I. EXECUTIVE SUMMARY

A. Overview

In February 1993, the Office of Professional Responsibility ("OPR") of the U.S. Department of Justice (the "Department") was informed of allegations made by defense counsel for Randall ("Randy") Weaver and Kevin Harris in the criminal case of United States v. Weaver which was pending in the federal district court in Idaho. Defense counsel alleged that employees of several components of the Department had engaged in criminal and professional misconduct during the investigation, apprehension and prosecution of Randy Weaver and Kevin Harris. The Department decided to defer action on this matter until the criminal trial was completed.

In July 1993, a jury acquitted Weaver and Harris of charges stemming from the murder of a federal officer. Following the acquittal, numerous additional allegations were raised by defense counsel and other sources against the Bureau of Alcohol, Tobacco and Firearms ("BATF"), the U.S. Marshals Service ("Marshals Service"), the Federal Bureau of Investigation ("FBI" or "Bureau") and the U.S. Attorney's Office for the District of Idaho ("USAO"). Included among these allegations were claims that Department employees had unlawfully caused the deaths of Sammy and Vicki Weaver, had taken actions that had obstructed justice, had committed perjury and had engaged in other criminal and ethical misconduct. In late July 1993, attorneys from OPR and the Criminal Division of the Department, assisted by inspectors from the FBI, began an investigation of these allegations.

This report details the results of this investigation and traces chronologically the events that occurred in the Weaver matter. The early sections of the report focus on Weaver's sale of illegal firearms to a BATF informant, BATF's unsuccessful attempt to enlist Weaver as an informant, the subsequent governmental delay in seeking an indictment on the firearms violations, and Weaver's arrest on weapons charges followed by his subsequent failure to appear for trial on those charges. Another area of investigative inquiry focuses on the efforts of the Marshals Service to apprehend Weaver. These efforts culminated in the August 21, 1992 gun battle at Ruby Ridge which took the lives of Deputy Marshal William Degan and Weaver's son, Sammy Weaver. Next, the report contains a discussion of the involvement of the FBI in the Weaver matter, including its initial intervention in the crisis, its responsibility for the death of Vicki Weaver and wounding of Kevin Harris on August 22, 1992, its handling of the crisis including its attempts to end the week-long standoff, its handling of the crime scene searches and its subsequent activities in assisting the USAO in preparing the Weaver case for trial. Finally, the last sections of the report address the handling by the USAO and the investigative

agencies of the prosecution of Weaver and Harris including representations made by the U.S. Attorney to the court prior to the beginning of Harris' preliminary hearing, the conduct of the Assistant U.S. Attorney before the grand jury and the untimely disclosure of critical information to the defense.

We found that many of the allegations of misconduct were not supported by the evidence. However, we did find merit in some of the more serious charges. As a result, we have asked that the appropriate component of the Department examine for prosecutive merit the conduct of the FBI sniper/observer who fired the shots on August 22, 1992. In addition, because our investigation indicated that Assistant U.S. Attorney Ronald Howen took certain questionable actions during the investigation and prosecution of the Weaver case, we have recommended that the Executive Office for United States Attorneys examine our analysis of his conduct and take whatever administrative action it deems appropriate. Finally, we have formulated a series of recommendations that address the problems that we reviewed or uncovered during our investigation.

B. Significant Findings

In October 1989, Randy Weaver sold illegal weapons to a BATF informant. When BATF agents later attempted to enlist Weaver as an informant in their investigation of the Aryan Nations, Weaver refused to cooperate. Seven months later, the government indicted Weaver for the illegal weapons sales. We have found no evidence to support the claim that BATF targeted Weaver because of his religious or political beliefs. Similarly, we found insufficient evidence to sustain the charge that Weaver was illegally entrapped into selling the weapons.

When Weaver was arraigned on the weapons charges in January 1991, he was told that his trial would commence on February 19, 1991. Two weeks later, the court clerk notified the parties that the trial date had been changed to February 20, 1991. Shortly thereafter, the U.S. Probation Office sent Weaver a letter which incorrectly referenced his trial date as March 20, 1991. After Weaver failed to appear for trial on February 20, the court issued a bench warrant for his arrest. Three weeks later, on March 14, a federal grand jury indicted Weaver for his failure to appear for trial. We found that: the government, especially the USAO, was unnecessarily rigid in its approach to the issues created by the erroneous letter; that the USAO improvidently sought an indictment before March 20, 1991; and that the USAO erred in failing to inform the grand jury of the erroneous letter.

From February 1991 through August 1992, the Marshals Service was involved in efforts to apprehend Weaver to stand trial for the weapons charges and for his failure to appear for trial.

These efforts included gathering information about Weaver and developing a plan to arrest him. Based on information that it collected, the Marshals Service learned that for many years Weaver had made statements about his intent to violently confront federal law enforcement officials. As a result, the Marshals Service concluded that Weaver intended to resist violently governmental attempts to arrest him. Thereafter, the Marshals Service investigated and carefully considered alternatives that would enable it to arrest Weaver without endangering his family or law enforcement personnel. It concluded that an undercover operation would be the most prudent way to proceed.

In August 1992, six marshals travelled to an area in northern Idaho known as Ruby Ridge to conduct surveillance of the Weaver residence in preparation for the undercover operation. During the surveillance mission, the Weaver dog discovered the marshals and began to bark. The marshals retreated with the dog, Harris, Randy Weaver and his son, Sammy Weaver, and other family members in pursuit. At an area known as the "Y," a gun battle occurred in which Deputy Marshal Degan and Sammy Weaver were killed.

We conclude that the marshals took a measured approach in developing a plan to apprehend Weaver. Throughout the 18 month period that the marshals were responsible for apprehending Weaver, they carefully devised a plan intended to pose the least amount of risk to Weaver, his family and the marshals. At no time did we find that it was the intent of the marshals to force a confrontation with Weaver or his family. Although some may question the expenditures of manpower and resources by the Marshals Service during this 18 month period, we believe that institutional pressure created by the existence of a bench warrant and an indictment, left the Marshals Service with little choice but to proceed as it did. Moreover, the USAO did little to assist the Marshals Service in this matter. Indeed, during the first part of this process the USAO thwarted the efforts of the Director of the Marshals Service to focus the court on the danger involved in making the arrest and incorrectly terminated efforts by the Marshals Service to negotiate with Weaver through intermediaries.

With regard to the responsibility for the deaths that occurred at the Y, the marshals assert that Harris initiated the fire fight when he shot Deputy Marshal Degan while Weaver and Harris claim that the marshals fired the first shots. After a thorough review of all of the evidence made available to us, we have been unable to determine conclusively who fired the first shot during the exchange of gunfire. Although there is evidence that one of the marshals shot Sammy Weaver during the exchange of gunfire, we found no proof that the shooting of the boy was anything other than an accident. In fact, the evidence indicates that the marshals did not know that Sammy Weaver had been killed

or wounded until his body was discovered by the FBI in a shed outside the Weaver cabin two days later. Nor did we discover any evidence indicating that the marshals attempted to coverup their roles in the incident or that they exaggerated the events to cause a more drastic FBI response than was appropriate.

Soon after learning of the August 21 incident at Ruby Ridge, the FBI officials in Washington, D.C. evaluated the information made available to them and decided to deploy its Hostage Rescue Team ("HRT") to Idaho to deal with the crisis. HRT members assumed their positions around the Weaver compound late in the afternoon of August 22, 1992 but before doing so they were instructed that their conduct was to be governed by specially formulated Rules of Engagement ("Rules"). These Rules instructed the HRT snipers that before a surrender announcement was made they could and should shoot all armed adult males appearing outside the cabin. Operating under these Rules on August 22, an FBI sniper/observer fired two shots in quick succession. The first shot was at an armed adult male whom he believed was about to fire at a HRT helicopter on an observation mission. The first shot wounded Randy Weaver while in front of a building at the Weaver compound known as the birthing shed. The second shot was fired at Harris while Harris was retreating into the Weaver cabin. The second shot seriously wounded Harris and killed Vicki Weaver who was behind the cabin door.

Following this shooting incident FBI officials spent the next eight days attempting to convince Weaver and Harris to surrender to federal authorities. Finally, due largely to the efforts of nongovernmental negotiators, Harris and Weaver surrendered on August 30 and August 31 respectively. Thereafter, the FBI completed its searches of the cabin and surrounding areas. During the following month, the FBI also conducted an internal review of the shooting incident to determine if the sniper had responded appropriately.

