

placed the date in the letter as part of his effort to get Weaver to contact him.⁸⁸ Weaver never responded to Richins' letter.⁸⁹

On February 8, 1991, after receiving the February 5 court notice, Hofmeister wrote another letter urging Weaver to contact him and informing Weaver that the trial date had been changed to February 20. Four days later, having still not heard from Weaver, Hofmeister placed numerous unanswered calls to a telephone number at which Weaver reportedly received messages. In addition, Hofmeister asked individuals who had contact with Weaver to ask Weaver to contact Hofmeister immediately. However, as of the morning of February 20, Weaver had not contacted Hofmeister.⁹⁰

(2) The "Queen of Babylon" Letters and the Threat Assessment by the U.S. Marshals Service

On February 7, 1991, the U.S. Attorney's Office in Boise received two letters signed by Vicki Weaver. The first letter was dated January 22, 1991 -- the same day that Weaver called Richins -- and was addressed to "The Queen of Babylon." It stated in part:

A man cannot have two masters. Yahweh Yahshua Messiah, the anointed One of Saxon Israel is our law giver and our King. We will obey Him and no others. . . . 'a long forgotten wind is starting to blow. Do you hear the approaching thunder? It is that of the awakened Saxon. War is upon the land. The tyrants blood will flow.⁹¹

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b7c The last quote was credited to []

The second letter, dated February 3, 1991, was addressed to "Servant of the Queen of Babylon, Maurice O. Ellsworth, U.S. Attny [sic]" and stated in part:

Yah-Yahshua the Messiah of Saxon Israel is our Advocate and our Judge.

⁸⁸ Id. at 36-37, 39-41.

⁸⁹ Id. at 38.

⁹⁰ Hearing Transcript, February 20, 1991, at 2-5.

⁹¹ Letter from Vicki Weaver to the "Queen of Babylon", January 22, 1991 (Appendix at 5).

The stink of your Lawless government has reached Heaven, the abode of Yahweh our Yahshua. Whether we live or whether we die, we will not bow to your evil commandments.⁹²

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.⁹³] However, because the language in the letters appeared somewhat threatening, requested the U.S. Marshals Service in Boise ("USMS") to conduct a threat assessment of the letters.⁹⁴[

After checking with state and local agencies, [

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revealed that weaver had [Aryan World Congresses [

] had attended three

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⁹² Letter from Vicki Weaver to the "Servant of the Queen of Babylon", February 3, 1991 (Appendix at 6).

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] One of the responsibilities of the United States Marshal Service is to assess the seriousness of threats made against judicial and law enforcement officials.

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]a deputy in the Boundary County Sheriff's Office,
that Weaver had sent a letter to that office stating that he
would not leave his cabin and that law enforcement officers would
have to take him out.¹⁰³ [
the Weavers voiced, [
as though the end is near¹⁰⁴]

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[the entire Weaver family, including the 12 and 14 year old children, were armed [

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c. February 20, 1991 - The Rescheduled Trial Date

Although the USAO continued preparing the Weaver case for trial, members of that office were beginning to doubt that Weaver would appear for trial. Sometime before February 20, defense counsel Hofmeister told Assistant U.S. Attorney Howen that he had been unable to contact Weaver. Based on this information, the two letters sent by Vicki Weaver and the information developed during the threat assessment, Howen concluded that Weaver would not appear for trial.

