

fatal injury, but thought it was possible that the weapon could have caused the wound to Sammy's arm.⁴³⁹

Cooper and Roderick last saw Sammy run out of view up the trail. The location where Harris found Sammy's body is unknown because the Weavers moved the body.

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evidence [sought to kill or injure Sammy Weaver.

] we have found no intentionally

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Cooper said that he purposely fired three shots at Harris, after Harris shot Degan and appeared to be preparing to fire at Degan again. [

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Cooper then wheeled his weapon toward sammy and took aim, but did not fire.⁴⁴¹ Cooper next fired a second three round burst, in the direction from which he had received fire, as cover in an effort to reach Degan. [

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Sammy Weaver was shot during a firefight in which he was a participant. [There is no proof, and we do not conclude, that intentionally aimed the fatal shot at Sammy Weaver. indeed,] the record demonstrates that the marshals went to great lengths in preparing for their mission to avoid endangering the Weaver children.

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d. Allegation the Marshals Attempted to Cover Up the Shooting Of Sammy Weaver

The marshals maintain that they did not know that Sammy Weaver had been killed until they were told about it on Sunday, August 23.⁴⁴² Prior to that time the marshals did not believe that Sammy Weaver had been harmed during the encounter. []

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⁴³⁹ Id. at 183-184.

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⁴⁴¹ [April 15, 1993, at 122-34.

] Cooper Trial Testimony,]

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⁴⁴² Roderick Trial Testimony, May 24, 1993, at 340 []

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[the news that Sammy's body had been discovered in the "birthing" shed on August 22 appeared to surprise the marshals. Before this, the marshals had reported that Sammy had been at the Y when the shooting began, but they did not believe that he had been shot.⁴⁴⁴ [

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In conclusion, we found no evidence that the marshals took any actions to conceal the death of Sammy Weaver. Indeed, the evidence indicates that it was not until the FBI discovered the body on August 24 that the marshals were even aware that Sammy Weaver had been killed.

4. Conclusion

We are unable to determine who initiated the gunfire at the Y on August 21. [

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[we find that there was no intent on the part of [,] to harm Sammy Weaver. We also find that the marshals did not attempt to conceal the shooting of Sammy Weaver since they were unaware that Sammy Weaver had even been injured.

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E. Activation of FBI Hostage Rescue Team and Swat Teams on August 21, 1992 and Initial Intelligence Gathering

1. Introduction

Soon after the U.S. Marshals Service Headquarters learned of the shooting at Ruby Ridge it contacted FBI Headquarters officials. A decision was made to deploy the FBI Hostage Rescue Team ("HRT") to Ruby Ridge. Allegations have been made that the deployment of the HRT on August 21 was based on false information about the dangerousness of Randy Weaver, the situation at Ruby Ridge and the August 21 exchange of gunfire. In addition, it has been contended that the activation of the HRT and regional FBI SWAT Teams was an improper, unnecessary, and exaggerated response to the situation. Specifically, critics have suggested that local law enforcement agents, who rescued the marshals, should have been left to resolve the situation and that the U.S. Marshals Service should have remained in charge. There has also been a claim that the federal response was driven by an influential Department of Justice official who had been a close friend of Deputy U.S. Marshal Degan and the Degan family.

Critics have also charged that the FBI failed to assess the situation accurately after the August 21 shooting in large part because they failed to carefully gather and verify information on the background of the Weaver/Harris group and the events that transpired at the Y. The faulty information gathering techniques of the FBI is alleged to have contributed to the subsequent shots fired on August 22, 1992.

2. Statement of Facts

a. The Marshals' Report of The Shooting

Following the shooting at the Y, Deputy Marshal David Hunt, who was familiar with the terrain of the mountain, and Deputy Marshal Joseph Thomas left, at approximately 10:45 a.m. to get aid. [446

Hunt immediately placed a "911" call for assistance which was received by the Boundary County Sheriff's Office, Bonners Ferry, Idaho, at 11:20 a.m. Hunt told the dispatcher:

I have an emergency situation on my hands. . . .
I got one officer dead. I got (inaudible)
pinned down. I need help quick. . . . I want

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the State Police, I want all the help that I can get. I gotta go back in for more officers that are trapped.⁴⁴⁷

Next, Hunt called Marshals Service Headquarters in Washington, D.C. and told [] that before the snooting began, a dog had picked up the marshals' scent and that they had run to avoid the Weavers. Hunt spoke of a "heck of a gunfight," in which Harris killed Degan. Hunt told [] that he had not heard any gunfire since leaving the mountain.⁴⁴⁸

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The Marshals Service Crisis Center ("Crisis Center") was activated under the direction of [] Deputy Director of Operations, and the Special Operations Group ("SOG") was alerted to deploy.⁴⁵⁰ []

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⁴⁴⁷ Transcript of call by Hunt to "911," August 21, 1992.