Our review found numerous problems with the conduct of the FBI at Ruby Ridge. Although we concluded that the decision to deploy the HRT to Ruby Ridge was appropriate and consistent with Department policy, we do not believe that the FBI's initial attempts at intelligence gathering at the scene were sufficiently thorough. We also found serious problems with the terms of the Rules of Engagement in force at Ruby Ridge. Certain portions of these Rules not only departed from the FBI's standard deadly force policy but also contravened the Constitution of the United States. In addition, we found these Rules to be imprecise and believe that they may have created an atmosphere that encouraged the use of deadly force thereby having the effect of contributing to an unintentional death.

With regard to the two shots fired on August 22, we concluded that the first shot met the standard of "objective

reasonableness" the Constitution requires for the legal use of deadly force but that the second shot did not satisfy that standard. It is our conclusion that the sniper/observer who took the second shot intended to shoot Kevin Harris but accidently killed Vicki Weaver whom he did not see behind the curtained door. We also found the internal FBI review of the shooting incident was not sufficiently thorough and reached incorrect conclusions about the second shot.

Our examination of the command and control of the crisis by the FBI, found numerous shortcomings. These shortcomings included initial inadequacies in utilizing negotiating personnel, communicating with FBI Headquarters, documenting decisions and securing the site.

During and after the crisis, the crime scenes were searched by many law enforcement officials under the direct supervision of the FBI. We found the FBI's handling of the crime scene searches to be inadequate including its failure to use basic crime scene techniques in collecting evidence. Furthermore, the general disorganization and inexperience of some of the participants coupled with inaccuracies in the searches adversely affected the prosecution and contributed to the negative impression of the government generated during the trial. We found no evidence that these deficiencies were intentional or that the FBI staged evidence for the prosecution's benefit.

Shortly after their arrest, separate preliminary hearings were held for Weaver and Harris. While arguing the government's motion requesting a continuance of the Harris preliminary hearing, U.S. Attorney Ellsworth made statements indicating that the government would allow Harris to have a complete preliminary hearing in return for consenting to the continuance. Thereafter, Harris consented to the continuance with the understanding that he would have a full preliminary hearing. An indictment was returned against Harris while his preliminary hearing was in progress. We have found that the U.S. Attorney did not intentionally misrepresent the government's position but that he failed to appreciate the impact of his statements and that he neglected to pay sufficient attention to the information that he received concerning the probable length of the preliminary hearing.

After the first indictments were returned against Weaver and Harris, the Assistant U.S. Attorney continued to present evidence to the grand jury which led to the return of two superseding indictments, each containing a conspiracy count. We found these conspiracy counts to be overly broad and to contain some overt acts for which there was insufficient evidence. With regard to the conduct of the Assistant U.S. Attorney before the grand jury, we found that he acted improperly in a number of instances. On certain occasions, he made improper comments to the grand jury

that bordered on unsworn testimony and introduced evidence of violent acts of racist groups that was at best only tangentially relevant to the charges to be presented to the grand jury against Weaver. Finally, when questioned by the grand jury concerning its jurisdiction to investigate the death of Vicki Weaver, the Assistant U.S. Attorney mistakenly advised them that the matter was not within their jurisdiction. We found that he later failed to correct this error.

Later the USAO decided to seek the death penalty against Weaver and Harris even though the applicable federal appellate court had held that the offense charged could not constitutionally support the imposition of a death sentence. We have concluded that the decision to seek the death penalty, although made in good faith, gave the appearance that the government was overreaching.

From the moment that the USAO began to prepare the case for trial, it met with resistance from the FBI. This resistance took many forms, all of which served to make preparation of the case more difficult. The FBI continuously opposed actions the prosecutors requested to prepare the case for trial, ranging from having the case agents conduct out-of state interviews to enlisting agents from other agencies to help prepare the case. The FBI, which wanted to be the only agency or, at a minimum, the lead agency on the case, resisted working as a coequal member of the prosecution team. Furthermore, when the USAO sought advice and assistance from the FBI Laboratory they met with unjustified delays and resistance that created discord within the team and disrupted trial preparation. These problems contributed to the USAO's decision to retain private forensic experts.

In addition, the FBI unjustifiably delayed producing materials to the USAO that were needed for trial preparation and that were clearly discoverable under federal law and the discovery stipulation signed by the parties. This action unreasonably delayed the availability of these materials for trial preparation and for discovery. Particularly at the headquarters level, we found that the FBI's efforts to locate and produce discoverable documents to be disorganized and incomplete. The late production during trial of material associated with the FBI Shooting Incident Report negatively affected the court's and the jury's perception of the government and the government's case. In addition, the delays in discovery caused by the disorganization of and mistakes committed by the FBI Laboratory contributed to the delay of the trial and to the perception that the government was uncooperative and not being totally forthcoming.

However, the FBI was not alone in failing to make timely disclosure of critical information to the defense. The USAO was also responsible for not promptly revealing certain important

information to the defense. Although in some instances we found these tardy disclosures to be unjustified or negligent, we do not believe that they were improperly motivated or taken intentionally to obstruct the Weaver trial.

C. Significant Recommendations

As the result of our investigation, we have made seven broad recommendations. First, we recommend that all federal law enforcement officers be governed by a standard deadly force policy and that the Department of Justice be responsible for developing such a policy. In addition to specifying clearly the circumstances in which deadly force may be used, the policy should define the occasions in which special Rules of Engagement may be implemented and the process by which such rules should be approved.

Second, we recommend that a crisis response team, including specially trained crisis managers, be available to respond to crises. In addition, we endorse the proposal to include specially trained prosecutors to provide legal support to tactical teams when needed. We also propose periodic joint training exercises by the various federal and local law enforcement agencies which are responsible for responding to crisis situations.

Third, we recommend that a panel comprised of representatives from federal law enforcement agencies, including an attorney from the Department of Justice, be created to examine the internal reviews that law enforcement agencies conduct after shooting incidents occur. This examination would focus of the thoroughness and prosecutive merit of the internal review.

Fourth, we recommend steps be taken to improve the coordination between the FBI and federal prosecutors in responding to discovery. Such steps should include having the Department of Justice develop a policy governing the retention and release of FBI material in criminal discovery and having the FBI denominate a unit to coordinate and monitor discovery.

Fifth, we recommend that FBI field offices that do not have a team in place to recover evidence after major hostage/barricade crises like Ruby Ridge request the assistance of the Evidence Response Team at FBI Headquarters. We further recommend that procedures be adopted to improve the coordination between the FBI Laboratory and the federal prosecutors and that an examination be done of the FBI procedures regarding the memorializing of interviews.

Sixth, we recommend that all U.S. Attorneys' Offices institute a review process for indictments, at least for significant cases.

Finally, we recommend that our findings concerning the events surrounding the shooting of Vicki Weaver on August 22, 1992 be referred to the appropriate component of the Department of Justice to assess prosecutive merit. In addition, we recommend that our analysis of the conduct of Assistant U.S. Attorney Ronald Howen be referred to the Executive Office for United States Attorneys for whatever administrative action it deems appropriate.

II. ORIGINS OF THE INVESTIGATION AND METHODOLOGY EMPLOYED

In February 1993, the Criminal Division of the United States Department of Justice (the "Department") informed the Office of Professional Responsibility ("OPR") of allegations of professional misconduct and criminal wrongdoing by agents of the U.S. Marshals Service ("Marshals Service"), the Federal Bureau of Investigation ("FBI"), the United States Attorney's Office for the District of Idaho ("USAO"), and the Bureau of Alcohol, Tobacco and Firearms ("BATF"), stemming from their involvement in the investigation, apprehension, and prosecution of Randy Weaver and Kevin Harris. Because Weaver and Harris were awaiting trial, OPR in conformity with its normal policy of avoiding interfering with the criminal process, postponed its inquiry until the litigation had concluded.

Following the jury verdict in July 1993, OPR began its inquiry. OPR was aware of numerous allegations of impropriety, some of which had been raised in defense pleadings and many others that arose during and immediately after trial. Allegations by various people and groups -- the media, the trial court, the United States Attorney's Office, the FBI, and U.S. Senator Larry Craig of Idaho, as well as the public -- suggested that personnel of the United States government had engaged in willful misconduct, including obstruction of justice, perjury, and other criminal and ethical violations. As a result, it became apparent that the scope of inquiry needed to be broader than merely issues that had been raised at trial by the defense.

