

**Written Statement of**

**Tim Evans**

**on his own behalf and on behalf of the  
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

**before**

**The U.S. House of Representatives, 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**

**July 21, 1995**

## **TIM EVANS**

**115 W. 2nd Street, Suite 202  
Fort Worth, Texas 76102  
817/332-3822**

Tim Evans, of Fort Worth, Texas, has practiced criminal law for over 25 years. He graduated from Texas Tech School of Law in 1970. He prosecuted as a Tarrant County Assistant Criminal District Attorney until 1976. He has since served as President of the Texas Criminal Defense Lawyers Association and Chairman of the Criminal Justice Section of the State Bar of Texas. In 1987, Mr. Evans was selected as the "Outstanding Criminal Defense Attorney of the Year" by the State Bar of Texas. He is currently serving his second term on the Board of Directors of the National Criminal Defense Lawyers Association. Mr. Evans has represented clients ranging from the National President of the Bandidos Motorcycle Club to judges, bankers and the Speaker of the Texas House of Representatives. He represented, pro bono, Norman Allison, a defendant in the Waco-Branch Davidian case. His client was acquitted and is at home with his family in England.

## TOPICAL SUMMARY

### I. WHY REVISIT THE WACO TRAGEDY?

### II. WHAT LESSONS CAN WE LEARN FROM THE WACO TRAGEDY?

### III. THE FRAUD.

- A. The Affidavit for the Arrest and Search Warrant.
- B. The Need for a "Dynamic Entry" Assault.
- C. The Phantom Methamphetamine Lab.
- D. The Element of Surprise.
- E. The False Affidavit that Delroy Nash (Norman Allison) Fired at Agents.
- F. The Claim that the Fire was Unexpected.

### IV. THE RAID.

- A. The Raid Mentality.
- B. Who Fired the First Shot(s)?
  - The Dogs
  - The Bullet Holes in the Second ATF Truck
  - The Missing Door
  - The Missing Photographs
- C. No Written Reports Were Made By the ATF Agents at the Scene.
- D. Showtime.

### V. THE "SECOND SHOOTING".

### VI. THE PARAMILITARY POLICE FORCE.

### CONCLUSION

Mr. Chairmen and members of the Committees:

Thank you for providing me this opportunity to testify on behalf of myself and the members of the National Association of Criminal Defense Lawyers (NACDL) on the matter of the raid on the Branch Davidians in Waco, Texas.

The almost 9,000 direct, and almost 30,000 state and local affiliated members of the National Association of Criminal Defense Lawyers are private defense lawyers, public defenders and law professors. They have devoted their lives to protecting the many provisions of the Bill of Rights concerned with fairness in the criminal justice system. NACDL's interest in, and special qualifications for understanding and helping to explain the excesses and misrepresentations of law enforcement concerning the raid and siege in Waco are keen. I am here to assist in the investigation and to focus on the grave constitutional questions raised by the conduct of law enforcement.

I have practiced criminal law for over 25 years. I have both prosecuted and defended persons accused of crimes. I have a wife, children and a new granddaughter who I hope can grow up in a peaceful community. My wife, Rita, worked for the Fort Worth Police Department for 19 years and we both respect the honest efforts of law enforcement.

I was honored to represent British citizen, Norman Allison, pro bono, against the government's allegations that he conspired to murder federal agents in Waco, Texas on February 28, 1993. The jury found him not guilty of all charges.

## **I. WHY REVISIT THE WACO TRAGEDY?**

Because the whole truth did not come out in either the government reports or the first hurried hearings before Congress.

## **II. WHAT LESSONS CAN WE LEARN FROM THE WACO TRAGEDY?**

Rather than teaching new lessons the events in Waco serve to reaffirm the lessons the framers of the Constitution knew very well. They knew then what we must not forget -- that there will always be people in law enforcement who are ambitious, who enjoy power and who will be willing to distort the truth to achieve their objectives or to hide from blame. The government actions in Waco are a case study in these human frailties. The Bill of Rights is our best protection against these frailties.

The events in Waco also teach us that we must be very careful when we wage war -- even a war on crime -- for there has never been a war without innocent victims. And when we wage war in our country the victims are our own.

### **III. THE FRAUD.**

Juries in federal courts across this land are routinely instructed that:

"a scheme to defraud includes any scheme to deprive another of ... honest services by means of false or fraudulent pretenses, representations or promises. A representation may be 'false' when it constitutes a half truth, or effectively conceals a material fact, provided it is made with intent to defraud". Pattern Jury Instructions, U. S. Fifth Circuit District Judges Association.

The following is a list of half-truths, misrepresentations and outright falsehoods perpetrated upon magistrates, supervisors, Congress and the public by officers ranking from line agents to the highest supervisors of the ATF and FBI.

#### **A. The Affidavit for the Arrest and Search Warrant.**

Others will speak to this issue but suffice it to say here that the warrant, although it might be sufficient on its face, is replete with stale information from persons with grievances against David Koresh and prejudicial assertions that fail to state any crime against federal gun laws.

#### **B. The Need for a "Dynamic Entry" Assault.**

The stated justification for this dangerous procedure was that David Koresh was becoming reclusive and rarely left the Mount Carmel Center. Yet, the ATF surveillance notes reflect that he left the compound on January 28, 1993 and witness Tommy Spangler testified Koresh was at his junk yard and parts store four days before the raid. No effort was made to arrest Koresh away from the center. Agents now give different reasons for not arresting Koresh alone, but when first asked they stated it was because he did not leave the center.

Former ATF Director Higgins is reported to have said that if Koresh was arrested away from the center the others could have started executing people. This is the wildest of inflammatory speculations, unsupported by any factual basis. It is an example of the rhetoric of rationalization that permeates the ATF's statements throughout the proceedings. It is doubtful that arresting Koresh away from the center was ever thoughtfully considered.

In the summer of 1992 Koresh, through gun dealer Henry McMahon invited ATF Agent Aguillera to come to Mount Carmel to inspect his guns. Additionally, other agencies had been allowed into Mount Carmel without incident and the county sheriff evidently had a good rapport with Koresh. In spite of this, no options other than raid or siege were seriously considered.

C. **The Phantom Methamphetamine Lab.**

Whether or not, and under what circumstances the ATF needed to show a nexus of drug violations to obtain military assistance is subject to legal analysis. But one fact is perfectly clear. The ATF believed it needed to show a drug connection. This can be shown by statements made not only to the military, the press, and the governor of Texas, but also in testimony before this Congress. Deputy Director Dan Hartnett stated in a letter to Governor Richards and to Congress in June, 1993 that there were a number of people inside the compound with drug trafficking and possession convictions. This was a fraudulent representation because it contained half-truths and omitted material facts.