Despite the indications that Weaver would not appear for trial, Howen told Byerly that they needed to continue preparing

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for trial. As a cautionary measure, Howen instructed Byerly to be in court on February 19, the original trial date, in case Weaver appeared.¹¹⁷ [

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On February 20, Howen and defense counsel Hofmeister appeared before U.S. District Court Judge Harold L. Ryan. At that time, Hofmeister told the court that he had been unable to contact Weaver.¹¹⁹ Hofmeister then detailed the efforts that he had taken to communicate with Weaver. In addition, Hofmeister said that on the weekend before trial his answering service had received no calls from Weaver and that none of the letters he had sent to Weaver -- all of which had been sent by regular mail -- had been returned.¹²⁰ Howen told the court that it was his understanding that Weaver had not kept in contact with Pretrial Services as required. He requested that a bench warrant be issued for Weaver's arrest, that his bond be revoked, and that he be taken into custody.¹²¹

Judge Ryan, after determining that the presentence specialist had no information about whether Weaver had contacted pretrial services, ordered that a bench warrant be issued for Weaver because he had failed to appear for trial.¹²² [

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¹¹⁷ See Byerly Trial Testimony, on April 20, 1993, at 68.

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¹²⁰ Hearing Transcript, February 20, 1991, at 2-5. Warren Mays testified at trial that the local postal inspector told him on February 21, 1991 that Bill Grider had picked up the mail from the Weaver box for the previous three weeks. See Mays Trial Testimony, April 23, 1993, at 111-12.

¹²¹ Hearing Transcript, February 20, 1991, at 6-7.

¹²² Id. at 7.

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d. Discovery of the Richins Letter and the Response of the Government

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Terrence Hummel, the Chief Probation Officer, of the inquiry. When Hummel retrieved the Richins letter, he discovered that it did, indeed, erroneously refer to the trial date as being on March 20.¹²⁵

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In addition to notifying the court and the Marshals Service, Hummel also informed U.S. Attorney Ellsworth of the Richins letter and sent him a copy.¹²⁹ []

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¹²⁹ Hummel also discussed the letter with Richins, who was quite concerned about the error. When Richins asked if there was (continued...)

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¹²⁹(...continued)

anything that he could do to correct the mistake, Hummel told him that he had handled the matter and had done everything that he could do. See Richins Trial Testimony, at 46-51.

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Sometime around February 27, Michael Johnson, the U.S. Marshal for the District of Idaho, asked Hummel to send another letter to Weaver informing him of the trial date error and the bench warrant and asking him to contact the pretrial services officer immediately.¹³⁸ However, Richins testified that no steps were ever taken to inform Weaver of the mistakes in the letter.¹³⁹

On February 28, Evans met with Ellsworth, Howen and Mays to discuss the failure of Weaver to appear for trial, the Richins letter¹⁴⁰ and the possibility of presenting an indictment to the grand jury.¹⁴¹ According to Ellsworth, Evans was concerned

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Evans told him that law clerk Martin had informed him that the bench warrant was still in effect and that the Marshals Service "would proceed with our duty." Trial Testimony of David Hunt on May 3, 1993, at 73-75. [

] Hunt testified at trial that

Evans told him that law clerk Martin had informed him that the bench warrant was still in effect and that the Marshals Service "would proceed with our duty." Trial Testimony of David Hunt on May 3, 1993, at 73-75. [

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Hunt Trial Testimony, May 5, 1993, at 9-10.

¹³⁹ Richins Trial Testimony, April 22, 1993, at 50-51.

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¹⁴¹ See Trial Testimony of Maurice Ellsworth, April 22, 1993, at 26-29. [Although Ellsworth did not recall Mays being a participant in this meeting, Mays testified at trial that he was present. See Mays Trial Testimony, May 5, 1993, at 2-3.]

(continued...)

about the impact of the Richins letter and questioned Ellsworth about how the Marshals Service should proceed. After this discussion, Ellsworth replied, "let's go ahead and return the failure to appear indictment. And if Mr. Weaver appears on March the 20th, we may to [sic] have to dismiss it."¹⁴² [

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Hunt testified at trial that the Richins letter created "a potential here for some reasonable misunderstanding."¹⁴⁴ Hunt explained that if Weaver had appeared on March 20, they had contemplated that dismissal of the indictment was possible.¹⁴⁵ According to Mays, in light of the Richins letter, the position

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142 Ellsworth Trial Testimony, April 22, 1993, at 30;]

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144 See Hunt Trial Testimony, May 3, 1993, at 66.]