Attorney General Janet Reno announced that the inquiry would include a complete and thorough review of the Weaver case from its inception to the conclusion of the criminal trial. OPR was to conduct this inquiry with investigative support from the FBI.

On July 26, 1993, Michael E. Shaheen, Jr., Counsel in the Office of Professional Responsibility detailed the role of OPR and the FBI in the inquiry in a letter to David G. Binney, Assistant Director of the FBI's Inspection Division. Concerns had been raised about the FBI's ability to be objective and to investigate alleged misconduct by its own agents. Some who had participated in the Weaver investigation and prosecution and had experienced a decided lack of harmony in their working relationship with the FBI, opposed the Bureau's involvement in the investigation. However, OPR's experience with the FBI in investigations in which the FBI was the subject -- including an investigation of its own Director -- demonstrated that the Bureau could be objective under OPR's supervision. Furthermore, the broad scope of the Weaver inquiry and the need for FBI expertise suggested that the Bureau be included in the inquiry.

From the beginning of the investigation OPR attorneys established that they would control the investigation, analyze the information gathered, and make findings and recommendations. The FBI's role was limited to assisting in gathering facts and conducting interviews. The FBI was not to make findings, conclusions, or recommendations.

Due to the expansive scope of the inquiry, former Deputy Attorney General Philip Heymann assigned four attorneys from the Criminal Division of the Department of Justice to assist OPR. It was decided that the review would cover: the conduct of the Marshals Service in its investigation of Randy Weaver from its inception to the conclusion of the trial; the actions of the FBI Hostage Rescue Team ("HRT") during the siege of the Weaver residence; the handling of evidence by the FBI Laboratory and its effect on the Weaver trial; and the conduct of the U.S. Attorney's Office in investigating and prosecuting the Weaver case.

OPR contacted the Department of Treasury ("DOT"), which had also received complaints about BATF's conduct and agreed that its Inspector General's Office would investigate that matter. However, it was understood that OPR would address those elements of the BATF investigation that affected the Weaver case and involved Department of Justice employees. To that end, OPR invited DOT to participate in interviews relevant to its investigation and to review material -- other than grand jury testimony -- that would assist its inquiry. Although DOT is preparing a report of its investigation, this report discusses issues involving BATF that affected the Weaver matter.

The FBI initially assigned 15 Inspectors and two administrative support personnel to the Ruby Ridge Inspection Team to work with the five DOJ attorneys. During the first phase of the inquiry, the team developed an investigative focus, established a management system, and attempted to identify, through research and selected interviews, the issues to be addressed. By August 1993, the team had determined the background interviews that needed to be conducted and had identified documents that needed to be reviewed, including case files and supporting materials from the Marshals Service, the USAO, and the FBI.

Initially, the investigators used a research system consistent with a typical FBI investigation. However, they soon realized that a thorough review of the Weaver matter would benefit from the support of the FBI's Rapid Start team of the Information Resources Division of FBI Headquarters. Rapid Start is a mobile group of FBI employees who provide information management services to major cases. The Rapid Start team developed an automated case management system to assist the investigators in capturing, storing, and retrieving information.

The team also assisted the investigation in tracking leads and with document control.

As Phase I of the investigation entered its final stages, it became apparent that the volume of material to be reviewed and the broad scope of the inquiry would require more personnel and time than had originally been contemplated. A decision was made to increase the size of the investigative team. Thus, when Phase II of the investigation began on September 21, 1993, the Ruby Ridge Inspection Team was doubled in size to include two full-time Inspectors, 26 Assistant Inspectors, and 10 support personnel.

Phase II was the investigative phase of the project. The inspectors were divided into the four teams. The first team was responsible for issues involving BATF and the Marshals Service. The second and third teams focused on the FBI role in the case including the FBI Laboratory, the FBI's handling of the crime scene, and the actions of the FBI HRT and its Rules of Engagement. The last team examined the actions of the USAO throughout its involvement in the Weaver matter. Each team was comprised of a DOJ Attorney, an inspection team leader, and five or six inspectors. The inspectors were encouraged to coordinate their inquiry with the DOJ attorney. Many interviews involved witnesses who had knowledge of issues being investigated by more than one team. In those instances, inspectors from the other teams either attended the interview, scheduled separate interviews, or submitted preliminary questions to determine whether an additional interview was necessary.

The FBI inspectors and DOJ attorneys conducted over 370 interviews of persons involved in the Ruby Ridge incident, including personnel of local, state, and federal law enforcement agencies, the USAO, the Department of Justice, as well as members of the federal judiciary and nongovernmental witnesses.[1] The interviews were conducted throughout the United States and, in some instances, supplemental interviews were conducted for clarification. Although the majority of the interviews were conducted by FBI inspectors, virtually all significant interviews

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[1] The following groups of people were interviewed: 52 FBI HRT members, 60 Marshals Service Special Operations Group personnel, 41 FBI Special Weapons and Tactics Team members, three BATF agents, eight Marshals Service management personnel, 15 Marshals Service personnel directly involved in the Ruby Ridge crisis, ten FBI Headquarters personnel, four FBI negotiators, 43 Idaho State Police members, 26 members of other agencies, 31 FBI field office personnel, 17 FBI Laboratory personnel, and 30 other persons involved with the prosecution, including personnel from the U.S. Probation Office and the U.S. Attorney's Office.

were conducted jointly by FBI inspectors and DOJ attorneys. In addition, thousands of pages of records and files were reviewed.

Before the interview process began, DOJ and FBI personnel developed a witness notification form describing the scope and purpose of the inquiry. Each witness executed this form before being interviewed. In addition, witnesses were asked to execute waiver forms before statements were taken. In some instances, interviewees were represented by counsel or declined to volunteer information, instead relying on earlier sworn testimony or statements.

On November 8, 1993, then Deputy Attorney General Philip Heymann responded to renewed objections to the investigative role of the FBI in the inquiry. Heymann received the assurance of the attorneys in charge of the inquiry that they would accommodate interviewees who requested interviews outside the presence of the FBI. The attorneys assured these interviewees that the FBI was assisting them in gathering facts but that the final report and its conclusions and recommendations would originate from the DOJ attorneys. However, these interviewees were advised that a record of their interviews would be given to the FBI to assist its inquiry. In addition, we cautioned all those interviewed that the Attorney General might release a version of our final report to the public and, therefore, we could not assure their confidentiality.

On January 19, 1994, the FBI investigators submitted their report of factual findings to the DOJ attorneys. Following the receipt of the FBI report, the DOJ attorneys completed their review of all pertinent materials and wrote a report analyzing the many allegations. The original team of lawyers was assisted by two attorneys from the Criminal Division who provided additional research and analysis. In addition, another OPR attorney assisted in the final stages of the preparation of this report.

This report was structured to be read in its entirety or in isolated sections. The Factual Summary, Chronology, and the Identification of Participants sections are intended to provide a general overview of significant events, which will assist the reader in understanding the detailed discussions that follow. Specific topics are generally arranged in chronological order and contain detailed discussions of the relevant facts, the issues raised and the findings made. Finally, we conclude with a section which sets forth recommendations, most of which are designed to anticipate and avoid the kinds of problems subject to this inquiry. An Appendix accompanies this report, but, because of the volume of source material used in this inquiry, it includes only the most significant documents.

III. FACTUAL SUMMARY

A. The U.S. Marshals Service

In January 1985, the U.S. Secret Service investigated allegations that Randy Weaver had made threats against the President and other government and law enforcement officials. The Secret Service was told that Weaver was associated with the Aryan Nations, a white supremacist group, and that he had a large cache of weapons and ammunition. Weaver had spoken of the world's ending in two years "when [his] home will be under siege and assaulted." Secret Service agents interviewed Weaver, who denied the allegations. No charges were filed.

In February 1985, Weaver and his wife, Vicki, filed an affidavit with the county clerk, giving "legal and official notice that [he] believe[d] [he] may have to defend [him]self and [his] family from physical attack on [his] life" by the FBI.

Weaver came to the attention of the Bureau of Alcohol, Tobacco and Firearms ("BATF") in July 1986, when a BATF informant was introduced to him at a World Aryan Congress. The informant met Weaver several times over the next three years. In July 1989, Weaver invited the informant to his home to discuss forming a group to fight the "Zionist Organized Government," referring to the U.S. Government. Three months later, Weaver sold the informant two "sawed-off" shotguns.