Pursuant to court order, the government prosecutors provided what they stated was the information actually possessed by the ATF to support their claims. The letter is attached as Exhibit A. This letter reveals that the ATF ran "name only" checks through drug intelligence computers. That means no other identifying information like age, date of birth, race or gender was included. It would be like asking if "John Smith" had a drug record. Even the rookie cop on the beat knows this is a very unreliable way to check criminal history. A trained federal agent obtained and forwarded such spurious information with the intent to influence a high official to rely on it and take action. The agent omitted the clearly material information that they could not be sure if the persons named were the same persons at Mount Carmel. In fact, to the contrary, they claimed that the persons named were indeed the Mount Carmel residents. This conduct fits the definition of fraud. People who gave similar misleading information to savings and loans are now in prison.

Further, deputy director Hartnett claimed the ATF had information from people inside the compound they had seen a meth lab. What he omitted was that this information dealt with an incident reported to have occurred four years earlier where Koresh had said he had found lab equipment and intended to turn it over to the Sheriff.

The source had not seen a meth lab.

The fact that the FLIR camera detected a hot spot at the center on a cold February, 1993, night in the area known by then to be the Chapel where religious meetings were conducted could not have been a good faith claim that there was actually a meth lab in operation. This hot spot could be anything -- a collection of warm bodies, electronic amplifiers, or a space heater. Trained agents know this, but they deleted this fact to achieve their purposes. Whether or not the ATF needed to make these claims, they were willing to do so to get what they wanted -- military helicopters.

**D. The Element of Surprise.**

The truth appears to be that the ATF did not care if they had the element of surprise or not. Their macho attitude was they could force their way through any problem which might arise. When the tragic results proved this assumption wrong they began to tell the press, the public and higher supervisors that they, of course, relied on the element of surprise, but were unaware they had lost it. This was an outright lie. It might have gone forever undiscovered had the line agents not been upset over the loss of their comrades. Further, Agent Rodriguez was beginning to be criticized for not informing the others of the loss of surprise. In a rare display of division of the ranks, it was soon revealed that Agent Rodriguez had in fact told his supervisor, Chuck Sarabyn, that "they know we're coming". Several agents testified under oath at the trial that they heard Sarabyn announce to the assembly of raid agents that, "they know we're coming, hurry up and get your gear on."

**E. The False Affidavit that Delroy Nash (Norman Allison) Fired at Agents.**

At the detention hearing held before U. S. Magistrate Dennis G. Green an affidavit sworn to by ATF Agent Charles Meyer was presented to Magistrate Green. This was done for the purpose of convincing the court to hold Norman Allison (who had first given the name Delroy Nash) in jail without bail pending the trial. My request to produce Agent Meyer so I could cross examine him on this issue was denied. The affidavit is attached as Exhibit B. It states, in pertinent part, that "as affiant and other agents took cover, Nash and the others began firing firearms at the agents." In truth, court testimony revealed that not one agent ever saw Allison (Nash) fire a single shot. In fact the testimony was that when Allison surrendered the .22 caliber pistol he had, it was in

a leather pouch. ATF Agent Marvin Richardson had recovered the gun, smelled no powder, saw no powder and was of the opinion at the scene that it had not been fired. This information was contained in a statement, (Exhibit C), given to the Texas Rangers by Agent Richardson on March 5, 1993 some five months before Allison's detention hearing in August, 1993. Not only was this sharply contradictory evidence withheld from the magistrate, it was not until the weekend before the trial in January, 1994, that this clearly exculpatory information was given to me as Allison's attorney. By this time Allison had been in jail for almost a year. The prosecution who is supposed to be bound by the Constitution and was bound by specific court order of U. S. Judge Smith to immediately turn over such information had delayed it for 10 months until the eve of trial.

**F. The Claim that the Fire was Unexpected.**

In order to absolve themselves of any responsibility for the horrific scene on the television screens of the nation when 76 men, women, children and two unborn fetuses were burned to death, the FBI has taken various positions. Some, even the President, attempt to divert blame by vilification of Koresh. They claim Koresh killed the children and Koresh is compared to Charles Manson. "They" committed suicide, we are told, even though little is known about the individual action or intent of the separate souls who perished.

The FBI tells us they did not know there was going to be a fire or they would have had emergency vehicles standing by. However, they further concede that fire trucks were not allowed in when they arrived because of a fear they would be fired upon. This matter of the fire trucks is a red herring because the real issue should be: could the fire have been prevented?; not whether it could be extinguished after it started. It is highly unlikely that fire trucks could have saved lives in that wind whipped tender box even if they had been in the front yard when the fire erupted.

The fraud is revealed when the tapes of both the negotiation and the electronic eavesdropping are examined. These tapes and transcripts are voluminous but a fair summary reveals inescapable conclusions that should not evade even the casual observer, much less the trained "elite" of law enforcement.



First, it is clear that the Davidians are not crooks or con artists. They were ardent and true believers in their interpretation of the Bible. They spoke of the scripture throughout the siege. Second, it is equally clear that they were obsessed with the "end days" and they believed that the apocalypse was upon them. They spoke often of death and many times of death by fire. This talk of death by fire is very apparent in the tapes recorded and monitored the day before the fire.

Most significantly, at 6:00 A.M., on April 19, 1993, the day of the fire, FBI negotiator Byron Sage informs the occupants by telephone that the gassing will start. At 6:05 and continuously for the next fifteen minutes, various Davidians talk about pouring and spreading fuel. (Transcripts of the first conversations are attached, Exhibit D) More sporadic conversations about fire and fuel occur throughout the morning. The prosecution introduced these tapes at trial to try to prove to the jury that the Davidians started the fire. In the process they succeeded in proving that the FBI knew of the likelihood of a holocaust in that wooden building for six hours before the fire broke out. Incredibly, instead of backing off they pushed forward, even more aggressively. Agents had also been asked about the possibility of suicide at that morning's news briefing. An agent claimed that they thought this was the best way to prevent a suicide pact from taking place. This was said while the Davidians had been talking about pouring fuel off and on for over three hours.

As recently as July 5, 1995, Special Agent in Charge Jeffrey Jamar continued the misrepresentations to avoid blame for callously pushing the Davidians toward the fire that consumed them. When confronted on Nightline by ABC's Ted Koppel with recordings of the Davidians talking about starting a fire, SAC Jamar claimed that the FBI could not hear the conversations that morning and that the tapes had to be enhanced at a later date. The trouble with this latest story is that the prosecution played the original, unenhanced version of the tapes to the jury at trial and even a lay person could hear that the Davidians were talking about spreading fuel and mentioning fire. It is incredulous to believe that a trained agent, with headphones, whose sole job was to monitor the activities of the Davidians that morning could not or did not hear what we all heard in that courtroom.

Agent Matt Gravel was one of the monitors and he testified that he was not told about the tear gas until about 7:00 A.M. That still gave him five hours to report the conversations about the fire. His notes of these conversations have not been produced.

