of Resource Management, and sought assistance in "planning, training, equipping and command and control in serving a federal search warrant . . . to a dangerous extremist organization believed to be producing methamphetamine." These letters also stated "special assistance is needed in medical evacuation contingency planning and on site trauma medical support." ATF dropped its earlier request for the Bradleys.

13. On or about February 3, the commander of the RSU, Major Mark Petree, began to question the propriety of fulfilling ATF's request for military support. Specifically, he expressed concerns about ATF's request for training which included assistance in planning ATF's service of a

federal search warrant and providing RSU medics on site during the execution of the warrants. He relayed his concerns to a Special Forces civilian employee who in turn contacted Major Philip Lindley, a military lawyer for the U.S. Army Special Forces Command at Ft. Bragg, North Carolina. Maj. Lindley concurred with Maj. Petree, believing that ATF's request for assistance exceeded the level of active duty military participation in civilian law enforcement activities permitted by applicable federal statutes, case law, military regulations and policy. Maj. Lindley believed that the requested assistance as proposed "crossed the line" and exposed the active duty military members of the RSU carrying out this request to both civil and criminal penalties.

14. Maj. Lindley drafted a memorandum on February 3, 1993, which reflected his thought processes as events unfolded. In that memorandum, he stated his position on the ATF request as follows: "at the point where the RSU assisted in the actual planning and rehearsal of the take down, participation in the arrest was 'active'." Therefore, it was not permissible. Maj. Lindley also expressed his concerns about the on-scene medical support requested by ATF. He believed that by treating injured Davidians, Special Forces medics would be in danger of "direct participation in the search and arrest of the civilians." Finally, Maj. Lindley also discussed in his memorandum the training capabilities of the RSU, stating that providing close quarters battle training was beyond the expertise of the unit. Based on these facts, Maj. Lindley concluded that ATF's request "appeared to go beyond DoD guidance for these missions," and he "advised against the operation" as initially planned.

15. Later on February 3, following discussions with Maj. Petree, Maj. Lindley received a call from Lt. Col. Ross Rayburn, legal advisor to JTF-6, who vigorously disputed Maj. Lindley's assessment that the proposed RSU mission was improper, and accused Maj. Lindley of trying to "undercut" the counter-drug mission of JTF-6. Lt. Col. Rayburn also issued a legal opinion that ATF's requested assistance was legal, in part because ATF had not requested RSU to accompany ATF to the complex to effectuate the search. Lt. Col. Rayburn wrote "[t]here is no legal objection to providing ATF with instruction and training during the rehearsal phase of the operation." Furthermore, Lt. Col. Rayburn stated "there is no legal prohibition" on providing medical care support. After further discussions with counsel at the Army Special Operations Command and the United States Special Operations Command, Lt. Col. Rayburn yielded and the military components involved reached a consensus that the RSU would not provide the assistance as initially requested.

16. During the following weeks, relevant military authorities worked on an "execution order" detailing the support that the RSU would provide, and they had the order reviewed by a military lawyer for possible violations of the law, including the *Posse Comitatus* Act. The execution order dated February 17, 1993, directed that the "RSU will not provide mission specific advice . . . RSU teams will not accompany BATF teams on either the operation nor [sic] any site visit within the area of operation," and "RSU personnel will not become involved in search, seizure, arrest or similar law enforcement related activities." Subsequently, the commander of JTF-6, Brig. Gen. John Pickler, issued the order to the RSU, and members from one of the RSU's six detachments, ODA381, arrived at Ft. Hood on February 22 prepared to provide ATF the support authorized in the order. Over the next few days,

members of ODA381 and ATF officials met to identify the necessities for the ATF's training and rehearsals.

17. Between February 24 and 26, ODA381 constructed a portable door entry and re-useable window on a practice facility, helped ATF tape off an area that represented the Davidian complex, provided medical evacuation and radio communications training, and coordinated the use of the ranges at Ft. Hood. On February 26 and 27, ATF conducted rehearsals at Ft. Hood. ODA381 provided safety advice and acted as human "silhouettes" during ATF's room clearing exercises. As ordered, the ODA381 let ATF define the parameters of its operation. Most of ODA381's members left Ft. Hood on the evening of February 27. Four ODA381 members remained at Ft. Hood until February 28 to assist in cleaning up the training site. Due to a flat tire and a severe thunderstorm, these four ODA381 members were delayed in their return and arrived back at McGregor Range, New Mexico, on March 1. No ODA381 members accompanied ATF to the Davidian complex on February 28.

18. Also in February 1993, ATF obtained permission from the Texas National Guard to utilize Guard helicopters and crews in connection with the planned search and arrest at the Davidian complex. In the last week of February, three members of the Texas National Guard, the commander of the Austin Army Aviation Facility, the State Aviation Officer, and one of the pilots who flew the mission on February 28, learned that ATF planned to use the Guard's helicopters as a diversion for ATF's raid. One person, the commander of the Austin Army Aviation Facility, expressed safety concerns to the State Aviation Officer about the plan. Nonetheless, the plan to use the Guard helicopters as a diversion

did not change. On February 27, the Guard helicopters participated in ATF's rehearsals, and the remaining pilots and crew of the Guard helicopters learned for the first time that they would act as a diversion during the ATF raid the next day.

C. ATF Attempts to Execute Search and Arrest Warrants.

19. On February 25, ATF Agent Aguilera presented to a federal magistrate an affidavit in support of an application for warrants to arrest Koresh and to search the Davidian complex and the surrounding 77 acres. The affidavit had been reviewed by Assistant United States Attorney William Johnston. The affidavit alleged violations of 26 U.S.C. § 5845(f)– unlawful possession of a destructive device. The affidavit also contained a discussion of alleged child abuse. There was no mention of alleged drug activity at the complex. The federal magistrate issued the warrants that same day.

20. According to ATF, on February 28, while ATF prepared for the dynamic entry into the complex, Agent Rodriguez entered the complex and spoke to Koresh. While there, he learned that Koresh had heard about the planned execution of a warrant and that the operation had been compromised. Indeed, local media had also learned of the planned search and arrest and had preceded ATF to the complex to cover the entry. Rodriguez reported to his supervisors that Koresh knew about ATF's operation. ATF supervisors nonetheless decided to execute the warrant on February 28.

21. Members of ATF's warrant execution team departed a preset staging area at 9:30 a.m. on February 28 in cattle trailers. They arrived at the complex, entered the driveway, exited their vehicles,

and approached the complex. According to Davidians Kathryn Schroeder, Victorine Hollingsworth and Marjorie Thomas, several Davidian males, including Koresh, were armed and prepared to fire on ATF agents. While there is some dispute as to who shot first– a matter outside the scope of the Attorney General's Order to the Special Counsel– there is no dispute that the Davidians were prepared for a gun battle and had ATF significantly outgunned.

22. A fierce and tragic gun battle ensued. Before a cease-fire could be arranged, the Davidians killed four and wounded twenty ATF agents. Additionally, ATF killed two and wounded five Davidians. At some point during or after the gun battle, the Davidians intentionally shot and killed three of their own at close range: Peter Hipsman (an apparent mercy killing), Perry Jones and Winston Blake. All three Texas National Guard helicopters took fire and were forced to land, but personnel on board suffered no injuries. Witness interviews indicate that the Guard helicopters did not return fire.

23. At 9:48 a.m., Davidian Wayne Martin telephoned the Waco 911 emergency services and was put in contact with a deputy sheriff. Martin indicated that ATF agents were firing into the complex, but Martin soon hung up the phone. After Martin hung up, the deputy called the complex and yelled over an answering machine for someone to pick up the phone. The deputy eventually spoke to Martin but could not effectuate a cease-fire. At 10:35 a.m., undercover ATF agents provided the ATF Assistant Special Agent in Charge with the Davidians' phone number and, after an hour of negotiations with Koresh's second in command, Steven Schneider, the parties agreed upon a cease-fire.

24. Later that day, Davidian Michael Dean Schroeder attempted to enter the complex. When ATF agents encountered Schroeder at the outer perimeter of the complex, he fired 18 shots at the agents. They returned fire and killed him. The death of Schroeder brought the total number of Davidians killed on February 28, 1993, to six.

D. ATF Transfers Control of the Standoff to the Department of Justice.

25. On March 1, after a series of meetings and teleconferences between senior officials of the Department of the Treasury (of which ATF is a component) and the Department of Justice (of which the FBI is a component), ATF turned control of the situation at the complex over to the Department of Justice, and, more particularly, to the FBI. FBI Director Sessions then briefed President Clinton on the status of the standoff at Waco.

26. As of February 28, President Clinton had not formally appointed a new Attorney General. Stuart Gerson, a Bush Administration holdover, remained Acting Attorney General until Janet Reno was sworn in on March 12. Attorney General Reno had many people reporting to her on Waco-related matters. These included Associate Attorney General Webster Hubbell. Other reporting relationships were as follows. The Criminal Division at the Department of Justice normally reported to the Deputy Attorney General, but since there was no Deputy Attorney General in place during the entire Waco standoff, the Division reported directly to the Attorney General. John C. "Jack" Keeney was the Acting Assistant Attorney General who headed the Criminal Division. Under the Assistant Attorney General were several Deputy Assistant Attorneys General, including Mark Richard who supervised the activities

of the Terrorism and Violent Crimes Section of the Criminal Division ("TVCS"). Section Chief James Reynolds and Deputy Chief Mary Incontro headed the TVCS. John Lancaster was a trial attorney in TVCS who later worked on the team that prosecuted some of the Davidians in 1994. The United States Attorney's Office for the Western District of Texas had primary responsibility for prosecuting federal crimes at Waco, including the shooting of the ATF agents. Ronald F. Ederer was the United States Attorney for the Western District of Texas, headquartered in San Antonio, Texas. Several Assistant United States Attorneys including First Assistant James DeAtley, William "Ray" Jahn, LeRoy Jahn, John Phinizy, and William "Bill" Johnston reported to Ederer. Johnston and Phinizy worked out of the Waco office.

27. Day-to-day law enforcement activity during the 51-day standoff was under the direct control of the FBI. FBI Director William Sessions reported to the Attorney General. Deputy Director Floyd Clarke and Associate Deputy Director W. Douglas Gow reported to Director Sessions. Assistant Director Larry Potts headed the FBI's Criminal Investigative Division, which reported to Clarke. Reporting to Potts was Deputy Assistant Director Danny Coulson, and Michael Kahoe, the Section Chief for the Violent Crimes and Major Offenders Section of the Criminal Investigative Division.

28. The FBI assigned the Special Agent in Charge of the FBI's San Antonio office, Jeff Jamar, as the on-scene commander at Waco and assigned numerous agents and FBI Special Weapons and Tactics ("SWAT") teams to work under his command. The FBI also assigned Special Agent in Charge Robert Ricks and Special Agent in Charge Richard Swenson to assist Jamar in supervising his team of

agents. On February 28, 1993, Jamar dispatched Supervisory Special Agent Byron Sage, a trained negotiator, to Waco. The FBI later assigned Special Agent Gary Noesner to lead the negotiation team. Several weeks later, Special Agent Clifford Van Zandt replaced Noesner as head of the negotiation team. The FBI also later assigned a fourth Special Agent in Charge, Richard Schwein, to its Waco team.

29. In parallel with the establishment of the negotiation team, the FBI deployed its tactical team. On February 28, senior FBI officials notified Richard Rogers, commander of the FBI Hostage Rescue Team ("HRT") that he should deploy to Waco. Among the HRT members who reported to Rogers (and whose activities proved relevant to the charter of the Office of Special Counsel) were Supervisory Special Agent Steve McGavin and Special Agent David Corderman. The HRT also had sniper teams on site, one of which was led by Special Agent Lon Horiuchi.

30. The FBI personnel located themselves in three operations centers. In Washington, FBI leadership activated the Strategic Information Operations Center ("SIOC") where the FBI had its command and control resources. At Waco, the FBI on-scene commanders established the rear Tactical Operations Center ("TOC") located in a hangar at a former Air Force base on the campus of Texas State Technical Institute approximately five miles from the Davidian complex. The FBI on-scene leadership, negotiators, behavioral scientists, investigators, and agents monitoring the listening devices secretly inserted into the complex operated from the rear TOC. The FBI also established a forward TOC near the "Y" intersection, consisting of three mobile homes about 1000 yards from the front of the

complex. This forward TOC served as the tactical operations center for the HRT and contained a communications center for equipment set up by the HRT, some with the assistance of the Army Special Forces.

31. The FBI designated areas of the complex by number and letter. It designated the front or south side of the complex as the white side, the back or north side of the complex as the black side, the right or east side of the complex as the red side, and the left or west side as the green side.[70] The FBI referred to the first floor as "Alpha," the second was "Bravo," the third was "Charlie," and the fourth was "Delta." Window and door designations were identified by counting from left to right.

32. The FBI HRT established sniper positions around the complex. The HRT Blue Sniper Team occupied Sierra-1 in the former ATF undercover house facing the white side of the complex. Upon their arrival at the Sierra-1 sniper position, members of the Blue Sniper Team observed spent shell casings in the undercover house. Sierra-1 Alpha was located in a house next door to Sierra-1 and housed assault team members and technical equipment. The HRT Gold Sniper Team occupied Sierra-2 in a structure on the green/black side of the complex. HRT also created Sierra-3, a sandbagged position on the red

[70]The complex did not line up precisely on an east-west axis, but the Special Counsel uses these directional approximations for ease of reference.

side which HRT snipers occupied on an as-needed basis.[71] Prior to April 19, HRT assaulters also operated the Bradleys obtained from the National Guard from the sniper positions.

E. The FBI Obtains Additional Military Support.

33. Within hours after the gun battle between ATF and the Davidians on February 28, ATF and FBI made requests for extensive military support. Texas Governor Ann Richards saw the gun battle on television and immediately called the Commanding General of the United States Army's III Corps at Ft. Hood to ask if he knew anything about the operation. The general informed the Governor that III Corps had no assets at Waco and did not know any details of the operation, but he dispatched Brigadier General Peter J. Schoomaker, from the First Cavalry Division at Ft. Hood, to Austin, Texas, to advise the Governor and the Adjutant General concerning the requests for military support that they had received from ATF and the FBI. After meeting with Governor Richards, Gen. Schoomaker drove to Waco, arriving early on March 1. He met briefly with HRT commander Rogers, discussed the situation in general terms, and then returned to Ft. Hood. He did not provide any advice to the FBI at that time.

34. The Texas National Guard immediately dispatched 10 Bradleys to the scene with their crews and trained HRT members in their use. The National Guard later provided five CEV's, a tank retriever, as well as trucks, jeeps and supplies. All of this equipment was operated by the law

[71] Sierra-4 was a campsite on the green side occupied by SWAT teams. It was located along the fence line beyond the inner perimeter of the complex.

enforcement personnel, not by National Guard personnel. The National Guard also provided maintenance support personnel and liaison personnel to handle any further equipment requests.

35. The FBI also made several requests for the loan of equipment and related training from the active duty military. Members of the active duty military trained HRT members in the operation of the equipment and provided maintenance support, but they did not operate the equipment. During the standoff, the U.S. Army provided two Abrams tanks (after disabling their offensive capability), three UH-1 helicopters, unmanned ground surveillance vehicles, trucks, communications equipment, ammunition, and various military supplies. Furthermore, the U.S. Army provided crews for vehicle and helicopter maintenance, medical staff, and liaison officers to handle additional equipment requests. The Army at III Corps obtained a legal opinion from an Army lawyer that providing military equipment to law enforcement agencies was permissible, but the Army deviated from standard procedures by failing to execute a lease agreement with the FBI for the equipment until after the standoff.

36. The U.S. Army Special Forces also supported the FBI. Its members provided surveillance equipment in the form of remote observation cameras which transmitted television images from locations around the complex to the FBI forward TOC and a thermal imager located on a water tower several hundred yards from the red side of the complex. The Special Forces also provided ground sensing equipment to assist with the security of the perimeter of the complex. In order to train the FBI on the use of the equipment, observe its use, and maintain it, the Special Forces provided a total of 10 personnel during the entire standoff, although usually only three or four were present at any given time.

On two occasions prior to April 19, Special Forces personnel went to forward positions (still hundreds of yards away from the complex) to repair or install the equipment. The Special Forces observers gathered information about the performance of the FBI and the performance of the Special Forces equipment. The Air Force provided television jamming equipment that government contractors operated briefly during the standoff. A member of the British Special Air Service ("SAS") was also present as an observer early in the standoff but had no active role in the FBI operation.

F. The FBI Attempts to Negotiate a Peaceful Resolution of the Standoff.

37. As the reports of other Waco investigations have set forth in detail, the FBI negotiation teams and the tactical teams ran different and sometimes conflicting operations. Most of this information is irrelevant to the charter of the Office of Special Counsel, but the following narrative provides some context relevant to the Special Counsel's conclusions. The negotiators centered their activities in a Negotiations Operations Center at the rear TOC. The FBI negotiators worked with negotiators from ATF, the Texas Department of Public Safety, the Austin Police Department, and the McLennan County Sheriff's Department. Their principal objective was to secure the release of the children in the complex and eventually effectuate the peaceful arrest and departure of the adults. They worked in 12-hour shifts. Each shift utilized a primary negotiator and a secondary "coach" who maintained notes of the negotiations and provided prompts to assist the primary negotiator. FBI personnel recorded and, if possible, transcribed the contents of negotiation sessions. Each shift kept a negotiations log and handwritten chronology. The negotiators regularly prepared "situation reports" summarizing the status of

negotiations. The negotiators also relied upon behavioral psychologists and religious experts for advice concerning the likely reaction of the Davidians to their negotiation strategy.

38. Over the 51 days, more than 40 law enforcement officers participated in negotiations, the objective of which was to get the Davidians to leave the complex peacefully. In order to effectuate a peaceful resolution to the standoff, Jamar made numerous concessions to Koresh based upon the recommendations of the negotiators. On March 1, the negotiators arranged the radio broadcast of a scripture message recorded by Koresh. Two days later, based on Koresh's promise to come out, they arranged for a one-hour message from Koresh to be aired nationally on television and radio. The negotiators also allowed Davidians to exit the complex for such matters as the burial of Davidian Peter Gent, to dispose of their dead dogs, and to retrieve Bible study materials from one of their cars. The negotiators sent in medical supplies for the wounded, made multiple deliveries of milk and food for the children, and provided the Davidians communications from family members outside the complex, as well as legal documents that Davidians had requested. Moreover, the negotiators took the unprecedented step of permitting criminal defense lawyers to enter the complex on several occasions to meet with Koresh and Schneider, even though the crime scene was unsecured.

39. The negotiators had some early success. Between February 28 and March 23, Koresh allowed 35 people to exit the complex. But Koresh also made repeated, well-chronicled and unfulfilled promises to exit the complex with the remaining Davidians, allowing only two people to exit after March 23. As early as March 3, a key behavioral psychologist, Dr. Park Dietz, advised the negotiators that

Koresh would not leave the complex and would not allow anyone about whom he truly cared to leave, including his numerous biological children. FBI negotiators also obtained conflicting opinions on the likelihood of a mass suicide by the Davidians. The negotiators considered the possibility of a mass suicide either within the complex or as part of an assault against the FBI by exiting Davidians. On March 27, Schneider told negotiators that the FBI should set the building on fire. Eventually, after meetings with his attorney, Koresh promised that he would exit the complex after he had written an interpretation of the Seven Seals referenced in the Book of Revelation. The negotiators concluded that this was another empty promise because Koresh failed to turn over an interpretation of any of the Seven Seals.

40. The tactical group, led by the HRT, ensured the security of the perimeter of the complex and executed tactics designed to force the Davidians out of the complex. As the standoff wore on, tactical actions– in which some negotiators concurred but others clearly did not– included cutting off the electricity, the unpredictable movement of vehicles, the use of flashbangs (loud, bright but non-lethal diversionary devices) to force Davidians venturing outside the complex without the intent to surrender to go back inside, and the use of disturbing sounds around the complex. The FBI logs and interviews indicate that the FBI utilized as few as seven and as many as 10 flashbangs near the complex during the standoff. Some negotiators believed that the activities of the tactical operators interfered with their efforts to get the Davidians to surrender peacefully. All tactical decisions were, however, approved by Special Agents in Charge, who received input from both the tactical group and the negotiators.

G. The FBI Develops a Tactical Solution to the Standoff.

41. As the release of Davidians slowed, and the prospects for the peaceful exit of the Davidians dimmed, the FBI stepped up efforts to develop a tactical resolution to the standoff. The FBI had developed the initial template for a tactical resolution during March, at a time when the prospect for the voluntary surrender of Koresh was still high. The development of such plans during hostage situations was standard operating procedure for the FBI, and did not indicate an intent by the FBI to engage in a tactical resolution in the early stages of the standoff. The FBI would normally effectuate such a plan only in emergency situations such as suicide or murder within the complex.

