

# Government counters Waco survivors' offer, proposes to create own simulation of siege

WASHINGTON (AP) — In the latest tit-for-tat over the controversial issue of whether federal agents fired gunshots on the final day of the 1993 Branch Davidian siege, the government countered the survivors' offer of an outdoor gunfire-and-videotaping simulation with a testing proposal of its own yesterday.

The question of government gunfire is a key piece of the wrongful-death lawsuit filed against the government by Branch Davidian survivors and relatives of those who died during the standoff — and has become a central focus for the special counsel re-investigating Waco.

Federal officials have long insisted that no shots were fired by government forces on April 19, 1993, when the 51-day siege ended in a deadly conflagration. Davidian leader David Koresh and some 80 followers perished during the blaze, some from the fire, others from gunshot wounds. The government said the Davidians died by their own hand.

The plaintiffs, however, contend that information collected by the FBI itself — aerial infrared surveillance footage — offers definitive proof that federal agents fired into the Davidians' compound on the final day.

Arguing that rapid bursts of light on the infrared tapes represents machine-gun fire, they proposed to stage a demonstration in which guns like those carried by federal agents and the Davidians themselves would be fired while an infrared camera similar to the FBI's would record the action from an overhead plane.

The Justice Department summarily dismissed the proposal when it was first made, offering to do a private test for the special counsel investigating Waco.

Troubled by the dueling test proposals, special counsel John Danforth earlier this month asked the federal judge presiding over the wrongful-death case to supervise an impartial demonstration.

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— Justice Department Lawyers

U.S. District Judge Walter Smith, who has set the trial's start for mid-May, agreed and asked the government, plaintiffs and Danforth to agree on a protocol under which an infrared demonstration would be conducted.

The Justice Department, in a 10-page filing with the court yesterday, suggested that the full-scale simulation proposed by the plaintiffs could not replicate the sun, wind, temperature, heat source and soil moisture conditions present that day.

"No attempt at 'recreation' of the events would meet the test of reliability because it could not replicate and

take into account all of the operative facts," the Justice lawyers wrote. "In short, it would produce more confusion than clarity."

Instead, they proposed a test that would determine whether gunfire can be detected by the Forward Looking Infrared technology deployed at Waco at specified spectral ranges. And they suggested that the testing protocol agreed to by the judge and the other parties examine other "possible sources for the flashes that appear on the FBI FLIR tape."

The plaintiffs' lead counsel rejected the government's offer as a "shell game."

"If you read between the lines, what they want to do would not involve the original camera and would not involve the original aircraft — both of which they have," Houston lawyer Michael Caddell, said.

"They claim that a more reliable test than using the same camera and the same airplane is using two different pieces of equipment? That's the silliest thing that I've ever heard of."

The government said details of the infrared camera and FBI Nightstalker airplane, which are "often used in foreign counterintelligence investigations," must remain classified. And, the Justice lawyers said, the FLIR camera used at Waco has been "modified and upgraded significantly" since 1993.

"The camera is modified, but frankly it doesn't appear from what we can tell, that it's modified in any significant way ... I think what they are trying to set up now are maybe some excuses that would give them some wiggle room," Caddell said in response.

News in Brief

## Escaped convicted rapist recaptured in Oklahoma

TYLER (AP) — A convicted rapist who escaped Sept. 21 from the Smith County Jail in Tyler has been recaptured in Oklahoma.

Investigators said Terry Lynn Rhodes and his friend were selling stolen merchandise. Would-be buyers became suspicious and called law enforcement officers. Rhodes and Rhonda Fields were arrested yesterday in Idabel, Okla.

Fields is formerly a guard at the Coffield prison in Texas, where Rhodes was serving a 45-year sentence for raping a woman at knifepoint in a 1996 attack. Rhodes had been transferred to the Smith County Jail to face a theft charge when he fled.

Rhodes and Fields are expected to face theft and burglary charges in Oklahoma before being returned to Texas.

## Jury sentences convicted killer to 3rd death sentence

FORT STOCKTON (AP) — A West Texas jury sentenced last week that a thrice-convicted cop killer to die for his crimes — the suspect's third death sentence in 10 years.