An agent who drove one of the CS gas armored vehicles admitted at trial that they first gassed the area of the underground bus to prevent the Davidians from getting to it. They also pushed the walls in where the trap door to the bus was located. Six women perished at the obstructed doorway to that underground exit.

It is inescapable that regardless of what they might have told their supervisors, the Attorney General, or the President, the FBI agents had decided that the siege was over-come hell, high water or holocaust. This is apparent as one listens to the tone of the FBI on the tapes becoming increasingly belligerent while continuing to assure the residents that the destruction

they were observing was "not an assault".

It is graphically depicted in the escalating destruction of the outer walls. Much of the backside, away from media cameras, is destroyed. FBI spokespersons at a news conference at midmorning had the audacity to claim that the tanks were merely opening holes to insert the gas. Later they were to claim that the destruction was to allow greater access to exit. Never mind that one would risk being crushed by debris trying to leave.

Finally, there is the disturbing photo of Agent Sage posing for the camera as the Mount Carmel Center rages in flames. (Exhibit E). SAC Jamar said on Nightline that it was unfair to interpret this "chance" photo in a bad light. What SAC Jamar was not shown on Nightline was the second photo of a second agent posing in exactly the same spot in an even more macho pose. (Exhibit F) I will not interpret these pictures, they are worth a thousand words.

#### **IV. THE RAID.**

The raid was a recipe for disaster from the beginning. Even a cursory understanding of the Davidian beliefs would make a military assault the last option. While it is true that religious beliefs do not justify law violations, neither should they carry the death penalty. While some in the ATF may have considered other options we know that the majority favored the "dynamic entry". As we have seen, a clever police officer can rationalize almost anything, but the obvious answer is that they opted for a raid because they could, and because they enjoy it. Librarians rarely volunteer for SWAT teams. Sure, it can be dangerous but so is skydiving. The personality traits that make a good SWAT team officer are not likely to favor passive alternatives.

##### **A. The Raid Mentality.**

In testimony at a pre-trial hearing, Agent Ballasteros admitted that in their Fort Hood training they never even practiced making a peaceful entry. An agent on the roof top entry team testified at trial that they couldn't see or hear what was happening at the front door and their plans were to break into the second story window regardless.

Agent Littleton's statement to the Texas Rangers reveals that he thought it was "no big deal" that they had lost the element of surprise because he had run a lot of warrants where they had lost the element of surprise.

When asked about the degree of force used, Agent Petrilli testified he thought they had not used enough force. Public Relations Agent Sharon Wheeler told the media shortly after the raid that the problem was "we were outgunned". Even a prosecutor argued to

the jury that if anything, not enough force was used. Some people just never seem to get it.

**B. Who Fired the First Shot(s)?**

For a variety of reasons, we are unlikely to ever learn the answer to the question of who fired the first shot. There are several indications that it may well have been the ATF.

**The Dogs**

An ATF team was assigned to "neutralize" the dogs. Team members deny shooting the dogs and claim they were going to use a fire extinguisher to scare off the dogs. However, no less than four agents told the Texas Rangers that when they heard the first shots, they presumed it was the dog team killing the dogs. Five dogs were killed. They were at a level below the firing lines of the shootout. It is unlikely the Davidians shot their own dogs.

Further, Kathy Schroeder, a Davidian called by the government as a witness, testified that the first shots she heard were outside the building and right after she heard them she heard the dogs yelping. The government relied on and sponsored her testimony regarding which defendants had guns during the standoff. Why would they not be willing to believe her concerning the shooting of the dogs?

**The Bullet Holes in the Second ATF Truck**

The second ATF truck, pulling the second cattle trailer stopped behind the first cattle trailer and parallel to the Mount Carmel building. There is a bullet hole in the front of the hood and a second hole, immediately behind the first, that goes through a bracket and into the radiator. When the hood is closed, these holes match up and were surely caused by the same bullet. A wooden dowel was placed in these holes and it points straight out the front of the truck at the first cattle trailer. (Exhibit G) It is unlikely that a Davidian was shooting from the first cattle trailer, it is more likely that an agent accidentally discharged their weapon. No one has admitted that they did, but not all agents testified, and their track record for credibility in this case is poor.

### The Missing Door

There were two matching metal front doors. Koresh was standing at these doors before the shooting started. Only the door with the bullet holes indicating shots coming out of the Mount Carmel Center was recovered, according to the government. Where is the other door? The government claims they cannot explain the whereabouts of the door except that it must have burned up in the fire. The door that was recovered was evidently pulled out with debris when a tear gas tank withdrew from the building. This story is debunked by the fact that other metal doors within the center survived the fire. In fact, tin cans of food and other small containers survived in the hottest areas of the fire. It is inconceivable that this door completely vaporized in the fire.

### The Missing Photographs

The ATF had cameras with high powered lenses set up in the undercover house for weeks prior to and on the morning of the raid. This house faces the front of the Mount Carmel Center. There were ATF cameras all over the place that morning. Many agents carried personal cameras, three people in the helicopters had video cameras. However not one ATF photo or video has been produced of any portion of the raid or ensuing standoff. Agents testified that the cameras at the undercover house were supposed to take pictures that morning. When the defense asked for these photos we were told there were none and the only explanation given was that the cameras must have malfunctioned.

#### **C. No Written Reports Were Made by the ATF Agents at the Scene.**

Ordinary and routine police procedures require that at least one, and often more than one officer make a written report of any important incident in which they are involved. Even the rookie traffic cop writes a report if he or she investigates a traffic accident. This is especially true when an officer even discharges a weapon, much less shoots someone. In contravention of the most basic police practice, not one of the ATF agents involved in the shootings on February 28th made a written report of their observations or conduct.

Instead, these agents were allowed to and did talk amongst themselves for days before they were required to give statements to the Texas Rangers. By this time these agents knew that they were under intense scrutiny by the national press and by their own higher level supervisors in Washington. They were also understandably upset over the loss of their comrades. The potential for collusion is immense. When coupled with all other facts collusion is a virtual certainty.

In this most unreliable state the agents were finally asked what happened and allowed to give narrative recorded statements to the Rangers.

Every Ranger and most of the ATF agents who were asked, agreed that it was not normal procedure to fail to make written reports of such an event. Ranger Captain David Byrnes, when asked if he thought the ATF had made written reports of the shootings, replied, "I assume they did, and I would bet my life that my people did." His assumption, though understandable, was wrong.

Several Rangers also agreed that a basic investigation technique is to separate witnesses to an event and not let them meet and compare stories. In fact, just the opposite was done by the ATF.

This fact alone casts grave doubt on the reliability of the ATF version of these events. Additionally, several of the agents, most notably Agents Ballasteros and Meyers, added incriminating information against the Davidians to their original statements months after the first statements were taken.

All these facts taken together renders the testimony of the ATF, some of which would be otherwise compelling, of little or no value.