145 Id. at 66-67.

of the Marshal Service was that the bench warrant and the indictment "would be dropped" if Weaver appeared on March 20.¹⁴⁶

[
interim, the Marshals Service continued to gather information¹⁴⁷] In the
about Weaver, in part to determine if contact could be made with
him.¹⁴⁸ On March 4, Hofmeister informed Evans that despite
numerous phone calls and letters, Weaver had still not contacted
him.¹⁴⁹[

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¹⁴⁶ See Mays Trial Testimony, May 5, 1993, at 6-8.

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¹⁴⁸ Hunt Trial Testimony, May 3, 1993, at 66-67.

¹⁴⁹ See Evans Trial Testimony, May 5, 1993, at 63.

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**Pages 51-52 of Report
have been withheld
in their entirety
pursuant to
5 U.S.C. 552(b)(5),
5 U.S.C. 552(b)(6)
and
5 U.S.C. 552 (b)(7)(C)**

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] a combination of tactical and nontactical approaches should be considered to apprehend Weaver. [

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] He suggested several options including attempting discussions with Weaver by a negotiation team [

] or using other intermediaries. [

] through whom to negotiate with the weavers. [

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] there was "the probability that Weaver will open fire on any law enforcement officer or agent or ZOG ("Zionist Organized Government") once they are identified."¹⁵⁹

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e. Decision to Present an Indictment to the Grand Jury

U.S. Attorney Ellsworth authorized Howen to present the failure to appear indictment to the grand jury, with the understanding that if Weaver appeared for trial on March 20 they "would possibly have to dismiss the indictment."¹⁶¹ Ellsworth explained that dismissal would be necessary under those circumstances, "[b]ecause the fact that he showed up would at least create reasonable doubt in my mind and possibly in a juror's mind as to whether or not the erroneous letter had been

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¹⁶¹ Ellsworth Trial Testimony, April 22, 1993, at 33.

basis for him not showing up February 20th, but showing up on March 20th.¹⁶²

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162 Id. at 34.

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f. March 14, 1991 Indictment for Failure to Appear

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The grand jury returned an indictment against Weaver on March 14, 1991 charging him with failure to appear in violation of 18 U.S.C. § 3146(a)(1). Howen signed the sealed indictment on behalf of Ellsworth. An arrest warrant was issued on that date.

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3. Discussion

a. Government Knowledge of Erroneous Richins Letter Prior to February 20, 1991

This investigation has found no evidence that anyone in the government, including the USAO, was aware of the error in the February 7 Richins letter until February 26, 1991.

learned of the error six days after Judge []]government officials Ryan had issued the bench warrant on February 20, 1991. Consequently, we find no factual basis for the allegation that the existence of the Richins letter was concealed from the court on February 20, 1991.

b. Appropriateness of Governmental Response to the Richins Letter

Four governmental agencies were involved in the Richins letter issue: the federal district court, which issued the bench warrant for Weaver's failure to appear; the federal probation office, which wrote the erroneous letter; the U.S. Marshals Service, which was responsible for apprehending Weaver on the bench warrant; and the U.S. Attorneys Office, which was responsible for prosecuting the firearms charges and for deciding whether an indictment should be presented for the failure to appear charge.

[After being informed of the mistake in the Richins letter, there was a flurry of activity by each of these entities. Phone conversations were initiated, meetings were conducted and memoranda were written.] The evidence indicates that the immediate reaction of almost all involved was that the letter was significant, although differences of opinion existed as to the impact of the letter and what, if any, actions should be taken.