In June 1990, BATF agents approached Weaver to persuade him to become an informant. Weaver refused to become a "snitch," and he was indicted for manufacturing and possessing an unregistered firearm. A warrant was issued for his arrest. BATF concluded that it would be too dangerous for the arresting agents and the Weaver children to arrest Weaver at his mountaintop residence. Instead, in January 1991, BATF agents, posing as stranded motorists, surprised Weaver and his wife when they stopped to offer assistance. Weaver told the arresting agents "nice trick; you'll never do that again."

Weaver was arraigned and was released on a personal recognizance bond. A trial date was set for February 19, 1991. Shortly thereafter, Weaver's wife, Vicki, sent the U.S. Attorney's Office two letters addressed to the servants of the Queen of Babylon, which asserted that "[t]he tyrants blood will flow" and "[w]hether we live or whether we die, we will not bow to your evil commandments."

A U.S. Probation Officer sent Weaver a letter incorrectly referring to a March 20 trial date. Weaver did not appear for the February trial, and a bench warrant was issued for his

arrest. On March 14, 1991, Weaver was indicted for failure to appear for trial.

The matter was referred to the U.S. Marshals Service, which learned that Weaver had attended Aryan World Congresses and that he and his family were constantly armed. Weaver sent a letter to the local sheriff, stating that he would not leave his cabin and that law enforcement officers would have to take him out. The Weavers "felt as though the end [was] near." Weaver was quoted as threatening to shoot law enforcement officers, who came to arrest him. Weaver and his family remained in a cabin, atop an isolated mountain.

Between March 1991 and August 1992, the marshals undertook a series of efforts to convince Weaver to surrender. They also made plans to arrest Weaver without harm to law enforcement officers or the Weaver family, particularly the children. The marshals exchanged messages with Weaver through intermediaries, until the U.S. Attorney directed that all communications go through Weaver's appointed counsel (with whom Weaver would not speak).

Teams from the Marshals Service Special Operations Group ("SOG") conducted surveillance of the Weavers' mountaintop property to devise methods to take Weaver into custody safely. Surveillance cameras were installed and aerial photographs were taken of the property. The marshals observed that Weaver and his children responded to approaching persons and vehicles by taking armed positions over the driveway leading to the Weaver cabin. During this period, Weaver continued to make statements that he would not surrender peacefully and that his family was prepared to defend him.

The Director of the Marshals Service ordered that no action be taken that could endanger the Weaver children. In the Spring of 1992, the marshals developed an undercover plan to arrest Weaver away from his cabin and family.

A surveillance team of six marshals went to the mountain on August 21, 1992 to look for places to station cover teams for the operation. Toward the end of the surveillance mission, one of the Weaver's dogs began to chase three of the marshals. Marshals stationed at an observation post saw Kevin Harris, an associate of Randy Weaver, Weaver, his thirteen year old son, Sammy, and Weaver's daughters, follow the dog. All were carrying firearms.

The marshals retreated. As they approached an intersection of trails known as the "Y," they saw Randy Weaver coming down the trail. They identified themselves and told him to halt, but he turned and ran back up the trail. The dog caught up with Deputy Marshal Cooper. He held the dog at bay with his firearm, but did not shoot for fear of provoking the Weavers. An exchange of

gunfire occurred moments later, resulting in the death of Deputy Marshal William Degan, Sammy Weaver, and the dog.

According to the marshals, the fire fight began when Degan and Deputy Marshal Cooper rose to identify themselves. Kevin Harris wheeled and fired at Degan with a 30.06 rifle. Cooper returned fire and thought he hit Harris, though he had not. Cooper turned his weapon toward Sammy Weaver, but did not fire.

Deputy Marshal Roderick, who was further down the path, heard a shot from his left. Roderick could not see anyone other than Weaver's dog, which was heading in the direction Randy Weaver had gone. When the first shot was fired, the dog turned its head toward the marshals. Roderick feared that the dog would turn and attack him or lead Weaver, Harris, and the others to the marshals. Roderick fired at the dog, killing him.

Sammy Weaver then shot at Roderick, and Roderick dove into the woods. Roderick later found a bullet hole through his shirt, though he was not wounded. Cooper heard the shots to his right. He rose and fired a three-round burst to provide cover fire for himself so that he could get to Degan, who had called for help. Following the last shots, Cooper saw Sammy Weaver run out of view up the trail to the Weaver cabin. He did not think that he had hit the boy.

Randy Weaver and Kevin Harris claimed that they did not know what the dog was chasing, though there is evidence to the contrary. They said that they thought they were pursuing a large animal. They asserted that the first shot fired at the Y was Roderick's attack on the dog, that Sammy fired at Roderick in retaliation, and that Degan and Cooper then shot at Sammy. Harris maintained that the marshals did not identify themselves until the shooting had ended and that he shot Degan to defend Sammy.

Soon after the shooting, the three marshals, who had been at the observation post, ran to the Y. They came under fire along the way. One marshal, a medic, treated Degan, without success. Shortly thereafter, the marshals heard a barrage of gunfire, followed by screaming and crying. After a brief time, two marshals left the hill to seek help. The three surviving marshals maintained their positions out of fear that, if they moved, they would be shot at. They also refused to leave without the body of the slain marshal. They did not receive additional fire, though in the hours that followed they heard shots when an airplane flew overhead.

B. Federal Bureau of Investigation - Deployment of Hostage Rescue Team

As soon as the U.S. Marshals Service received word of Marshal Degan's death and the ongoing situation at Ruby Ridge, they sought and received FBI assistance. The FBI had primary jurisdiction for assaults on federal officers, and its Hostage Rescue Team ("HRT") is seen as uniquely skilled for crises. FBI and Marshals Service Headquarters immediately activated command centers to coordinate communications. Special Agent Eugene Glenn was assigned the command and began to arrange for the personnel and equipment required for the crisis. Concurrently, state and local law enforcement and a few FBI agents who were in the immediate area came to the scene and began securing the area.

The rescue of the marshals was delayed until after dark. A team led by the Idaho State Police reached the marshals at approximately 11:30 p.m., more than twelve hours after the shooting. The rescue effort was ongoing when Glenn arrived and deployed FBI SWAT teams to secure the command post's perimeter. He planned to maintain the status quo until the HRT had arrived. Local law enforcement continued to guard the access road as a crowd of sympathizers and onlookers gathered.

The marshals were successfully removed from the mountain without additional gun fire. Once rescued, they were examined at a hospital and transported to a command post where they were given food and allowed to rest. FBI agents interviewed the marshals, starting the following afternoon.

C. Rules of Engagement and the Death of Vicki Weaver on August 22

While the rescue of the marshals was underway, the HRT advance team was en route to Idaho with the Associate Director of the Marshals Service, who briefed them about Weaver's background, his failure to appear for trial, the underlying weapons charge, and his professed desire to confront the federal government. During the flight, HRT Commander Rogers and FBI Associate Director Potts drafted special Rules of Engagement to address the danger they perceived. When the HRT arrived in Idaho, Rogers briefed them on the situation and the proposed Rules of Engagement. They established a command site, flew reconnaissance missions, and began to make plans to address the crisis.

On the afternoon of the shooting, the U.S. Attorney's Office obtained a search warrant and complaints for Randy Weaver and Kevin Harris's arrest on charges relating to the death of Marshal Degan. Assistant U.S. Attorney Ronald Howen, who was assigned to the case, went to the site. Howen remained until Weaver and Harris surrendered a week later. Howen took no role in developing the Rules of Engagement or drafting operations plans,

but he did participate in crime scene searches, interviews, and negotiations. The Boundary County prosecutor was also present during most of the crisis but was not involved in the operations planning.

According to the HRT plan, communication with the occupants of the Weaver cabin, including a surrender demand, was to take place using armored personnel carriers, which would deliver a telephone to the cabin site. The HRT was concerned that the Weavers or sympathizers might be hiding in the woods and planning an ambush. Therefore, teams of HRT sniper/observers were stationed overlooking the cabin before the carrier drove up the hill. Although FBI headquarters had not approved a tactical operations plan, permission was granted to begin negotiations with the Weavers when HRT agents arrived at their positions.