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are given in Pacific Daylight Savings Time.] All references to time

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Agents from the U.S. Border Patrol, the Boundary County Sheriff's Office, and the Idaho State Police had reached the scene. The Idaho State Police Critical Response Team ("CRT") and the Marshals Service SOG unit were en route.⁴⁵⁴

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**Page 131 of Report
has been withheld
in its 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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b. Decision to Deploy the HRT

The FBI's involvement in the Idaho crisis began when U.S. Marshals Service Director Henry Hudson told FBI Associate Deputy Director W. Douglas Gow that a Deputy U.S. Marshal had been shot and killed in Northern Idaho; that two other deputy marshals remained pinned down, having previously received heavy gunfire from several subjects; and that the Department of Justice had instructed that the FBI would be the lead agency handling the situation. [

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When Gow received word of the assault, he called Assistant Special Agent in Charge Richard Rogers, Commander of the FBI Hostage Rescue Team ("HRT"). The HRT is a specialized full-time tactical team, based at the FBI Academy in Quantico, Virginia. Although its original purpose was to handle high-risk terrorist, hostage situations, its mission has evolved to cover a variety of sensitive, high-risk situations.⁴⁶⁴ At 4:30 p.m. EDT, Gow told Rogers that a deputy marshal had been shot and killed in Northern Idaho, that other deputy marshals were still pinned down there,

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The HRT is comprised of [] with specialized skills and training. The HRT has been utilized in a variety of high risk situations since its formation in 1983, ranging from international antiterrorist operations to prison uprisings, arrest/search operations against white separatist organizations, and hostage situations.

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and that the Marshals Service had requested assistance. [

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The FBI was told that a deputy marshal, who had been able to leave the shooting site, had summoned help, that the location of the remaining deputy marshals was unknown, and that radio contact with them was sporadic. [] did not know how many people were involved or whether anyone was in the vicinity of the Weaver cabin. They reported that, shortly after the firefight, Weaver or his associates had fired upon an aircraft.

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The Marshals Service personnel also provided background on Weaver, who was described as a white separatist or supremacist, with a possible Aryan Nations affiliation. Weaver was also described as a former member of the U.S. Army Special Forces, trained in the use of explosives and as a survivalist with large numbers of weapons, including shoulder weapons, ammunition, grenades, food, and supplies stored in his remote, mountaintop cabin. It was believed that Weaver knew well the extremely rugged terrain near his cabin. He had told the media that he would not be captured alive and that the only way he would leave his cabin would be to die in a shoot-out. His entire family, including his wife and children, was reported to be heavily armed.⁴⁷³

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HRT deployments must be initiated by the Assistant Director of the FBI's Criminal Investigative Division ("CID"). After consulting with FBI Deputy Assistant Director Coulson, Potts decided to deploy the HRT fully. [

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Rogers was notified of the decision to deploy and immediately departed aboard an FBI aircraft. []

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c. Initial Intelligence Gathering and Rescue of the Marshals

HRT Commander Rogers departed for Idaho at approximately 6:30 p.m. EDT on August 21 with an advance team of HRT personnel, including Supervisory Special Agent Stephen McGavin, and Special Agents Lester B. Hazen and Dale F. Carnegie, accompanied by Marshals Service Deputy Director Duke Smith.

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[Idaho State Police CRT, was informed of the incident and proceeded to the command post [After a briefing from Hunt, [] decided that the CRT would wait until nightfall to rescue the marshals so as to avoid ambush by the Weavers.⁴⁷⁷

A ten man CRT team, along with Deputy Marshal Thomas, left the command post at approximately 8:30 p.m. PDT (11:30 p.m. EDT).⁴⁷⁸ [

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The CRT team secured Degan's body and headed down the mountain. The return was long and difficult due to the extreme darkness and the burden of Degan's body. They returned to the Command Post at 12:46 a.m. PDT.

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]When the marshals were rescued [
]to a hospital at Bonners Ferry,

Idaho. [

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They were examined briefly at the hospital and then released.]