42. In early March, HRT began the development of a tear gas insertion plan that the FBI could use to resolve the standoff even in a non-emergency situation. The "Proposed Operations Plan" dated March 10, 1993, provided that (a) CEV's would clear all obstacles from the white and red sides, (b) CEV's would approach the front of the complex, (c) the FBI would demand the surrender of the Davidians, and (d) if necessary, personnel inside the Bradleys would shoot projectible flashbangs wherever needed and deliver CS gas into the complex. CEV's would create escape routes by punching holes into the building structure. In contrast to the final plan, which required the gradual insertion of tear gas, this plan called for the FBI to insert as much tear gas as necessary to secure the exit of the Davidians.

43. On March 14, after discussions within the FBI on the contents of the March 10 draft plan, the HRT issued a "Proposed Operations Plan - Revision #2." The plan provided that CEV's would

insert tear gas through canisters on booms on the vehicles, and made the first mention of the possible use of "ferret rounds"– non-pyrotechnic tear gas rounds fired from M-79 grenade launchers. Neither this revised plan nor the preceding one made any reference to the use of military or pyrotechnic tear gas rounds.

44. On March 16, at FBI headquarters in Washington, D.C., FBI Deputy Assistant Director Coulson sent an e-mail message to FBI Acting Deputy Director Larry Potts addressing the tear gas insertion plan that the FBI leadership at Waco had developed and refined in the preceding days. The message discussed the possibility that the Davidians could engage in mass suicide or start a fire deliberately or by accident, but it concluded that personnel safety, among other factors precluded a firefighting response. The memorandum stated that the CEV's would make escape openings for the Davidians and then insert tear gas.

45. Despite concerns for the safety of firefighters, both Jamar and Sage contacted the Waco Fire Department, among others, to determine what fire response was possible. Waco Fire Chief Robert Mercer and Bellmead Fire Chief James Karl met with FBI agents several weeks prior to April 19 and were asked to prepare a plan to assist the FBI if needed. During this meeting, the Chiefs used aerial maps to target water resources. Based on information provided by the departments, the FBI prepared a firefighting plan.

46. While the FBI negotiators tried to bring about a peaceful resolution to the standoff by providing telephonic suggestions to Koresh on how the Davidians could exit the complex and how the FBI would treat them thereafter, the negotiators began to lose hope that Koresh would ever leave voluntarily. An FBI memorandum dated March 22 prepared by the negotiation team indicated that the negotiators were willing to consider the tactical use of tear gas to end the standoff.

47. On March 23, following a request by HRT commander Rogers to implement the tear gas plan, Coulson wrote a memo critical of Rogers' request. He stated his opinion that HRT members at Waco were fatigued, noted the mistakes of the Ruby Ridge incident in which Rogers played a role, and advised Potts that both Potts and Kahoe should go to Waco to assess the situation for themselves.

48. On March 27, Jamar initialed "Proposed Operations Plan– Revision 3." This revised plan called for the removal of all obstacles, such as fences and vehicles, from the white side of the complex the day before the tear gas insertion. The following day, the FBI would commence an all out insertion of tear gas into the complex. Two CEV's and four Bradleys would deliver tear gas into the complex without warning. The booms on the CEV's would penetrate the complex to deliver the tear gas and would also create exits for the Davidians. Attached to the plan were medical assignments and communications information, and involved the use of military personnel within the medical staging facility. The plan contained no reference to the use of flashbangs or pyrotechnic tear gas rounds.

49. Over the next several days, Coulson, Jamar and other FBI personnel debated the advisability of the tear gas insertion plan. Discussion centered around the concern that the Davidians might shoot at FBI agents immediately upon commencement of the operation. In Washington, D.C., Coulson expressed concern that the risk of Davidian gunfire was so high that the FBI should not implement the plan. At Waco, however, Jamar and others continued to advocate an all-out tear gas assault which differed substantially from the gradual insertion plan advocated by those in Washington.

50. On April 7-8, Clarke and Potts traveled to Waco in an effort to develop a consensus as to whether to recommend a tactical resolution to the standoff and, if so, what solution to recommend. After a series of meetings with Jamar, Rogers and others, they decided that a tactical resolution was appropriate and agreed on a plan that they would present for the review of Attorney General Reno on April 12.

51. On April 12, the FBI submitted to Attorney General Reno a "Briefing Book" which contained a revised operations plan as well as background information on the standoff and information from behavioral psychologists indicating that it was unlikely that Koresh would voluntarily surrender. Under this plan, from the outset the FBI would tell the Davidians (by telephone or loudspeaker) that it was inserting tear gas to force the Davidians out, that the FBI was not assaulting the complex, that the Davidians should not use their weapons, and that they must stay out of the tower area. Two CEV's would deliver tear gas into the complex in a gradual, but systematic fashion. If the CEV's took gunfire, the FBI would immediately accelerate the plan to an all out insertion of tear gas by using HRT personnel

in Bradleys to shoot Ferret rounds into the complex. The CEV's would continue to insert tear gas with canisters mounted to their booms. The plan provided that the tear gassing would continue for 48 hours or until all Davidians had exited the complex. The FBI's standard deadly force policy, which allowed FBI agents to use deadly force only "in self-defense, the defense of another, or when they have reason to believe they or another are in danger of death or grievous bodily harm" would apply. If the Davidians had not exited after 48 hours, the FBI would use a CEV with a modified blade to peel back the walls and dismantle the complex.

H. The FBI Obtains Final Approval from Attorney General Reno to Implement the Tactical Plan.

52. On April 12, officials from the FBI met with officials from the Department of Justice to present the proposed tear gas insertion plan. Attorney General Reno participated in a second meeting at the FBI SIOC later in the day. Interviews regarding this meeting, along with contemporaneous notes, indicate that the FBI described the plan in detail. FBI officials presented the plan as controlled and gradual, possibly lasting up to 48 hours. Attorney General Reno asked why the FBI had to act at that particular time. In response, the FBI emphasized that the Davidians were not coming out and the FBI had to increase the pressure on them. Participants at the meeting also discussed cutting off the water supply to the complex, but concluded that this tactic was not feasible. Attorney General Reno raised additional questions about the availability of gas masks, the effects of tear gas on Davidians, particularly on the children, and the availability of medical facilities. The FBI told her that there were probably no tear gas masks available for children, but that the tear gas would not cause them permanent harm. They

discussed a plan to establish three detoxification units to help people who exited the complex, and told Attorney General Reno that pediatricians would be present during the tear gas operation. Other issues raised at the meeting included whether the plating on the tanks was sufficient to protect HRT personnel from .50 caliber weapons, what to do if the Davidians emerged from the complex shooting, what to do if they did not exit at all, and whether the plan should be delayed if Koresh's attorney requested more time. The meeting concluded without any resolution or decision by Attorney General Reno. During the next several days, Attorney General Reno and her staff sought additional information from numerous sources to supplement the responses provided to her by the FBI.

53. In accordance with the instructions of President Clinton that he be notified of changes in the FBI's strategy at Waco, Hubbell met with White House officials on April 13 to notify them of the proposed tear gassing plan. He informed White House officials that Attorney General Reno had not decided whether to implement the plan. White House Counsel Bernard Nussbaum briefed the President on the situation.

54. FBI Director Sessions convened a meeting on April 14 during which military experts addressed Attorney General Reno's questions and concerns regarding the tear gas plan. The FBI requested the presence of Gen. Schoomaker, a Special Forces colonel, and a toxicology expert employed by the Department of Defense. After Gen. Schoomaker's superiors approved the assignment, he drove to Waco where HRT commander Rogers gave him an aerial tour of the complex. They then landed at the forward TOC, and Rogers showed Gen. Schoomaker the communications

center and the medical facilities. The two then flew to Ft. Bragg, picked up the Special Forces colonel, and continued to Washington, D.C. On the way to Washington, Rogers asked Gen. Schoomaker to review and comment on the tear gas insertion plan and Gen. Schoomaker told him that he could not do that.

55. During the April 14 meeting with Attorney General Reno and her staff, the toxicologist reported on the effects of CS gas, concluding that it posed no risk of permanent harm to the inhabitants of the complex. The discussion at this meeting is reflected in interview notes and in a memorandum prepared by the Special Forces colonel after the meeting. Attorney General Reno asked repeatedly about the dangers that tear gas posed to the children in the complex. The toxicology expert reassured her that the long-term danger to the children was minimal. The military personnel present noted, however, that the effects of CS gas were unpredictable, that the natural impulse would be to exit the building, but that people could behave irrationally when exposed to tear gas. When asked to comment on specific, tactical aspects of the plan, Gen. Schoomaker responded, "[w]e can't grade your paper." The military representatives did, however, note that a military operation would be quite different in that a military assault would be rapid, violent, and would focus on killing the leaders. They further indicated that the military would insert the tear gas all at once.

56. The military experts also raised the possibility of a fire, noting that the British SAS had burned down a building during a tear gas operation in London. The FBI assured Attorney General Reno

that the means of delivery of the tear gas would be non-pyrotechnic.[72] According to Attorney General Reno, either at this meeting or later in the week, she gave an express directive that no pyrotechnic tear gas was to be fired "at the compound"– a phrase that was never clearly defined to include such areas as the concrete construction pit, the pool, and the underground bus located outside the main structure of the complex, but which Attorney General Reno meant to cover all of these areas.

57. Finally, the participants at the April 14 meeting discussed the issue of timing. Attorney General Reno asked again, "Why now?" The FBI told her that (a) there was no reason to believe that Koresh would come out voluntarily, (b) the health and safety of the children was in jeopardy, and (c) the effect of a prolonged standoff on the HRT was an issue. The Special Forces colonel also suggested that the HRT may need to stand down for retraining. Rogers opposed this suggestion. He told Attorney General Reno that the HRT had breaks during the siege, and was not fatigued or in need of retraining. He agreed, however, that if the siege continued for several more weeks, it might be necessary to pull the HRT back for retraining. At the end of the meeting, Attorney General Reno still had not decided whether to approve the plan.

58. Following further discussions among her staff, Attorney General Reno called Assistant United States Attorney Ray Jahn to inquire about conversations picked up by the Title III intercepts which indicated that the water supply at the complex might be running low. FBI agents again assessed

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[72]People at the meeting do not remember hearing the word "pyrotechnic" but it was clear that the means of delivery to be used would not start a fire.

the water supply issue, and concluded that the Davidians had plenty of water and had enough food to last a year. Attorney General Reno also directed Hubbell to contact negotiator Sage directly to obtain his assessment of the likelihood of a negotiated resolution. On April 15, Sage advised Hubbell that negotiations were at an impasse, and that a negotiated solution was unlikely in the short term. Sage told Hubbell that the only people who had left the complex were people whom Koresh wanted to leave.

59. On Friday, April 16, Attorney General Reno advised Hubbell that she had decided not to approve the plan at that time. This decision set off a series of meetings among Department of Justice and FBI personnel. Ultimately, Director Sessions appealed directly to Attorney General Reno, and requested that she reconsider her decision. After further considering the issue, Attorney General Reno changed her mind. She indicated that she was inclined to approve the plan, but wanted to see an even more detailed discussion of the plan and substantial supporting documentation setting out the conditions inside the complex, the status of negotiations, and the reasoning behind the plan. According to Attorney General Reno, she ultimately changed her mind because she was convinced that the Davidians would not come out voluntarily. She felt that the FBI would eventually have to go forward with some plan, and that it was better to proceed when the FBI was ready and best able to control the situation.

60. Senior Department of Justice and FBI officials worked together to prepare the documentation requested by Attorney General Reno. The materials that they prepared included the written opinion of behavioral psychologist Dr. Dietz that negotiations were not likely to resolve the crisis and that Koresh would probably continue to abuse the children. FBI and Department of Justice officials

met again on April 17 to review the plan, the supporting documentation, and the rules of engagement. Attorney General Reno approved the plan at approximately 7:00 p.m. Waco time (8:00 p.m. Washington time), and Jamar notified Rogers that the plan had been approved at 7:17 p.m. Attorney General Reno informed President Clinton of her decision to approve the plan on Sunday, April 18.

I. Activities Inside the Complex During the Days Preceding the Execution of the Tactical Plan.

61. As mentioned above, during the final days before the execution of the plan, Koresh told negotiators that he was writing an interpretation of the Seven Seals. Even as Koresh claimed he had finished interpreting the First Seal, Schneider acknowledged that he had not seen any work product. Koresh sent a letter out on April 14 indicating that he would surrender when he finished writing his interpretation of the Seven Seals. However, FBI behavioral scientists concluded that this letter constituted another empty promise by Koresh and, accordingly, Attorney General Reno did not put credence in Koresh's letter. Koresh would not give any credible or consistent timetable for surrendering, leading to a consensus among FBI officials that he had no intention of exiting the complex.

62. On April 16, the Davidians displayed a sign outside a window on the east or red side of the complex that said, "The flames await Isaiah 13." On April 17, Title III intercepts captured a conversation (unintelligible at the time) among Davidians concerning their plan to prevent fire trucks from reaching the complex: "You're definitely right . . . I think all the time he knows it . . . nobody comes in here;" ". . . bring the fire trucks and they couldn't even get near us;" "Exactly." As the FBI cleared the

area in front of the complex of cars and other obstructions on April 18, the Title III intercepts picked up a conversation between Davidians in which Schneider said "you always wanted to be a charcoal briquette." The other responded, "I know that there's nothing like a good fire . . ."

J. The FBI Initiates the Tactical Plan on April 19.

63. The events of April 19 are well-chronicled in numerous logs, timelines, audio, and video transmissions prepared contemporaneously, as well as numerous reports prepared after the fact. Throughout the standoff, including April 19, the agents kept a typed log of their observations of the activities at the command center in the rear TOC and a handwritten log at the forward TOC. The FBI negotiators kept logs, and the FBI leadership in Washington, D.C., kept a SIOC log. The following events are relevant to the Attorney General's Order to the Special Counsel.

64. Prior to April 19, the FBI had equipped each of two CEV's with tear gas canisters mounted on a boom extending from each CEV. CEV-1 had four refillable canisters of tear gas. CEV-2 had two refillable canisters of tear gas mounted so that its boom could reach the second floor of the complex. In addition, a CEV was equipped with a rail which could be used to remove the siding from a building. The FBI also equipped HRT agents in four Bradleys with M-79 grenade launchers to shoot non-pyrotechnic Ferret tear gas rounds. HRT Supervisory Special Agent McGavin commanded a tank retriever, designated the Staff Command Vehicle. McGavin and his team established a rally point for exiting Davidians southeast of the complex, and raised a large flag containing a red cross at that location.

Two additional Bradleys occupied blocking positions, and two others were on standby to be used for medical evacuation. HRT commander Rogers occupied an Abrams tank.

65. The Sniper Teams remained at Sierra-1 and Sierra-2 where they were joined by machine gunners from the HRT Golf and Echo teams. A medical evacuation Bradley moved to Sierra-2 shortly after the commencement of the operation. Three FBI snipers occupied Sierra-3. The seven SWAT teams provided perimeter security and medical response security. According to the medical annex to the FBI's operational plan, the plan was "designed to provide the best care possible for mass casualties which could potentially result from an explosion or other catastrophic event" at the Branch Davidian complex. Attorney General Reno had requested that medical support be available for every man, woman and child in the complex. In short, the plan called for a "transfer point" near the "T intersection" where casualties were to be evaluated and initially treated before being transferred to a "medical staging area" located at the entrance of the Forward TOC area located near the "Y intersection." From there, the plan called for helicopters to be available to rush critical patients to one of a number of civilian medical facilities. The FBI effectuated this plan on April 19.

66. The CEV's approached the complex at 6:00 a.m. Sage telephoned into the complex, eventually reaching Schneider, telling him that a tactical operation was about to begin, but that it was not an assault. At 6:05 a.m., the Davidians threw the phone outside the complex, probably because it had been disconnected when a CEV ran over the line. At that point, Sage made an announcement through a public address system (an announcement that he repeated many times during the morning), stating that

the FBI had begun to insert tear gas, that the FBI was not assaulting the complex, and that the Davidians should exit the complex and walk toward the flag with the red cross.

67. In accordance with the operations plan, CEV-1 punched its boom into the complex and discharged the first canister of tear gas into the first floor at a location designed to prevent the Davidians from moving to the underground bus at the green side of the complex. CEV-1 then continued its tear gassing operation systematically as outlined in the plan.

68. As the first tear gas insertion occurred, at 6:05 a.m., HRT Sniper Lon Horiuchi stationed at Sierra-1, saw what he believed to be green tracer rounds emanating from the complex toward the CEV. He radioed to the FBI commanders the word "compromise," meaning that the FBI was taking fire from the Davidians. Numerous FBI agents and other witnesses saw or heard gunfire coming from the complex, and some of these observations are recorded in the various FBI logs referenced above. Davidian gunfire continued sporadically throughout the morning. No logs or radio transmissions indicate that the FBI returned fire. At 6:17 a.m., the on-scene FBI leadership questioned the agents at various positions around the complex to learn whether they were returning fire. They all responded that they were not.

69. CEV-1 continued its insertion of tear gas, moving to the black side of the complex and eventually returning to a resupply area to refill its canisters. CEV-2 covered the red side, inserting tear gas until it too needed to refill its canisters. As a result of the calling of "compromise," the Bradleys

began firing non-pyrotechnic Ferret rounds into the main living quarters of the complex almost immediately after the operation began. The first targets were the tower and windows from which Davidians were firing at the CEV's. Then the Bradleys began a more systematic process of attempting to fire Ferret rounds into all the windows at the complex.

70. By 6:27 a.m., Rogers announced that the FBI had tear gassed all windows in the complex. Due to the combination of high winds, the failure of some Ferret rounds to penetrate into the complex and/or discharge their tear gas, and the use of gas masks by some Davidians, the tear gas appeared to have little effect upon the inhabitants. No one exited. A Title III intercept recorded a Davidian asking at 7:50 a.m., "[h]ave we been gassed?" Other intercepts record some Davidians speaking without difficulty, indicating that they had suffered no seriously ill effects from the tear gassing operations at that time.

71. At 6:44 a.m., at the request of Rogers, Sage announced to the Davidians that, if they did not exit within two minutes, the FBI would resume tear gassing operations. When no one exited, Jamar and Rogers ordered a second round of tear gassing with Ferret rounds to begin. The FBI soon ran low on Ferret rounds and made efforts to locate additional rounds. The tear gassing continued throughout the morning, with planned breaks, and with repeated announcements by Sage that the Davidians should exit the complex. The FBI fired a total of 389 Ferret rounds into the complex during the entire April 19 operation; in addition, the FBI delivered 20 canisters of tear gas during the entire operation.

K. The FBI Fires Three Pyrotechnic Tear Gas Rounds at the Concrete Construction Pit on the Green Side of the Complex.

72. Early in the morning, the Charlie Team Bradley unsuccessfully attempted to deliver Ferret rounds into the concrete construction pit on the green side of the complex. The Charlie Team made the attempt to prevent Davidians from hiding in the concrete construction pit which was connected to the main structure by a buried bus and an underground tunnel. At approximately 7:45 a.m., the Charlie Team Leader requested permission from McGavin to fire military tear gas rounds– which had better penetration capability– toward the concrete construction pit on the green side of the complex. Unlike a Ferret round, a military tear gas round delivers the tear gas through pyrotechnic means.

73. At 7:48:52 a.m., McGavin radioed Rogers and told him that he thought that the FBI could penetrate the concrete construction pit with a military tear gas round. Rogers gave permission to McGavin to fire military tear gas rounds although he suggested that they may not work due to water in the structure. Rogers has subsequently claimed that he believed that firing pyrotechnic tear gas at the concrete construction pit did not violate the instructions of Attorney General Reno because the concrete construction pit was not part of the flammable wooden living structure of the complex. The Bradley moved into position, and the driver dropped the back door. Special Agent Corderman used the back door of the vehicle as a platform from which to fire the military tear gas rounds. He fired three rounds at approximately 8:08 a.m. but immediately saw that they had bounced off the roof of the concrete construction pit. One landed between the concrete construction pit and the Sierra-2 sniper position and the other two landed just to the right side of the concrete construction pit. All three rounds came to rest

harmlessly in no position capable of starting a fire in the complex. The firing of the military tear gas rounds was not recorded on any log on April 19. However, the radio transmission at 7:48:52 a.m. was recorded by the Nightstalker aircraft as follows:

HRT-2: HR-2 to HR-1.

HRT-1: Go ahead, this is HR-1.

HRT-2: Currently re-supplying Charlie-1 . . . relative safety, ah, utilizing the vehicle for cover and attempt to get . . . penetrate the construction project.

HRT-1: You're talking about the black over top of the construction?

HRT-2: Say again HR-1.

HRT-1: Are you saying he can penetrate the black covering over the construction on the green side?

HRT-2: 10-4 . . . He thinks he can get in a position of relative safety, utilizing the track for cover and attempt to penetrate it with military rounds.

HRT-1: Roger. Of course, if there is water underneath, it's just going to extinguish them, but you can try it.

HRT-2: 10, 10-4, copy you can try it.

HRT-1: Yeah, that's affirmative.

The FBI did not fire any other military tear gas rounds at Waco on April 19.

L. The FBI Breaches the Complex.

74. At 9:01 a.m., Rogers radioed that he did not want the vehicles to insert tear gas into the front door of the complex because he wanted to create an escape route for the Davidians. At 9:12 a.m., a CEV pushed in the front door that the Davidians had blocked with a piano, after which, at 9:19 a.m., both Rogers and McGavin stated by radio to the vehicle drivers that the HRT should not insert tear gas into the front door so that the Davidians could avail themselves of the newly created exit route.