**D. Showtime.**

Trial testimony revealed that the code word to launch the raid was "showtime". The next words were "goggles down, weapons out, fingers off the trigger". Two separate public relations agents, Sharon Wheeler from Dallas and Franseska Perot from Houston were assigned to the operation. Pre-raid video from the "command" headquarters shows a prepared public relations center with fax machines, telephones and computers. It is very likely that

a substantial part of the press release had been prepared before the raid. Congress should ask to see it.

It is inescapable that this raid was to be a media event. It is also true that budget hearings for the agency were set in two weeks.

The trial judge would not allow us to delve into these matters at trial but they should not be ignored. The conclusions are obvious.

## **V. THE "SECOND SHOOTING".**

The term "second shooting" has come to refer to the shooting of Michael Schroeder in a field behind the Mount Carmel Center at about 5:00 P.M., after the raid and standoff.

We are left with only the ATF version of this shooting because Schroeder was killed and the two other persons in the field, Norman Allison and Woodrow Kendrick could not see enough of what happened to provide details. We are told that Schroeder refused requests to surrender and began firing at the agents. Approximately eleven agents returned fire and Schroeder was killed. Again, no written reports were made by the individual agents involved.

When questioned several days later, they told the Rangers that they had been shooting at Schroeder with pistols from a distance of about 100 yards. He had fallen, appeared wounded or dead, and they left him there without going near him. His body was left in the field for five days before Rangers were allowed to investigate the scene.

Photos of the body in the field show he was wearing a blue stocking cap. Autopsy reports show several gunshot wounds including two entry wounds in the side of the head. These holes are about two inches apart. Pretty good shots from 100 yards. Strangely the stocking cap came up missing. The medical examiner had all the other clothes, but not the stocking cap.

The Rangers requested permission from the FBI to return to the field to take plaster footprints. This would have shown if all the prints around Schroeder's body were his. Permission was reportedly denied for 10 days. In the interim heavy rains destroyed the footprint evidence.

Some claim has been made that Schoreder's body lay in the field and the Rangers were denied the right to return for "security and safety reasons". This is yet another weak excuse. The fact is this area is well out of sight and line of fire from the Mount Carmel Center. Armored personnel carriers were available during this time and could easily have been used to ferry Rangers to this remote sight. Plenty of personnel were available to provide security.

## **VI. THE PARAMILITARY POLICE FORCE.**

The scenes at Waco look more like Bosnia or some third world dictatorship than the United States of America. Civilian peace officers in full military gear. Tanks. Helicopters. Camouflage. Snipers. Even the command structure and the terminology was right out of the military manual.

These scenes are not limited to Waco. The nightly news across America in cities and villages alike shows these Ninja suited attack squads complete with Kevlar helmets and assault weapons riding the streets of our communities. I thought I would never live to see a civilian peace officer in the United States of America standing with assault weapons atop a military tank in full battle gear. The photo is attached as Exhibit H.

Among the many tragic scenes displayed from Waco there was no more chilling or revolting sight than that image displayed on the front pages of many of our newspapers the morning after the fire. It was that telling photograph of the ATF flag flying on the Davidian flagpole, callously waving above the smoldering remains of fellow human beings born and yet to be born. A "victory" sure enough, but a shameful victory in the war on crime.

Someone must start to realize what we have created and begin to take measures to reverse this dangerous trend.

## **CONCLUSION**

The actions of law enforcement before, during and after the tragedy at Waco cannot logically be assumed to be an isolated aberration. The disease of fraud, deceit and arrogance displayed by so many throughout this affair could not have inflicted them overnight. The extent of this disease is not known but its potential is dangerous indeed. It is not peculiar to any one branch of law enforcement. It infects the ranks of honest and dedicated officers throughout the land. It grows in the petri dish of permissiveness and is fed in the frenzy of the "War on Crime".

Congress, and all legislatures, should realize that there is a huge and powerful lobby constantly asking for more power, more money and fewer restrictions. It is the lobby of law enforcement. It ranges from the constant pressure of the Department of Justice to the demands of myriad local police organizations. We must begin to scrutinize their requests.

We must return to a healthy and meaningful system of checks and balances in the enforcement of our criminal laws. It should never be "easy" to convict another citizen. When it becomes easy to convict "them", it will become easy to convict "us".

It is checks and balances that keep us free; not studies, commissions, training or counseling. We must stop equating individual protections with "criminal's rights". We must avoid the reckless rhetoric that equates the Bill of Rights to "legal technicalities".

Specifically, we must return to the protections of the Fourth Amendment. A healthy exclusionary rule protects the innocent and the free, not the "criminal". Can one imagine what the agents, who would twist the truth to obtain probable cause, would do if they no longer needed probable cause to arrest and search and seize.

We must allow meaningful discovery to those accused of crime. If they are guilty they will still be convicted, if they are not guilty, they will have the means to disclose the unreliability of the government's case. Under the present rules of discovery the Davidian defendants, who were facing life without parole, were entitled to but a small portion of the documents Congress has accumulated for these hearings. The only reports or statements of government witnesses which we received were of those who the government chose to call as witnesses. By limiting their witnesses, they limit the information they have to disclose.

Congress should even the playing field by appointing a committee, not dominated by the Department of Justice, to recommend fair discovery in criminal cases.

We must revive the presumption of innocence in this country. It may not be dead but it has certainly been in a coma for over a decade. We should restrict the practice of holding presumptively innocent citizens in jail while they await their trial to the most compelling of circumstances. It is much too easy for the government to present conclusionary hearsay evidence at these detention hearings. In this case alone, three innocent people lost a year of their lives in jail because of this Orwellian practice.

In short, the events of Waco call not merely for a re-examination of law enforcement but for a fundamental realization that they are not always right and they do not always tell the truth. Congress should therefore re-examine its propensity to grant carte blanche requests from the Department of Justice for more power, fewer restrictions and broader criminal statutes. **The last thing this country needs is a federal police force!**





U.S. Department of Justice

United States Attorney's Office  
Western District of Texas

P.O. Box 828  
Waco, Texas 76703

(817) 757-6245

January 6, 1994

RE: US v. Branch, et al

TO COUNSEL FOR ALL DEFENDANTS:

In response to the Court's order filed January 4, 1994, we provide the following information which ATF possessed prior to the February 28th raid concerning the existence of a drug lab at Mt. Carmel:

Name checks through the Treasury Enforcement Computer System were performed by the Houston Field Division Office of ATF on or before December 16, 1992. The results, based on name only searches indicated that four persons believed to be living in the Compound had drug smuggling or possession entries in the Treasury Computer System. The accuracy of these checks is somewhat questionable because of the "name only" type inquiry, without having other identifying data on the queried individual.