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5 U.S.C. 552(b)(5),
5 U.S.C. 552(b)(6)
and
5 U.S.C. 552 (b)(7)(C)**

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the government's approach and the lack of leadership exhibited by the USAO on this issue. []we are troubled by the rigidity of []we do not believe that the response of the government to this letter was illegal or violated Weaver's constitutional rights. []

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It was incumbent upon the USAO to have had the Probation Office send an appropriate correction and to have attempted to discuss the matter with the court. Such action would have taken little effort and would have eliminated any question as to whether Weaver was confused.

c. Propriety of Seeking an Indictment on March 14, 1991

Despite the existence of an outstanding bench warrant, the USAO decided to present an indictment to the grand jury charging Weaver with failure to appear. []

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At the time that it sought the indictment, a bench warrant was outstanding. The USAO had

never received any indication that the court would withdraw the warrant. To the contrary, the court was firmly resolved that the bench warrant was appropriate and should be executed.

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an indictment at the time that the USAO did created an appearance of governmental overreaching.]seeking

- d. Failure to Inform the Grand Jury of the Richins Letter

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.]Even though the Department of Justice recognizes that federal law does not mandate the disclosure of exculpatory evidence to the grand jury, it is the "internal policy" of the Department to present or disclose exculpatory evidence to the grand jury "under many circumstances," such as "when a prosecutor conducting a grand jury inquiry is personally aware of substantial evidence which

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directly negates the guilt of a subject of the investigation."¹⁷⁹

It is our conclusion that the decision not to introduce evidence of the Richins letter was contrary to Department of Justice policy. One of the elements of the failure to appear charge is that the individual "knowingly . . . fails to appear before a court as required by the conditions of release."¹⁸⁰ Evidence that Weaver might have thought that he was required to appear on another date is in our view "substantial evidence which directly negates the guilt." We think that the inconsistency created by the information in the Richins letter went directly to Weaver's state of mind regarding when he was to appear. Accordingly, we think that [] was obligated to present the Richins letter to the grand jury.¹⁸¹

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¹⁷⁹ U.S. Attorneys' Manual § 9-11.233 (1992). Although not binding on Department of Justice Attorneys, the American Bar Association's Standards for Criminal Justice provide that "[n]o prosecutor should knowingly fail to disclose to the grand jury evidence which tends to negate guilt or mitigate the offense." ABA Standards for Criminal Justice: The Prosecution Function, Standard 3-3.6(b) (3d ed. 1992).

¹⁸⁰ 18 U.S.C. § 3146(a)(1). In United States v. DePugh, 434 F.2d 548, 551 (8th Cir. 1970), cert. denied, 401 U.S. 915 (1969), the Eighth Circuit held that "willful" means that the act is "knowingly done with the purpose of doing that which the statute prohibits," and does not require "knowledge that the act which he does is in violation of the law." Congress intended the word "knowingly . . . to perpetuate the concept of 'willfully' which appear[ed] in the [prior] bail jumping statute . . . as interpreted in United States v. DePugh . . ." H. Rep. No. 1030, 98th Cong., 2d Sess. 30, reprinted in, 1984 U.S. Code Cong. & Admin. News 3182, 3215-16.

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[We found no evidence that [. . .] failure to introduce the letter was motivated by bad faith [

4. Conclusion

There is no evidence that members of the USAO, the federal probation office and the Marshals Service intentionally concealed the erroneous Richins letter from the court on February 20, 1991. However, we conclude that the USAO, the probation office and the court should have appreciated the potential impact of the letter and should have pursued simple and straight forward steps to remedy the error. The decision to seek an indictment prior to the March 20 date stated in the letter was unnecessary and created an impression of prosecutorial overreaching. Finally, the failure to inform the grand jury of the Richins letter, although not illegal, violated internal Department of Justice policy.

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C. Efforts by the Marshals Service to Effect the Arrest of Weaver

1. Introduction

It has been suggested that the shooting deaths of Marshal Degan and Sammy Weaver on August 21, 1992 were the result of a scheme by the Marshals Service to assault the Weaver property, or at the least, the result of inadequate planning. This inquiry examined the scope of the Marshals Service investigation between February 1991 and August 1992 and examined the options the marshals considered to effect the arrest of Weaver.