75. Between 9:30 a.m. and 10:00 a.m., Rogers, Jamar, and McGavin (and for some of the time Swenson) met at the "Y" intersection outside the complex to discuss the ineffectiveness of the tear gas inserted thus far. They agreed that they would penetrate deeper into the complex in order to increase the effectiveness of their operation. While the plan only allowed for the systematic dismantling of the complex after the passage of 48 hours, the FBI on-scene leaders determined that they would need to penetrate the building to effectuate their tear gas delivery. Jamar and Rogers believed the occupants of the complex had taken shelter near the concrete bunker beneath the tower. Since the Bradley M-79 tear gas gunners could not otherwise reach this area, Rogers decided to order the breach of the building from the front and rear with the CEV's in order to deliver tear gas to this area.

76. After refilling the tear gas canisters the second time, CEV-2 lost its tread and its crew then occupied CEV-3, which was not equipped to deliver tear gas. CEV-3 drove to meet Rogers, who was in the Abrams tank, at which time Rogers instructed the crew to go to the black side of the complex and

use the boom and blade to create a path to the tower. Rogers and the crew of CEV-3 have stated that the purpose of this operation was to create a driveway to the main tower so that CEV-1 could insert tear gas close to the tower.

77. The FBI Nightstalker surveillance aircraft captured the CEV penetration activity on its Forward Looking Infrared ("FLIR") thermal imaging system which had provided the audio recording of the radio transmissions concerning the authorization for the use of military tear gas rounds and the opening of an escape route through the front door. It also provided video of the front door being pushed in by the CEV. The video from the early morning FLIR was obscured by considerable cloud cover. By the time the operation to deliver tear gas to the tower began, the cloud cover had lifted and the images were relatively clear. At 10:41 a.m., the beginning of the second shift, the operator failed to engage the audio, although the video remained operational.

78. At 11:18 a.m., CEV-3 made contact with the wall on the black side of the gymnasium. Its mission was to clear a path through the gymnasium (which the Davidians used as a storage area) to the tower, so that CEV-1 could then deliver tear gas. At 11:20 a.m., CEV-3 pushed through the wall of the gym, and then exited. At 11:21 a.m., the CEV entered again. The entries were slow and problematic because the driver feared a drop off or ledge, and encountered a large number of stored items that created obstacles. He also stated that he feared that Davidian snipers might be located in the catwalk at the top of the gymnasium. On the eighth entry, the CEV went completely inside the gym so that the front

of the CEV (or the debris it was pushing) protruded from the front of the gym. At 11:27 a.m., the CEV clipped a beam, causing the gym roof to collapse.

79. The effort to reach the tower continued for over a half an hour longer, and included penetrations into the white side of the complex by CEV-1 as well, with portions of the structure continuing to collapse throughout the process. At about 11:30 a.m., the driver of CEV-1 penetrated the building on the white side perpendicular to the tower or concrete bunker area. Over the next twenty minutes, CEV-1 entered and backed out of the building three times. As the vehicle backed from the building, the operator used the blade to drag debris from the area. Again, the penetrations of the building were slow and methodical as the driver feared there may be a basement or drop off beneath the structure and the vehicle would become stranded. During this operation, the CEV-1 operator had swivelled the boom to the rear and, at 11:50 a.m., after repositioning the boom, CEV-1 entered the structure once again to insert tear gas into the tower area. After inserting the tear gas, and on the command of Rogers, CEV-1 returned to the front door and again penetrated this area. A short time later, at about 11:54:26 a.m., CEV-1 again penetrated the front door area and inserted a canister of tear gas. At about 11:57 a.m., Jamar ordered the CEV to clear this area to allow the occupants to exit quickly and safely. CEV-1 then made several additional entries into the front door area. At 12:05 p.m., Rogers ordered the CEV to deliver tear gas to the white/red corner, and the CEV departed the area of the front door. Throughout this operation, the FBI FLIR tapes showed rapid "flashes" on and around the complex and the vehicles. These flashes were solar reflections off of certain types of debris, including glass, that was strewn around the complex.

M. The Davidians Prepare to Start the Fire.

80. During the early part of the execution of the FBI's tear gas insertion plan, the Title III intercepts recorded Davidians making references to getting gas masks; and they recorded the sounds of people loading guns, and moving to different parts of the complex. The Davidians commented on the "good" wind dispersing the tear gas, and opened windows to ventilate the complex further. The Title III intercepts also recorded sounds consistent with gunfire emanating from within the complex to positions outside the complex.

81. As early as 6:05 a.m., the Title III intercepts picked up conversation indicating that the Davidians were pouring fuel and preparing to light the complex on fire. The Title III monitors at the rear TOC were unable to understand these conversations, which remained largely unintelligible until they were professionally enhanced after the standoff. Because these conversations bear directly on the issue of who started the fire, some of them are included below. They indicate that the Davidians began pouring fuel early in the morning on April 19, and that they prepared to start a fire at several different times during the tear gassing operation.

82. At 6:09 a.m, the intercepts recorded the following conversation among a group of Davidians:

Unidentified Male: Have you poured it yet?

Unidentified Male: Hm.

Unidentified Male: Did you pour it yet?

Unidentified Male: In the hallway . . . yes.

Unidentified Male: David said pour it right?

Unidentified Male: D'you need . . .

Unidentified Male: Come on let's go.

Unidentified Male: David said we have to get the fuel on.

Unidentified Male: Does he want it poured already?

Unidentified Male: We want the fuel.

Unidentified Male: Yeah.

Unidentified Male: We want some here.

83. At 6:15 a.m., the intercepts recorded this conversation:

Unidentified Male: Have you got the fuel . . . ready?

Unidentified Male: I already poured it.

Unidentified Male: It's already poured.

84. At 6:22 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: Nobody comes in huh?

Unidentified Male: Nobody's supposed to come in.

Unidentified Male: Right.

Unidentified Male: They got some fuel around here.

Unidentified Male: Yeah . . . We've been pouring it.

Unidentified Male: Pouring it already.

Unidentified Male: We've got it poured already.

85. At 7:08 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: That's good . . .

Unidentified Male: Real quickly you can order the fire yes.

Unidentified Male: Yeah.

86. At 7:20 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: You've got to put the fuel in there too.

Unidentified Male: Is it dry?

Unidentified Male: Hey let's put loads of fuel in there.

Unidentified Male: Fuel.

87. At 7:21 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: Is there a way to spread fuel there?

Unidentified Male: OK . . . what we do . . . . You don't know.

Unidentified Male: I know that won't spread . . . get some more.

Unidentified Male: So we only light it first when they come in with the tank right . . . right as they're coming in?

Unidentified Male: Right.

Unidentified Male: That's secure . . . . We should get more hay in here.

Unidentified Male: I know.

88. At 7:23 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: You have to spread it all so get started OK?

Unidentified Male: Yeah . . . got some cans there.

Unidentified Male: Right here . . . two cans here . . . and that's . . . and the rest can take em . . .

89. At 11:27 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: There isn't any reason to go out there.

Unidentified Male: No.

[Vehicle noise]

Unidentified Male: Do you think I could light this soon?

Unidentified Male: They're bringing it right to the middle of the . . .

Unidentified Male: Whoa . . . whoa.

90. At 11:42 a.m., the intercepts recorded the following conversation among the Davidians:

Unidentified Male: We're near the point where we oughta be . . .

Unidentified Male: We've no . . . we're not to blame for that . . . . We're not to blame.

Unidentified Male: Looks to me that you gotta . . .

Unidentified Male: You'll have to deal with that.

Unidentified Male: Go and get the kids.

Unidentified Male: They'll go for the barn.

Unidentified Male: I want a fire on the front . . . you two can go . . .

91. Then, at 11:54 a.m., an unidentified male stated: "Keep that fire going . . . keep it." This was the last statement intercepted before the listening device ceased operating.

92. At approximately 12:06 p.m., an FBI agent observed a white male wearing a gas mask just inside of the front door area of the complex. The individual had a long rifle in his right hand and was walking from east to west holding something in his left hand. An overturned piano obstructed the FBI agent's view of the individual's hands and body, but the agent later concluded that the individual's movements were consistent with those of a person spreading fuel within the complex. Also, the FBI agent observed the unidentified individual ignite a fire in the front door area of the complex. The agent reported his observation contemporaneously.

93. An FBI agent, who had a clear view into the chapel area, observed two individuals making movements which were consistent with the spreading of fuel. The FBI agent was located at a sniper/observer position approximately 180 yards from the southeast corner of the complex. The FBI agent was using binoculars and a spotting scope at the time of his observation. Seconds before smoke

became visible on the second floor of the southeast tower, a SWAT agent observed a white male repeatedly bending over in the second floor room of the southeast tower where the fire ignited. The agent was located at a position on a hill approximately 900 meters from the east side of the complex, and was using field glasses at the time he made his observation. From within the complex, Davidian Graeme Craddock observed an unidentified individual pouring Coleman fuel in the chapel area of the complex. Craddock also overheard Pablo Cohen tell the unidentified person to pour the fuel outside rather than inside. A few minutes later, Craddock heard Mark Wendell say "light the fire," and, in response, Cohen stated "wait, wait, find out." At that time, Cohen and Wendell then had a conversation which Craddock could not overhear.

N. Fire Starts at the Complex and Nine Davidians Exit.

94. At 12:06 p.m., CEV-1 moved from the southeast corner of the complex toward the road. Moments later, at 12:07 p.m., the FLIR tape shows a visible fire signature in a second floor room at the southeast corner of the complex. The FLIR tape shows a second visible fire signature in the dining room area at 12:08 p.m. The FLIR video shows a third visible fire signature in the stage area at the rear of the chapel.

95. As the fire began to spread, FBI agents heard gunfire within the complex. They stated that some of the rounds sounded "cooked off" by the heat, but that others were rhythmic in nature, leading some of the agents to conclude at the time that the Davidians were committing mass suicide.

96. Shortly after the fire began in the southeast corner of the complex, Davidians David Thibodeau, Derek Lovelock, Jamie Castillo, and Clive Doyle exited the chapel. Doyle had injuries on both sides of his hands consistent with liquid fuel burns. Graeme Craddock exited the chapel area through a window, entered the rear courtyard, and concealed himself in a concrete structure at the base of the water tower. He was not arrested until 3:30 p.m. At 12:16 p.m., Davidian Renos Avraam exited to the roof. HRT agents attempted to help him to safety, although he resisted. Similarly, Davidian Ruth Riddle jumped from the white side roof but then reentered the complex. Special Agent James McGee exited his secure position in a Bradley, ran into the flaming building, and rescued Riddle against her will. Once Riddle was safely outside of the complex, McGee questioned her regarding the location of the children within the complex, but Riddle refused to answer. Marjorie Thomas and Misty Ferguson, who fell or jumped from the second floor on the white side of the complex, were badly burned. According to one of the Secret Service paramedics who treated her, Marjorie Thomas was in respiratory arrest and would have died had she not received the immediate medical care provided to her. During the course of the fire, a total of nine Davidians exited the complex. These Davidians were initially treated in the fortified medical position near the "T intersection" and then, transported to the rear medical area field hospital. The severely burned victims were flown by MedEvac helicopter to Parkland Hospital in Dallas, Texas.

97. The FBI combined log reports the first observation of fire at 12:10 p.m. At 12:13 p.m., fire department assistance was requested. Within 18 minutes of the first observation of fire, the entire complex was engulfed in flames. Jamar permitted firefighting vehicles to approach the complex at 12:34

p.m. He has stated that he waited until then because of fear for the safety of the unarmed firefighters. Rounds continued to cook off inside the complex after the firefighting trucks were on the complex premises putting out the fire.

98. At 1:00 p.m., several HRT agents entered the concrete construction pit, waded through waist high water contaminated with sewage and rats, and reached the underground bus to search for survivors. Several FBI searchers, including HRT commander Rogers, entered the concrete construction pit with the hope that the children were hiding in the underground bus. They found none. They also could not open the trap door leading from the underground bus to the living quarters because it was covered with debris.

O. The FBI and the Texas Rangers Investigate the Crime Scene.

99. At approximately 4:00 p.m. on April 19, the FBI permitted the Texas Rangers (with assistance from the Texas Department of Public Safety) to begin their efforts to secure the scene and gather evidence. The Rangers maintained security around the remains of the complex. Captain David Byrnes, among others, supervised the securing of the scene pending the implementation of a search protocol. Smoldering remains from the fire delayed the processing of the scene for three days. During that time, because of the heat, ammunition continued to "cook off" and cans of food exploded.

100. Although the Texas Rangers had principal responsibility for organizing the search for evidence, numerous federal and state agencies and agency components participated in the gathering and

analysis of evidence from the scene. They included representatives from the Laboratory Division of the FBI, the Tarrant County Medical Examiner's Office, the Houston Fire Department's Arson Division, the United States Attorney's Office for the Western District of Texas, the Texas Department of Public Safety Crime Laboratory, ATF, and the Smithsonian Institution. During the first few days after the fire, the Rangers led several coordination meetings with the representatives of these entities to ensure the orderly processing of evidence.

101. On April 20, explosive experts from ATF and the FBI searched the remains of the complex for explosive devices. FBI Supervisory Special Agent Wallace Higgins, an explosive and hazardous device examiner, located two military tear gas projectiles adjacent to the east side of the concrete construction pit. Higgins, concerned that one of the rounds might still contain tear gas, fired a handgun at the projectile in an attempt to render it safe. He did not retrieve either of the projectiles. No one logged these projectiles into evidence.

102. On April 22, the crime scene search personnel met at Ft. Fisher Texas Ranger Museum to reach a consensus on how to proceed. They decided to divide the complex grounds into gridded sectors so that people making use of the evidence in the future would know where each piece of evidence had been found. The grid contained 21 lettered sectors, from "A" to "W," excluding the letters "Q" and "K." Six teams, each led by a Ranger, gathered and catalogued evidence. Photographers took pictures of key evidence before agents removed it. However, there were more grids than photographers, so each photographer covered more than one grid. As bodies were found, they were

tagged, removed from the crime scene to a staging area, and subsequently loaded onto a refrigerated truck and transported to the Tarrant County Medical Examiner's Office.

103. On April 23, during the search for evidence, Sergeant George Turner, a Texas Ranger, recovered an expended shell casing from a pyrotechnic tear gas round in Sector E, grid EC1. The FBI laboratory labeled the shell item Q1237. Sgt. Turner stated that he discussed the find with FBI Supervisory Special Agent Rick Crum who said he would try to determine its origin. The shell casing recovered by Sgt. Turner is a component part of a 40 millimeter tear gas round referred to as a military tear gas round or XM651E1. According to Sgt. Turner, Crum informed Sgt. Turner in 1994 at the criminal trial of the Davidians that the shell casing that Turner found in April was from a military casing that had been fired by the FBI. Also according to
Sgt. Turner, Crum stated that his inquiries had revealed that the FBI had fired the round in an effort to knock down a door and that FBI on-scene leadership had given permission to fire the round.

104. As the crime scene search continued, the Rangers were cataloguing thousands of pieces of evidence and retrieving thousands of pounds of additional materials. Additionally, the Rangers conducted a line search on April 30 involving 53 law enforcement officials who lined up fingertip to fingertip and searched the area outside the main structure of the complex. On April 30, a crime scene photographer took a photograph of a military tear gas projectile 200 yards northwest of the water tower. This projectile was not inventoried as evidence and extensive searches have failed to locate it.

105. On May 12, the Rangers loaded the evidence into a truck. The evidence recovered by Rangers from the Davidian complex included 300 rifles and shotguns, including two .50 caliber BMG rifles, 34 AR-15 assault rifles, 61 M-16 assault rifles, 61 AK-47 rifles, and 5 M-14 rifles. More than 40 of these rifles were fully automatic. Additionally, the Rangers recovered 60 pistols and thousands of pounds of live and spent ammunition. On May 15, they delivered evidence to the FBI Crime Laboratory in Washington, D.C. On May 17, the chain of custody was formally transferred to FBI Special Agent Jim Cadigan of the FBI Crime Lab. The FBI returned the evidence to the Rangers on various dates but most had been returned by December 3, 1993.

106. On April 19, 1993, at the direction of the Department of Justice, ATF assembled an independent team of fire investigators. The team consisted of Assistant Chief Investigator Paul Gray, Houston Texas Fire Department; Senior Investigator William Cass, Los Angeles City California Fire Department; Investigator John Ricketts, San Francisco California Fire Department; and Deputy Fire Marshal Thomas W. Hitchings, Allegheny County Police Fire Marshal's Office. Also, Drs. James Quintiere and Frederick Mower were retained in order to conduct a fire development analysis.

107. The fire investigation team conducted a nine-day on-site investigation beginning April 21, 1993, and continuing until April 29, 1993. On April 22, 1993, prior to gaining access to the crime scene, the fire investigation team viewed news media video recordings of the fire and discussed the possibility that fires had ignited in three separate areas almost simultaneously. On April 23, 1993, the fire investigation team began the process of collecting potential evidence and identifying items to be sent

to the laboratory for analysis. An accelerant detection dog was used to determine which items were to be sent for laboratory analysis. The accelerant detection dog alerted agents to debris in the southeast corner area, the dining room area, and the chapel area, and to a number of articles of Davidian clothing.

108. The investigation resulted in the recovery of numerous Coleman fuel cans (some of which appeared to have been intentionally punctured), lanterns, and numerous articles of debris on which the laboratory detected the presence of flammable liquids. The laboratory was able to confirm the accelerant detection dog's alerts on debris in the chapel area and in the southeast corner area of the complex.

109. The fire team concluded that: the "fire was caused by the intentional act(s) of a person or persons inside the compound;" the "fires were set in three separate areas of the complex;" and "flammable liquids were used to accelerate the spread and intensity of the fire."

P. The Medical Examiners Determine the Cause of Death of the Davidians.

110. On April 19, the Tarrant County Medical Examiner's Office, led by Dr. Nizam Peerwani, the Chief Medical Examiner, prepared to conduct the autopsies of the Davidians. The Tarrant County Medical Examiner's Office first became involved with the events at Waco when Dr. Marc Krouse, the Deputy Chief Medical examiner, was called on February 28, 1993, and told to prepare for the autopsies of the four ATF agents killed during the initial gun battle. In early March 1993, Dr. Krouse performed these autopsies, and Dr. Peerwani conducted another autopsy on the body of Michael Schroeder, who had been killed in a gun battle with ATF agents late in the day on February 28.

111. On April 19, Dr. Peerwani activated his office's Mass Disaster Plan. Dr. Peerwani's office received the first body from the crime scene on April 19. On April 21, Dr. Peerwani and an odontologist from his office surveyed the crime scene. Between April 22 and April 29, Dr. Peerwani's recovery team, including a photographer, criminalist, pathologist and an anthropologist, assisted in the recovery of bodies. They developed a procedure for flagging, photographing and removing the human remains from the scene. Later Dr. Peerwani created a diagram showing the location where they found each of the bodies.

112. Over the next month, Dr. Peerwani and his staff conducted autopsies at the Tarrant County Medical Examiner's Office. Dr. Peerwani led a team of professionals including pathologists, anthropologists, FBI fingerprint examiners, and odontologists from various organizations. Until they could be examined, the bodies were kept appropriately cool to preserve any evidence suggesting their cause of death. After their examination, the bodies were kept in a freezer donated by the FBI to the Tarrant County Medical Examiner's Office.[73]

[73]Sometime after the examination, the freezer malfunctioned.

113. The examiners found 94 remains and labeled them MC-1 through MC-81,[74] with multiple remains included under one number in some cases such as MC-31A through MC-31F[75] and MC-67-1 through MC-67-8. Furthermore, because of the extensive heat damage and commingling of bodies, DNA analysis determined that several of the MC numbers were actually the same individual.[76]

114. The autopsy reports, DNA findings, and anthropological work indicated that at least 74 Davidians died on April 19, including at least 20 children under the age of 14 with a majority of children under the age of seven. On April 19, at least 20 Davidians were shot including at least five children under 14. Of the 20, 12 were shot in the head, two were shot in the head and chest, three more were shot in the chest only, two were shot in the back and one, Schneider, was shot in the mouth. In several additional instances, the pathologists could not confirm, but would not rule out gunfire, which indicates that more Davidians may have been shot. Additionally, one child was stabbed to death. Dr. Peerwani attributed most of the other deaths to inhalation of smoke and carbon monoxide and thermal burns due to the fire or suffocation due to overlay and burial in the structural collapse.

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[74]"MC" denotes "Mount Carmel" which is another name for the Branch Davidian complex. Dr. Peerwani devised this numbering system.

[75]For example MC-31A and MC-31B are Aisha Summers (who died of a gunshot wound) and her near term unborn child respectively, while MC-31D and MC-31E called MC31-DE are parts of the same fragmented skull of an 11 to 14 year old unknown child (who also died of a gunshot wound).

[76]For example, DNA analysis showed that MC-50 and MC-61 are the same individual, a child of Douglas Wayne Martin.