At 3:30 p.m. on August 22, HRT sniper/observers, along with members of the Marshals Service SOG, began their ascent to the cabin. Before their departure, they were briefed on the Rules of Engagement, which provided that:

1. If any adult male is observed with a weapon prior to the announcement, deadly force can and should be employed, if the shot can be taken without endangering any children.

2. If any adult in the compound is observed with a weapon after the surrender announcement is made, and is not attempting to surrender, deadly force can and should be employed to neutralize the individual.

3. If compromised by any animal, particularly the dogs, that animal should be eliminated.

4. Any subjects other than Randall Weaver, Vicki Weaver, Kevin Harris, presenting threats of death or grievous bodily harm, the FBI rules of deadly force are in effect. Deadly force can be utilized to prevent the death or grievous bodily injury to oneself or that of another.

No shots had been fired since the previous day, but, while the HRT members were moving to positions overlooking the cabin, other observers reported to FBI headquarters that the subjects were outside the cabin. FBI Headquarters reminded the field commander that the Rules of Engagement would apply. By 5:45 p.m., the sniper/observers reached their positions. The engines of the personnel carriers at the command post below were audible. An unarmed, young female ran from the cabin to a rocky outcropping and returned to the cabin. Within a minute, an

unarmed male was seen on the cabin's back deck. About ten minutes later, a helicopter carrying HRT personnel began an observation mission. When the helicopter's engine was started, the female seen earlier and two males ran from the cabin to the outcropping. The last person to emerge was carrying a rifle. Sniper/observer Horiuchi identified him as Kevin Harris.

A few seconds later Horiuchi saw a person he believed to be Harris near an outbuilding known as the "birthing shed." The man appeared to be scanning above and behind the snipers for the helicopter. Horiuchi believed that he was trying to position himself to shoot at the helicopter from the more protected side of the shed. Horiuchi fired one shot as the man suddenly moved along the side of the shed out of sight. When Horiuchi fired, the man's back was toward Horiuchi and the helicopter. Because the man moved unexpectedly, Horiuchi assumed he missed. The man he aimed at was not Harris, but Weaver, who was slightly wounded.

Harris and Weaver have maintained that they had no aggressive purpose in leaving the cabin and that Weaver was opening the door to the shed to look at the body of his son.

After ten or twenty seconds Horiuchi saw the target of his first shot following the other two people as they ran to the cabin. The first two entered the cabin through an open door. Horiuchi fired, aiming slightly in front of the last running man. The bullet went through the curtained window of the open door, fatally wounding Vicki Weaver and seriously injuring Kevin Harris. The sniper testified that he did not know that Vicki Weaver was standing behind the door.

When Commander Rogers, who had been aboard the HRT helicopter, learned of the shootings, he and an FBI negotiator went in a personnel carrier to the cabin to make a surrender announcement and to begin negotiations by leaving a telephone. There was no response. A few hours later, due to deteriorating weather conditions, the snipers left their positions and returned to the command post where Rogers debriefed them. The next morning the snipers returned to their positions. Rogers once again went to the cabin area and issued repeated surrender announcements, which included warnings that the outbuildings would be removed if Weaver failed to comply.

By Sunday evening, there was still no response or indication that the Weavers were going to surrender or negotiate, so the first outbuilding, the birthing shed, was moved. Sammy Weaver's body was discovered in the birthing shed.

Negotiation efforts continued for days, but were unsuccessful. No one from the cabin picked up the telephone, which was on an armed robot outside the cabin. Although the weapon on the robot was not loaded, Weaver reported that he was

afraid that anyone who went outside would be shot. Attempts to intercept conversations inside the cabin were not successful. By Wednesday, no aggressive action had occurred for days, and the events which had preceded the confrontation began to seem less clear. The FBI command received evidence in apparent conflict with the initial impressions about Weaver's background and the circumstances surrounding the shootout. As a result, the FBI command decided to withdraw the special Rules of Engagement and to instate the FBI's standard Deadly Force Policy.

On Wednesday, August 26, Weaver told a negotiator that he wanted to talk with his sister. When she arrived, attempts to communicate with Weaver were frustrated by her inability to hear Weaver. On Friday evening, August 28, Weaver agreed to speak with Bo Gritz, whom Weaver told that the sniper had killed his wife and injured Harris and himself. Two other private citizens assisted Gritz in resolving the standoff. Gritz and a Weaver family friend carried Vicki Weaver's body out of the cabin. On Sunday, August 30, Kevin Harris surrendered. The Weavers surrendered the following day.

Searches of the Y were ongoing during the crisis. After the surrender, the cabin and surrounding area were searched. The FBI also sent a team of inspectors to begin an internal inquiry into the sniper shootings.

D. The Prosecution

After their surrender, Harris and Weaver were placed under arrest and charged with the murder of Deputy Marshal Degan. Separate preliminary hearings to determine probable cause for these charges were begun. Before their preliminary hearings concluded, a grand jury indicted Harris for assaulting and murdering Degan and indicted Weaver for aiding and abetting in Degan's death. Thereafter, the magistrate judges terminated the preliminary hearings of Weaver and Harris. Both defendants pleaded not guilty to all charges. On October 1, 1992, a grand jury returned a superseding indictment charging Weaver and Harris with numerous offenses including conspiracy.[2] On November 19, 1992 a Second Superseding Indictment was returned charging Weaver and Harris with the same offenses as the previous indictment and alleging additional overt acts.

In October 1992 the Marshals Service and BATF provided four agents to assist the U.S. Attorney's Office in preparing the case for trial. During the case preparation process continuous issues arose regarding the cooperation of the FBI in preparing the case

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[2] The indictment charged violations of 18 U.S.C. 2, 3, 111, 115, 371, 933(g)(2), 924(c)(1), 1071, 1111, 1114, 3146(a)(1), 3147, 26 USC 5861(d) and (f).

for trial. Included among these problem areas was the lack of cooperation by the FBI in providing discovery materials to the prosecution and the defense.

On January 8, 1993, on motion by the defense, the February 2 trial date was extended to allow time for the defense to review evidence and the results of FBI Laboratory tests. The defense complained about the government's failure to provide timely access to evidence and documents, and the trial judge admonished the prosecutors to have the laboratory examination completed quickly.

The 42 day jury trial began on April 13, 1993. During the trial, the defendants brought to the court's attention problems they had in obtaining documents and information to which they believed they were entitled under either federal law or a discovery stipulation with the government. The most extreme breach of the stipulation involved the late production of the underlying materials and notes related to the FBI Shooting Incident Report which had been produced as the result of an internal inquiry into the sniper shootings. Although the defendants had received the final Shooting Incident Report before trial, during trial the FBI, in response to a defense subpoena, sent by fourth class mail materials that were not part of the documents that the FBI had produced earlier in discovery. These materials included a drawing Horiuchi made days after the shooting. The drawing arrived in Idaho after Horiuchi had completed his testimony, thus requiring his return for additional testimony. The court fined the government for the attorneys fees incurred by the defendants for the lost trial day.

One of the two prosecutors became ill and did not participate in the final arguments. After deliberating for 20 days, on July 8, 1993, the jury acquitted Weaver and Harris of the murder of Deputy Marshal Degan, the conspiracy charge, and the significant remaining charges. Weaver was convicted on charges of failure to appear for trial and committing an offense while on release. On October 26, 1993, Weaver was sentenced to 18 months incarceration, three years probation and a $10,000 fine. The court issued an Order fining the FBI and criticizing it for its failure to produce discovery materials, its failure to obey orders and admonitions of the court, and its indifference to the rights of the defendant and to the administration of justice.

On December 18, 1993, Randy Weaver was released from incarceration.

IV. SPECIFIC ISSUES INVESTIGATED

A. Investigation of Weaver by Bureau of Alcohol, Tobacco and Firearms

1. Introduction

The events that led to the death of three persons at Ruby Ridge, Idaho in August 1992 and to the subsequent prosecution of Randall ("Randy") Weaver and Kevin Harris had their origin with an investigation by the Bureau of Alcohol, Tobacco and Firearms ("BATF"). Serious allegations have been made about the role of BATF in the Weaver matter. Included among these allegations are that a BATF informant entrapped Weaver into selling illegal weapons; that a BATF reward system created the incentive for the informant to entrap Weaver; and that BATF and the informant tried to conceal this future compensation arrangement from the defense, the court and the U.S. Attorney's Office.[3] It has also been alleged that BATF exaggerated to the U.S. Marshals Service, the U.S. Attorney's Office, and the court the extent of Weaver's involvement with the Aryan Nations and the Order and that federal law enforcement unconstitutionally targeted Randy Weaver for prosecution because of his religious views.[4]

2. Statement of Facts

a. Early Law Enforcement Contacts With Randy Weaver

Randy Weaver first came to the attention of federal law enforcement personnel in 1985 as a result of alleged threats he made against President Reagan, Idaho Governor John Evans, and certain law enforcement officials.[5] The U.S. Secret Service investigated the allegations and interviewed Weaver. During this

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[3] The controversy that erupted at trial concerning the compensation arrangement between BATF and the informant is discussed in Section IV(O) of this report.