During November of 1992, Special Agent Aguilera spoke with a former resident of the Mt. Carmel Center who told Aguilera that Vernon Howell had told this former member that when he (Howell) and others had taken possession of the Mt. Carmel Compound in 1988, there was an amphetamine manufacturing facility which Vernon referred to as an amphetamine still on the property. Vernon Howell also related to this former member that he (Howell) found a number of documents regarding the manufacture of amphetamine, including recipes and instructions. Vernon Howell related to this former resident that he (Howell) intended to turn these materials over to the McLennan County Sheriff's Office. Agent Aguilera personally checked with members of the McLennan County Sheriff's Office and learned that at no time since 1988 did Vernon Howell or others at the Mt. Carmel Center relinquish possession of any components of a amphetamine laboratory nor did they turn over any instructions or recipes relating to a lab.

Based upon the above information, ATF coordinated a surveillance flight using a helicopter with infrared capabilities. This flight took place on February 6, 1993. A National Guard Analyst reviewed

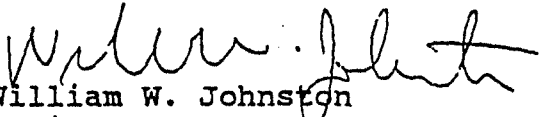
EXHIBIT A

the data and concluded that a large amount of heat, consistent with that produced by a drug laboratory was emanating from an area of the Mt. Carmel Center at 1:45 a.m. on February 6, 1993. A photocopy of a portion of the aerial photograph with the analyst writing showing areas of heat is attached to this letter.

Sincerely,

JAMES H. DEATLEY  
UNITED STATES ATTORNEY

by:

  
William W. Johnston  
Assistant U.S. Attorney  
Western District of Texas

AFFIDAVIT

On February 28, 1993, your Affiant, Bureau of Alcohol, Tobacco and Firearms (ATF) Special Agent Charles Meyer was working with other ATF Agents providing perimeter security while a federal search warrant was being executed at the residence of VERNON WAYNE HOWELL, off of Double EE Ranch Road in McLennan County, Texas. Your Affiant has been a Special Agent with ATF since 1976.

Other Agents had been fired on and several were killed and wounded. At approximately 5:00 p.m., which was near dusk, Affiant and several other ATF Special Agents encountered Defendant DELROY NASH and two other males. Affiant and other ATF Special Agents identified themselves as Federal Agents several times and ordered the three individuals not to move. As Affiant and other agents took cover, NASH and the others began firing firearms at the Agents. Affiant and other Special Agents returned fire and hit one of the individuals. When the firing ceased, NASH yelled and was ordered to stand up with his hands on his head and walk toward Affiant and Special Agents. He did and was apprehended. NASH was searched and had 99 round of .22 caliber ammunition and a Jennings .22 caliber pistol on his person.

*Charles Meyer*

Charles Meyer, Special Agent  
Bureau of Alcohol, Tobacco and Firearms

SUBSCRIBED AND SWORN TO before me on this the 1st day of March, 1993.

*[Signature]*

United States Magistrate Judge



EXHIBIT B

STATEMENT OF: MARVIN G. RICHARDSON  
DATE: March 5, 1993  
INTERVIEWER: John Aycock

reach for them, so about that time, I counted three and fired off like maybe six rounds and told Ivan to go and I fired off six rounds and then all I remember then is just, just a whole bunch of shots ringing out at that point in time. We were all, uh, just returning fire. Uh, I know I shot, I went through two clips and had put my third one in and started firing and about that time, the uh, the guy started yelling from down in the, in the little ravine, he was yelling, you know, surrender, surrender. And we stopped firing and the guy was given instructions. Uh, Special Agent Mihalec was instructing the guy to come up toward him. So he starts working his way up the hill with his hands up. He gets about six feet from Mark and we put him on his knees. He gets on his knees. Mark tells him to work his way on up toward him on his knees. Gets him there, asks him if he has a gun. He says, yeah, I got a gun. He points to his pocket and Mark reached into his pocket while I was covering the suspect. He grabbed the gun and he threw the gun toward me and I grabbed the gun and stashed it in a bag with the rifle that we had taken. We took that rifle that I told you about earlier, back at the bus. Yeah, I had that bag, had it in a bag, the rifle and the gun which we took off of the suspect. Mark cuffed him and took him to the front of the line. At that time, I proceeded last man to the front of the line and we were going to leap frog out. So, when I got to the front of the line, the last people started working their way up and we started heading out again. Uh, . . .

Q. The male that you guys had captured, what was he?

A. I want to say he was a Jamaican because I could catch his accent when he was talking to, when he was talking to Special Agent Mihalec, and it was pretty easy . . .

Q. A black male?

A. Yeah, black male, uh. . . .

Q. And what kind of gun did he have?

A. He had a Jennings 22, little chrome-plated 22 and a homemade leather pouch which, you know, it had not been fired because I cleared the weapon when we got back after everything was over with and it had not been fired, uh, to the best of my knowledge and then all I did was clear it. It had six rounds in it, one was in the chamber. I didn't observe any powder or anything like that. I didn't get to look it over as well as

TRANSCRIPT OF "BUGGED" CONVERSATIONS THE MORNING OF THE FIRE

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

KORESH - DAVID KORESH  
S - STEPHEN SCHNEIDER  
S/A SAGE - BYRON SAGE  
UM - UNKNOWN MALE  
UM (S) - UNKNOWN MALE (POSSIBLY STEPHEN SCHNEIDER)  
UF - UNKNOWN FEMALE  
C - CHILD  
UI - UNINTELLIGIBLE

Time

0556 (telephone ringing)

UM: Hello...hello

S/A SAGE: Hello, is Steven there?

UM: I can hardly hear you

S/A SAGE: Is (ui) there?

UM: Uh, no he's asleep right now

S/A SAGE: Wake him up...this is Byron Sage, it's a very important call.

UM: Ah...no sir, he asked not to be bothered now. He really had a very (ui) day..(long pause)...I'm gonna go check again, ok? Hold on (ui).

(pause, background noises, whistling sound, tanks moving)

(UI conversation)

0600 UM (S): Hello, yes, I can hardly hear you

S/A SAGE: Hear now?

UM: very weakly

S/A SAGE: Ok, this is Byron Sage. I'm going to advise you of something that's very important.

UM: Ok...I'm glad I can hear you

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

S/A SAGE: Ok, we're in the process of putting in tear gas into the building. This is not an assault. We are not entering the building, not an assault.

S: You are going to spray tear gas into the building.

S/A SAGE: In the building...we are not entering the building. This is not an assault.

UM: Tear gas (ui).

S/A SAGE: Don not fire your weapons. If you fire, fire will be returned.

UM (S): Everybody grab your masks, everybody grab your masks.

(sound of shuffling around; popping/clicking noises - possibly the sound of rounds being chambered into weapons)

(UI conversation)

S/A SAGE: (ui) inside the Branch Davidian compound. We are in the process of spraying tear gas into the building. This is not an assault. This is not an assault. We will not be entering the building; this is not an assault; do not under any circumstances discharge the weapons. If you fire, fire will be returned. Do not shoot, this is not an assault.