2. Statement of Facts

a. Involvement of the Marshals Service Special Operations Group

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b7C [] requested the assistance of the Marshals Service Special Operations Group ("SOG").¹⁸³ SOG is a voluntary unit in the Marshals Service specifically trained to handle dangerous or complex matters, such as hostage situations involving fugitives.¹⁸⁴ []

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184 Testimony of Arthur Roderick, Preliminary Hearing, United States v. Weaver, No. MS-3934, September 10, 1992, at 11-13.]

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b6 []¹⁸⁵ Kahl was head of a militant anti-tax group, Posse Comitatus. He was wanted for a probation violation when U.S. Marshals, along with local authorities, attempted to arrest him. A firefight erupted in which two marshals were killed and Kahl [] wounded. Kahl evaded arrest following the shooting, but was later killed in a confrontation with authorities. A local sheriff was also killed. "Radical Tax Protester's Legacy Lives," UPI, July 9, 1983; untitled article by Gordon Hanson, Associated Press, February 14, 1983; []

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tentatively agreed that an SOG reconnaissance team would travel to Idaho in mid-June to gather information for a plan to arrest Weaver. [¹⁸⁸] It was ¹⁸⁹]

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**Pages 66-69 of Report
have been withheld
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pursuant to
5 U.S.C. 552(b)(5),
5 U.S.C. 552(b)(6)
and
5 U.S.C. 552 (b)(7)(C)**

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c. Additional Contacts With Intermediaries

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On July 9, 1991, Deputy U.S. Marshal [] and Everett Hofmeister, Weaver's appointed counsel, told [] a Weaver associate, that if Weaver surrendered, the failure to appear charge might be dismissed.²⁰³ []

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d. Exchange of Surrender Terms

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On October 9, 1991, Deputy Marshal [] interviewed [] who had been observed bringing supplies and mail to the Weaver cabin.²⁰⁹ [] asked [] to convey another negotiation offer to the Weavers. A series of exchanges followed. On October 12, 1991, [] gave [] a letter from the Weavers which stated:

The U.S. Government lied to me - why should I believe anything its servants have to say This situation was set up by a lying government informant whom your lawless courts will honor. Your lawless One World Beast courts are doomed. I have appealed to Yahweh's court

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of Supreme Justice. We will stay here separated from you & your lawless evil in obedience to Yahshua the Messiah.²¹⁰

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b7C [] told Hunt that Weaver did not want to be tried in Idaho "due to the prejudice against those who believed in separation of the white race."²¹¹ According to [] Weaver might surrender, if the trial could be moved and if [] Weaver could remain with Weaver until he was released or sentenced.²¹²

Thereafter, the Marshals Service began to formulate a surrender offer. This offer included promises that: the government would not interfere with Vicki Weaver's custody of her children;²¹³ the Marshals Service would not harass Randy Weaver's family; and the Government would not move to forfeit Randy Weaver's property.²¹⁴

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b6 The following day [] delivered a letter from Vicki Weaver, addressed to [] that posed a number of questions, including:

²¹⁰ This note was unsigned, but all correspondence (unless otherwise identified) was in Vicki Weaver's handwriting.

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²¹¹ In an October 11, 1991 letter to []
[] Vicki Weaver wrote, "Race mixing is against the law."

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1. Why a government informant or agent cannot be cross-examined by a defense attorney?
2. Why did the U.S. Dist. Judge in Couer D'Alene tell [the Weavers] that if [they] lost [their] case [they] would lose the \$10,000 bond to pay the attorney?²¹⁵
3. Why is there a concerted effort to 'set up' for prison or murder all ex-green berets (Special Forces). My husband is an ex-green beret. We know there are those already in prison from 'set ups.' They all went to court expecting justice from the courts of the country they loved. They didn't receive any!