[4] [ ] Letter from Senator Larry E. Craig to Lloyd Bentsen, Secretary of the Treasury, July 22, 1993; Letter from Senator Larry E. Craig to Janet Reno, Attorney General, July 23, 1993. The Weavers raised a similar issue during the standoff with the FBI in August 1992 [ ]

[5] [ ]]

b7C b6 investigation, it was learned that Weaver[
b7C b6]was associated with members of the Aryan
b7C b6 Nations, a white-supremacist group.[6][

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The Secret Service was also told that Weaver had a cache of weapons, including a number of semi and fully automatic handguns and rifles,[10] and that he had access to explosives and to "an b6 b7C unlimited amount of ammunition."[11][

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b6]Boundary County Sheriff Bruce Whittaker has been quoted as saying that Weaver told him that "the real Jews of the Bible are we white Christians and . . . the false Jews . . . should be eliminated." "Standoff with Police Enters Second Year," San Francisco Examiner, March 27, 1992.

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Weaver had spoken of the world ending in two years "when my home will be under siege and assaulted."[15]

Secret Service agents interviewed Weaver on February 12, 1985. At that time, he denied threatening the President, the Governor, or churches. He also denied having any affiliation with the Aryan Nations or its members.[16] Weaver said that he had "no time for Aryan Nation's preachers" and that his religious beliefs were "strictly by the bible."

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15 In a 1983 newspaper interview, Weaver discussed his plan to move to Northern Idaho to live in an isolated hideaway "and survive the coming 'great tribulation.'" The article stated that Weaver, a "former Army Green Beret, [was] developing defense plans that include[d] a 300 yard 'kill zone' encircling the compound." "Survivalist Makes Plans for Time of 'Great Tribulation,'" Waterloo Courier, January 9, 1983, B-1.

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On February 28, 1985, Randy and Vicki Weaver filed a handwritten affidavit with the Boundary County Clerk claiming that persons around Deep Creek, Idaho were conspiring to endanger the Weaver family and to precipitate an attack on Randy Weaver's life. The affidavit alleged that Weaver's "accusers" had made false statements about his connections with the Aryan Nations and his ownership of illegal weapons and that they had wrongfully alleged that he had threatened the President and the Pope. The Weavers also stated that these falsehoods were designed to provoke the FBI into storming their home. Weaver expressed fear that he would be killed or arrested for assault of a federal officer, if he tried to defend himself, and he gave "legal and official notice that [he] believe[d] [he] may have to defend [him]self and [his] family from physical attack on [his] life."[20]

[In May 1985,[

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] Vicki Weaver sent a letter to the Spokane Field Office of the U.S. Secret Service demanding a written apology from the Secret Service.[21]] The federal government never filed

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[20] Affidavit of Randy and Vicki Weaver, February 28, 1985.

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any charges against Weaver for the alleged threats made against the President, the Governor, or others.[22]

b. BATF Contact With Weaver

Weaver first came to the attention of the BATF in July 1986 during its investigation of a series of bombings in Coeur d'Alene, Idaho in which the Aryan Nations was believed to be involved. BATF asked Kenneth Fadeley, a confidential informant, to assist its investigation by obtaining information about people attending an upcoming World Aryan Congress who might be engaged in illegal activities.[23] Thereafter, Fadeley portrayed himself as a weapons dealer who catered to motorcycle gangs and, in this role, managed to be introduced to high level members of the Aryan Nations in Northern Idaho.[24]

In July 1986, Fadeley attended the World Aryan Congress at Hayden Lake, Idaho. During this assembly, Fadeley was introduced to Weaver, who was at that time of no particular investigative significance to BATF.[25]

b6 b7C Six months later, in January 1987, Fadeley met with [ ] who was suspected of significant firearms trafficking. Fadeley wore a hidden tape recorder to this meeting. Randy b6 b7C Weaver accompanied [ ] and although Weaver's name had been b6 b7C mentioned numerous times, Fadeley had not expected Weaver at this meeting.[26] In Weaver's presence, [ ] after suggesting that Fadeley was a government informant, held a gun to Fadeley's head and ran an electronic stud finder over Fadeley's body to

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[26] Testimony of Herbert G. Byerly in United States v. Weaver, No. CR-92-080-N-EJL, April 21, 1993, at 8-9 (hereinafter cited as "Trial Testimony").

search for a hidden microphone or recorder. [ ] did not find the recorder.[27] At this meeting, Weaver gave Fadeley no indication that he was predisposed to selling illegal weapons,[28] [ ]

At the World Aryan Congress in July 1987, Fadeley again met Weaver, who was accompanied by his wife and children. Weaver mentioned to Fadeley that it was a "struggle" to provide for his family. Weaver also declared that he did not trust the leaders of the Aryan Nations and that he did not agree with the actions of Richard Butler, leader of the Aryan Nations.[30] After this contact, Fadeley continued to view Weaver simply as one of the many attendees at the World Aryan Congress.

c. Sale of Weapons by Weaver to BATF Informant

Fadeley and Weaver met again at the July 1989 World Aryan Congress, where Weaver was one of the speakers.[31] Fadeley told Weaver that his gun "business [was] busy." In response, Weaver did not offer to sell Fadeley firearms, but he did invite Fadeley to a house he was renting to discuss forming a group to fight the "Zionist Organized Government," a term used by Aryan Nations members to refer to the U.S. Government.[32] According to Weaver, the proposed group was to include [ ] and [ ], who had been convicted of an explosives violation and had formed an Aryan Nations splinter group in

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[27] [ ]

[28] Trial Testimony of Kenneth Fadeley, April 20, 1993, at 60.

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[30] Fadeley Trial Testimony, April 20, 1993, at 60-69.

[31] In the interim, Weaver had run unsuccessfully in the Republican primary for sheriff of Boundary County. During his campaign, he promised to enforce only those laws the people wanted, and he distributed cards that said "get out of jail free." Weaver lost the primary, 384 votes to 102. "Survivalist Refuses to Come in From Cold," The Oregonian, October 1, 1991, C8; "Feds Have Fugitive 'Under Our Nose'," Spokesman Review (Spokane), March 1, 1992, A19.

[32] Fadeley Trial Testimony, April 20, 1993, at 45, 82-90.

Montana,[33] was of "continuing investigative interest" to the BATF. After learning of Weaver's plan to include [ ] in this group, the BATF began to view Weaver as a possible point of introduction to [.[34]]

On September 8, 1989, at BATF's request, Fadeley telephoned Weaver and arranged to meet him on October 11.[35] Fadeley did not record his conversations with Weaver during the October 11 meeting. At the meeting, Weaver asked Fadeley how his business was going. Fadeley replied that he was "extremely busy" and that he had sold all his "product." Weaver explained that he would like to assist Fadeley and that [' [36]] Weaver then asked what the most popular items were, and Fadeley described the "street" weapons he thought he could sell, including shotguns. In response, Weaver said that he could supply four or five shotguns per week. [

[ ] Weaver added that there would be "no paper," that is, the weapons would not have registration documents.[37]

As the two men left the meeting, Fadeley walked to Weaver's truck where Weaver showed Fadeley a shotgun and indicated a spot on the barrel where he thought it could be cut. Fadeley pointed to the weapon and said "about here"[38] [

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[33] Id. at 103, 112.

[34] [ ]

[35] Fadeley Trial Testimony, April 20, 1993, at 100-02.

[36] [ ] See Fadeley Trial Testimony, April 20, [ ] [ ] [ ]

[38] Fadeley Trial Testimony, April 20, 1992, at 105.