UM: you all up

UM: (ui) tear gas in the building.

S/A SAGE: It's a non-lethal...(ui) it will temporarily render the building uninhabitable. Exit the compound now and follow instructions. (ui) You are not to have anyone in the tower. The tower is off limits. No one is (ui) the tower.

UM: (ui) shootin' at him.

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

B: The tower...

0601 UM (S): Everybody wake up...let's start to pray (ui)

S/A SAGE: Dealt with accordingly, come out now - you will not be harmed, follow all instructions, come out of the compound with your hands up - carrying nothing. Come out of the compound with your hands up, carrying nothing. Come out of the building and walk up the driveway toward Double Ranch Road. Walk toward the large red cross flag. Follow all instructions of the FBI Agents in the Bradley vehicles.

(clicking sounds - possibly loading a weapon)

S/A SAGE: Follow all instructions, you are under arrest. This standoff is over. We do not want anyone hurt.

UM: Where's Steve? Steve down here?

UM: (ui)

S/A SAGE: Follow all instructions.

UM: We have to make out (ui).

S/A SAGE: Do not, do not fire any weapons. We do not want anyone hurt.

UM: (ui) the phone.

S/A SAGE: The gas will continue to be delivered until everyone is safely out of the building.

UN: Get any (ui)?

UM: Yeah.

S/A SAGE: Exit the compound now. (ui) Those of you remaining inside the Branch Davidian complex (ui) proper authorities. We do not want anyone (ui). Follow all instructions. This is not an assault

0605

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

UM: What number you got on 'em?

S/A SAGE: Do not discharge any weapons.

UM: (ui)

S/A SAGE: The gas will continue to be delivered until everyone is out of the building.

UM: (ui) bad (ui).

S/A SAGE: Exit the compound now. You are advised there is to be no one in tower, the tower is off limits. Be advised that the tower is off limits. No one is to be in the tower. Anyone observed in the tower will be considered to be an act of aggression and will be dealt with accordingly.

(Thumping sound)

UM: Am I gonna hear him?

UM: let me do that

(UI conversation)

UM: Come on.

UM: (ui) you can't get a (ui).

UM: One? Right here.

UM: You want it poured?

(thumping sound)

S/A SAGE: (ui) the tower is off limits, no one is to be in the tower. If you are observed in the tower (ui). Come out now and you will not be harmed.

UM: (ui)

S/A SAGE: carrying nothing. Come out of the building and walk up to (ui)



89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

UM: They're hitting the building. Whoa

S/A SAGE: Follow all instructions (ui) Bradley. Follow all instructions. You are under arrest. We do not want anyone hurt. Follow all instructions.

UM: Pablo, have you poured it yet?

UM: Huh?

UM: Have you poured it yet?

UM: In the hallway.

UM: Things are poured. Right? (ui)

S/A SAGE: Do not, do not fire any weapons.

UM: Need to get the fuel out.

S/A SAGE: We do not want anyone hurt.

UM: Do you want me to pour it already?

UM: We want the fuel.

S/A SAGE: The gas will continue to be delivered until all...

UM: You want some here?

S/A SAGE: Are out of the building. Come out now.

UF: I need a gas mask.

CHILKORESH: I need a gas mask.

UM: Got any fuel?

UM: We need fuel.

UM: Fuel, over here.

UM: Is that (ui)?

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

UN: Fuel.

(sound of tanks)

0610 KORESH: You got a mask up here?

UM: (ui) there are no more.

UM: You need to stop the tear gas.

UM: Okay Pablo.

(popping sounds)

UM: Don't pour it all out, we might need some later.

UM: (ui) throw the tear gas back out.

UM: Tear gas (ui).

UM: Big bang?

UM: Don't fire (ui).

S/A SAGE: (ui) tear gas will be (ui) at this time (ui) the building (ui) fire, you will be fired on. This is not an assault. The gas you will smell is non-lethal tear gas. (ui) Exit the compound now. Exit the compound now and follow instructions. You are not to have anyone in the tower. No one is to be allowed in the tower. Anyone in the tower is considered to be an act of aggression.

UM: Can we put out the lights?

UM: No

UM: Did somebody ask?

S/A SAGE: If you come out now you will not be harmed. Follow all instructions. Come out with your hands up, carrying nothing.

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

UM: They're comin' in, they're breaking the building down.

UF: Would you get (ui) gas mask?

UM: (ui)

UM: (ui) baking it.

S/A SAGE: You are under arrest.

UM: (ui) as long as I can.

S/A SAGE: We don't want anyone hurt.

UM: They're punching walls in.

S/A SAGE: No one in the (ui).

UM: (ui), hey, hey.

S/A SAGE: This is not an assault. Do not fire any weapons. Do not fire any weapons. We do not want anyone hurt.

UM: (ui)

S/A SAGE: The gas will continue to be delivered until everyone is out of the building.

UM: (ui) fuel, be careful with it.

S/A SAGE: Exit the compound now.

UM: (ui) what kind of a (ui)?

UF: (ui).

KORESH: Is there another gas mask somewhere?

UM: I don't know.

0612 KORESH: Go get another mask.

(popping sounds)

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

KORESH: You got to get the fuel ready.

UM: I already poured it. It's already poured.  
(popping sounds)

UM: (ui)

UM: You got the (ui)?

UM: Okay.

UM: Huh?

(popping sounds)

UM: Oh.

UM: What's the problem?

UM: You want to (ui) more people.

UM: They're gonna kill us.

UM: They don't want to kill us.

UM: What?

0614 KORESH: I'm going back upstairs.

UM: Go on up to your hard (ui)  
(possible gunfire in background)  
(UI conversation)

0616 UM/UF I don't know.

UM: He's pretty decent.

UM: He is decent.

UM: Anybody have any other masks?

UM: David took a few of them.

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

UM: (ui)  
(popping sounds)  
UM: (ui)  
UM: If you face (ui), man.  
UM: All the kids, all the kids, all the kids are  
down in the (ui).  
UM: Okay, if you face (ui), man.  
UM: What you doin' now?  
UM: Don't move around (ui) get ready, don't let  
anybody come in.  
UM: Nobody comes in, huh?  
UM: Nobody (ui).  
UM: Right,  
UM: They got some fuel around in here?  
UM: Yeah, they even poured already.  
UM: Poured it already.  
UM: He's got it poured already.  
UM: You don't want to talk on the phone anymore,  
huh?  
S: He might be on the phone right now.  
UM: No.  
0617 S: They come close to it.  
S: Hello.  
S/A SAGE: (ui) do not, I repeat, do not, (ui), do not,  
not an assault, don't fire your weapons,  
don't fire your weapons. If you fire, fire

89B-SA-38851  
SA 73-2  
DAY 2  
DATE 4/19/93

will be returned. Do not, do not fire. We don't (ui) non-lethal tear gas. (ui) are temporarily rendered uninhabitable. Exit the compound now and follow instructions. You are not to have anyone in the tower. The tower is off limits. No one is to be in the tower. If anyone is observed in the tower it will be an act of aggression and will be dealt with accordingly. If you come out now you will not be harmed. Follow all instructions. Come out with your hands up. Turn right. Come out of the building and walk up the driveway toward Double Ranch Road. Walk toward the large Red Cross flag. Follow all instructions. (ui) I repeat follow all instructions. You are under arrest.