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Meanwhile, while en route to Idaho, Smith briefed Rogers and the other HRT personnel on the Weaver case.]

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Rogers also testified at trial about the impression of the crisis that Smith conveyed:

Smith said the aggression was on the part of the members of the Weaver family and that Degan . . . and the others were actually pursued while attempting to retreat from Randall Weaver and Kevin Harris and after being observed by those subjects. . . . He told me that the family was heavily armed, they had both pistols and rifles. There was an indication that they might possibly . . . have some armor-piercing ammunition. It was unclear as to whether there were grenades or explosives, because of Mr. Weaver's background in the military. . . . I certainly had the impression that this was a heavily armed group, and based on what he had told me concerning the

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fire-fight breaking out and Marshal Degan dying, it was clear to me that they were willing to use these weapons.⁴⁸⁶

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Rogers said that it was his impression that a firefight was either "still in progress" or there was "intermittent gunfire taking place" or "sporadic gunfire . . . through the evening". He believed that the marshals were still on the mountain and that they could not extract Degan's body.⁴⁸⁹]

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⁴⁸⁶ Rogers Trial Testimony, June 2, 1993, at 16-17.

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⁴⁸⁹ Rogers Trial Testimony, June 2, 1993, at 18, 184, 187.

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Potts and Coulson relayed to Glenn the information about the crisis situation that the Marshals Service had provided. Prior to Glenn's arrival Hunt had briefed two FBI agents who had responded to the call for assistance. He gave them information on the Weaver family and Kevin Harris, an overview of the morning's events, and a description of Weaver's tactical operations and defensive positions. Hunt told them that Weaver and the others had pulled back to their defensive positions and were preparing for and awaiting the arrival of government agents. Hunt also briefed local law enforcement officials.⁴⁹¹

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When Special Agent in Charge Eugene Glenn arrived in Sandpoint, Idaho, about 7:00 p.m. (PDT), deputies from the Boundary County Sheriff's Office took him and members of the Salt Lake SWAT Team and Technical Agents to a National Guard Armory to be briefed by law enforcement personnel. [

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] told Glenn that Randy Weaver was a violent, former Green Beret and explosives expert, who reportedly had a large cache of arms concealed on his property. Because of Weaver's political and religious beliefs, he had separated himself from the community and was living off the land. Weaver was said to have constructed bunkers and fortifications around his home and claimed he wanted to have a showdown or last stand with the federal government. [] told Glenn that Weaver had stated he would never be taken off the mountain and in fact had not come down for nearly 18 months.⁴⁹²

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Glenn was told that Weaver was with at least one or two other people who may also have been present during the exchange of gunfire. He was told that these people, as well as Weaver's entire family, were committed to similar religious and political beliefs, such as white separatism and supremacism and an intense hatred of the federal government.⁴⁹³

Following this briefing, Glenn travelled to the Command Post at Ruby Ridge, arriving at approximately 9:30 p.m. (PDT). [

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They learned that the Marshals Service was reporting that Kevin Harris may have been shot during the shootout. There was a report that the marshals still on the mountain had received sporadic gunfire until after dark.⁴⁹⁶

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[provided information about BATF's investigation of Weaver, his arrest, failure to appear, and the entry of the Marshals Service into the case. Weaver was described as a "white supremacist who had been affiliated with the Aryan Nation."⁴⁹⁷

In spite of the fact that the marshals were rescued in the early morning hours of August 22, first-hand information about the incident which began the crisis was not gathered immediately because the marshals were not made available until 2:00 p.m.]

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[] a cold front was approaching, with rain, snow, and temperatures in and around the twenties, and that the terrain around the crisis site was severe. There was no current intelligence as to the tactical preparations the Weavers might be making to engage law enforcement, but [] agents would have to take positions close to Weaver's residence to address the situation properly. []

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By early morning, August 22, HRT Commander Rogers and the HRT advance unit had arrived, along with senior Marshals Service personnel. Rogers reported to Glenn:

I asked Mr. Glenn for a quick briefing as to what the current situation was up on the mountain. He told me that they had managed to get Marshal Degan's body off and extricate the remaining marshals. Other than that, it was basically unknown what was taking place up around the cabin, because there were no law enforcement directly with eyes on at the shooting site or at the Weaver cabin.⁵⁰¹

Glenn told Rogers that shots had been fired "early on," but Rogers did not think they "had a time frame when the last shot was fired."⁵⁰² Rogers did not do an independent investigation when he arrived because Glenn basically repeated what Smith had told him earlier.⁵⁰³

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⁵⁰¹ Rogers Trial Testimony, June 2, 1993, at 26.