Following the meeting, Special Agent Herbert Byerly, Fadeley's BATF contact agent, conducted various records checks on Weaver.[40]

On October 13, 1989, Fadeley telephoned Weaver from a BATF office and recorded the conversation to confirm his report of the October 11 meeting. During this discussion, Fadeley and Weaver used agreed upon code words and referred to weapons as [41]

On October 24, 1989, Weaver met with Fadeley, who was wearing a miniature tape recorder and an electronic transmitter. At that time, Weaver gave Fadeley two shotguns, one with a 13 inch barrel, the other with a 12-3/4 inch barrel. Weaver told Fadeley that he had cut the shotgun barrels himself, "[s]itting under a shade tree with a vise and a hacksaw," and added that, "when I get my workshop set up I can do a better job."[42] Fadeley paid Weaver $300.00 for the weapons. When Weaver requested an additional $150.00 for the weapons, Fadeley told him that he would give him the additional money at the next purchase.[43] Fadeley then proceeded to tell Weaver that "[t]here is money to be had, and it looks like [you] did a real nice job". He then asked Weaver, "You figured four or five a

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[40] Byerly Trial Testimony, April [illegible], 1993, at [illegible]

[41]

[42] Section 5681 of Title 26 of the United States Code criminalizes the possession of unregistered firearms and the alteration of firearms by anyone not in the business of manufacturing firearms. Section 5845(a) explains that the term "firearms" includes shotguns with barrels of less than 18 inches

[43] Byerly Trial Testimony, April 20, 1993, at 32-34

week?" to which Weaver replied, "yeah, or more." Weaver repeated that there would be no paper trail on the weapons.[44]

b6 b7C Fadeley met Weaver again on November 30, 1989 with the intent of arranging a trip to Montana to meet [ ] At this time, Weaver announced that he had five additional sawed-off shotguns available for purchase. When Fadeley told him that he had not brought enough money to pay for them, [ ] In addition, Weaver told Fadeley that he was not able to go to Montana that day. [ ] Fadeley paid Weaver $100 toward the balance of the previous purchase of two sawed-off shotguns.[45] Following this meeting, Byerly instructed Fadeley to have no additional contact with Weaver.[46]

d. Delay in Obtaining Indictment and BATF Efforts to Enlist Weaver as an Informant

[ ] On November 24, 1989, Byerly discussed the Weaver gun sale with [ ] from the U.S. Attorney's Office in Boise ("USAO"). [ ] Five months later, on May 21, 1990, Byerly submitted a case report to the USAO

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[44] [ ] Fadeley Trial Testimony, at 135.

[45] [ ]

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[46] Byerly Trial Testimony, April 20, 1992, at 4[illegible].

[47] [ ]

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recommending that Weaver be prosecuted for the sale of the sawed-off shotguns.[48]

b7C b6 b7C b6 One month later, in June 1990, BATF Agents [redacted] and [redacted] drove to the Weaver property to speak with Weaver to determine if he might be willing to cooperate in their investigation of Aryan Nations members.[49]

b5 b7C b6 [redacted]

b5 b7C b6 [redacted] identified themselves, [redacted] explained to Weaver that the USAO knew of the illegal weapons sale and that Weaver could help himself by providing information to BATF about the illegal activities of Aryan Nations members. He told Weaver that his assistance would be brought to the U.S. Attorney's attention.[50] At the end of the conversation, Byerly gave Weaver his telephone number and told him that they would wait for Weaver to come to the BATF office to discuss cooperating with them. Weaver responded that he would not become a "snitch."[51]

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[48] [redacted]

b5 b7C b6 [redacted]

b6 b7C [49] [redacted]

b6 b7C [50] [redacted]

b6 b7C [51] [redacted] Vicki Weaver described this encounter in a letter, dated June 12, 1990, addressed to the "Aryan Nations & all our brethren of the Anglo Saxon Race." She wrote:

> We cannot make deals with the enemy. This is a war against the sons of Isaac. Yahweh our Yashua is our Savior and King . . . . If we are not free to obey the laws of Yahweh, we may as well be dead! Let Yah-Yashua's perfect will be done. If its our time, we'll go home. If it is not we will praise his Separated name!

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[52] On December 13, 1990, seven months after BATF referred the case to the USAO, a federal grand jury in the District of Idaho indicted Weaver for manufacturing and possessing an unregistered firearm.

e. Arrest and Arraignment of Weaver on Weapons Charges

After the issuance of the arrest warrant, BATF conducted an evaluation of Weaver and concluded that it would be too dangerous to the arresting agents and to the Weaver children for BATF to arrest Weaver at his residence.[53] Therefore, BATF agents decided to carry out a ruse to arrest Weaver by surprise away from his home. On January 17, 1991, two agents, posing as stranded motorists, stopped a pickup camper on a bridge near the Weavers' residence, raised the hood, and pretended to examine the engine. [b7C b6] other BATF Agents, and [b7C b6] hid in the back of the camper. Shortly thereafter, Randy and Vicki Weaver stopped their truck and approached the camper. The BATF agents then surprised Weaver and placed him under arrest. In the process, Weaver attempted to grab one of the agent's sidearms. Later, Weaver told the arresting agents "nice trick; you'll never do that again."[54] After making the arrest, the arresting agents discovered that Weaver had a pistol in his front pants pocket and Vicki Weaver had a revolver in her purse, which she had left in their pickup truck.[55]

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[54] [b6 b7C]

[55] See Pretrial Services Report, United States v. Randall C. Weaver, January 18, 1991. [b6 b7C]

3. Discussion

It has been alleged that BATF singled out Randy Weaver because he shared many of the political and religious beliefs associated with the Aryan Nations, and that BATF entrapped Weaver in order to coerce him to become an informant.[56] We found insufficient evidence to support these claims.

a. The Decision of BATF To Target Weaver

This investigation found no evidence that BATF improperly targeted Weaver because of his religious or political beliefs. Instead, the evidence indicates that BATF became interested in Weaver not because of his personal views but rather because he was acquainted with members of the Aryan Nations, who were suspected of being involved in bombings that had occurred in Northern Idaho. Indeed, BATF, which knew of Weaver's beliefs for more than three years before the sale of the shotguns in October 1989, had taken no action to target Weaver for investigative focus during that period. [

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[57] We find nothing improper in the BATF plan.

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[ ]reasons for seeking Weaver's cooperation[59] and find nothing improper about[ ]decision to approach Weaver as a possible source of information about illegal acts committed by members of the Aryan Nations. b7C b6

b. Possible Entrapment by the BATF Informant

Defense counsel have charged that Weaver "was induced by federal authorities" into selling illegal weapons, that is, the government entrapped Weaver into unlawful conduct.[60] To establish the defense of entrapment, it must be shown that the defendant was not predisposed to commit the criminal act.[61] A principal factor in determining whether a defendant was entrapped is whether the defendant evidenced reluctance to commit the offense but was overcome by repeated government persuasion.[62]

[b5/b7C b6

Based on the information available to us, there is no evidence that Weaver proposed or was interested in selling weapons before the October 1989 meeting with Fadeley. Although Fadeley had seen Weaver on a number of occasions with a variety of weapons, Weaver apparently had never said that he wanted to sell guns. Nor is there is any indication that Fadeley repeatedly proposed that Weaver sell weapons to him and that Weaver refused.]

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[59] [ ]

[60] Memorandum in Support of Defendants' Motions, January 6, 1993, at 2 (hereinafter cited as "Defendants' Memorandum").

[61] See Hampton v. United States, 425 U.S. 484, 488 (1976).

[62] United States v. Busby, 780 F.2d 804, 805 (9th Cir. 1986).

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However, Fadeley admitted that he had shown Weaver where to cut the shotgun in response to Weaver's saying, "Just tell me what . . . size [shotgun] and I'll supply what you want."[66]

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, [68] we cannot conclude, on the evidence before us, that Weaver was coerced or unduly enticed into selling weapons to Fadeley.

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[66] Fadeley Trial Testimony, April 20, 1993, at 105:

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c. Delay in Obtaining Indictment

It has been alleged that Weaver's indictment on weapons charges was delayed so as to give BATF an opportunity to "turn" Weaver, that is, to make him a BATF informant. Although BATF was interested in securing Weaver's cooperation, we have found no evidence that the indictment was delayed to help this effort.

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[ ]

[In early May 1990, Byerly submitted a case report to the U.S. Attorney's Office recommending that Weaver be prosecuted for the sale of the sawed-off shotguns.] Byerly approached Weaver to seek his cooperation in June 1990.[

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[69] Seven months later, the matter was presented to a grand jury and an indictment was returned in December 1990.