(Emphasis in original.) [

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e. Post-Negotiation Investigation

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In October 1991 [] drafted a letter to Weaver, for [] containing proposed surrender terms. They sent the letter to the USAO for review.²¹⁷ [] rejected the proposal []

²¹⁵ Magistrate Judge Ayers had explained to Weaver that he would forfeit the property bond only if he failed to appear for trial. Arraignment Transcript, January 18, 1991, at 10-11.

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²¹⁷ Hunt Trial Testimony, May 5, 1993, at 2-9.]

[I] cannot authorize further negotiations or discussions along this line with defendant or his agent for two reasons. First, since the defendant is represented by Everett C. Hofmeister, appointed counsel, all contact with the defendant must be through his lawyer and not by ex parte means. Department of Justice policy and the Cannons (sic) of Ethics prohibit direct or indirect contact with a defendant who is represented by counsel for any negotiation purpose. Second, the . . . areas of proposed negotiation are either not within my power to grant or bind the government, to (sic) broad in their scope, or are the type of matters properly addressed in a plea agreement in exchange for guilty pleas, but not mere surrender.²¹⁸

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] the Marshals Service did not

send the proposed letter.

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Following the termination of negotiations, [] continued to gather information. []

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There was little activity by the marshals on the Weaver matter through the winter months because the property was snowed in, and surveillance was not practical.²²⁰ However, they continued to receive information about who was visiting the Weaver property.

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On March 1, 1992, the Spokesman Review, a newspaper in nearby Spokane, Washington, reported that Weaver's children were armed and quoted area residents who predicted violence if law enforcement agents attempted to apprehend Weaver. [Allen Jeppeson] was quoted as saying, "They'll lose their lives if they go up there and threaten Weaver" and "he don't want nobody on his mountain."²²¹

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On March 4, 1992, Cluff and Evans traveled to [] to obtain an update on Weaver's activities and to check on the status of a telephone being installed there at the Marshal Service's expense. Once there, Cluff and Evans decided to drive up the mountain road leading to the Weaver cabin.²²² They were in plain clothes and rode in an unmarked four-wheel drive vehicle. As they proceeded up the mountain road, the marshals found that vehicle noise on the unmaintained road was clearly audible for great distances. When they reached the top of the road, by the entrance to the Weaver property, they saw signs reading, "White Power is Supreme" and "Bow Down to Yahweh."

Cluff and Evans then saw Randy Weaver, armed with a rifle, and a boy and a girl standing above them on a rock formation. The boy also had a rifle. A yellow dog ran up to the vehicle, barking.²²³ When Weaver told them they were trespassing, they responded that they were interested in buying property. Weaver told them to return with a realtor. Cluff and Evans left.²²⁴

²²¹ "Feds Have Fugitive 'Under Our Nose'," Spokesman Review (Spokane), March 1, 1992, at A1. On the same day, an article in the Chicago Tribune described Weaver as a "folk hero" holding the Marshals Service at bay. One week later, the story was picked up by the Associated Press, and articles appeared in the New York Times ("Marshals Know He's There But Leave Fugitive Alone," New York Times, March 13, 1992, at A14) and the San Francisco Chronicle ("U.S. Slow to Nab White Supremacist," San Francisco Chronicle, March 13, 1992). On March 27, 1992, the San Francisco Examiner reprinted the March 8, 1992 Chicago Tribune article ("Standoff With Police Enters Second Year," San Francisco Examiner, March 27, 1992).

²²² Evans described the decision to drive to the Weaver property as spontaneous. He said they had no intention of making contact with the Weavers. Evans Trial Testimony, May 3, 1993, at 35.

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at 1-2; Evans Trial Testimony, May 3, 1993, at 35.