The 12-member panel deliberated for less than three hours before deciding Charles Edward Smith should die by lethal injection for the 1988 shooting death of a Pecos County lawman.

Smith, from Kansas, showed no reaction Thursday as District Judge Brock Jones read his order to put Smith on death row.

Defense attorney Martin Underwood said he planned to appeal the sentence.

The Texas Court of Criminal Appeals has already overturned Smith's two previous death sentences after Thursday's punishment was handed down. Underwood said he would file another appeal with the higher court in "a couple months."

## Pilot hurt after falling from an airport boarding ramp

GRAPEVINE (AP) — An American Airlines pilot was critically injured yesterday when a stairway outside a boarding ramp at Dallas-Fort Worth International Airport shifted, hurling him and a flight attendant to the tarmac.

Capt. Jay Straub, 41, was in critical condition at Parkland Health and Hospital System in Dallas, a hospital spokesperson April Foran, said.

American spokesperson John Hotard said the pilot fell on his face, while flight attendant Ricky Phillips suffered a bump on his head and a sprained ankle.

The two had just arrived on American Flight 53 from Tulsa, Okla., and were descending the stairs outside the boarding ramp when the accident happened, Hotard said.

# Judge rejects woman's attempt to subpoena tobacco files

HOUSTON (AP) — In a case combining a bitter divorce and the state's tobacco settlement, a district judge yesterday dealt a setback to the ex-wife of a lawyer who will share a \$3.3 billion award.

Dawn Nelson claims that prominent Houston defense attorney John Eddie Williams Jr. hid the size of his potential tobacco-settlement fee when the couple divorced in 1997. She asked the court to issue a subpoena for letters and audits related to the negotiations.

Assistant Attorney General Andy Taylor said he could not comply with the subpoena because Williams has never turned over paperwork from the

settlement, in which cigarette makers agreed to pay the state \$17.3 billion over the next 25 years for treating smoking-related illness.

Taylor asked Judge Doug Warne to order Williams to turn over the records.

But the judge blocked the efforts of both the ex-wife and the attorney general's office by simply quashing her subpoena and refusing to order Williams to turn over anything.

Last Friday, the lawyers agreed to accept a \$3.3 billion award set by an arbitration panel and waive their effort to collect more from the state.

Attorney General John Cornyn, a

Republican, is investigating the 1996 hiring of the five private attorneys by former Attorney General Dan Morales, a Democrat.

"We've made countless requests for our file by telephone, in person and in writing, but to no avail," Taylor said yesterday. "They won't give us our file; they won't cooperate with our investigation."

Michael Tigar, a former University of Texas law professor who represents the five lawyers, said they are willing to cooperate with the investigation. The case file is expected to contain money records, as well as letters between Williams and Morales.

The question of whether the tobacco

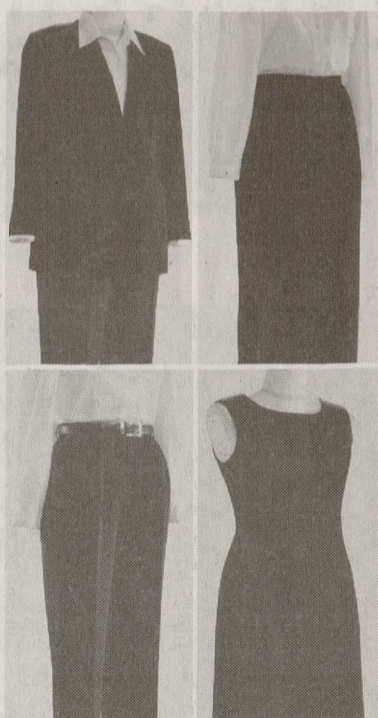
records belong to the state or to the lawyers themselves is being debated in a Texarkana federal court, the attorneys said. Cornyn tried to move the case to the state courts, but the state Fifth Court of Appeals in Texarkana denied his request.

Williams' attorneys were incensed at Taylor's appearance at the divorce proceeding yesterday.

"[The attorney general's office] ought to be ashamed of themselves," Jack O'Neill said. "By coming in here today without any prior warning, they violated every code of ethics and courtesy among lawyers."



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