This investigation has uncovered nothing that suggests misconduct in the span between the weapons sale in 1989 and the indictment in December 1990.[

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] and there is no evidence that the charge was treated as anything but a routine matter.

4. Conclusion

It is our conclusion that the investigation which led to Weaver's indictment for the unlawful sale of two sawed-off shotguns, and the decision to indict were proper. We found no evidence that Weaver was unfairly targeted by BATF at the outset or that the delay in indicting him was improper.[Although we are troubled by the sequence of events which immediately preceded the sale of the shotguns to the confidential informant,] we cannot conclude, based on the evidence before us, that Weaver was coerced or unduly enticed into selling the sawed-off shotguns.

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B. The Failure of Weaver to Appear for Trial

1. Introduction

On January 18, 1991, Randy Weaver was arraigned on the charges that he made and possessed illegal firearms. At that time, the court set February 19, 1991 as the trial date. Several weeks later the court clerk sent a notice to the parties informing them that the trial date had been changed from February 19 to February 20. Two days later, U.S. Probation Officer Karl Richins sent a letter to Weaver in which he erroneously referred to the trial date as March 20, 1991. When Weaver did not appear in court on February 20, the court issued a bench warrant for the his arrest. Almost a month later, on March 14, 1991, while the bench warrant was still outstanding, a federal grand jury returned an indictment against Weaver charging him with failure to appear for trial.

A number of issues have been raised with regard to the conduct of the government in handling this stage of the Weaver matter. These issues include: whether government officials, particularly the U.S. Attorney's Office, knew about the erroneous Richins letter before the court issued the February 20 bench warrant; whether the government responded appropriately to the issues created by the Richins letter; whether the U.S. Attorney's Office erred in presenting the indictment to the grand jury before March 20; and whether the Assistant U.S. Attorney acted improperly by not disclosing the Richins letter to the grand jury.

2. Statement of Facts

a. January 18, 1991 Arraignment

On December 13, 1990, a federal grand jury indicted Randy Weaver for making and possessing illegal firearms.[71] BATF Agent [ ] arrested Weaver on January 17, 1991 and transported him to Coeur D'Alene, Idaho for arraignment. On January 18, [ ] informed Assistant U.S. Attorney [ ] that Weaver had been arrested, that Weaver had resisted arrest, that Weaver had said when arrested, "nice trick; you'll never do that again" and that Weaver appeared to be associated with the Aryan Nation. [ ][72]

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[71] See 26 U.S.C. §§ 5861(d) and (f).

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[72] [ ]

Weaver appeared in court for his arraignment the following day before U.S. Magistrate Judge Stephen Ayers. No one was present for the government at the arraignment nor was Weaver represented by counsel.[73]

At the arraignment, Judge Ayers discussed the appointment of counsel with Weaver. Weaver consented to the appointment of Everett Hofmeister, who had previously represented him on an unrelated civil matter. Thereafter, Judge Ayers entered a not guilty plea for Weaver and informed him that the trial was set for February 19, 1991 in Moscow, Idaho.[74] Judge Ayers then addressed the issue of pretrial release and decided to release Weaver on certain conditions including that he "appear for all proceedings before this Court. And the next scheduled court appearance is, as I said earlier, your trial in Moscow, on the 19th of February."[75] In addition, Judge Ayers required Weaver to execute an unsecured bond in the amount of $10,000. Judge Ayers explained to Weaver that if he failed to abide by any of the conditions of release, including the obligation to appear for trial, the United States could execute the bond by seizing and selling his real property.[76]

Before releasing Weaver, Judge Ayers instructed him that he was required to report on a regular basis to Karl Richins, the Pretrial Service Officer, in Boise and that his first contact was to be on January 22.[77] Later, Judge Ayers, in order to avoid any misunderstanding, added Richins' name and phone number to the order setting forth the release conditions.[78] Judge Ayers told Weaver that it would be a criminal offense if he failed to appear. Weaver said that he understood the penalties for violating the release conditions and that he agreed to abide by

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[73] [redacted] Accord, Trial Testimony of Stephen Ayers, April 21, 1993, at 26-27.

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[74] Arraignment Transcript in United States v. Weaver, No. 90-092-N-HLR, on January 18, 1991, at 6 (hereinafter cited as "Arraignment Transcript").

[75] Id. at 10.

[76] Id.

[77] Id. at 12.

[78] Id. at 18.

those conditions. Thereafter, he signed and received a copy of the release conditions.[79] Weaver also signed a bond and the court explained that the bond could be executed if he failed to appear for trial.[80] Before terminating the proceeding, Judge Ayers had Weaver confirm that his mailing address was Box 103 in Naples, Idaho.[81]

b. Events Occurring From the Arraignment Through February 20, 1991

(1) Communications With Weaver

On January 22, 1991, four days after the arraignment, Judge Ayers sent a letter to Everett Hofmeister informing him that he had been appointed as defense counsel for Weaver, that Weaver could be contacted at "PO Box 103, Naples, Idaho 83847" and that the trial date was set for February 19, 1991. A copy of this letter was sent to Weaver. On that same day, Weaver telephoned Karl Richins, the U.S. Probation Officer, and informed Richins that he had been ordered to call Richins on that date. Richins told Weaver that he had not received the paperwork on his case and, thus, could not advise him about the release conditions. Richins asked Weaver to leave his name and phone number so that Richins could call him when he received the case file. According to Richins, Weaver never gave him a phone number where he could be contacted nor could Richins recall what understanding the parties had as to how Richins would contact Weaver in the future.[82] After this conversation, Richins never heard from Weaver again.[83]

On January 29, 1991, defense counsel Hofmeister sent a letter to the two addresses he had for Weaver, requesting Weaver to contact him. Hofmeister sent similar letters to Weaver at these addresses on January 31 and February 5. Around February 5,

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[79] Id. at 15. The Order setting forth the conditions of release reiterated that the next court appearance was on February 19, 1991 and that Weaver had to contact Richins on January 22, 1991. Condition 7(g) required Weaver to "refrain from possessing a firearm, destructive device, or other dangerous weapon." Order Setting Conditions of Release in United States v. Weaver, No. 90-092-N-HLR, January 18, 1991, at 2 (Appendix at 4).

[80] Arraignment Transcript, at 16-17.

[81] Id. at 17-18.

[82] See Trial Testimony of Karl Richins, April 22, 1993, at 27-30.

[83] Id. at 31-32.

Hofmeister contacted individuals who knew Weaver and requested that they instruct Weaver to contact Hofmeister immediately.[84]

Meanwhile, in early February, the court learned that the Weaver trial, which had been scheduled for February 19, would have to be changed to give the participants sufficient travel time following a federal holiday on the preceding Monday. On February 5, the court clerk sent a notice to the parties informing them that the trial was rescheduled for February 20, 1991. Although this notice was not sent directly to Weaver, a copy was sent to and received by Hofmeister.[85]

Two days later, on February 7, 1991, probation officer Richins sent a letter to Weaver at his Naples address. Richins wrote:

> On January 18, 1991, you were released on Pretrial Supervision pending your trial set for March 20, 1991. You contacted our office and I advised you we would be getting back with you as soon as we received the paper work from Magistrate Ayers. I have long ago received the paperwork but have been unable to locate a telephone number where I could contact you. Accordingly, with this letter, I are [sic] requesting you to contact me at 334-1630 as soon as possible. You may call collect if you choose.[86]

(Emphasis added.)

According to Richins, he wrote the letter because he needed to establish pretrial supervision of Weaver and had not heard from Weaver since their January 22 phone conversation.[87] The only explanation that Richins could provide for the erroneous trial date was that it was a typographical error. At trial, Richins expressed regret for the error and testified that he

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[84] Hearing Transcript in United States v. Weaver, No. 90-092-N-HLR on February 20, 1991, at 2-5 (hereinafter cited as "Hearing Transcript").

[85] See Notice dated February 5, 1991, in United States v. Weaver, No. 90-092-N-HLR (Appendix at 7).

[86] See Letter from Karl L. Richins to Randy Weaver, February 7, 1991 (Appendix at 8). There is no indication on the letter that Probation sent copies to any other party.

[87] See Richins Trial Testimony, April 22, 1993, at 32.