Q. The Department of Justice and Congress Investigate the Activities at Waco.

115. Immediately following the fire, FBI Special Agent in Charge and spokesman Robert Ricks announced at a press conference that the FBI had not used any pyrotechnic devices during the April 19 operation. Within days, Congress convened hearings, and on April 28, 1993, Attorney General Reno testified that she had been assured prior to the operation that the tear gas and its "means of use" were non-pyrotechnic. HRT commander Rogers sat behind her during this statement but did not inform her that the FBI had used pyrotechnic tear gas at the concrete construction pit. In addition, FBI Director Sessions testified that the FBI had chosen CS gas because the agents could deliver it without pyrotechnics. Rogers, also present during the testimony of Sessions, failed to correct any potential misimpression left by this statement.

116. Numerous investigations and inquiries followed, including a fire investigation and scientific fire analysis, Congressional hearings in 1993 and 1995, a 1993 Department of Treasury Report about the ATF's role in the Waco operation, and a 1999 GAO report on the use of the armed forces at Waco. Also, in 1993, the Department of Justice organized a series of inquiries into the Waco operation under the supervision of Deputy Attorney General Philip Heymann. This project was divided into four parts: (1) a factual review of the entire Department of Justice and FBI operation at Waco, (2) further review by a panel of experts who were asked to make recommendations based on the facts developed in the initial review, (3) a critical evaluation of the handling of the Branch Davidian standoff prepared by Edward S.G. Dennis, Jr., and (4) Deputy Attorney General Heymann's own report containing

recommendations for changes to better handle similar situations in the future. None of these reports or investigations found evidence of criminal wrongdoing by the United States or its agents at Waco.

117. Attorney General Reno asked Richard Scruggs, an experienced federal prosecutor, to conduct the factual inquiry into the activities of the FBI and Department of Justice at Waco, including the April 19 operation. Scruggs was an acquaintance of Attorney General Reno's who came to Washington, D.C., from Miami at her request to assist her in her new role. Deputy Attorney General Heymann asked Assistant United States Attorney Steven Zipperstein and a Department of Justice's Office of Professional Responsibility attorney, Robert Lyon, to work with Scruggs. The FBI's Inspections Division provided the investigative resources for the review. This effort was led by FBI Inspector Victor Gonzalez and Assistant Inspectors Herbert Cousins and Roderick Beverly. The FBI compiled memoranda of interviews (called "302's") and other documents. Scruggs and his team then drafted a summary of the beliefs of the Davidians and a narrative of the events occurring at Waco. Scruggs and his team did not conduct a formal investigation. They did not make efforts to determine or challenge the veracity of the statements of witnesses, nor did they test or challenge the FBI's widely publicized contention that it did not fire guns or use pyrotechnics during the standoff.

118. Scruggs and his team assumed from the outset that the Davidians, not the FBI, started the fire. While the Scruggs team did not specifically ask witnesses whether they used pyrotechnic devices at Waco, one FBI pilot told Scruggs' investigators that he had heard a radio conversation about the use of "some sort of military round" at the concrete construction pit. The other pilot in that same plane told

Scruggs' investigators that he observed a tear gas cloud form over the concrete construction pit. The investigators apparently attributed no significance to these statements. Scruggs issued his report, entitled "Report to the Deputy Attorney General on the Events At Waco Texas February 28 to April 19, 1993," on October 8, 1993. In a section entitled "False Accusations that the FBI Started the Fire," the report stated that "a nationally recognized team of arson experts [concluded that] . . . the gas delivery systems that the FBI used were completely nonincendiary." Further, the Scruggs report stated that the arson team "noted that the tear gas delivery methods that had been selected evidenced the FBI's concern for eliminating fire hazards." The report, while discussing military involvement at Waco, did not analyze the legality of the use of the Armed Forces of the United States.

R. The Department of Justice Prosecutes the Davidians.

119. On August 6, 1993, a federal grand jury returned a ten count superceding indictment charging twelve Davidians with various crimes arising out of their activities at the complex prior to February 28, during the 51-day standoff, and on April 19. The indictment named Kathryn Schroeder, Brad Branch, Kevin Whitecliff, Clive Doyle, Jaime Castillo, Livingstone Fagan, Paul Fatta, Woodrow Kendrick, Norman Allison, Graeme Craddock, Renos Avraam, and Ruth Riddle as defendants. The Davidians faced different charges, which included conspiracy to murder federal agents, aiding and abetting the murder of federal agents, using and carrying a firearm during and in relation to a conspiracy to murder federal agents, aiding and abetting an attempted murder of federal agents, illegally carrying an explosive grenade, conspiring to possess and manufacture machine guns illegally, and aiding and abetting Koresh in the illegal possession of machine guns. As part of the conspiracy count, the government

alleged that the Davidian defendants had deliberately set fire to the complex on April 19. One Davidian, Kathy Schroeder, pled guilty to one count of armed resistance of a federal officer; the remainder prepared to go to trial.

120. Assistant United States Attorney Ray Jahn was the lead prosecutor on the case. Assistant United States Attorneys Bill Johnston, LeRoy Jahn, and John Phinizy assisted him, along with Department of Justice attorney John Lancaster and paralegal Reneau Longoria.

121. On August 23 to 25, 1993, the prosecution team, including Ray and LeRoy Jahn, John Lancaster and John Phinizy, met with several members of the Texas Rangers and FBI Laboratory personnel, including Rick Crum, to discuss the ongoing analyses of the evidence recovered from the crime scene. During the meetings, LeRoy Jahn asked Crum to have a specific 40 millimeter shall casing analyzed to determine "what the original load was and marks of value." On August 25, 1993, Crum hand carried the casing to Washington for analysis by the FBI Laboratory. Crum identified the casing as a "grenade launcher cartridge case." This casing was labeled by the lab as Exhibit Q1237.

122. In November 1993, the government's criminal trial team made a trip to Quantico, Virginia, to interview members of the HRT who had participated in the events at Waco earlier that year. Before making the trip, the trial team viewed a recently released film produced by Linda Thompson entitled, *Waco: The Big Lie.* The film contained news footage showing an FBI agent shooting a grenade launcher from the back of a Bradley and, moments later, a cloud of tear gas rising from the area of the

concrete construction pit. Thompson claimed in the film that this footage showed that the FBI started the fire early in the morning of April 19. One reason for interviewing HRT members at Quantico was to hear their explanation of this footage.

123. The prosecutors showed the film to a large group of HRT members and then interviewed them in smaller groups. During the interview of the Charlie Team, Corderman told members of the trial team that the smoke shown in the film was not due to fire, but rather was a tear gas cloud from a military tear gas round that he had fired at the concrete construction pit. Corderman described the round as incendiary. Longoria wrote the word "incendiary" in her notes next to the description of the military round. Lancaster's notes also state "fired 1-4 incendiary rounds" and "1 military" round at the "ce-ment [sic] underground deal."

124. Members of the trial team also met with HRT commander Richard Rogers. LeRoy Jahn's notes reflect that Rogers told them that the FBI had used a "cupcake" round at the concrete construction pit, that he knew there was water in the concrete construction pit, and that the cupcake round had greater "penetrator" power than the Ferret rounds that had bounced off. Lancaster recalls that LeRoy Jahn asked Rogers what a cupcake round was and that Rogers explained that it was a military round. Longoria's notes from the same interview reflect that Rogers referred to the use of a "military tear gas round."

125. Back in Waco, the criminal trial team prepared outlines and witness charts reflecting that the HRT had fired "military" rounds at the concrete construction pit during the early morning hours of April 19. These documents indicate that the trial team decided to save this information for rebuttal in the event that the Davidians attempted to claim that the "smoke" in the concrete construction pit was the result of an igniting fire, rather than the use of tear gas.

126. The government's trial team did not disclose the use of the military tear gas rounds to the lawyers for the Davidians under *Brady v. Maryland* which requires prosecutors to provide the defense with exculpatory information. In the "Government's Response to Defendant Castillo's Specific Brady Requests," Ray Jahn stated, "[t]he government has no evidence that government agents fired gunshots on April 19, 1993, other than ferret tear gas rounds." However, the government provided the criminal defense team with a 49-page FBI laboratory report which referenced Q1237, the shell from a military tear gas round that the Rangers had located at the scene, and they also provided the defense with numerous photographs, including the photograph of a spent military tear gas projectile taken by the crime scene photographer at the crime scene.

127. During the trial, the prosecution sought to prove that the Davidians started the fire. Dr. Quintiere, the government's fire expert, testified that the fire started in three or four locations simultaneously, and another expert testified that the Davidians had spread accelerants throughout the complex. None of the prosecutors mentioned the FBI's use of pyrotechnic rounds several hours before the fire started. They continued to view this evidence only as rebuttal evidence. They did provide

testimony that the FBI had used Ferret rounds, and FBI HRT member Thomas Rowan testified that a Ferret round was "not a pyrotechnic."

128. On February 26, 1994, the jury acquitted the defendants of the conspiracy and murder counts but convicted five defendants of the lesser included offense of aiding and abetting manslaughter. Those convicted of aiding and abetting manslaughter were Renos Avraam, Brad Branch, Livingstone Fagan, Jaime Castillo, and Kevin Whitecliff. Brad Branch, Kevin Whitecliff, Jaime Castillo, Livingstone Fagan, Graeme Craddock, Renos Avraam, and Ruth Riddle were each convicted of using or carrying a firearm during a conspiracy to murder federal officers. Graeme Craddock was convicted of possessing an explosive grenade, and Paul Fatta was convicted of conspiring to illegally possess and manufacture machine guns and aiding and abetting the illegal possession of machine guns. Three Davidians, Clive Doyle, Woodrow Kendrick, and Norman Allison, were acquitted of all charges.

129. On June 17, 1994, the Honorable Walter S. Smith, Jr. sentenced Avraam, Branch, Castillo, Fagan, and Whitecliff to 40 years each in prison. Judge Smith sentenced Craddock to 20 years in prison, Fatta to 15 years, and Riddle to five years. Schroeder was sentenced to three years on July 8. The United States Court of Appeals for the Fifth Circuit affirmed the convictions on August 2, 1996. On June 5, 2000, the Supreme Court remanded the case to the District Court for resentencing, holding that the Davidians convicted of using or carrying firearms during and in relation to the ATF raid were improperly sentenced to 30 years for possession of machine guns because the jury had not found specifically that the defendants possessed machine guns.

S. Congress Holds Additional Hearings in 1995.

130. In July and August 1995, the United States House of Representatives held additional hearings on the Waco incident. The hearings were convened jointly by the Judiciary Committee's Subcommittee on Crime and the Committee on Government Reform and Oversight's Subcommittee on National Security, International Affairs, and Criminal Justice.

131. Upon learning that Congress intended to hold the hearings in 1995, Attorney General Reno asked Scruggs and Zipperstein to lead the Department of Justice effort to prepare for these hearings. Many in the Department of Justice viewed these hearings as a highly partisan effort to impugn the actions of Attorney General Reno and her staff.

132. On June 8, 1995, Congress submitted document requests to the Department of Justice, which included a request for "all records of or concerning pyrotechnic devices and incendiary weaponry, including a listing of all pyrotechnic and incendiary devices . . . used on April 19 . . . against the residence of Koresh and the Branch Davidians," as well as the names of persons who employed these devices. In response to an inquiry from the Department of Justice to the FBI concerning this request, a member of the FBI's Office of Public and Congressional Affairs wrote to Scruggs that "[t]here were no incendiary or pyrotechnic devices used against the Branch Davidians on 4/19/93." Numerous other documents prepared by the FBI and the Department of Justice to brief Attorney General Reno for her testimony, including a set of "Waco Fact Sheets," indicated that the FBI did not fire pyrotechnic devices on April 19, 1993. Attorney General Reno was not asked about pyrotechnic devices during the 1995

hearings, but Department of Justice witnesses told the Office of Special Counsel that the "Waco Fact Sheets" used to prepare for her testimony were produced to Congress. In addition, FBI and Department of Justice officials apparently told congressional staffers, and possibly even members of Congress, that no pyrotechnic devices were used.

133. In response to the document requests, Congress received the notes of Reneau Longoria from 1993 that reference the use of military round[s] and describe them as "incendiary," Longoria's notes from Rogers' interview which refer to a military round, and the criminal trial team's witness chart that references Corderman's statement to the criminal trial team in 1993 that the FBI had fired a military round/bubblehead. These documents do not use the word "pyrotechnic" to describe the military tear gas rounds.

134. Congress also requested the Department of Justice to produce the FBI FLIR tapes recorded from 6:00 a.m to 6:00 p.m. on April 19, 1993. In response to this request, the Department of Justice produced only tapes from the second shift, beginning at 10:42 a.m., maintaining that the government did not have tapes from earlier in the morning. The Department of Justice and FBI took a similar position in response to a lawsuit filed under the Freedom of Information Act seeking access to the FLIR tapes. An FBI Supervisory Special Agent submitted a sworn declaration which detailed all of the files that the FBI had searched for responsive information, and erroneously stated that the "earliest FLIR videotape recorded on April 19, 1993, occurred at approximately 10:42 a.m."

135. During the 1995 congressional hearings, prosecutor Ray Jahn submitted a written statement to Congress that "the FBI did not fire a shot, other than the nonlethal ferret rounds which carried the CS gas." No one questioned him about this statement, and the issue of the use of pyrotechnic devices did not surface during the course of the hearings.

136. The Committees issued a report on August 2, 1996, which concluded, among other things, that the FBI's strategy decisions during the 51-day standoff were flawed and "highly irresponsible" and the Attorney General's decision to assault the complex on April 19, 1993, was "premature, wrong, and highly irresponsible." The report also concluded, however, that the ultimate responsibility for the deaths at Waco lay with Koresh, and that the evidence indicated that some Davidians intentionally set fire to the complex. The report stated that there was no evidence that the FBI discharged firearms on April 19 or intentionally or inadvertently caused the fire. The report also exonerated the armed forces of any wrongdoing relative to the *Posse Comitatus* Act.

T. The Surviving Davidians and Relatives of Deceased Davidians File a Wrongful Death Lawsuit.

137. On March 21, 1994, the first of seven groups of surviving Davidians and relatives of deceased Davidians filed a wrongful death lawsuit against the United States and certain individual FBI and Department of Justice employees in the United States District Court for the Southern District of Texas, Houston Division. The seven cases were consolidated on January 16, 1996, and the various groups of plaintiffs filed a single consolidated complaint. Upon motion by the United States on April 4,

1996, the Court transferred the case to the Western District of Texas, Waco Division. The plaintiffs alleged that agents of the United States used excessive force on February 28, during the siege, and on April 19, and that they had failed to provide adequate emergency services and committed other intentional acts of misconduct or gross negligence in connection with their handling of the Davidian standoff at Waco in 1993. One such act alleged by the plaintiffs was that the government defendants caused "a fire in the Church which trapped and killed the [Davidians.]"[77]

138. In January 1996, the plaintiffs in the civil suit filed a declaration by their fire expert, Richard Sherrow, in support of their opposition to the government's motion to dismiss the complaint and specifically its motion to dismiss the plaintiffs' claims regarding the fire. Sherrow stated that:

> Besides the SGA-400 Ferret cartridges, information from documents obtained from the FBI through the United States Department of Justice

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[77]On July 14, 2000, after a four week trial, an advisory jury returned a verdict in the civil case. In its verdict, the advisory jury answered "no" to each of the following questions:

> Did the plaintiffs prove by a preponderance of the evidence that the Bureau of Alcohol, Tobacco and Firearms (ATF) used excessive force on Feb. 28, 1993, in either of the following respects?
>
> 1. by firing at Mount Carmel without provocation.
> 2. by using indiscriminate gunfire at Mount Carmel on Feb. 28, 1993.
>
> Did the plaintiffs prove by a preponderance of the evidence that the Federal Bureau of Investigation acted negligently on April 19, 1993, in one or more of the following respects?
>
> 1. by using tanks to penetrate Mount Carmel other than in accordance with the approved Plan of Operations on April 19, 1993.
> 2. by starting or contributing to the spread of the fire at Mount Carmel on April 19, 1993.
> 3. by affirmatively deciding to have "no plan to fight a fire" at Mount Carmel, despite Attorney General Reno's directive that required "sufficient emergency vehicles to respond both from a medical and any other point of view."

> indicates that military pyrotechnic munitions may have been fired into Mount Carmel. Documents disclosed indicate that agents could not penetrate either the underground shelter roof or the top of the rear four-story tower with Ferrets. Therefore, they fired at least one "military" round and referred to this munition as a "bubblehead."[78]

139. Marie Hagen, the Department of Justice attorney heading the civil case asked FBI attorney Jacqueline Brown for help in responding to these allegations. Brown in turn faxed the Sherrow declaration to the FBI Training Specialist Law Enforcement Chemical Agent, along with a note asking for assistance in responding to the declaration. The declaration was also provided to HRT Special Agent Robert Hickey. On February 15, 1996, Hickey sent a memorandum to Brown, stating in relevant part, that the FBI HRT Charlie Team had fired "[a] total of two (2) or three (3)" military rounds at the roof of the underground shelter outside the complex. He stated that the rounds were fired shortly after 6:00 a.m.,[79] bounced off the roof, and landed in the field behind the complex. Hickey noted that "the military CS rounds were prohibited from being fired into the main structure due to their potential for causing a fire." Brown read the memorandum and made notations regarding this paragraph.

140. The Department of Justice did not file a responsive pleading to the Sherrow Declaration in 1996 because it did not consider the allegations germane to the main issues in the case. In 1997, the

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[78]Document discovery in the civil case did not begin until July 1999. Therefore, the "documents" referred to by Sherrow came from other sources. Most likely, the documents were Longoria's notes which were produced to Congress in 1995, and the criminal trial team's witness chart which was produced to Congress in 1995 and to the plaintiffs in a related Davidian civil case in 1994. Both of these documents contain the term "bubblehead."

[79]In fact, the rounds were fired at approximately 8:08 a.m.

plaintiffs filed a supplemental declaration by Sherrow which again alleged that the HRT had used military tear gas rounds on April 19. In a brief filed on March 20, 1998, the government dismissed Sherrow's statement that the FBI fired pyrotechnic rounds on April 19, 1993, with a footnote stating that Sherrow "ignores the virtual arsenal gathered by the Davidians," clearly suggesting that the Davidians had fired the military tear gas rounds at the FBI. Brown reviewed the brief before it was filed. After the FBI publicly acknowledged using military tear gas rounds in August 1999, the Department of Justice filed a pleading withdrawing this statement.

141. As the civil lawsuit proceeded, Dan Gifford and Michael McNulty (among others) produced and released the film *Waco: Rules of Engagement*. The film included portions of the FLIR tapes from after 10:42 a.m. The producers noted the flashes emanating from the complex and around government vehicles which they claimed evidenced a gun fight between the government and the Davidians. The producers also noted objects on the FLIR tapes which they claimed were persons exiting the government vehicles and assuming positions to fire shots into the complex. The plaintiffs in the civil lawsuit seized upon this information to support their allegations that the government had contributed to the deaths of the Davidians by shooting into the complex, pinning the Davidians down, and preventing their escape. The government continued to assert that the FBI had not fired a single shot at Waco on April 19, 1993. Its experts stated that the flashes on the FLIR tapes were reflections from debris on the ground, a theory dismissed as impossible by the plaintiffs' experts.

142. In 1997, as part of the preparation of the defense in the civil litigation, various Department of Justice and FBI officials debated internally the desirability of conducting a test of the FBI's Nightstalker FLIR equipment to determine whether gunfire could appear on a FLIR tape and to determine whether debris could cause flashes on a FLIR tape. Those favoring the test noted that the FBI intended to upgrade its FLIR system soon and recommended that the test occur immediately. The test never occurred, and the FBI upgraded the equipment.

U. Events in 1998 and 1999 Lead to the Appointment of the Special Counsel.

143. On August 21, 1998, after consulting with Department of Justice public affairs officials, Assistant United States Attorney Johnston allowed McNulty, who was working on another Waco film, access to the Waco evidence storage facility. McNulty inspected the evidence on this and five subsequent occasions. During one of his visits, McNulty located the military tear gas shell casing (Exhibit Q1237) referenced earlier. McNulty already had the photograph of the missing military tear gas projectile which had been produced to the Davidians in the criminal trial, and recognized it as a pyrotechnic device. McNulty did not initially disclose his findings to the public but continued to seek additional information from the Department of Justice and other sources through correspondence.

144. On June 14, 1999, the Texas Department of Public Safety began an evidence review in the course of preparing a motion to transfer custody of the Waco evidence to the Court. The Ranger leadership assigned Sergeant Joey Gordon to conduct the review and instructed him to review carefully

evidence that the Rangers had made available to McNulty. While reviewing the evidence, Sgt. Gordon initiated an investigation of the 40 millimeter military tear gas round shell casing, Exhibit Q1237.

145. On July 28, 1999, *The Dallas Morning News* published an article reporting that the head of the Texas Department of Public Safety had stated that evidence held in the custody of the Rangers called into question the federal government's claim that its agents used no incendiary devices on April 19, 1993. A spokesman for the Department of Justice dismissed the allegation as "more nonsense." Attorney General Reno responded at her weekly news conference, as quoted by *The Dallas Morning News* in an article published July 30, 1999, that "I have gone over everything, and I know of no such evidence."