⁵⁰² Id. at 190-91.

⁵⁰³ Id. at 192.

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[Rogers did not talk to any of the marshals involved in the shooting because he had been told that they were asleep or were being treated for exposure. According to Rogers, the "implication" of this report "was that they were not available to me and that they would certainly have to be debriefed before I would have a chance to talk to them. . . debriefed I assumed by their own marshals."⁵⁰⁷

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⁵⁰⁷ This failure to speak to the marshals was highlighted when Rogers testified that he did not know who David Hunt was nor did he know the identity of the source who had provided information about the previous day's events to Marshals Service Headquarters and Smith. Rogers Trial Testimony, June 2, 1993, at 189-90. Rogers also admitted during cross examination at trial that he had no information as to who killed Degan and that he had never spoken to Cooper or Roderick during his entire stay at Ruby Ridge.

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• Cooper and Roderick informed HRT members about the layout of the Weaver complex, the terrain, and weaponry. They told the HRT that there were no booby traps or mines on the Weaver property.

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3. Discussion

a. The Marshals' Report of the Shooting

There have been allegations that the marshals involved in the shooting and others in the Marshals Service intentionally concealed the marshals' role in the August 21 shooting. It has also been charged that the Marshals Service lied about Weaver's dangerousness and the circumstances at the time of the shooting to gain the FBI's support and assistance and to cover up a confrontation with the Weavers' son, Sammy.

At trial, the defense contended that a deputy marshal had fired the first shot, which killed the family dog Striker. After that shot a marshal knowingly and fatally shot Sammy Weaver in the back as he retreated from the firefight. The defense also contended that Sammy Weaver responded to the killing of his dog with gunfire, which Degan returned, and that Harris shot Degan in defense of himself and Sammy only after these events had occurred and because they were subjected to gunfire.

Those who believe that sequence of events, particularly after Weaver and Harris' acquittal for Degan's murder, have

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charged that the marshals involved in the shooting engaged in a coverup to protect themselves. That coverup is said to have included exaggerated accounts of aggressive acts at the shootout on August 21, Weaver's role in the events, and the danger of Weaver and Harris. One area repeatedly challenged at trial was the claim that the marshals were "pinned down" and had sustained "continuing fire" hours after the fatal shots had been fired.⁵¹⁸

Defense counsel alleged in pretrial motions that, after the shooting at the Y, Hunt falsely reported to his superiors and to other law enforcement agencies that the marshals who remained with Degan's body were "pinned down in a fire fight."⁵¹⁹ We did not find any evidence that Hunt or any of the marshals claimed that they were receiving continual fire well after the exchange at the Y.

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⁵¹⁸ Briefly, our investigation found no intentional exaggeration of facts or a failure to disclose material facts. Moreover, we were unable to find any material representations made to FBI Headquarters which were unsupported by information in Marshals Service files. In our interviews, FBI Headquarters personnel and Marshals Service personnel did not report any significant incorrect information on the status of the marshals on the mountain, in contrast to media reports on the subject.

⁵¹⁹ Defendants' Memorandum, at 8-10.

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⁵²²] Hunt's reports to the Crisis Center are consistent with the accounts given by the marshals on the mountain. They believed they were "pinned down" in the sense that they were "outflanked" by the Weavers and might come under fire if they moved.⁵²³ We conclude that the marshals did not deliberately attempt to mislead other law enforcement agencies about the events at the Y or the condition of the marshals still on the mountain.

b. Decision to Deploy the HRT

Our investigation found that the HRT was properly deployed to Idaho to address this crisis, a deployment, which, in accordance with FBI policy, had received specific approval from the Assistant Director of the Criminal Investigative Division at FBI Headquarters.

The training of HRT members and its ability to be deployed quickly made HRT a reasonable choice in this instance.

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⁵²³ Roderick Trial Testimony, May 24, 1993, at 128, 266.

Furthermore, jurisdiction for the investigation of assaults on federal officers ("AFO") rests with the FBI. Although this began as a Bureau of Alcohol Tobacco and Firearms case and became a Marshals Service case, the Marshals Service does not have primary jurisdiction for investigating AFOs. In addition, Marshals Service supervisors were understandably concerned that action by the Marshals Service would appear to have been taken in retaliation.