S: (ui) line is dead.

UM: (ui) in the office right here?

0619 UM: Hmm?

UM: (ui) ... start the fire?

UM: We have a (ui) goin' in?

S/A SAGE: Follow all instructions. This is not an assault. Do not fire your weapons. Do not fire weapons. We do not want anyone to be hurt. The gas will be delivered until everyone is out of the building. Exit the compound now. The (ui) proper authorities. David, we are attempting to contact you via the telephone, attempt to initiate contact telephonically with the negotiators. If you cannot do that, if you cannot do that, the lines have been cut, indicate with a flag out the front door. Once again do not, do not send anyone in the tower. The tower is off limits. No one is to be in the tower. Send a flag out the front door and indicate if the phone line is no longer working or (ui) you have intentions to contact us (ui) tell us you are initiating telephonic contact. Once again this is not an assault.

66-51-8  
DEFENDANT'S  
EXHIBIT  
3/2  
4930846

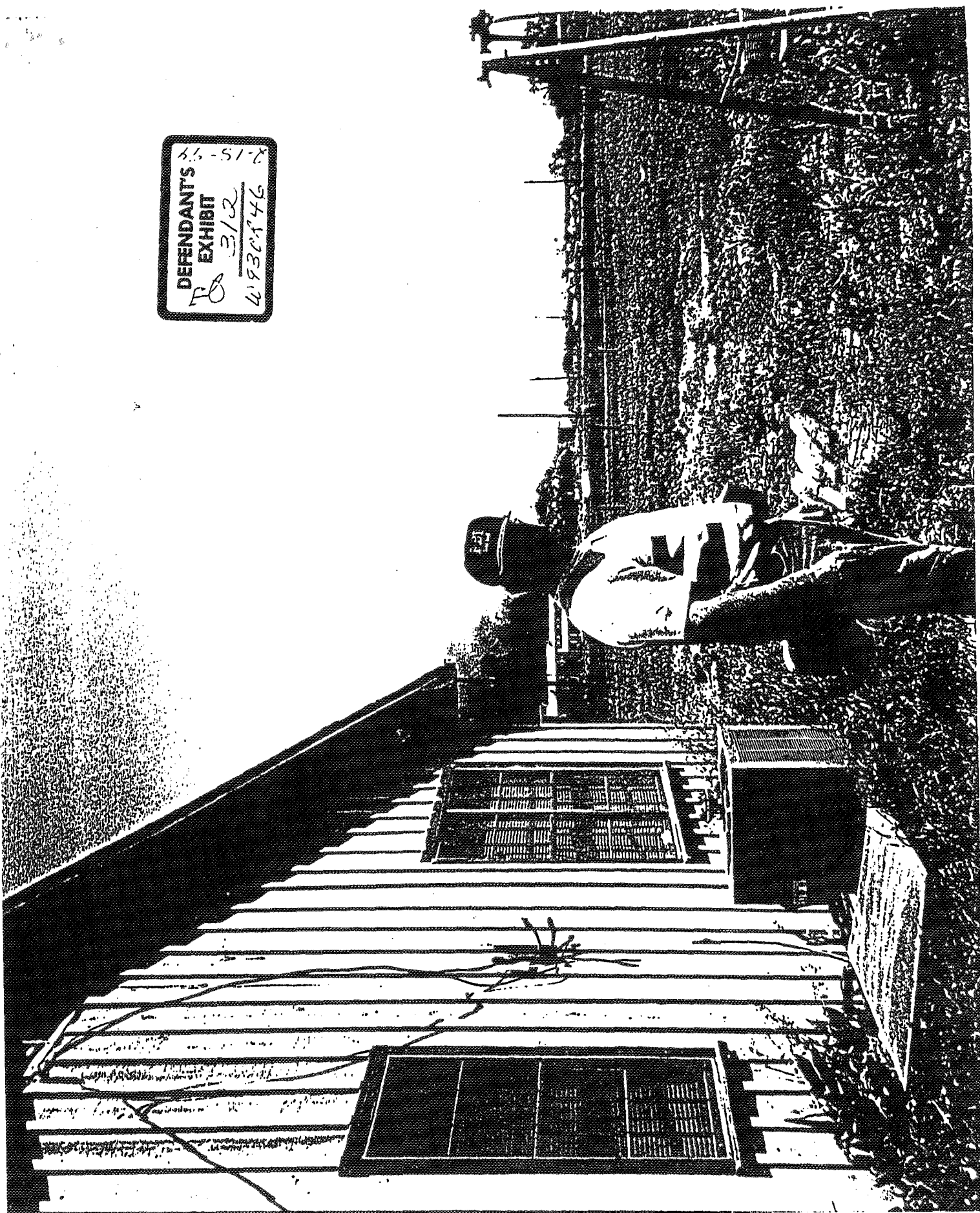


EXHIBIT E



EXHIBIT F



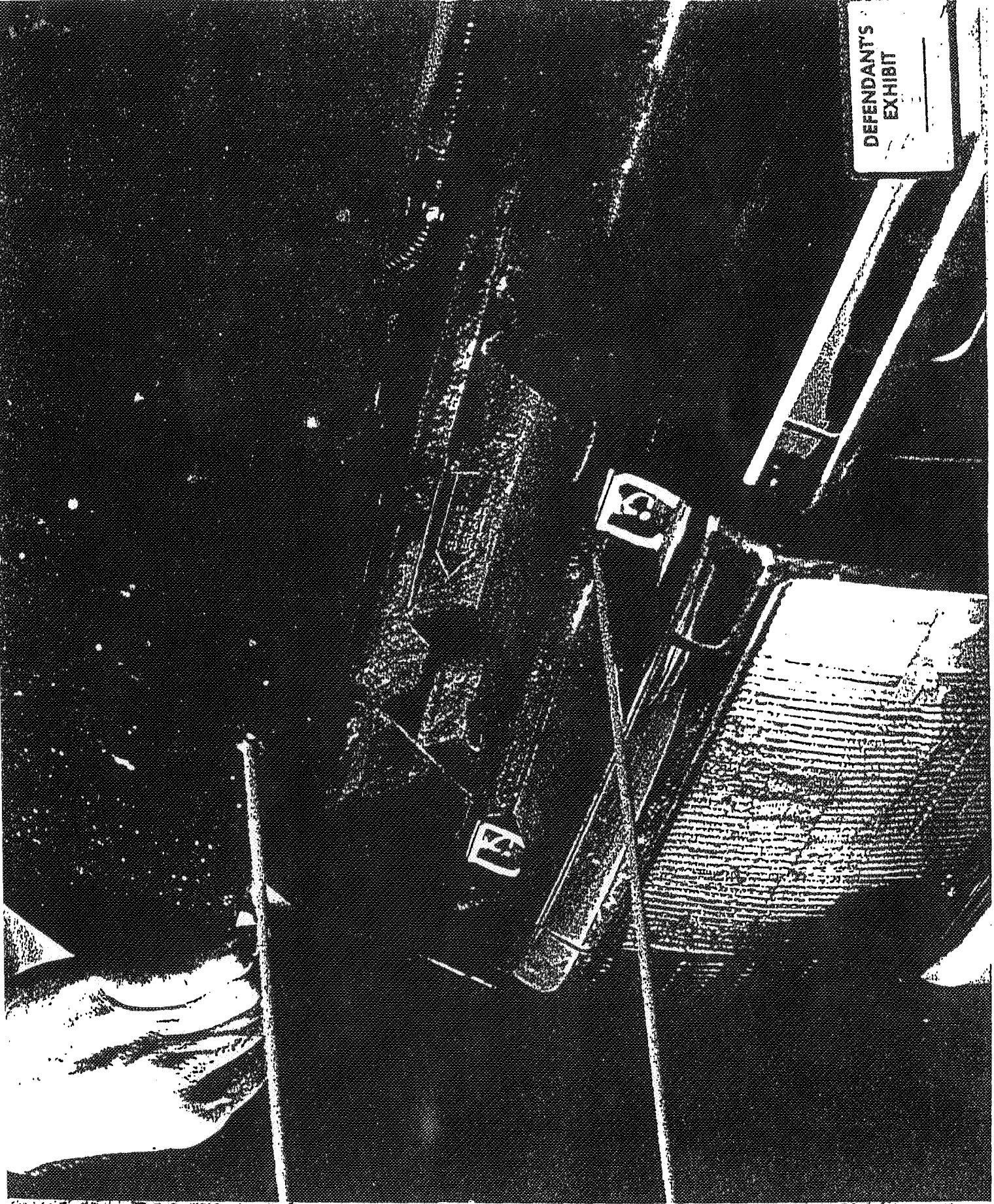


EXHIBIT G

DEFENDANT'S  
EXHIBIT  
155  
W93CR46 21-94



EXHIBIT H

## OFFICERS

### PRESIDENT

Gerald H. Goldstein  
San Antonio, TX  
210-226-1463

### PRESIDENT ELECT

Robert Fogelnest  
New York, NY  
212-683-8000

### FIRST VICE PRESIDENT

Judy Clarke  
Spokane, WA  
509-624-7606

### SECOND VICE PRESIDENT

Gerald B. Lefcourt  
New York, NY  
212-737-0400

### THIRD VICE PRESIDENT

Larry S. Pozner  
Denver, CO  
303-333-1890

### TREASURER

William B. Moffitt  
Alexandria, VA  
703-684-7900

### SECRETARY

David L. Lewis  
New York, NY  
212-285-2290

### IMMEDIATE

#### PAST PRESIDENT

John Henry Hingson, III  
Oregon City, OR  
503-656-0355

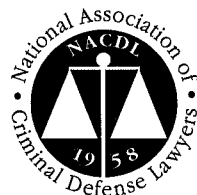
### PARLIAMENTARIAN

Edward A. Mallett  
Houston, TX  
713-880-9900

.....

### EXECUTIVE DIRECTOR

Stuart M. Statler



**NACDL** is a specialized bar association representing the nation's criminal defense lawyers. Its 8,700 direct members and 70 state and local affiliates include private criminal defense lawyers, public defenders, and law professors. The 36-year old association is devoted to ensuring justice and due process for persons accused of crime; fostering the integrity, independence, and expertise of the criminal defense profession; and promoting the proper and fair administration of criminal justice.

## DIRECTORS

Julie B. Aimen  
