I decided not to use the Waco piece (and Jim disagreed). The more I read it, the more it seemed like an apologia for the militias and the rest of the the far right. To me it seemed to imply a false dilemma: that a choice has to be made between the goons on the right and the jack-booted ATF cowboys.

I agree that the assault on Koresh's compound was criminal and amounted to mass murder. And that it was wrong for the FBI to attack Randy Weaver's home. But that doesn't no-bill Weaver. If Weaver was not a white supremacist or white separatist, what was he? And can we not say that because it is what was said by the mainstream press?

And Bo Gritz was a war hero. But so what. What's he done for us lately? For me, the news value that Koresh's followers are not a part of Bo Gritz's invisible empire the West was lost in this piece. And that seemed to be the real story.
Dick J. Reavis—Davidian trial report

The Judge. When Walter S. Smith, Jr. retires from the bench—and that's not coming anytime soon—he'll be remembered as the judge who made the trials run on time. That's the reputation that he's earning at San Antonio, where he's presiding, not so much over, as in, the trial of 11 Branch Davidians.

Smith is a hands-on judge, who, at San Antonio, is intervening left and right to hurry justice on its way. This was clearly evident at the start of the trial, when he limited defense lawyers to 15-minute opening arguments. He timed their performances with his own wristwatch.

At one point during the trial's first week, after prosecuting attorneys had paraded more than a 100 pieces of physical evidence before the jury, one weapon at a time, Smith asked them to make their next submission of evidence en masse, a tableful at a time. At another point, when the prosecutors were introducing photos, he admonished them with words to this effect: "If you've got exhibits that are numbered from 100 to 120, introduce them as 'Exhibits 100 through 120, not as 101, 102, 103, etc.'" With Smith, as with the station house managers of yore, seconds really do count.

His boldest time-shaving move has been to pick the jury panel himself. Smith sent our questionnaires to about 300 potential jurors, and then pared his list to about 120 by standards of his own—perhaps some people didn't respond—and
trimmed that list to 80, scratching those potential jurors whose written responses indicated strong feeling for the case, he says. Conducting most of the voir dire himself, Smith eliminated all of them but 41, leaving only the final cut to the attorneys. Jury selection, which could have taken weeks, took only two days instead.

The resulting jury is largely female, and largely Catholic, and though the attorneys involved can't say so, neither bodes well for the defense, whose ideal jury would have consisted of 12 Anabaptist members of the NRA. Females are not as much into what might be called "gun culture" as are males, and Catholics don't beat the Bible like Protestants--and Davidians--do.

Judge Smith has refused to separate the cases of defendants who, for example, weren't even at Mt. Carmel during the infamous events of last spring. Those three defendants will stand trial for conspiracy along with survivors of the blaze, some of whom are charged with actual murder. Smith decided to try the Davidians as a gang, he told the jury panel, "for your convenience and my convenience--to save money"; and money, of course, is also time.

Though Smith is a Reagan appointee and a former McLennan county Republican chairman, his motivation for adopting the time-keeping order is apparently what it seems on its face. Defense lawyers at the trial--who cannot speak frankly because Smith has gagged them--mutter beneath their restraints that his attitude has seemed fair. During voir dire,
he asked the kinds of questions that they would have asked, though, some of them point out, not as skillfully as they would have asked them.

**The Law.** Smith's handling of the law, as opposed to procedures, is more to be questioned. "There are almost as many religions in this country as grains of sand on the beach," he told the jurors, Solomon-style. "...But no one's religion gives them the right to break the law," he said. With this instruction, he summarized the doctrine of what might be called "state supremacy" (as opposed to church supremacy), a doctrine of things that ain't quite so.

Not long ago, a cabal of Santeros in Miami sacrificed animals to their deities, overlooking and violating laws about cruelty. The Supreme Court ruled that, because of their religious convictions, the Santeros had a right to violate those laws. Judicial history is by now chocked full of cases brought by members of the Native American Church, claiming a right to overlook peyote prohibition because of their faith, and generally speaking, they've prevailed, too. During the era of the military draft, Mennonites and other pacifist Christians were legislatively exempted from military service for similar reasons. It just ain't so that "no one's religion gives people the right to break the law". Sometimes, some people's religions do give them that right.