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] This situation had been generated by a federal warrant based on a federal indictment involving federal law enforcement agencies. In attempting to effectuate a federal arrest, a federal officer had been killed, and the subjects of that shooting and the outstanding warrant remained at large. In light of these circumstances and the resources available to the federal response teams, we find reasonable and appropriate the decision to send FBI SWAT teams, the HRT, and the Marshals Service SOG to resolve this matter.

c. Initial Intelligence Gathering

In this section we discuss what the FBI did in the first 36 hours to verify the information it had obtained and to secure the best and most current information. Our investigation addressed criticism concerning the failure of Special Agent in Charge Glenn and HRT Commander Richard Rogers during their first hours at the site to update intelligence from more knowledgeable people present.

Almost within hours of setting up the command centers at Marshal Service Crisis Center and FBI Headquarters, both agencies had representatives at each other's command centers to aid communication.⁵²⁴ [

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]we did not find intelligence gathering at the site to have been sufficiently thorough under the circumstances. [

there were gaps in information about the underlying events caused by failure to debrief the marshals involved in the shootout.

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]We found no evidence that anyone denied the FBI access to the marshals after they had been taken to the hospital and allowed to rest. [

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This inquiry also considered whether the Marshals Service tried to prepare the marshals for their interviews. [

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We also find no evidence that the marshals were coached before their interviews.

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this investigation has found no proof that the Marshals Service or the marshals themselves coordinated or altered their individual accounts of the events on the mountain.

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Although the marshals had lengthy interviews on Saturday and Sunday with FBI agents and returned to the command post on Saturday and Sunday, none of them were interviewed by the FBI senior management team

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It is not clear when the information developed in these interviews was shared

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It is difficult to estimate the impact additional intelligence gathering would have had on the decisions made during the crisis. Much of the information the FBI considered in

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assessing the danger and formulating Rules of Engagement and operational plans was consistent with what they would have heard from the marshals.

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] We found the background information on Weaver, which the Marshals Service gave the FBI and which served as a basis for the HRT deployment and the development of plans to secure the site, consistent with the information that was available in the Marshals Service files before August 21.

4. Conclusion

We found no evidence that the Marshals Service intentionally covered up or exaggerated Weaver's background or the events that had occurred at the Y in order to obtain assistance from other law enforcement personnel. However, we did find that the initial intelligence gathering by the FBI lacked thoroughness because of its failure early in the crisis to seek information from the Marshals Service personnel who had been on the mountain on August 21. Finally, this inquiry found that there was no abuse of discretion in the activation of the HRT in this situation. It was legally and factually justified and consistent with Department of Justice policy and procedures. No evidence was discovered during this inquiry that the decision to deploy HRT was based on improper or personal motives.

F. FBI'S Rules of Engagement and Operations on August 21 and August 22, 1992.

1. Introduction

The issues addressed in this part of our inquiry concern the initial response to the crisis by law enforcement agencies directed by the FBI and the decisions made to resolve the crisis.

During the early hours of the crisis, in addition to the movement of personnel and equipment, the primary concerns were to stabilize the situation and to gather intelligence. Throughout this early period, FBI officials were formulating a proposed plan of action -- also referred to as an "operation plan" or "operational plan" -- and specialized "Rules of Engagement" ("Rules").

It has been alleged that during this initial period negotiations were ignored as a strategy and that only tactical responses were considered. Indeed, the FBI has been criticized for its failure to contact the occupants of the Weaver residence until Saturday evening, after the sniper shots had been fired and Vicki Weaver had been killed. [

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⁵²⁶] Some individuals have contended that the helicopter flights over the Weaver compound were designed to lure the subjects out so they could be targets for the snipers who were under orders to shoot to kill armed adult men.

Furthermore, it has been alleged that the FBI's operations plan and Rules of Engagement were developed to eliminate witnesses to the shootout on August 21 in retaliation for the death of Deputy Marshal Degan. Of particular concern are the Rules of Engagement, which instructed the FBI Hostage Rescue Team ("HRT") sniper/observers that they "can and should" use deadly force against any armed adult male, even before a surrender announcement had been made to the subjects or notice given that law enforcement was present. The Rules have been interpreted as unlawful "orders to shoot" by their severest critics and as being inappropriate for the situation or being inartfully drafted by others. It has been charged that the Rules used at Ruby Ridge were orders to shoot, which violated federal and state law and the FBI's own standard policy on the use of deadly force.