Chicago, IL  
312-697-0022

Charles E. Atwell  
Kansas City, MO  
816-221-0080

James A.H. Bell  
Knoxville, TN  
615-637-2900

James E. Boren  
Baton Rouge, LA  
504-387-5786

Juanita R. Brooks  
San Diego, CA  
619-595-5417

Raymond M. Brown  
Newark, NJ  
201-622-1846

Peter A. Chang, Jr.  
Santa Cruz, CA  
408-429-9191

Mary E. Conn  
Houston, TX  
713-520-6333

Richard K. Corley  
Providence, RI  
401-861-2100

Charles W. Daniels  
Albuquerque, NM  
505-842-9960

Tim Evans  
Ft. Worth, TX  
817-332-3822

Charles W.B. Fels  
Knoxville, TN  
615-637-0661

Drew Findling  
Atlanta, GA  
404-588-1518

John P. Flannery, II  
Leesburg, VA  
703-338-7248

Nina J. Ginsberg  
Alexandria, VA  
703-684-4333

Lawrence S. Goldman  
New York, NY  
212-997-7400

Stanley I. Greenberg  
Los Angeles, CA  
310-444-5999

Gary G. Guichard  
Atlanta, Georgia  
404-894-2595

M. Cristina Gutierrez  
Baltimore, MD  
410-752-1555

John Wesley Hall, Jr.  
Little Rock, AR  
501-371-9131

Tova Indritz  
Albuquerque, NM  
505-344-2719

Joseph D. Johnson  
Topeka, KS  
913-232-6933

G. Douglas Jones  
Birmingham, AL  
205-254-9000

Helen Leiner  
Fairfax, VA  
703-591-1112

Jack T. Litman  
New York, NY  
212-809-4500

Shaun McCrea  
Eugene, OR  
503-485-1182

George H. Newman  
Philadelphia, PA  
215-592-9400

Martin S. Pinales  
Cincinnati, OH  
513-721-4876

Leah J. Prewitt  
Knoxville, TN  
615-637-7979

David S. Rudolf  
Chapel Hill, NC  
919-967-4900

Kent A. Schaffer  
Houston, TX  
713-228-8500

Natman Schaye  
Tucson, AZ  
602-544-2955

Barry C. Scheck  
New York, NY  
212-790-0368

Laurie Shanks  
Albany, NY  
518-434-1493

Burton H. Shostak  
St. Louis, MO  
314-725-3200

Theodore Simon  
Philadelphia, PA  
215-563-5550

Marshall A. Stern  
Bangor, ME  
207-942-6791

Michael L. Stout  
Roswell, NM  
505-624-1471

Richard J. Troberman  
Seattle, WA  
206-343-1111

**NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

1627 K STREET NW, SUITE 1200, WASHINGTON DC 20006 • TEL: 202-872-8688 • FAX: 202-331-8269