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Thereafter [] determined that additional reconnaissance was necessary. [] had learned of previously unknown trails to the Weaver property and believed it was necessary to explore them.

f. Briefing of the Marshals Service Director

A meeting was held on March 27, 1992 at Marshals Service Headquarters to brief Acting Director Henry Hudson and other officials, []

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At the meeting, [] presented a plan for an assault on the Weaver compound, but recommended against taking such action. Hudson agreed that a tactical approach did not appear viable because of their concern for the safety of Vicki Weaver and her children.²²⁵

As an alternative, Hudson telephoned U.S. Attorney Ellsworth and asked him to consider dismissing the warrant against Weaver and reissuing it under seal. Hudson thought this would relieve the pressure to arrest Weaver and might cause Weaver to believe it was safe to come off the mountain. Hudson explained to Ellsworth that Weaver could then be arrested without launching an assault on the compound and risking injury to the children and to government personnel.

Ellsworth told Hudson []

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[] they could not dismiss the indictment because Judge Ryan was calling for Weaver's arrest.²²⁷ In response, Hudson offered to travel to Boise to meet Judge Ryan, but his offer was not accepted.²²⁸

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Unable to resolve the matter in this fashion, Hudson ordered that any plan adopted should avoid potential harm to Vicki Weaver and the Weaver children. He believed that a "ruse" arrest would be more likely to achieve this goal than an "operational" strategy.²²⁹

Thereafter, the Weaver case was transferred to the Enforcement Division and was given the name "Operation Northern Exposure." The primary responsibility for developing a plan was given to Deputy Marshal Arthur Roderick, Branch Chief of the Enforcement Division.²³⁰

g. Development of Three Phase Operational Plan

After considerable discussion with the Idaho District and Headquarters, Roderick [] devised a three phase plan for arresting Weaver. Under Phase I, a team of marshals would assess the feasibility of technical surveillance of the Weaver cabin and property.²³¹ This would necessitate inspection of the Weaver property to determine the surveillance equipment that could be used.²³² A team [

was assembled to carry out Phase I.²³³]

(1) Phase I

[] The team also spent several days conducting surveillance of the Weaver house from the north and west ridges and looking for sites on which to

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mount surveillance cameras. During this process, they observed the Weavers responding to certain noises by running with rifles to a rock ledge that overlooked the driveway.²³⁴

On one occasion during Phase I, Roderick nearly had an encounter with Kevin Harris. While Roderick was in the woods near the north ridge observation post, he saw Harris ride nearby on a motorcycle and past the unmarked marshal's truck. When Roderick returned to the truck the tires on the truck were flat.²³⁵

(2) Phase II

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On April 13, 1992, Roderick [] briefed Acting Director Hudson on the results of Phase I of the plan to arrest Weaver.²³⁶ While Hudson was shown photographs of the area, [] described the locations of surveillance cameras, which would provide information about the Weavers' daily routine. Information obtained from the surveillance cameras during Phase II was expected to assist the Marshals Service in developing options for Phase III of the plan, which was the arrest of

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] ²³⁵ Roderick Trial Testimony, May 10, 1993, at 243-44; Roderick Sworn Statement, at 10. Roderick thought that foliage made it impossible for Harris to see them. He also believed that the flat tires may have been caused by something in the road he had struck earlier. Id. at 10.

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Weaver.²³⁷ [

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Director Hudson approved Phase II on or about April 13, 1992.

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On April 18, the marshals installed surveillance cameras on the west ridge and, on April 22, they installed the cameras on the north ridge. Soon thereafter the cameras became operational after a number of technical problems had been solved.²⁴⁰ The marshals had to make several trips to the camera sites, often in darkness, to bring the heavy batteries needed to power the cameras.²⁴¹

During Phase II, the team also made three trips onto the Weaver property to survey the terrain because little was known about the land surrounding the Weaver cabin. [

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.²⁴²] Although aerial photographs portrayed the land

²³⁷ The cameras, which operated on batteries, would provide "real-time" recordings of the Weaver residence and would run during daylight. [

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as flat, it was actually heavily wooded and frequently steep and rugged.