146. On August 19, 1999, while preparing for the civil trial, Department of Justice civil attorney James Touhey conducted a database search for the term "bubblehead" which he had seen in the Sherrow Declaration. He found the 1996 Hickey memorandum to Brown discussing the use of the pyrotechnic military tear gas rounds by the FBI at Waco, as well as Longoria's notes from the Corderman interview and the witness chart referring to the use of "military rounds" and "bubblehead." Touhey contacted Brown, but she said that she had no recollection of the Hickey memo. Touhey faxed a copy of the memorandum to Brown on August 19, 1999.

147. *The Dallas Morning News* continued to report on the release and surrender of custody of the Waco evidence. In response to a request for comments on the allegations regarding pyrotechnics, a

Department of Justice spokesman told *The Dallas Morning News* on August 23, 1999, that "[W]e are aware of no evidence to support the notion that any pyrotechnic devices were used by the federal government on April 19." *The Dallas Morning News* reported this statement on August 24, 1999, along with the news that former FBI Deputy Assistant Danny Coulson now confirmed that the FBI had fired pyrotechnic devices on April 19, 1993. On August 25, the FBI confirmed that it "may have used a very limited number of military-type CS gas canisters on the morning of April 19 . . . ." In the following days, the national media picked up the story and began to raise serious questions about whether the Department of Justice had been forthright with the American people concerning the conduct of the FBI on April 19, 1993. In addition, on August 27, 1999, *The Dallas Morning News* reported the presence of military Special Forces personnel at Waco, stating a source had indicated that members of a secret Army unit were "present, up front and close" during the FBI operation of April 19, 1993.

148. On August 30, 1999, Johnston wrote Attorney General Reno, stating that he had been unfairly chastised for letting McNulty view the physical evidence in the possession of the Texas Rangers and suggesting that Attorney General Reno had been misled about the FBI's use of pyrotechnic devices on April 19, 1993.

149. In early September 1999, the FBI disclosed publicly the existence of additional FLIR video recordings which it had previously claimed did not exist, one of which contained the audio recording of the request and authorization of the HRT to fire the military tear gas rounds. On September 2 and 3, 1999, the FBI press office released the morning FLIR recordings, including the audio, which confirmed

the firing of the pyrotechnic military tear gas rounds at the concrete construction pit shortly after 8:00 a.m. on April 19, 1993.

150. As a result of the public release of information from the newly discovered FLIR tapes, the public disclosure of the military tear gas shell and the photograph of the military projectile, and the new information about the presence of Army Special Forces personnel at Waco, on September 1, 1999, at the suggestion of FBI Director Louis Freeh, Attorney General Reno sent U.S. Marshals to the FBI to confiscate Waco-related evidence. Then, after first considering allowing the FBI to investigate the matter, she decided to appoint a Special Counsel to investigate questions about the conduct of the FBI at Waco, and whether any government official had covered up information about the incident. On September 9, 1999, Attorney General Reno appointed former United States Senator John C. Danforth as Special Counsel, issued Order No. 2256-99 defining his charter, and recused herself from further involvement in the Waco matter.

* * * * * * * * * * * * * * * * * * *

This concludes the Special Counsel's Interim Report to the Deputy Attorney General. The Office of Special Counsel intends to proceed with dispatch to conclude the open issues concerning the possible concealment of evidence and to issue its Final Report, if at all possible, by the end of this year.

EXHIBIT 3

FILED

SEP 27 2000

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

ISABEL G. ANDRADE, ET AL., Plaintiffs,	§	
v.	§	Civil No. W-98-CA-139 (Consolidated)
UNITED STATES OF AMERICA, Defendant.	§	

AMENDED
FINDINGS OF FACTS
AND
CONCLUSIONS OF LAW

The above-captioned cause of action came on for trial before the Court and an advisory jury on June 19 through July 14, 2000.

Before reaching the merits of the suit, the Court must address two motions recently filed by the Plaintiffs – a second motion to recuse and a motion for reconsideration. The attorneys for the Andrade plaintiffs request the undersigned recuse himself from further participation in this lawsuit because they contend there was bias against them and their clients. This motion is a further example of this attorney's abuse of the judicial process. As has been clear that for the past year, the attorneys representing the Andrade plaintiffs have attempted 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. None of the allegations contained in

Plaintiffs' motion, either singularly or combined, forms a legal basis for recusal.

Although it should not be necessary, the Court reminds Mr. Caddell of a lawyer's responsibilities as set out in the Preamble to the Texas Disciplinary Rules of Professional Conduct:

> A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold the legal process.

Rule 8.02(a) further provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office." Many of the allegations contained in Plaintiffs' motion are either false or made with reckless disregard as to their truth or falsity.

As an example, Mr. Caddell asserts that the Court should recuse himself because the Government's attorneys presented gifts to the Court's staff. Having investigated, the Court has determined that as a prank played on a deputy marshal, some t-shirts were purchased by government attorneys and presented to deputy marshals. Deputy marshals are not part of the Court's staff. Neither the undersigned, nor his secretary, court reporter, or his law clerks (those persons who

constitute the Court's staff) received t-shirts, nor were even aware until now that the prank had occurred. Other "gifts" that Mr. Caddell may refer to involve the presentation of chocolate chip cookies to the clerk's office, baked by a representative of the government. Once again, the employees of the clerk's office are not members of the Court's staff, and neither the undersigned, his secretary nor law clerks received any cookies.

As a second example, Mr. Caddell complains of the Court's comments concerning Livingstone Fagan. That statement was off the record in response to another lawyer's humorous suggestion, and was not in any way intended to be taken seriously.

Additionally, there is absolutely no legal basis for Plaintiffs' motion, but is merely another attempt to unnecessarily complicate this litigation. Accordingly, the Andrade Plaintiffs' Second Motion to Recuse is DENIED.

The Brown and Holub Plaintiffs seek reconsideration of this Court's decision to proceed to rule on the FLIR issue without an additional hearing. This decision was made as the Plaintiffs had no desire to go to London to depose the Court's expert or to appear before this Court to cross-examine him. Despite Plaintiffs' assertions, they have been on notice since the Court's Order of June 13, 2000 that the Court would resolve this issue on the pleadings and summary judgment proof that had already been filed and on the report from Vector Data Systems. The parties have had more than sufficient time since that date to present additional evidence or

argument regarding the FLIR issue. The failure to present such evidence is the fault of the parties in attempting to circumvent the clear intention of the Court that Mr. Oxlee's deposition occur in England rather than in the United States. Had the parties adhered to the Court's Order, Mr. Oxlee's deposition could have been taken and presented to the Court by this time.

The Court understands the financial straits that the Plaintiffs and their attorneys may face, but that is no more than is faced by any plaintiff in any civil suit. The fact that a party cannot afford to hire a particular expert or take as many depositions as they wish is merely a product of our legal system – there is no requirement that a defendant or the Court be forced to absorb such expenses merely because a plaintiff may wish it. In no other case has the Court required a defendant to defray as many pre-trial costs as in this one. There will be no further delay for the Plaintiffs to present any additional FLIR evidence.

The Brown and Holub Plaintiffs additionally object to being required to pay their proportionate share of the FLIR test that was conducted at Ft. Hood. The amount attributable to these Plaintiffs is a mere drop in the bucket to the total costs that were expended to hold the test and to transport the Lynx helicopter from Great Britain. There was no objection from any party at the time the protocol was finalized in St. Louis, even though all parties were represented; nor was there any objection made to the Court's Order mandating the FLIR test which clearly provided that the costs of the tests would be assessed among the parties as the Court deemed

appropriate. Accordingly, the Motion of the Brown and Holub Plaintiffs for Reconsideration of the Court's Order of August 29, 2000 is **DENIED**.

The Andrade Plaintiffs' latest attempt to delay this case is their Motion to Reopen the evidence. As with their Motion to Recuse, there is no basis for their request. Plaintiffs argue that they were prepared to present evidence regarding the Government's misconduct during the 51-day siege but did not because of the Government's stipulation that it would not seek an issue regarding contributory negligence. However, that evidence would not have been admissible regardless of the Government's stipulation. Plaintiffs obviously did not read the Court's previous Order partially granting the Government's and individual Defendants' Motions to Dismiss and/or for Summary Judgment which determined that there could be no liability for the Government's actions during the 51-day siege because those actions were covered by the discretionary function exception to the Federal Tort Claims Act. Additionally, the charge given to the jury was absolutely correct -- Plaintiffs were under an obligation to submit to lawful authority and were in violation of the law for their failure to do so. Finally, the Plaintiffs' actions during that time preclude them from claiming negligence on the part of the Government as their own actions were the sole proximate cause of any injuries during that period. 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 February 28, 1993 through April

19, 1993. Accordingly, Plaintiffs' Motion to Reopen is DENIED.

The next issue the Court must address is the Plaintiffs' allegation that FBI agents fired into the Compound on April 19, 1993 to prevent the Davidians from exiting. As the Court previously noted, there is sufficient summary judgment proof contained in the record in this case, along with the report from Vector Data Systems, to rule upon this issue without the necessity for a hearing, although the Court did provide the opportunity for the parties to address these issues in a hearing. The basis for Plaintiffs' argument in this regard is the presence of flashes or glints of light that could be seen on the FLIR tape taken on April 19. The Court has carefully considered all of the expert testimony filed by both sides, as well as that of VDS, and has determined that Plaintiffs have failed to establish that any of those "anomalies" are gunfire. This is bolstered by the following: (1) the glints are too long in light of the signature flashes of the fastest weapons possessed by the FBI on that day; and (2) there is no detectable human presence in the vicinity of the glints. Plaintiffs' experts offer mere speculation that FBI agents could have been there and might have been wearing clothing that would not have been detected by the FLIR. Mere speculation does not constitute proof, and there is no further proof in support of those claims. Accordingly, it is ORDERED that the Government is entitled to Judgment as a matter of law on the FLIR issue.

After considering the pleadings, evidence, arguments and briefs, the Court enters the following findings of fact and conclusions of law:

Findings of Fact

A. Background

The background of the Davidians and the ATF investigation is set forth in the Court's July 1, 1999 *Memorandum Opinion and Order* and is incorporated herein. Therefore, the Court will not revisit those issues.[1]

B. The Events of February 28, 1993

1. The Branch Davidians (Davidians) initiated a gun battle when they fired at federal officers who were attempting to serve lawful warrants.

2. The Davidians provoked gunfire when they barraged ATF agents with gunfire directed from multiple locations.

3. The gunfire came from all floors of the Mt. Carmel Compound (Compound).

4. No ATF agent fired any shot nor used any force against residents of the Compound and the Davidians that was unprovoked.

5. Gunfire was directed at ATF agents by both male and female adult Davidians.

6. No ATF agent fired any shot nor used any force against residents of the Compound and the Davidians that was indiscriminate.

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[1]The only factual issues that Plaintiffs have proven incorrect from the Court's Order were the presence of Army personnel at the scene and the use of pyrotechnic devices by the FBI. However, the Army personnel had no participation in any of the events that occurred on April 19, but acted merely as observers. Also, the pyrotechnic devices fired by the FBI did not penetrate the Compound and did not cause nor contribute to the fire.

7. ATF agents returned gunfire to the Compound in order to protect themselves and other agents from death or serious bodily injury.

8. At all times, the ATF agents' gunfire was directed at those areas of the Compound where they perceived deadly threats.

9. The ATF agents were prevented from serving the lawfully issued arrest and search warrants by the Davidians' superior fire power and defensive position.

C. The Events of April 19, 1993

1. A number of Davidians left the Compound after February 28 but before April 19, 1993.

When the FBI injected tear gas into the Compound on April 19, 1993, the remaining Davidians did not leave as instructed by the FBI. Instead certain Davidians directed gunfire at the CEV's and the Bradley vehicles.

2. 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.

3. During the course of the day, certain Davidians prevented others from leaving the Compound. During the stand-off, Davidians had blocked the doors, windows, and other areas of the Compound, thereby inhibiting egress from these areas on April 19, 1993. At least twenty-one of the Plaintiffs died of wounds that apparently were either self-inflicted or inflicted by other Davidians; twenty Davidians died of gunshot wounds and one child died of a stab wound to the chest.

4. The FBI did not prevent nor hinder any Plaintiff from leaving the building.

To the contrary, the FBI repeatedly asked the Davidians to leave the building, warned them that tear gas would be inserted, opened up egress routes, and cleared material that was blocking the front door.

5. The Davidians possessed large-caliber weapons and had used these weapons to kill and injure the ATF agents. Military vehicles were utilized to provide protection to the officers on the scene.

6. FBI agents operating the military vehicles inserted tear gas in accordance with the approved Plan of Operations on April 19, 1993. Because the plan could not provide for every contingency, it necessarily afforded discretion to the FBI agents on the scene to adapt to the evolving conditions, including, among other things, the failure of the Davidians to leave the building, the relative ineffectiveness of the tear gas due to the wind and the Davidians' gas masks, and the possibility that certain individuals inside were prevented from leaving because the exits were barricaded. Any deviation from the written plan was within the authority delegated to the agents on the scene.

7. One of the military vehicles, CEV-1, penetrated the left-front area of the compound with its boom only to insert tear gas. CEV-1 did not cause any debris to fall on nor block the trap-door located some twelve feet from the front of the building.

8. Although the FBI fired three so-called "military" CS tear gas rounds at approximately 6:00 a.m. on April 19, 1993 at the structure the Plaintiffs call the tornado shelter, no such rounds were fired into the main wooden structure. No

Plaintiff was injured by the firing of these rounds, and they had no causal relationship to the fires which broke out shortly after noon.

9. Three separate fires started within two minutes of one another, beginning shortly after noon on April 19, 1993.

10. These fires were started intentionally by Davidians, including but not limited to, Plaintiffs David Koresh,[2] Clive Doyle, Pablo Cohen and Derek Lovelock.[3]

11. The adult Davidians kept the children in the Compound after starting the fire rather than sending them to safety.[4]

12. The fires were neither caused nor contributed to by any act of the Defendant.

13. In fact, several of the Davidians were rescued by FBI agents, who faced gunfire and flames to pull them to safety. Special Agents Bryan Timmis and Mark Tilton left the protection of their Bradley Vehicles to come to the aid of Plaintiff Marjorie Thomas, who was on fire when she left the building. Special Agent James McGee actually entered the building when it was engulfed in flames and carried Ruth Riddle to safety. Neither would tell the agents where the children were located, nor

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[2]The entire tragedy at Mount Carmel can be laid at the feet of this one individual.

[3]The most telling evidence in this regard is the conversations of the Davidians captured by the FBI on the hidden microphones. While there was much discussion of spreading the fuel and starting the fire, there was no discussion of getting the children to safety.

[4]In contrast, agents of the Defendant acted reasonably in their efforts to protect the children.

would Clive Doyle after he left the building.[5]

14. The FBI's plan to combat a fire at the Compound, should any develop, did not violate any mandatory directive from the United States Attorney General. The FBI's plan relied on the firefighting resources of the local community. In accordance with the FBI's plan, the local authorities were contacted shortly after the fire started.

15. Generally, in order to rescue fire victims, firefighters must enter the structure and fight the fire from the inside. However, because gunfire continued to be heard in the Compound even as the fire consumed the building, the fire trucks were held away from the Compound temporarily, and the firefighters were not permitted to enter. In addition to gunfire, explosions from propane tanks and grenades increased the potential danger to the fire fighters.

16. The United States Attorney General did not mandate that the FBI have armored fire trucks or other equipment available on scene. In fact, she was aware that civilian firefighters would not be permitted to approach the Compound while the Davidians were shooting.

17. There is no proof that armored fire fighting vehicles that were available would have been effective due to their limited water reservoirs, the lack of a water supply at the scene, and the extreme speed in which the Compound was engulfed

[5]The actions of these agents are the most telling evidence that the Government did not plan to intentionally harm the Davidians either by shooting them or by setting fire to the Compound. It is inconceivable that these agents were the only ones not part of the "conspiracy." Likewise, had the Government intended to burn the Davidians out, the FBI would have used a true incendiary device rather than the ferret rounds actually used.

in flames .

18. The only gunfire on April 19, 1993 was generated by certain Davidians inside the Compound. There was no gunfire from any employee of the United States that day. None of the surviving Davidians saw or heard gunfire from any FBI agents, members of the military, or any person other than the Davidians at Mt. Carmel on April 19, 1993. Certain of the events that morning were recorded by the FBI's airborne forward looking infrared (FLIR) camera. Although the FLIR tapes do not show any people outside the Compound before the fire, the system did record a number of flashes in the area around the compound during the late morning. These flashes are too long in duration to have been caused by gunfire.

19. The Andrade and Holub Plaintiffs have stipulated that the following weaponry and ammunition were found in the Compound following the April 19, 1993 fire:

Sixty one (61) AK-47 rifles;

Sixty-one (61) M-16 rifles;

Thirty-four (34) semi-automatic AR-15 rifles;

Three (3) Galil rifles;

Eleven (11) FN-FAL Belgian rifles;

Ten (10) Ruger Mini-14 semi-automatic rifles;

Five (5) M-14 rifles;

Two (2) .50 caliber rifles;

Two (2) SP-89 firearms;

Five (5) MAC-11/9 firearms;

Thirteen (13) shotguns

Six (6) .30 caliber carbines;

Over fifty (50) pistols and revolvers;

A British semi-automatic Sten gun;

Other assorted rifles;

Forty-eight (48) of the firearms found in the Compound had been modified to shoot in a fully automatic mode;

Barrels for AR-15 or M-16 rifles; one barrel for a M-60 machine gun; and four (4) barrels for other firearms;

A number of illegal silencers and several silencer components;

Hundreds of cartridge magazines and magazine springs for various firearms;

Hundreds of thousands of rounds of ammunition, some cooked off;

Several hundred rounds of spent ammunition;

A number of grenade rockets, rocket heads and a wide variety of gun parts;

One live hand grenade;

Hundreds of pieces of exploded pineapple-type hand grenade fragments;

Hundreds of pineapple-type hand grenade hulls and several baseball-type hand grenade hulls, and seven (7) flare launchers.

20. Any finding of fact which would more appropriately be a conclusion of law

is deemed so.

Conclusions of Law

1. Jurisdiction is vested in this Court by virtue of the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and 2671, *et seq.* (FTCA). The FTCA is a limited waiver of sovereign immunity for claims sounding in tort.[5] Plaintiffs contend venue was proper in the Southern District of Texas, Houston Division, where Plaintiffs' claims were initially filed, but do not challenge venue at this point in the Waco Division of the Western District of Texas.

2. Under the FTCA, Texas law governs this case.

3. Under the FTCA, Texas negligence law governs this case.

4. As a matter of Texas law, the Government was negligent if one of its agents, a) failed to do what a person of ordinary prudence would have done under the same or similar circumstances; or b) did what a person of ordinary prudence would not have done under the same or similar circumstances.

5. As a matter of Texas law, the Government's agents must exercise that degree of care that an ordinary prudent person would have used under the same or similar circumstances.

6. As a matter of Texas law, although the duty owed to children by the Government's agents is generally the same as that owed to adults, the risk of injury

[5] Those Plaintiffs remaining in the lawsuit as of the filing of these Findings of Fact and Conclusions of Law have satisfactorily established that they have exhausted their administrative remedies under the FTCA.

to a child may be greater than that posed to an adult by the same condition or act. Therefore, the exercise of ordinary care toward a child may require different conduct than would be required toward an adult.

7. As a matter of Texas law, a child under five years of age cannot be negligent.

8. As a matter of Texas law, a child at least five years old and under fourteen years old was negligent only if that child, a) failed to do what an ordinary prudent child of the same age, experience, intelligence and capacity would have done under the same or similar circumstances; or b) did what such a child would not have done under the same or similar circumstances.

9. As a matter of Texas law, a child at least five years old and under fourteen years old must exercise only that degree of care that an ordinary prudent child of the same age, experience, intelligence and capacity would have used under the same or similar circumstances.

10. As a matter of Texas law, a person who is fourteen years old or older is negligent only if that person, a) failed to do what a person of ordinary prudence would have done under the same or similar circumstances; or b) did what a person of ordinary prudence would not have done under the same or similar circumstances.

11. As a matter of Texas law, a person who is fourteen years old or older must exercise that degree of care that an ordinary prudent person would have used under the same or similar circumstances.

12. As a matter of Texas law, the negligence of a parent will not be imputed to a child with respect to a cause of action by the child's estate for survivor damages.

13. As a matter of Texas law, only the negligence of a parent that was a proximate cause of the death of the child will be considered in allocating responsibility with respect to the parent's wrongful death cause of action.

14. As a matter of Texas law, proximate cause means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event, but if an act or omission of any person other than the defendant or the particular claimant (deceased or injured party) was the "sole proximate cause" of an event, then no act or omission of any other person could have been a proximate cause.

A. The Events of February 28, 1993

1. It is the law of the case that the United States cannot be held liable for any claims based upon the decision to use a "dynamic raid and entry" to serve the warrants because these claims are barred by the discretionary function exception to the waiver of sovereign immunity. Likewise is the decision not to attempt to arrest David Koresh away from the Compound.