There's not yet been any testimony on this point, but it's a safe bet that at least some of the Davidians kept firearms because and only because they believed it their duty to protect
their messiah from harm. Perhaps it requires a far stretch of the imagination to formulate an instruction in which a judge would tell a jury, "if you find that because of a sincere religious conviction, any of these defendants produced an automatic weapon, or because of religious belief, fired any weapon at federal agents, you must vote to acquit that defendant"--but stranger things have happened. The future of American gun legislation is not likely to read that "automatic weapons are subject to a federal firearms tax, except when owned by members of religious groups specified in Section 12c of Part 23-a"--but reg books are full of clauses like that. Stranger things also happen anytime a legislature passes bills of personal privilege.

Far more disturbing than "state supremacy" vis a vis religion, in the eyes of defense attorneys, was Judge Smith's refusal to instruct the jury on the right of citizens, at least under the Texas Constitution, to resist lawmen when those lawmen use excessive force to accomplish their ends. The prosecution asked Judge Smith not to inform the jury about self-defense at all, and though he did talk to them about the concept, he didn't tell them that one can act in self-defense against a legally authorized aggressor.

The Austin American-Statesmen quotes Smith as having said, before the trial began, that, "an organization plans to attempt to hand out leaflets to potential jurors about how they should ignore the law and follow their conscience". According to the Statesman's Jim Phillips, Smith said that in justification of
his decision to empanel an anonymous jury. And he instructed the
jury to base its verdicts on law, not on scruples.

In ignoring religious claims, the concept of self-
defense against thugs wearing badges, and the notion of plenary
jury power, Judge Smith has firmly put himself on the side of
"state supremacy"—against both the church and the citizenry.

The Rules. Smith has also promulgated a set of severe rules for
the courtroom. The most serious of these involve exclusions of
the public. At Smith's instruction, federal marshalls have
divided those who would witness the trial into three categories:
members of bereaved families, members of the press, and members
of the public. Thus far, there has been room for almost
everybody, except during jury selection, when only five members
of the press—no family or public spectators—were permitted in
court. Since the press witnesses were credentialed by the U.S.
Marshall's service, that part of the proceeding was arguably not
a Constitutional "public trial".

The Press. During the Waco standoff, former Klansman Louis Beam
was ejected from an FBI press conference after asking whether or
not the siege of Mt. Carmel was evidence that the nation is
becoming a police state. The nearly 200 journalists present did
little to defend him, because they viewed Beam as less than a
legitimate reporter. The public, whose rights are the basis for
any access that the press has to trials and government
information feedings, was entirely excluded from the Waco
conferences—and the press didn't challenge that, either.

The good news is that, thus far, the press isn't being restricted by federal authorities as much as at Waco. Beam was in Waco to write for Jubilee, a California newspaper dedicated to somewhat right-wing Christian concerns. Jubilee's representative in San Antonio, self-professed Davidian Ron Cole, has been issued a pass to the press room set up for the trial, and so have all other applicants. The press room isn't the courtroom, but it is wired with an audio feed of the proceedings.

**The Bottom Line.** If there's any one incident that summarizes the knotty contradictions underlying the San Antonio trial, it's something that involves a bearded, fortyish reporter named Jim Pate. Despite being on the scene for Soldier of Fortune magazine, Pate is one of fifty press people who've been issued credentials for courtroom entry. But he has to share his courtroom pass with a reporter from the New York Daily News, and so, as often as not, he's gotten into court as a member of the public. One day Pate was barred from the courtroom for wearing jeans. The following day he returned, still wearing jeans. He was admitted, because Smith apparently defines jeans by material, not by cut: Pate was excluded for wearing denim jeans, but admitted while wearing jeans of corduroy. "These aren't jeans that I'm wearing, these are corduroy dress pants," Pate quips--having discerned how Smith's mind works. If the verdicts that come out the court keep the spirit of Smith's instructions on law and rules, we're in for
surprises; the jury's decisions will turn on points that only a Republican judge can comprehend.

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