In this section we examine the factors considered in the formulation of the Rules and the reasonableness of some of these considerations, including the belief that the Weaver/Harris group

was aware of law enforcement's presence and that every armed individual in the Weaver compound intended to cause bodily harm to law enforcement personnel. We also examine the intent of those who reviewed and approved the Rules and whether the Rules and the procedures used to develop and authorize their use conformed with FBI policy.

Finally, we evaluate those who operated under the Rules of Engagement and the actions they took while at Ruby Ridge. This portion of the report examines the circumstances surrounding the two rifle shots fired by HRT member Lon Horiuchi on August 22, 1992 and whether the ensuing death and injuries were the result of lawful acts.

2. Statement of Facts

a. The Formulation of Rules of Engagement En Route to Idaho on August 21, 1992

When FBI tactical teams, such as HRT or SWAT, are deployed and confrontations are a possibility, Rules of Engagement are commonly established. Rules of Engagement are described as instructions to deployed units or individuals that clearly indicate what action should be taken when confronted, threatened, or fired upon by someone. They are intended to provide a context within which decisions about the use of deadly force are to be made. They serve two purposes: to restrict the application of the standard FBI deadly force policy or to heighten the awareness of tactical personnel regarding the threat level of individual situations. Formulation and approval of the Rules of Engagement are the responsibility of the on-scene commander.⁵²⁹

The need for special Rules of Engagement for the Ruby Ridge crisis was discussed and agreed upon at an early point. While en route to Northern Idaho, Richard Rogers, Commander of the HRT, and Assistant Director Larry Potts had a series of conversations in which Potts advised Rogers of intelligence received.⁵³⁰ The two discussed proposed Rules of Engagement with each other and with Deputy Assistant Director Danny Coulson. [

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[⁵³¹] At trial, Rogers explained his initial thoughts about the Rules of Engagement:

In this particular situation, after hearing the description of what had taken place, specifically the fire-fight, the loss of a marshal, it was clear to me that there was a shooting situation taking place at this location. It appeared to me that it would have been irresponsible for me to send my agents into the situation without at least giving them a set of rules within the greater framework of the standard FBI rules, that would allow them to defend themselves. With that in mind, I proposed that the rules be that if any adult is seen with a weapon in the vicinity of where this fire-fight took place, of the Weaver cabin, that this individual could be the subject of deadly force. . . . [A]ny child is going to come under standard FBI rules, meaning that if an FBI agent is threatened with death or some other innocent is threatened with death by a child, then clearly that agent could use a weapon to shoot the child . . . that's the way its stated, but quite frankly, we try to prevent ourselves from being put in positions where children can threaten us and where we would have to use deadly force.⁵³²

When asked if he had considered the possibility that an adult might be seen with a weapon slung on his shoulder or carried in a nonoffensive way, Rogers replied:

Yes, it was considered, and it's always my knowledge that my sniper observers and my other team members are clearly going to make a judgmental call as to whether to employ deadly force, and based upon the training, based upon the experience of these men, I know that they have absolutely the best judgment when it comes to use of deadly force.⁵³³

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532 Rogers Trial Testimony, June 2, 1993, at 20-21.

533 Id. at 22-23.

Rogers acknowledged that the Rules of Engagement he proposed specified that any adult with a weapon observed in the vicinity of the Weaver cabin or in the firefight area "could and should be the subject of deadly force."⁵³⁴ According to Rogers he discussed this rule with FBI Assistant Director Larry Potts who concurred fully.⁵³⁵

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Potts considered the information provided by the Marshals Service to be the basis of the proposed Rules of Engagement. He recalled the proposed Rules of Engagement as providing that:

Any adult with a weapon who was observed in the vicinity of Randall Weaver's cabin or the fire fight area, could be the subject of deadly force. All efforts should be made to avoid any confrontation with children, but if such a confrontation became unavoidable, that faced with the threat of death or grievous bodily harm, the standard FBI use of deadly force policy would be in effect.⁵³⁷

According to Potts, he and Coulson believed that this crisis was the most dangerous situation into which the HRT had ever gone. [

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⁵³⁴ Rogers Trial Testimony, June 3, 1993, at 85-86.

⁵³⁵ Id., June 2, 1993, at 24.