2. Moreover, ATF's decision to use a "dynamic raid and entry" to serve the

warrants was reasonable under the circumstances in light of the accumulation of weapons by the Davidians.

3. The ATF agents complied with the law, including identifying themselves and their purpose at the outset, in attempting to execute the arrest and search warrants at the Compound.

4. Because ATF agents did not fire without provocation or in an indiscriminate manner, the use of force by ATF agents was reasonable under the circumstances and cannot result in liability.

5. A law enforcement officer is privileged to engage in certain conduct which could normally be considered tortuous because the officer "has acted to further an interest of such social importance that it is entitled to protection, even at the expense of damage to the Plaintiff. The Defendant is allowed freedom of action because his own interest, or those of the public, required it, and because social policy will best be served by permitting it. *Hinojosa v. City of Terrell, Texas*, 834 F.2d 1223, 1231 (5th Cir. 1988) (quoting W. Keeton, Prosser and Keeton on Torts, 16 (5th edition 1984)). As stated in *Hinojosa*, a police officer in Texas is also privileged even to use force when necessary in the performance of his duties as an officer. *Id.*, citing the Texas Penal Code Annotated, §§ 9.21-9.22, 9.51, 9.52. Further, an officer in the state of Texas has an affirmative duty to execute all lawful process issued to him by any Magistrate or Court. Texas Code of Criminal Procedure, Annotated, Article 2.13.

B. The Events of April 19, 1993

1. It is the law of the case that the United States cannot be held liable for any claims based upon the decision to use tear gas in the April 19, 1993 attempt to end the stand-off because these claims are barred by the discretionary function exception.

2. Likewise, the decision to use tanks to insert the tear gas is protected by the discretionary function exception. The FBI had discretion as to the type of vehicles and equipment to use in attempting to achieve the goals of the operation which were grounded in law enforcement policy. Given that the discretion to use tear gas is protected, the decision as to the type of vehicles and equipment to use in insertion is necessarily protected as well. *See United States v, Faneca*, 332 F.2d 872, 874-75 (5th Cir. 1964), *cert. denied*, 380 U.S. 971 (1965) (barring claims based on the decision to use tear gas, the "*modus operandi* and the time to put it into action").

3. Therefore, Plaintiffs' claim alleging that the FBI was negligent in proceeding with the tear gas operation in light of the information available regarding the condition of the building, the habits of the Davidians, and the weather is also barred by the discretionary nature of the conduct at issue. The exception covers negligence and abuse of discretion, as well as the failure to consider possible alternatives. *Myslakowski v. United States*, 806 F.2d 94, 97-98 (6th Cir. 1986), *cert, denied*, 480 U.S. 948 (1987)("Indeed, it is, in part, to provide immunity against

liability for the consequences of negligent failure to consider the relevant, even critical matters in discretionary decision-making that [§ 2680(a)] exists.") Thus, even assuming that the decision to proceed with the operation failed to consider the possibility that the Davidians might start a fire–and thus "could be shown to have been made without consideration of important, relevant factors, or was a decision negligently reached," *id.*–the discretionary function exception bars the claim. *See Red Lake Band of Chippewa Indians v. United States*, 800 F.2d 1187 (D.C. Cir.1987) (barring claims based on failure to assess information received and to have alternative plan in place).

4. Similarly, Plaintiffs' claim that the use of military tanks to insert tear gas caused the Davidians to refuse to surrender and to set the building on fire, killing their children and themselves, is barred because this claim is "based upon" and arises out of conduct that is encompassed by the discretionary function exception. *See* 28 U.S.C. § 2680(a) (barring any claim "based upon" the exercise or performance of a discretionary function); *Fisher Bros. Sales, Inc. v. United States*, 46 F.3d 279 (3rd Cir.) (en banc), *cert. denied*, *Balmaceda, Inc. v. United States*, 116 S.Ct. 49 (1995) (barring claim deemed "based upon" discretionary decision to suspend importation of fruit, notwithstanding plaintiffs' contention that claim is predicated on negligent chemical analysis underlying the decision).

5. Further, the Court finds as a matter of law that the use of tear gas, an

accepted law enforcement practice, was reasonable under the circumstances, given the refusal of the Davidians to comply with lawful orders to surrender. Texas has accorded privileges to its law enforcement officers in the performance of their duties as officers. *Hinojosa v. City of Terrell, Texas*, 834 F.2d 1223, 1231 (5th Cir. 1988), *cert. denied*, 493 U.S. 822 (1989) (privilege protects actor from finding of tortuous conduct). Under the FTCA, the United States may invoke privileges available to state law enforcement officials. *Id.* *See also, Louie v. United States*, 776 F.2d 819, 824-25 (9th Cir. 1985). The use of tanks to insert tear gas to end the 51-day stand-off between federal officers and armed resisters was privileged under Texas law which allows officers to use that force necessary to make or assist in making an arrest or search. *See* Texas Penal Code § 9.51.

6. Moreover, even if the United States was negligent in causing damage to the building prior to the start of the fire, such negligence was not the proximate cause of the Plaintiffs' injuries. The intervening criminal acts of certain Davidians in starting the fire was a superceding cause that was different in kind from that which would otherwise have resulted from such negligence. It therefore broke any purported causal connection between the damage to the building and the Plaintiffs' injuries. *See Skipper v. United States*, 1 F.3d 349, 353 (5th Cir. 1993) (murder committed by intoxicated boyfriend was superceding cause which extinguished any liability on the part of club that served alcohol to him because premeditated murder was not "of

such a general character as might reasonably have been anticipated" by the club); *Phan Son Van v. Pena*, 990 S.W.2d 751 (Tex. 1999) (gang members' criminal conduct and harm inflicted was extraordinary in nature and not of the type generally contemplated by unlawfully furnishing alcoholic beverages to minors and thus was superceding cause of injuries and death).

7. Because the fire was started by certain Davidians, the United States owed no duty to protect the remaining Davidians from the fire and no special relationship existed between the Plaintiffs and the United States which would invoke such a duty. *See Crider v. United States*, 885 F.2d 294, 299 (5th Cir. 1989), *cert. denied*, 495 U.S. 956 (1990) ("it presses the potential liability of law enforcement officers-or of any group-to the extreme to suggest that just because having a contact with a potentially dangerous actor they become responsible for his conduct"). Despite this, a number of FBI agents risked their lives to assist Davidians from the burning Compound and to attempt to save the children.

8. Because the fire was started by certain Davidians, the United States owed no duty to rescue the remaining Davidians from a peril it did not cause. *See Ohler v. Trinity Portland Cement Co.*, 181 S.W.2d 120, 127 (Tex. Civ. App.-Galveston 1944).

9. The FBI's decision not to allow the fire trucks upon the property was reasonable. The on-scene commander would not allow the fire trucks to approach the Compound given the risk of injury or death posed to firefighters by the gunshots

coming from the Compound. His decision not to allow the fire trucks to approach the Compound until it was safe for them to do so was reasonable under the circumstances and therefore cannot result in liability.

10. Plaintiffs' related claim based on the failure to have specialized equipment that may have enabled firefighters to approach the compound sooner despite the gunfire is barred by the discretionary function exception. The decisions as to the type of equipment to be utilized fall within the exception because they are "susceptible to policy analysis." *United States v. Gibbered,* 499 U.S. 315, 325 (1991). *See Brown v. United States*, 790 F.2d 199, 203 (1st Cir. 1986), *cert. denied*, 479 U.S. 1058 (1987) (barring claim that death of fisherman was caused by failure to obtain more or better equipment because "[all of these are matters which Congress reserved, both to itself in respect to appropriations, and to the agencies' conduct by the discretionary function exception").

11. Any conclusions of law which should more appropriately be a finding of fact is deemed so.

SIGNED this 27 day of September, 2000.

WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT 4

UNSUBSTANTIATED ALLEGATIONS OF WRONGDOING INVOLVING THE CLINTON ADMINISTRATION

Prepared for Rep. Henry A. Waxman

Minority Staff Report
Committee on Government Reform
U.S. House of Representatives

September 2000

Over the past eight years, Chairman Dan Burton of the House Government Reform Committee and other Republican leaders have repeatedly made sensational allegations of wrongdoing by the Clinton Administration. In pursuing such allegations, Chairman Burton alone has issued over 900 subpoenas; obtained over 2 million pages of documents; and interviewed, deposed, or called to testify over 350 witnesses. The estimated cost to the taxpayer of investigating these allegations has exceeded $23 million.[1]

Chairman Burton or other Republicans have suggested that Deputy White House Counsel Vince Foster was murdered as part of a coverup of the Whitewater land deal; that the White House intentionally maintained an "enemies list" of sensitive FBI files; that the IRS targeted the President's enemies for tax audits; that the White House may have been involved in "selling or giving information to the Chinese in exchange for political contributions"; that the White House altered videotapes of White House coffees to conceal wrongdoing; that the Clinton Administration sold burial plots in Arlington National Cemetery; that prison tape recordings showed that former Associate Attorney General Webster Hubbell was paid off for his silence; and that the Attorney General intentionally misled Congress about Waco.

This report is not intended to suggest that President Clinton or his Administration have always acted properly. There have obviously been instances of mistakes and misconduct that deserve investigation. But frequently the Republican approach -- regardless of the facts -- has been "accuse first, investigate later." Further investigation then often shows the allegations to be unsubstantiated. In fact, FBI interviews showed that one widely publicized Republican allegation was based on nothing more than gossip at a congressional reception.

This approach has done great harm to reputations. The unsubstantiated accusations have frequently received widespread attention. For example, Chairman Burton's allegation regarding White House videotape alteration received widespread media coverage. It was reported by numerous television news programs, including *CBS Morning News,*[2] *CBS This Morning,*[3] *NBC News At Sunrise,*[4] NBC's *Today,*[5] *ABC World News Sunday,*[6] *CNN Early Prime,*[7] *CNN Morning News,*[8] CNN's *Headline News,*[9] CNN's *Early Edition,*[10] Fox's *Morning News,*[11] and *Fox News Now/Fox In Depth.*[12] In addition, newspapers across the country, including the *Washington Post,*[13] the *Las Vegas Review-Journal,*[14] the *Houston Chronicle,*[15] the *Commercial Appeal,*[16] and the *Sun-Sentinel,*[17] published stories focusing on the allegation. Two months later, when Senator Fred Thompson announced that there was no evidence that the videotapes had been doctored, there was minimal press coverage of his statement.[18]

The discussion below examines the facts – and lack thereof – underlying 25 of the most highly publicized allegations.

Allegation: During 1994 and 1995, Chairman Burton suggested numerous times on the House floor that Deputy White House Counsel Vince Foster had been murdered and that his murder was related to the investigation into President and Hillary Clinton's involvement in the Whitewater land deal.[19]

The Facts: Chairman Burton's allegations have been repeatedly repudiated.

On August 10, 1993, the United States Park Police announced the following conclusions of its investigation: "Our investigation has found no evidence of foul play. The information gathered from associates, relatives and friends provide us with enough evidence to conclude that . . . Mr. Foster was anxious about his work and he was distressed to the degree that he took his own life."[20] On June 30, 1994, Independent Counsel Robert Fiske issued his report stating that "[t]he overwhelming weight of the evidence compels the conclusion . . . that Vincent Foster committed suicide."[21]

More recently, on October 10, 1997, Independent Counsel Ken Starr concluded: "The available evidence points clearly to suicide as the manner of death."[22]

Allegation: In 1995 and 1996, Republicans alleged that the White House fired the employees of the White House travel office so that White House travel business would be given to Harry Thomason, a political supporter of President Clinton. The Chairman of the House Committee on Government Reform and Oversight, William F. Clinger, said he saw the First Lady's "fingerprints" on efforts to cover up and lie about the travel office firings.[23] Discussing the travel office matter, Rep. Dan Burton said, "The First Lady, according to the notes we have, has lied."[24]

The Facts: In June 2000, the Office of the Independent Counsel issued a press release announcing that its investigation into the Travel Office matter had concluded. Independent Counsel Robert Ray stated:

> This Office has now concluded its investigation into allegations relating to . . . Mrs. Clinton's statements and testimony concerning the Travel Office firings and has fully discharged [her] from criminal liability for matters within this Office's jurisdiction in the Travel Office matter.[25]

Allegation: In June 1996, Chairman Burton alleged that the White House had improperly obtained FBI files of prominent Republicans and that these files "were going to be used for dirty political tricks in the future."[26] Committee Republicans also released a report suggesting that the files were being used by the Clinton Administration to compile a "hit list" or an "enemies list."[27]

The Facts: These allegations have been thoroughly investigated by the Office of the Independent Counsel and repudiated. The Independent Counsel had been charged with examining whether Anthony Marceca, a former White House detailee who had requested the FBI background files at issue, senior White House officials, or Mrs. Clinton had engaged in illegal conduct relating to these files.

According to the report issued by Independent Counsel Ray in March 2000, "neither Anthony Marceca nor any senior White House official, or First Lady Hillary Rodham Clinton, engaged in

criminal conduct to obtain through fraudulent means derogatory information about former White House staff." The Independent Counsel also concluded that "Mr. Marceca's alleged criminal conduct did not reflect a conspiracy within the White House," and stated Mr. Marceca was truthful when he testified that "[n]o senior White House official, or Mrs. Clinton, was involved in requesting FBI background reports for improper partisan advantage."[28]

Allegation: Beginning in 1996, Chairman Burton and other Republican leaders suggested that there was a conspiracy between the Chinese government and the Clinton Administration to violate federal campaign finance laws and improperly influence the outcome of the 1996 presidential election. In a February 1997 interview on national television, Chairman Burton stated:

> **If the White House or anybody connected with the White House was selling or giving information to the Chinese in exchange for political contributions, then we have to look into it because that's a felony, and you're selling this country's security – economic security or whatever to a communist power.[29]**

Further, on the House floor in June 1997, Chairman Burton alleged a "massive" Chinese conspiracy:

> **We are investigating a possible massive scheme . . . of funneling millions of dollars of foreign money into the U.S. electoral system. We are investigating allegations that the Chinese government at the highest levels decided to infiltrate our political system.[30]**

The Facts: The House Government Reform Committee to date has spent four years and over $8 million investigating these allegations. No evidence provided to the Committee substantiates the claim that the Administration was "selling or giving information to the Chinese in exchange for political contributions."

The FBI obtained some evidence that China had a plan to try to influence congressional elections.[31] However, no evidence was provided to the Committee that the Chinese government carried out a "massive scheme" to influence the election of President Clinton.

Allegation: In June 1997, Rep. Gerald Solomon, the Chairman of the House Rules Committee, claimed that he had "evidence" from a government source that John Huang, the former Commerce Department official and Democratic National Committee fundraiser, had "committed economic espionage and breached our national security." This allegation was reported on national television and in many newspapers across the country.[32]

The Facts: In August 1997, and again in February 1998, Rep. Solomon was interviewed by the FBI to determine the basis of Rep. Solomon's allegations. During the first interview, Rep. Solomon told the FBI that he was told by a Senate staffer at a Capitol Hill reception that the staffer "received confirmation that 'a Department of Commerce employee had passed classified

information to a foreign government.'" According to the FBI notes on the Solomon interview, the Senate staffer did not say that the employee was John Huang, nor did he say that information went to China. Rep. Solomon did not know who the staffer was.[33]

In his second interview with the FBI, Rep. Solomon recalled that what the staffer said to him was: "Congressman you might like to know that you were right there was someone at Commerce giving out information." Again in this interview, Rep. Solomon told the FBI that he did not know the name of the staffer who made this comment.[34]

Allegation: In August 1997, several Republican leaders called for an independent counsel to investigate allegations by Democratic donor Johnny Chung that former Energy Secretary Hazel O'Leary had, in effect, "shaken down" Mr. Chung by requiring him to make a donation to the charity Africare as a precondition to a meeting with her. On national television, Republican National Committee Chairman Jim Nicholson stated, "[W]e need independent investigation made of people like Hazel O'Leary."[35] Rep. Gerald Solomon, the Chairman of the House Rules Committee, criticized the Attorney General for being "intransigent" in refusing to appoint an independent counsel.[36]

The Facts: A Department of Justice investigation found "no evidence that Mrs. O'Leary had anything to do with the solicitation of the charitable donation."[37] In fact, it turned out that Secretary O'Leary's first contact with Mr. Chung occurred after Mr. Chung had made his contribution, making the allegation factually impossible.[38]

Allegation: In September 1997, Chairman Burton suggested on national television that the Clinton Administration was engaging in an "abuse of power" by using the Internal Revenue Service (IRS) to retaliate against the President's political enemies.[39] *The Washington Times* also quoted the Chairman as stating: "One case might be a coincidence. Two cases might be a coincidence. But what are the chances of this entire litany of people -- all of whom have an adversarial relationship with the President -- being audited?"[40]

The Facts: The Chairman's remarks related to allegations that the IRS was auditing conservative groups and individuals for political purposes. According to these allegations, several non-profit tax-exempt organizations that supported positions different from those of the Clinton Administration were being audited while other organizations favored by the Administration were not.[41]

The Joint Committee on Taxation conducted a three-year bipartisan investigation of these allegations. In March 2000, the Committee reported that it had found no evidence of politically motivated IRS audits.[42] Specifically, the bipartisan report found there was "no credible evidence that tax-exempt organizations were selected for examination, or that the IRS altered the manner in which examinations of tax-exempt organizations were conducted, based on the views espoused by the organizations or individuals related to the organization." Further, the report found "no credible evidence of intervention by Clinton Administration officials (including

Treasury Department and White House officials) in the selection of (or the failure to select) tax-exempt organizations for examination."[43]

Allegation: In October 1997, Chairman Burton held a hearing which he claimed would produce evidence of "blatantly illegal activity by a senior national party official."[44] The star witness at that hearing, David Wang, alleged that then-DNC official John Huang had solicited a conduit contribution from him in person in Los Angeles on August 16, 1996.[45]

The Facts: It was Charlie Trie and his associate Antonio Pan, not John Huang, who solicited Mr. Wang. Unlike Mr. Huang, Mr. Trie and Mr. Pan were never "senior officials" at the DNC. Credit card records, affidavits, and other evidence conclusively demonstrated that Mr. Huang had been in New York, not Los Angeles, on the day in question.[46] Mr. Huang later testified before the Committee and denied Mr. Wang's allegations.[47] On March 1, 2000, Democratic fundraiser Charlie Trie appeared before the Committee and acknowledged that it had been he and Mr. Pan, not Mr. Huang, who had solicited the conduit contribution.[48]

Allegation: At an October 1997 hearing before the House Committee on Government Reform and Oversight, Chairman Burton publicly released a proffer from Democratic fundraisers Gene and Nora Lum. Chairman Burton stated that the proffer indicated that "the solicitation and utilization of foreign money and conduit payments did not begin after the Republicans won control of the Congress in 1994. Rather, it appears that the seeds of today's scandals may have been planted as early as 1991."[49] Specifically, the proffer suggested that President Clinton endorsed the candidacy of a foreign leader in exchange for campaign contributions.[50] This allegation was reported in the *Washington Post* in an article entitled "Story of a Foreign Donor's Deal With '92 Clinton Camp Outlined," and in other national media.[51]

The Facts: To investigate this allegation and other allegations concerning the Lums, Chairman Burton issued nearly 200 information requests that resulted in the receipt of over 40,000 pages of documents, 50 audiotapes, a videotape, and numerous depositions. After this extensive investigation, however, the Chairman was never able to produce any evidence to support the dramatic allegation in the proffer.