The closest that the marshals got to the cabin was during the third trip in the first week of May. (the "East Trail," which ended behind the Weaver cabin. They then passed some water tanks a few yards from the cabin and worked their way down to the spring house by the lower garden. This was the first time any marshal had circled the Weaver house and viewed the surrounding grounds.

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Video tapes produced from the surveillance cameras during Phase II were sent to Headquarters which had directed the cameras to continue to be operated. Because the batteries were running low, the marshals decided to replace them with solar panels, which were installed on May 1 and 2. (

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A few days later the camera on the north ridge stopped transmitting. Upon investigation, Roderick and two other marshals discovered that the camera equipment had been stolen.²⁴⁵

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On April 18, 1992, the Marshals Service was informed that a crew from "Now It Can Be Told," a television program hosted by Geraldo Rivera, may have been shot at while flying over the Weaver property in a helicopter.²⁴⁶ Two weeks later, Randy and Vicki Weaver were interviewed on May 2, 1992 by Michael Weland, a local newspaper reporter. Vicki said that the mountain had been given to them by "Yahweh" and that "We will not leave our mountain."²⁴⁷ Weland also quoted Vicki as saying that her family feared that Randy would "be railroaded through the court and once he was gone [the government] would have come in, kicked us off the property and torn this place apart." Randy Weaver was quoted in the same article as stating that: "Right now, the only thing they can take away from us is our life. Even if we die, we win. We'll die believing in Yahweh."²⁴⁸

(3) Transition to Phase III

After Phase II of the operation had been completed, Roderick [capturing weaver, [] for

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denied that anyone had shot at the helicopter. [Weaver: "Fugitive: No Surrender," Coeur D'Alene Press, May 3, 1992, at 1. [

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248 "Fugitive: No Surrender," Coeur D'Alene Press, May 1, 1992, at 1.

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[] Roderick developed an undercover plan to arrest Weaver, which required two marshals to assume the roles of husband and wife and to purchase a plot of land north of the Weaver property. To provide security for the marshals, the land purchase would have legitimate paperwork. In addition, the undercover marshals would clear the property to create the impression that they were authentic purchasers. [

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assumed that Weaver would become accustomed to the undercover marshals, leading to an opportunity to arrest him out of the presence of the other family members. [²⁵³] The plan

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] Roderick was given permission by [] in late May 1992, to begin preparations for the undercover operation. [

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h. Delay in Implementing the Undercover Operation

Roderick was instructed not to put the undercover plan into effect while Hudson's confirmation was pending before the U.S. Senate.²⁵⁶ In early August 1992, Hudson was confirmed Director of the Marshals Service and gave oral approval of the undercover plan shortly thereafter.²⁵⁷ Because there had been no surveillance of the Weaver property since May, Roderick thought it necessary for a team to visit the site and update their information.²⁵⁸

3. Discussion

A number of allegations has been raised about the conduct of the Marshals Service between February 1991 and August 1992. We examine in this section these allegations.

a. The Initial Response of the Marshals Service to Weaver's Failure to Appear

Before the failure to appear indictment was returned, Judge Ryan issued a bench warrant and directed the Marshals Service to arrest Weaver. Judge Ryan declined to withdraw the warrant when he learned that the Probation Office had sent Weaver a letter with an incorrect trial date. After the indictment was returned,

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Ellsworth rebuffed Hudson's request to dismiss the indictment and return it under seal.

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] this investigation has found that simply leaving Weaver on the mountain, despite its facial appeal, was not an option available to the Marshals Service once charges had been instituted.²⁶⁰ [

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²⁶⁰ Sheriff Bruce Whittaker [was quoted as saying, "It's just as bad for [Weaver] sitting up there on that mountain as if he was sitting in prison somewhere. . . . He's on his own self-imposed house-arrest up there, and it isn't costing anybody any money." "Feds Have Fugitive 'Under Our Nose.'" Spokesman Review (Spokane), March 1, 1992, at A1.

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