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**Page 159 of Report
has been withheld
in its 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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No additional legal advice regarding the Rules was solicited from within the FBI.]

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Nor did the FBI officials drafting the Rules consult with the United States Attorney's Office having jurisdiction over the]

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crisis. Assistant U.S. Attorney Ron Howen arrived at the crisis site shortly after the crisis began and remained there until the situation was resolved. While at the crisis scene, he provided legal advice and legal assistance regarding the preparation of legal documents, such as an affidavit supporting the government's request to obtain electronic surveillance of the cabin, and he forwarded information to the U.S. Attorney in Boise. Howen did not participate in any discussion about the operations plan or Rules of Engagement, and he was not involved in formulating or approving any of the operations plans or the Rules of Engagement. The local Boundary County prosecutor, who was also on site during the crisis, was also not consulted.

Coulson recalls that the proposed Rules of Engagement "were words to the effect of, 'any armed adult outside the Weaver cabin or on Ruby Ridge could be the subject of deadly force.'"⁵⁴⁴ [

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b. Formulation of the Rules Of Engagement and Operations Plan on August 22

When the remaining HRT members arrived, they went to the National Guard Armory in Bonner's Ferry, Idaho, where HRT

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Commander Rogers briefed them at 9:00 a.m. (PDT).⁵⁴⁹ Rogers told the HRT members and SOG snipers that the Rules of Engagement had not yet been approved, and [

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] would brief the sniper/observers before their deployment. The proposed Rules of Engagement provided at the initial briefing were:

Any adult with a weapon who was observed in the vicinity of Randall Weaver's cabin or the fire fight area, could and should be the subject of deadly force.

Following the briefing, the HRT travelled to Ruby Creek at the base of the mountain on which the Weaver cabin was located and began to establish tactical operations centers. This involved unloading and erecting command and bunk tents, clerical equipment and supplies, and weapons systems. Some HRT members began to assimilate the massive amount of information provided by the Marshals Service and local law enforcement agencies.⁵⁵⁰

While these organizational activities were in progress, HRT supervisors were engaged in the drafting of the Rules of Engagement and the establishment of an operational plan. McGavin prepared the original draft of the Rules. After reviewing this draft, Rogers told McGavin to scratch out what he had originally written and then proceeded to discuss with McGavin and [] what he wanted in the Rules. Rogers told McGavin to insert the "and should" clause into the Rules. [

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Rogers testified that the words that comprised the Rules were his words and that McGavin and [] wrote them down to provide the sniper/observers and other team members with Rules that "clearly reflect what I know I had approved through our chain of command."⁵⁵² These rules were:

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552 Rogers Trial Testimony, June 2, 1993, at 44.]]]

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If any adult in the compound is observed with a weapon after the surrender announcement is made deadly force can and should be employed to neutralize this individual.

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

If compromised by any dog the dog can be taken out.

Any subject other than R, V, + K, presenting threat of death or grievous bodily harm FBI rules of deadly force apply.⁵⁵³

Once at the site, Rogers proposed to Glenn that several things be done quickly. First, communication should be established with the people in the cabin or in bunkers, if there were any. Next, Rogers wanted to "call-out," to let the subjects know that the FBI was there and that there were warrants for their arrest. Finally, and most importantly, he wanted to ask them and give them the chance to surrender to law enforcement authorities, which, according to Rogers, is "standard procedure."⁵⁵⁴ Since law enforcement personnel had not surrounded the cabin, Rogers also wanted to place sniper/observers around the site to cover law enforcement personnel and to cordon the site.⁵⁵⁵

Rogers testified that when the FBI makes an arrest, it tries to notify the subjects of the arrest that the FBI is present with a legitimate arrest warrant. This surrender announcement or "call-out" was going to be accomplished in this instance by agents going to the cabin area in armored personnel carriers and broadcasting the message with a megaphone or loud hailer. At the same time, the agents would drop off a phone at

⁵⁵³ Trial Exhibit No. 41-3, United States v. Weaver, CR 92-080-N-EJL. The Rule was modified from "adult" to "adult male" to exclude Vicki Weaver around 2:30 or 3:00 p.m. after consultation with Glenn because Vicki Weaver was not seen at the site of Degan's slaying. The change was communicated to the sniper/observers before deployment. Rogers Trial Testimony, June 2, 1993, at 31.

⁵⁵⁴ Id. at 31-32.

⁵⁵⁵ Id. at 50.