The proffer presented by Chairman Burton states that, during the 1992 campaign, the Lums arranged a meeting with a Clinton/Gore official for an individual who had proposed to arrange a "large donation in exchange for a letter signed by the Clinton campaign endorsing the candidacy of a man who is now the leader of an Asian nation." The proffer states that the official "later provided a favorable letter over the name of Clinton," that a "Clinton/Gore official signed then Governor Clinton's name to the letter," and that the individual who made the request for the letter then made a $50,000 contribution that reportedly came from "a foreign person then residing in the United States."[52]

In its investigation, the only letter the Committee obtained that concerned then-Governor Clinton's position on an election in Asia is an October 28, 1992, letter on Clinton/Gore letterhead

that pertains to the presidential election in Korea. This document specifically states that then-Governor Clinton does not believe it is appropriate for U.S. public officials to endorse the candidacies in foreign elections. The letter states:

> Thank you for bringing to my attention the impact in Korea that my statement of September 17th has caused. I would appreciate your help in clarifying the situation in Korea through proper channels. My statement was a courtesy reply in response to an invitation to me to attend an event in honor of Chairman Kim Dae-Jung, and to extend to him my greetings. It was not meant to endorse or assist his candidacy in the upcoming presidential election in Korea. I do not believe that any United States government official should endorse a presidential candidate in another country.[53]

Allegation: On October 19, 1997, Chairman Burton appeared on national television and suggested that the White House had deliberately altered videotapes of presidential fund-raising events. On CBS's *Face the Nation*, he said "We think ma--maybe some of those tapes may have been cut off intentionally, they've been--been, you know, altered in some way." He also said that he might hire lip-readers to examine the tapes to figure out what was being said on the tapes.[54]

The Facts: Investigations by the House Government Reform and Oversight Committee and the Senate Governmental Affairs Committee produced no evidence of any tampering with the tapes. Shortly after Chairman Burton made his allegation regarding tape alteration, the Senate Governmental Affairs Committee hired a technical expert, Paul Ginsburg, to analyze the videotapes to determine whether they had been doctored. Mr. Ginsburg concluded that there was no evidence of tampering.[55] In addition, Colonel Joseph Simmons, commander of the White House Communications Agency (WHCA), Colonel Alan Sullivan, head of the White House Military Office which oversees WHCA, and Steven Smith, chief of operations of WHCA, all testified under oath before the House Government Reform and Oversight Committee in October 1997 that they were unaware of any alteration of the videotapes.[56]

Allegation: In November 1997, Republican leaders drew on unsubstantiated reports by conservative radio talk shows and publications to accuse the Clinton Administration of selling burial plots in Arlington National Cemetery for campaign contributions.[57] Republican Party Chairman Jim Nicholson accused the Administration of a "despicable political scheme," and several Republican leaders, including Chairman Burton, called for investigations.[58] Representative Gerald Solomon stated, "[t]his latest outrage is one more slap in the face of every American who ever wore the uniform of their country, who seem to be special objects of contempt in this administration."[59]

The Facts: The Army has established restrictive eligibility requirements for burial at Arlington. Individuals who are eligible for Arlington National Cemetery burial sites include service members who died while on active duty, honorably discharged members of the armed forces who have been awarded certain high military distinctions, and surviving spouses of individuals

already buried at Arlington, among others. The Secretary of the Army may grant waivers of these requirements.[60]

In January 1998, the General Accounting Office (GAO) concluded an independent investigation of the allegations that waivers were granted in exchange for political contributions. As part of this investigation, GAO analyzed the laws and regulations concerning burials at Arlington, conducted in-depth review of Department of Army case files regarding approved and denied waivers, and had discussions with officials responsible for waiver decisions.[61]

GAO's report stated: "[W]e found no evidence in the records we reviewed to support recent media reports that political contributions have played a role in waiver decisions." Further, GAO stated: "Where the records show some involvement or interest in a particular case on the part of the President, executive branch officials, or Members of Congress or their staffs, the documents indicate only such factors as a desire to help a constituent or a conviction that the merits of the person being considered warranted a waiver."[62]

Allegation: In January 1998, Chairman Burton held four days of hearings into whether campaign contributions influenced the actions of Secretary of the Interior Bruce Babbitt or other Department of the Interior officials with respect to a decision to deny an Indian gambling application in Hudson, Wisconsin. During those hearings, Chairman Burton alleged that the decision was a "political payoff" and that it "stinks" and "smells."[63]

The Facts: On August 22, 2000, Independent Counsel Carol Elder Bruce released the report of her investigation into the Hudson casino decision. She found that the allegations of political payoff were unsubstantiated, concluding:

> A full review of the evidence . . . indicates that neither Babbitt nor any government official at Interior or the White House entered into any sort of specific and corrupt agreement to influence the outcome of the Hudson casino application in return for campaign contributions to the DNC.[64]

Allegation: In April 1998, Chairman Burton suggested that President Clinton had created a national monument in Utah in order to benefit the Lippo Group, an Indonesian conglomerate with coal interests in Indonesia.[65] James Riady, an executive of the Lippo Group, was a contributor to the DNC. In June 1998, in a statement on the House floor, Chairman Burton reiterated his allegation: "[T]he President made the Utah Monument a national park. What is the significance of that? The largest clean-burning coal facility in the United States, billions and billions of dollars of clean-burning coal are in the Utah Monument. It could have been mined environmentally safely according to U.S. engineers. Who would benefit from turning that into a national park so you cannot mine there? The Riady group, the Lippo Group, and Indonesia has the largest clean-burning coal facility, mining facility, in southeast Asia. They were one of the largest contributors. Their hands are all over, all over these contributions coming in from Communist China, from Macao and from Indonesia. Could there be a connection here?"[66]

The Facts: In September 1996, President Clinton set aside as a national monument 1.7 million acres of coal-rich land in Utah under a 1906 law that allows the president to designate national monuments without congressional approval.[67] After two years of investigation, the Committee produced no evidence that there is any connection between the designation of this land as a monument and Riady group or any other contributions.[68]

Allegation: In April 1998, Chairman Burton released transcripts of selected portions of Webster Hubbell's prison telephone conversations. According to these transcripts, if Mr. Hubbell had filed a lawsuit against his former law firm, it would have "opened up" the First Lady to allegations, and for this reason Mr. Hubbell had decided to "roll over" to protect the First Lady. These transcripts included a quote of Mrs. Hubbell saying, "And that you are opening Hillary up to all of this," and Mr. Hubbell responding, "I will not raise those allegations that might open it up to Hillary" and "So, I need to roll over one more time." These quotes were taken from a two-hour March 25, 1996, conversation between the Hubbells.[69]

The Facts: Webster Hubbell was Assistant Attorney General until March 1994. Prior to that, he was a partner with Hillary Clinton at the Rose Law Firm in Little Rock, Arkansas. In December 1994, Mr. Hubbell pled guilty to tax evasion and mail fraud and went to prison for 16 months.

During his imprisonment, Mr. Hubbell's phone calls to his friends, family, and lawyers were routinely taped by prison authorities. Such taping is standard in federal prisons. These tapes were turned over to the Government Reform and Oversight Committee. Although the tapes are supposed to be protected by the Privacy Act, Chairman Burton released a document in April 1998 entitled the "Hubbell Master Tape Log," which contained what were purported to be excerpts from these tapes. However, it was subsequently revealed that many of these excerpts were in fact inaccurate or omitted exculpatory statements made by Mr. Hubbell that directly contradicted the allegations.[70]

For example, while the "Hubbell Master Tape Log" quoted the above portions of the March 25, 1996, conversation between Mr. and Mrs. Hubbell, it omitted a later portion of the same conversation that appears to exonerate the First Lady. The later portion of that conversation follows, with the portions that Chairman Burton omitted from the "Hubbell Master Tape Log" underlined:

Mr. Hubbell: Now, Suzy, I say this with love for my friend Bill Kennedy, and I do love him, he's been a good friend, he's one of the most vulnerable people in my counterclaim. Ok?

Mrs. Hubbell: I know.

Mr. Hubbell: Ok, Hillary's not, Hillary isn't, the only thing is people say why didn't she know what was going on. And I wish she never paid any attention to what was going on in the firm. That's the gospel truth. She just had no idea

what was going on. She didn't participate in any of this.

Mrs. Hubbell: They wouldn't have let her if she tried.

Mr. Hubbell: Of course not.

The "Hubbell Master Tape Log" released by the Chairman also included an underlined passage in which Mr. Hubbell allegedly said: "The Riady is just not easy to do business with me while I'm here." In fact, the actual tape states: "The reality is it's just not easy to do business with me while I'm here."

Allegation: In April 1998, Chairman Burton sought immunity from the Committee for four witnesses: Nancy Lee, Irene Wu, Larry Wong, and Kent La. He and other Republicans leaders, including Speaker Newt Gingrich, alleged that these witnesses had important information about illegal contributions from the Chinese government during the 1996 elections.[71]

Speaker Gingrich alleged that the four witnesses would provide information on "a threat to the fabric of our political system."[72] Rep. John Boehner alleged that the witnesses had "direct knowledge about how the Chinese government made illegal campaign contributions" and stated that the decision regarding granting immunity "is about determining whether American lives have been put at risk."[73] Committee Republican Rep. Shadegg stated that one of the witnesses, Larry Wong, "is believed to have relevant information regarding the conduit for contributions made by the Lums and others in the 1992 fund-raising by John Huang and James Riady."[74]

The Facts: In June 1998, the Committee provided these witnesses with immunity. After they were immunized, their testimony revealed that none had any knowledge whatsoever about alleged Chinese efforts to influence American elections. For example, Mr. Wong's primary responsibilities in working for Democratic donor Nora Lum were to register voters and serve as a volunteer cook.[75] Following is the total testimony he provided regarding James Riady:

Majority Counsel: Did Nora ever discuss meeting James Riady?
Mr. Wong: James who?
* * *
Majority Counsel: James Riady.
Mr. Wong: No.[76]

Allegation: In May 1998, Rep. Curt Weldon suggested on the House floor that the President could have committed treason. Rep. Weldon's remarks involved allegations that the political contributions of the Chief Executive Officer of Loral Corporation, Bernard Schwartz, had influenced the President's decision to authorize the transfer of certain technology to China. Rep. Weldon described this issue as a "scandal that is unfolding that I think will dwarf every scandal that we have seen talked about on this floor in the past 6

years," and said, "this scandal involves potential treason."[77] The *National Journal* reported this allegation in an article that referred to Rep. Weldon as "a respected senior member of the National Security Committee."[78]

The Facts: The Department of Justice examined the allegations relating to whether campaign contributions influenced export control decisions and found them to be unfounded.[79] In August 1998, Lee Radek, chief of the Department's public integrity section, wrote that "there is not a scintilla of evidence – or information – that the President was corruptly influenced by Bernard Schwartz."[80] Charles La Bella, then head of the Department's campaign finance task force, agreed with Mr. Radek's assessment that "this was a matter which likely did not merit any investigation."[81]

A House select committee investigated allegations relating to United States technology transfers to China, and whether campaign contributions influenced export control decisions. In May 1999, the Committee findings were made public. The Committee's bipartisan findings also did not substantiate Rep. Weldon's suggestions of treason by the President.[82]

Allegation: In September 1998, Rep. David McIntosh sent a criminal referral to the Department of Justice alleging that White House Deputy Counsel Cheryl Mills provided false testimony to Congress and obstructed justice.[83] He told the *Washington Post* that there was "very strong evidence" that Ms. Mills lied to Congress.[84]

The Facts: Rep. McIntosh's claims were based on a run-of-the-mill document dispute. Ms. Mills believed that two documents out of over 27,000 pages of documents produced to the Government Reform and Oversight Committee were not responsive to a request from Rep. McIntosh, while Rep. McIntosh believed the two documents were responsive. Instead of viewing this disagreement as a difference in judgment, Rep. McIntosh charged that Ms. Mills was obstructing justice and that she lied to the Committee.[85] The Justice Department investigated Rep. McIntosh's allegations and found them to be without merit.[86]

Allegation: In October 1998, Rep. David McIntosh alleged that the President, First Lady, and senior Administration officials were involved in "theft of government property" for political purposes. To support this claim, Rep. McIntosh claimed that the President's 1993 and 1994 holiday card lists had been knowingly delivered to others outside of the government, and that, with respect to the holiday card project, evidence suggested a "criminal conspiracy to circumvent the prohibition on transferring data to the DNC."[87]

The Facts: The White House database, known as "WhoDB," is a computerized rolodex used to track contacts of citizens with the White House and to create a holiday card list. In putting together the holiday card list, the Clinton Administration followed the procedures established by previous administrations. A number of entities, including the White House and the Democratic National Committee, created lists of card recipients, and the White House hired an outside contractor to merge the lists, and produce and mail the cards. As with past Administrations, the production and mailing costs of the holiday card project were paid for by the President's political

party to avoid any appearance that taxpayer funds were being used to pay for greetings to political supporters.

The evidence showed that the contractor charged with eliminating duplicate names from the 1993 holiday card list failed to remove the list from its computer. This computer was subsequently moved – for unrelated reasons – to the 1996 Clinton/Gore campaign. The Committee uncovered no evidence that this list was ever used for campaign purposes. In fact, computer records showed that the Clinton/Gore campaign never accessed it, and it appears that the campaign was not aware that the computer contained this list.

With respect to the 1994 holiday card list, a DNC employee learned that the contractor charged with eliminating duplicate names from the list did not properly "de-dupe" the list. Therefore, she worked with her parents and several volunteers over a weekend to properly perform this task. The evidence indicates that neither the 1994 nor the 1993 holiday card list was used for any other purpose than sending out the holiday cards.[88]

Allegation: In March 1999, Chairman Burton sent a criminal referral to Department of Justice alleging that Charles Duncan, Associate Director of the Office of Presidential Personnel at the White House, made false statements to the Committee regarding the appointment of Yah Lin "Charlie" Trie to the Bingaman Commission.[89]

The Facts: Chairman Burton alleged that Mr. Duncan made false statements in his answers to Committee interrogatories in April 1998.[90] These answers included statements by Mr. Duncan that, to the best of his recollection, no one expressed opposition to him regarding the appointment of Mr. Trie to a trade commission known as the "Bingaman Commission."[91] The main basis for the Chairman's allegation was that Mr. Duncan's responses were "irreconcilable" with statements purportedly made by another witness, Steven Clemons.[92]

Investigation revealed that Mr. Clemons's statements were apparently misrepresented by Mr. Burton's staff. Mr. Clemons was interviewed by two junior majority attorneys without representation of counsel. Immediately after the majority released the majority staff's interview notes of the Clemons interview in February 1998, Mr. Clemons issued a public statement noting that he had never seen the notes, he had not been given the opportunity to review them for accuracy, and that "the notes have significant inaccuracies and misrepresentations . . . about the important matters which were discussed."[93] The Department of Justice closed its investigation of Mr. Duncan without bringing any charges.[94]

Allegation: In June 1999, Chairman Burton issued a press release accusing Defense Department officials of attempting to tamper with the computer of a Committee witness, Dr. Peter Leitner, of the Defense Threat Reduction Agency (DTRA), while he was testifying before the House Committee on Government Reform. The Chairman alleged, "While Dr. Leitner was telling my committee about the retaliation he suffered for bringing his concerns to his superiors and Congress, his supervisor was trying to secretly access his

computer. This smacks of mob tactics." He further commented, "George Orwell couldn't have dreamed this up."[95]

The Facts: Both the Committee and the Air Force Office of Special Investigations subsequently conducted investigations regarding the allegation of computer tampering. The Committee interviewed 11 DTRA employees, obtained relevant documents, and learned that the allegation was untrue. Instead, the incident was nothing more than a routine effort to obtain files in the witness's computer that were necessary to complete an already overdue project.

When Dr. Leitner was on leave to testify before the Committee on June 24, 1999, his superior, Colonel Raymond A. Willson, had reassigned a task of Dr. Leitner's to another DTRA employee. This reassignment -- responding to a letter from Senator Phil Gramm -- occurred because DTRA's internal due date for the project was passed and Dr. Leitner's draft response was not accurate. As part of reassigning the task, Col. Willson asked the office's technical division to transfer relevant files from Dr. Leitner's computer. The transfer never occurred, however, because the employee to whom the task was reassigned did not need Dr. Leitner's files to complete the task. Dr. Leitner's computer was not touched.[96]

On July 12, 1999, the Committee also learned that the Air Force Office of Special Investigations had completed its investigation and found that Col. Willson had done nothing improper.

Allegation: In July 1999 testimony before the House Rules Committee, Chairman Burton stated that the House Committee on Government Reform had received information indicating that the Attorney General "personally" changed a policy related to release of information by the Department of Justice so that an attorney she knew "could help her client."[97]

The Facts: One year after Chairman Burton testified before the Rules Committee, the House Government Reform Committee took testimony from the relevant witnesses at a July 27, 2000, hearing.

Chairman Burton's allegations concerned efforts by a Miami attorney, Rebekah Poston, to obtain information for her client, who had been sued in a Japanese court for libel by a Japanese citizen named Nobuo Abe. The alleged statements at the heart of this lawsuit related to whether Mr. Abe had been arrested or detained in Seattle in 1963. Mr. Abe maintained that he had never been detained and that statements to the contrary made by Ms. Poston's client were defamatory.[98] In order to support her client's interests in this lawsuit, Ms. Poston filed Freedom of Information Act (FOIA) requests with several components of the Department of Justice in November 1994 seeking records that established that her client's statement were true and that Mr. Abe had, in fact, been arrested or detained.

In response to Ms. Poston's FOIA requests, the INS, Bureau of Prisons, and Executive Office of the United States Attorneys informed Ms. Poston that no records on Mr. Abe existed.[99] The Department of Justice, however, initially informed Ms. Poston that it was its policy not to confirm or deny whether the Justice Department maintains such files on an individual unless the individual

authorizes such a confirmation or denial.[100] After Ms. Poston appealed this decision and threatened litigation on the matter, the Justice Department reversed its decision and confirmed to her that no records on Mr. Abe existed. This decision to confirm the lack of records was legal and it was damaging to Ms. Poston's client. The Justice Department official who directed this decision testified that he believed it was appropriate because it precluded potential litigation and did not deprive anyone of privacy rights because no release of records was involved.[101]

Although the Chairman suggested that the Attorney General "personally" changed Department policy to allow release of information, the records produced to the Committee show that the Attorney General recused herself from the decision.[102] John Hogan, who was Attorney General Reno's chief of staff at the time of Ms. Poston's FOIA request, testified before the House Government Reform Committee that the Attorney General "had no role in this decision whatsoever, initially or at any stage."[103]

Allegation: In August and September 1999, Chairman Burton alleged that Attorney General Reno had intentionally withheld evidence from Congress on the use of "military rounds" of tear gas, which may have some potential to ignite a fire, during the siege of the Branch Davidian compound in Waco, TX. Specifically, on a national radio news broadcast in August 1999, he stated that Attorney General Reno "should be summarily removed, either because she's incompetent, number one, or, number two, she's blocking for the President and covering things up, which is what I believe."[104]

Further, on September 10, 1999, Chairman Burton wrote the Attorney General regarding a 49-page FBI lab report that on page 49 references the use of military tear gas at Waco. He stated that the Department had failed to produce that page to the Committee on Government Reform during the Committee's Waco investigation in 1995, and asserted that this failure "raises more questions about whether this Committee was intentionally misled during the original Waco investigation."[105] In a subsequent television interview, Chairman Burton stated, "with the 49th page of this report not given to Congress when we were having oversight investigations into the tragedy at Waco and that was the very definitive piece of paper that could have given us some information, it sure looks like they were withholding information."[106]

The Facts: Evidence regarding the use of "military rounds" of tear gas was in Chairman Burton's own files at the time he alleged that the Department of Justice had withheld this information. Within days after Chairman Burton's allegations, the minority staff found several documents provided by the Department of Justice to Congress in 1995 that explicitly describe the use of military tear gas rounds at Waco on April 19, 1993.[107]

Further, contrary to Chairman Burton's allegations, the Department of Justice in fact had produced to the Committee copies of the FBI lab report that did include the 49th page. Former Senator John Danforth, whom the Attorney General appointed as a special counsel to conduct an independent investigation of Waco-related allegations, recently issued a report that commented as follows on document production to congressional committees:

> [W]hile one copy of the report did not contain the 49th page, the Committees were provided with at least two copies of the lab report in 1995 which did contain the 49th page. The Office of Special Counsel easily located these complete copies of the lab report at the Committees' offices when it reviewed the Committees' copy of the 1995 Department of Justice production. The Department of Justice document production to the Committees also included several other documents that referred to the use of the military tear gas rounds, including the criminal team's witness summary chart and interview notes. The Special Counsel has concluded that the missing page on one copy of the lab report provided to the Committees is attributable to an innocent photocopying error and the Office of Special Counsel will not pursue the matter further.[108]

Allegation: In November 1999, Chairman Burton appeared on television and claimed that FBI notes of interviews with John Huang show that the President was a knowing participant in an illegal foreign campaign contribution scheme. According to the Chairman, "Huang says that James Riady told the President he would raise a million dollars from foreign sources for his campaign," that "$700,000 was then raised by the Riady group in Indonesia," and that "that money was reimbursed by the Riadys through intermediaries in the United States. All that was illegal campaign contributions." He further stated: "[T]his $700,000 that came in – the President knew that James Riady was doing it. He knew it was foreign money coming in from the Lippo Group in Jakarta, Indonesia, and he didn't decline it. He accepted it, used it in his campaign, and got elected."[109]

The Facts: The FBI interview notes do not support the Chairman's allegation. The FBI notes of interviews with Mr. Huang do indicate that Mr. Riady, who was a legal resident at the time, told President Clinton that he would like to raise one million dollars.[110] The notes do not indicate, however, that Mr. Riady discussed the source of the contributions he intended to raise, and Mr. Huang told the FBI that he personally never discussed individual contributions or the sources of such contributions with the President.[111]

In December 1999, John Huang appeared before the Committee. He testified that he had no knowledge regarding whether President Clinton knew of foreign money coming from the Lippo group to his campaign, and that he did not believe that the President knew about it. He further stated that he had no knowledge that Mr. Riady indicated to the President the source of the money he intended to raise.[112] In addition, Mr. Huang testified that, as far as he knew, President Clinton had not participated in or had any knowledge of efforts to raise illegal foreign campaign contributions.[113]

Allegation: In December 1999, Chairman Burton alleged that the White House prevented White House Communications Agency (WHCA) personnel from filming the President meeting with James Riady, a figure from the campaign finance investigation, at an Asia-Pacific Economic Cooperation (APEC) summit meeting in New Zealand in September 1999. During a December 15, 1999, hearing entitled "The Role of John Huang and the Riady Family in Political Fundraising," Chairman Burton showed the two tapes made by the WHCA personnel, and then showed a video filmed by a press camera. Of the third

tape, the Chairman said:

> **That shows a little different picture. The White House tapes don't show it, but President Clinton really did pay some special attention to Mr. Riady. This White House is so consumed with covering things up that their taxpayer-funded photographer wouldn't even allow a tape to be made of the President shaking Mr. Riady's hand. No one minded the President meeting Mr. Riady. They just didn't want anyone to know how warmly he was greeted because of the problems surrounding Mr. Riady.**[114]

The Facts: President Clinton shook James Riady's hand in a rope line in New Zealand in September 1999. One of the WHCA cameras filming the President from the side stopped filming as the President greeted Mr. Riady. The other camera, filming the President head-on, panned away from the President as he moved down the rope line and did not return to him until he moved past Mr. Riady. The third camera, the camera Chairman Burton claimed was operated by a member of the press, captured the whole exchange between the President and Mr. Riady. This exchange lasted approximately 10 seconds and consisted of a handshake and a brief, inaudible conversation.

Committee staff interviewed Jon Baker, the person who operated the camera filming the President from the side, and Quinton Gipson, the person who operated the camera filming the President head-on. Mr. Baker told staff that no one instructed him not to film the President and Mr. Riady and he did not know who Mr. Riady was. Similarly, Mr. Gipson said he did not know who James Riady was and that he did not get any guidance about taping the event from anyone.

WHCA policy is to film any remarks the President gives, but not necessarily to film every move the President makes. WHCA camera operators do not take direction from the White House about how to cover events. Mr. Baker told Committee staff that he stopped filming when he did because he had to pack up his equipment and rush to join the motorcade and it was a coincidence that neither he nor the other cameraman captured the full exchange between the President and Mr. Riady.

Allegation: In July 2000, Chairman Burton said a videotape of a December 15, 1995, coffee at the White House indicates that Vice President Gore suggested that DNC issue advertisements be played for Democratic donor James Riady, who has been the subject of campaign finance probes. According to the Chairman, Vice President Gore "apparently states: 'We oughta, we oughta, we oughta show Mr. Riady the tapes, some of the ad tapes.'"[115]

The Facts: Chairman Burton played the videotape at a July 20, 2000, hearing of the Government Reform Committee. However, it was not possible to determine what was said on the tape. Further, it was impossible to determine to whom the Vice President was speaking because he was not on camera during the alleged comment. A *Reuters* reporter describing the playing of the videotape at the hearing wrote, "Gore's muffled words were not clear."[116]

When Chairman Burton played the tape on Fox Television's program *Hannity and Colmes*, the person whose job it is to transcribe the show transcribed the tape excerpt as follows:

> We ought to -- we ought to show that to (unintelligible) here, let (unintelligible) tapes, some of the ad tapes (unintelligible).[117]

Citations

1. The minority staff of the Government Reform Committee estimates that the costs of the congressional campaign finance investigations alone have exceeded $23 million. This figure includes $8.7 million that a 1998 General Accounting Office report found federal agencies reported spending on responding to congressional inquiries on campaign finance matters; over $8 million that the House Government Reform Committee has spent on its campaign finance investigation; $3.5 million that the Senate Governmental Affairs Committee spent on its campaign finance investigation; $1.2 million authorized for the House Committee on Education and the Workforce's investigation of allegations of campaign finance abuses concerning the Teamsters; and $2.5 million authorized for a select committee that investigated allegations that the Clinton Administration gave missile technology to China in exchange for campaign contributions. *See GAO Survey of Executive Branch Cost to Respond to Congressional Campaign Finance Inquiries* (June 23, 1998); House Committee on Government Reform and Oversight, *Interim Report: Investigation of Political Fundraising Improprieties and Possible Violations of Law, Additional and Minority Views,* 105th Cong, 3968-69 (1998) (H. Rept. 105-829). When the costs of investigating allegations in addition to the campaign finance allegations are included, the total costs likely significantly exceed $23 million. Many of these additional investigations involved substantial congressional resources as well as executive branch resources to respond to inquiries. For example, to investigate allegations concerning the government's actions at Waco, Texas, the House Government Reform Committee has conducted at least 82 interviews, and has received over 750,000 pages of documents from the Justice Department and the Defense Department in response to Committee requests.

2. CBS, *CBS Morning News* (Oct. 20, 1997).

3. CBS, *CBS This Morning* (Oct. 20, 1997).

4. NBC, *NBC News At Sunrise* (Oct. 20, 1997).

5. NBC, *Today* (Oct. 20, 1997).

6. ABC, *ABC World News Sunday* (Oct. 19, 1997).

7. CNN, *CNN Early Prime* (Oct. 19, 1997).

8. CNN, *CNN Morning News* (Oct. 20, 1997).

9. CNN, *Headline News* (Oct. 20, 1997).

10. CNN, *Early Edition* (Oct. 20, 1997).

11. Fox, *Fox Morning News* (Oct. 20, 1997).

12. Fox, *Fox News Now/Fox In Depth* (Oct. 20, 1997).

13. *Tapes May Have Been Altered, Rep. Burton Says; Clinton Aide Decries Chairman's 'Innuendo'* (Oct. 20, 1997).

14. *GOP Suggests Tapes Altered* (Oct. 20, 1997).

15. *GOP Suspects White House Altered Fund-raising Tapes* (Oct. 20, 1997).

16. *Panel May Use Lip Readers to Check Fund-raising Tapes* (Oct. 20, 1997).

17. *Tape-Tampering Denied* (Oct. 21, 1997).

18. Senator Thompson announced these findings on NBC's *Meet the Press* (Dec. 7, 1997). Only a handful of media outlets reported this announcement, and these reports focused on other campaign finance issues and mentioned the Thompson announcement only at the very end of the accounts. *E.g., Reno and Freeh to Testify, Morning Edition*, National Public Radio (Dec. 9, 1997) (reporting on the upcoming House Government Reform and Oversight Committee hearing on the independent counsel decision and noting Senator Thompson's announcement at the very end). Beyond coverage of Senator Thompson's announcement, one article reported that Paul Ginsburg, a technical expert hired by the Senate Governmental Affairs Committee, had found no signs of doctoring. *See Expert: Coffee Tapes Are Clean*, Newsday (Nov. 8, 1997), and the "Real Deal" segment at the end of *Face the Nation* on November 2, 1997, followed up on Rep. Burton's allegation to report that Mr. Ginsburg was going to report that there was no doctoring.

19. *See, e.g.,* Congressional Record, H5632 (July 13, 1994).

20. Office of Independent Counsel, *Report on the Death of Vincent W. Foster, Jr. (In Re: Madison Guaranty Savings & Loan Association)*, 5 (Oct. 10, 1997) (citing Federal News Service (Aug. 10, 1993)).

21. *Id.* at 7 (citing *Report of the Independent Counsel Robert B. Fiske, Jr., In Re: Vincent W. Foster, Jr.*, at 58).

22. *Id.* at 111.

23. *Former Clinton Aide Faces Questions on Memo; Document Suggests that First Lady Was Behind Firings in Travel Office*, Milwaukee Journal Sentinel (Jan. 6, 1996).

24. House Committee on Government Reform and Oversight, *Hearing, White House Travel Office – Day Three*, 104th Cong., 111 (Jan. 24, 1996).

25. Press Release, Office of the Independent Counsel (June 22, 2000).

26. Congressional Record, H6633 (June 20, 1996).

27. House Committee on Government Reform and Oversight, *Investigation of the White House and Department of Justice on Security of FBI Background Investigation Files*, 104th Cong., 16 (1996) (H. Rept. 104-862).

28. Office of Independent Counsel, *Report of the Independent Counsel (In Re: Madison Guaranty Savings and Loan Association) In Re: Anthony Marceca*, 7-8 (March 16, 2000).

29. CNN, *Late Edition with Frank Sesno* (Feb. 16, 1997).

30. Congressional Record, H4097 (June 20, 1997).

31. *See Senate Panel Is Briefed on China Probe Figure; Officials Say Evidence May Link L.A. Businessman to Election Plan*, Washington Post (Sept. 12, 1997).

32. *E.g.,* CBS Evening News (June 11, 1997); *Huang Leaked Secrets, GOP Lawmaker Says,* Los Angeles Times (June 13, 1997); *Republican Lawmaker Alleges Huang Passed Secrets; Communications with Lippo Group Questioned,* Baltimore Sun (June 13, 1997); *Congressman Says Evidence Confirms Huang Passed Secrets – The House Rules Chairman Says Information Was Given to the Lippo Group,* Fort Worth Star-Telegram (June 13, 1997); *Huang Gave Classified Data to Lippo, Lawmaker Claims,* Austin American-Statesman (June 13, 1997); *Huang Accused of 'Economic Espionage,'* Cincinnati Enquirer (June 13, 1997); *Legislator Alleges Fund-raiser Gave Classified Data to Overseas Company*, Las Vegas Review-Journal (June 13, 1997); *Dem Donor 'Breached Security' Lawmaker Accuses Ex-Clinton Appointee,* Arizona Republic (June 13, 1997); *Congressman Alleges Huang Passed Secret Data to Firm; White House, FBI Decline to Comment on Solomon's Remarks,* Milwaukee Journal Sentinel (June 13, 1997).

33. Gerald Solomon Interview FD-302 at 1 (Aug. 28, 1997).

34. Gerald Solomon Interview FD-302 at 1 (Feb. 11, 1998).

35. CNN, *Inside Politics* (Aug. 27, 1997).

36. *GOP Lawmaker Seeks Counsel to Probe O'Leary-Chung Tie,* Buffalo News (Aug. 22, 1997).

37. Notification to the Court Pursuant to 28 U.S.C. §592 (b) of Results of Preliminary Investigation (Dec. 2, 1997).

38. *Id.* The House Government Reform and Oversight Committee also discovered that fact. The Committee deposed several individuals, including Secretary O'Leary, to investigate the allegation by Mr. Chung regarding Secretary O'Leary. The Committee scheduled a hearing on the matter, but, upon discovering the allegation was false, canceled the hearing.

39. NBC's *Meet the Press* (Sept. 14, 1997).

40. *White House Denies Role in Audit of Jones; IRS Has History of Targeting 'Enemies,'* Washington Times (Sept. 16, 1997).

41. *E.g., Whistleblowers' Letter, Newspapers Alert Agency,* Washington Times (Sept. 29, 1997); *Conservatives Suspect IRS Audit Is Price of Opposing Clinton Policies,* Washington Times (Apr.

21, 1997); *Politics and the IRS,* Wall Street Journal (Jan. 9, 1997).

42. Staff of the Joint Committee on Taxation, *Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters* (March 2000).

43. *Id.* at 7.

44. House Committee on Government Reform and Oversight, *Hearings on Conduit Payments to the Democratic National Committee*, 105th Cong., 7 (Oct. 9, 1997) (H. Rept. 105-51).

45. *Id.* at 257, 271.

46. Minority Staff Report, House Committee on Government Reform and Oversight, *Evidence that John Huang Was in New York City on August 15, 16, 17, and 18* (Oct. 9, 1997).

47. House Committee on Government Reform, *Hearing on the Role of John Huang and the Riady Family in Political Fundraising*, 108 (Dec. 15, 1999) (stenographic record).

48. House Committee on Government Reform, *Hearing on the Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising*, 250-52 (March 1, 2000) (stenographic record).

49. House Committee on Government Reform and Oversight, *Hearings on Campaign Finance Improprieties and Possible Violations of Law*, 105th Cong., 11-12 (Oct. 8, 1997) (H. Rept. 105-50).

50. Proffer of Nora and Gene Lum to the Committee on Government Reform and Oversight (Aug. 22, 1997).

51. *E.g.*, *Story of a Foreign Donor's Deal With '92 Clinton Camp Outlined*, Washington Post (Oct. 9, 1997); *House Panel to Hear of '92 Clinton Donation Problem Probe*, Los Angeles Times (Oct. 9, 1997).

52. Proffer of Nora and Gene Lum, *supra* note 50, at Part B.1-3.

53. Deposition of Richard C. Bertsch, House Committee on Government Reform and Oversight, ex. 12 (March 30, 1998). The letter was addressed to Richard Choi Bertsch, who worked for an organization called the Asian Pacific Advisory Council-VOTE ("APAC") which conducted get-out-the-vote and fund-raising activities in the Asian-American community in California in 1992. *Id.* at 10-13, 20-22.

54. CBS's *Face the Nation* (Oct. 19, 1997).

55. Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns,* 105th Cong., v. 6, 9345-46 (1998) (S. Rept. No. 167); *Meet the Press* (Dec. 7, 1997) (interview with Senator Thompson).

56. Deposition of Joseph Simmons, House Committee on Government Reform and Oversight, 149 (Oct. 18, 1997); Deposition of Alan P. Sullivan, House Committee on Government Reform and Oversight, 37 (Oct. 17, 1997); Deposition of Steven Smith, House Committee on Government Reform and Oversight, 99 (Oct. 18, 1997).

57. The conservative publication *Insight* magazine reported that "dozens of big-time political donors or friends of the Clintons" had gained waivers of the eligibility rules regarding burials at Arlington National Cemetery. Without naming its sources, the article stated that a "national cemetery official" and other sources are "outraged that the Clinton White House has applied pressure to gain waivers for fat-cat donors." *Is There Nothing Sacred?*, Insight Magazine (dated Dec. 8, 1997, but reportedly released in advance of that date).

58. *White House Denies Burial Politics*, Atlanta Constitution (Nov. 21, 1997); *Burton to Probe Plots-for-Politics Allegations*, Indianapolis Star News (Nov. 21, 1997).

59. Press Release, Rep. Gerald Solomon (Nov. 20, 1997).

60. General Accounting Office, *Arlington National Cemetery: Authority, Process, and Criteria for Burial Waivers*, 2-3, appendix 1 (Jan. 28, 1998) (GAO/T-HEHS-98-81).

61. *Id.* at 1.

62. *Id.* at 9.

63. House Committee on Government Reform and Oversight, *Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Application*, 105th Cong., v.1, 106, 340 (Jan. 28, 1998).

64. Office of Independent Counsel, *Final Report of Independent Counsel In Re: Bruce Edward Babbitt,* 430, 441 (Aug. 22, 2000).

65. *Burton's Pursuit of President*, Indianapolis Star (Apr. 16, 1998).

66. Congressional Record, H4545 (June 11, 1998).

67. *Subpoena Widens Finance Probe; Request for White House Papers Covers 25 Categories, Copy Shows,* Washington Post (Aug. 15, 1997).

68. House Committee on Government Reform and Oversight, *Investigation of Political Fundraising Improprieties and Possible Violations of Law,* 105th Cong, 3978 (1998) (H. Rept. 105-829).

69. Letter from Rep. Henry Waxman to Chairman Dan Burton (May 3, 1998).

70. *Bridling G.O.P. Leader Says Tapes Speak for Themselves*, New York Times (May 5, 1998); *Burton Defends Hubbell Transcript Actions*, Washington Post (May 5, 1998).

71. *Opening Statement by Chairman Burton*, House Committee on Government Reform and Oversight, Business Meeting, 6-13 (Apr. 23, 1998); Congressional Record, H2338 (Apr. 28, 1998); Congressional Record, H2444 (Apr. 29, 1998).

72. Congressional Record, H2336 (Apr. 28, 1998).

73. Congressional Record, H3453 (May 19, 1998).

74. House Committee on Government Reform and Oversight, Business Meeting, 87 (Apr. 23, 1998) (stenographic record).

75. Deposition of Larry Wong, House Committee on Government Reform and Oversight, 13-14, 19, 26-27, 43, 52, 57 (July 27, 1998).

76. *Id.* at 85.

77. Congressional Record, H3239 (May 13, 1998).

78. *GOP Breaking China Over Clinton's Deals,* National Journal (May 23, 1998).

79. *See Internal Justice Memo Excuses Loral*, Los Angeles Times (May 23, 2000).

80. Memorandum from Lee Radek to James Robinson, Assistant Attorney General, Criminal Division (Aug. 5, 1998).

81. The Addendum to Interim Report for Janet Reno and Louis Freeh Prepared by Charles La Bella and James DeSarno (Aug. 12, 1998).

82. House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, 105th Cong., 2nd Sess. (Committed to the Committee of the Whole House, Jan. 3, 1999; Declassified in Part, May 25, 1999) (H. Rept. 105-851).

83. Letter from Rep. David McIntosh to Attorney General Janet Reno (Sept. 17, 1998).

84. *Database Criminal Probe Sought,* Washington Post (Sept. 9, 1998).

85. Letter from Rep. David McIntosh to Attorney General Janet Reno (Sept. 17, 1998); House Committee on Government Reform and Oversight, *Investigation of the Conversion of the $1.7 Million Centralized White House Computer System, Known as the White House Database, and Related Matters*, 105th Cong., 574-581 (Oct. 30, 1998) (H. Rept. 105-828).

86. Letter from M. Faith Burton, Special Counsel to the Assistant Attorney General, to Rep. David McIntosh (May 6, 1999).

87. House Committee on Government Reform and Oversight, *Investigation of the Conversion of the $1.7 Million Centralized White House Computer System, Known as the White House Database, and Related Matters*, 105th Cong., 1-6, 33-44 (Oct. 30, 1998) (H. Rept. 105-828).

88. *Id.*, Minority Views, 564-68.

89. Letter from Chairman Dan Burton to Attorney General Janet Reno (March 22, 1999).

90. *Id.*

91. Charles Duncan's Responses to Interrogatories (Apr. 20, 1998).

92. Letter from Chairman Dan Burton to Attorney General Janet Reno, *supra* note 89.

93. Statement of Steven C. Clemons (Feb. 25, 1998); Letter from Rep. Henry A. Waxman to Attorney General Janet Reno (Apr. 13, 1999).

94. Statement of Alan Gershel, Deputy Assistant Attorney General, Department of Justice, House Committee on Government Reform, *Hearing on Contacts between Northrop Grumman Corporation and the White House Regarding Missing White House E-Mails* (Sept. 26, 2000).

95. Press Release, Chairman Burton, *Burton Angered by Harassment of Witness* (June 29, 1999).

96. Letter from Rep. Henry Waxman to Chairman Dan Burton (July 15, 1999).

97. Testimony of Chairman Dan Burton, House Rules Committee (July 15, 1999) (available at www.house.gov/reform/oversight/99_07_15db-rules.htm).

98. *See* Letter from Russell J. Bruemmer, Wilmer, Cutler & Pickering, to Richard L. Huff, Co-Director, Office of Information and Privacy, Department of Justice (March 31, 1995).

99. Letter from Wallace H. Cheney, Assistant Director/General Counsel, Federal Bureau of Prisons, to Joseph M. Gabriel, Law Offices of Langberg, Leslie and Gabriel (March 2, 1995); Letter from Bonnie L. Gay, Attorney-in-Charge, FOIA/PA Unit, Executive Office of United States Attorneys, Department of Justice, to Joseph M. Gabriel (Dec. 15, 1994); *See* Letter from Magda S. Ortiz, FOIA/PA Reviewing Officer, Immigration and Naturalization Service, to Rebekah Poston (Dec. 6, 1994) (explaining that a potentially responsive record was illegible and requesting additional information); Letter from Russell J. Bruemmer, Wilmer, Cutler & Pickering, to Richard L. Huff, Co-Director, Office of Information and Privacy, Department of Justice (March 31, 1995) (explaining that the INS searched for, but ultimately could not find, a record responsive to the FOIA request).

100. Testimony of Richard Huff and Rebekah Poston, House Government Reform Committee, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department*, 129-31 (July 27, 2000) (stenographic record).

101. Testimony of John Schmidt and John Hogan, House Committee on Government Reform, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department*, 120-23, 128, 140-41 (July 27, 2000) (stenographic record).

102. Memorandum from Attorney General Janet Reno to Staff of the Attorney General (Apr. 28, 1995).

103. House Committee on Government Reform, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department,* 154 (July 27, 2000) (stenographic record).

104. *Morning Edition*, National Public Radio (Aug. 31, 1999).

105. Letter from Chairman Burton to Attorney General Janet Reno (Sept. 10, 1999).

106. Fox News, *Fox News Sunday* (Sept. 12, 1999).

107. Letter from Rep. Henry Waxman to John Danforth, Special Counsel (Sept. 13, 1999); FBI FD-302 of FBI Agent (June 9, 1993) (reporting that a pilot heard "a high volume of [Hostage Rescue Team] traffic and Sniper [Tactical Operations Command] instructions regarding . . . the insertion of gas by ground units," including "one conversation, relative to utilization of some sort of military round to be used on a concrete bunker"); FBI H.R.T. Interview Schedule (Nov. 9, 1993) (summarizing an interview with an FBI agent and stating that "smoke on film came from attempt to penetrate bunker w/1 military and 2 ferret rounds" and further describing the military round as "Military was . . . bubblehead w /green base"); Handwritten notes (April 19, 1993) (making repeated references to military rounds fired on April 19, 1993, such as "smoke from bunker came when these guys tried to shoot gas into the bunker (military gas round)").

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