

Gritz and [] to overpower Weaver, if he did not
surrender.⁸⁴⁷

b6
b7C

[

b5/
b7C
b6

August 31.⁸⁴⁸

]The Weaver family surrendered on

i. Decision to Send Howen to Ruby Ridge

In the afternoon of August 21 []
informed U.S. Attorney Ellsworth about the shooting at Ruby
Ridge.⁸⁴⁹ Shortly thereafter, Ellsworth informed Howen, the
Assistant U.S. Attorney to whom the Weaver matter had been
assigned, about the incident. [

b6
b7C

b5/
b7C
b6

]

⁸⁴⁷ Rogers Trial Testimony, June 2, 1993, at 167-68 and
June 3, 1993, at 108.

b6
b7C

848 []

b6
b7C

849 []

b5/
b7C
b6
b6
b7C

851 []

852 []

b5/
b7C
b6

]

b5/b7C [Ruby Ridge. =] Howen suggested to Ellsworth that he travel to Ellsworth agreed. 853 b6 [

b5/b7C b6

]

b6 b7C 853 []

b6 b7C 854 []

b6 b7C 855 []]

b6 b7C 856 []]

b6 b7C 857 []]

b6 b7C 858 []]

b6 b7C 859 []]

**Pages 254-257 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)**

3. Discussion

a. FBI Decision to Remove Law Enforcement Personnel From the Mountain on Saturday Night

At approximately 8:00 p.m., HRT and SOG personnel were ordered to leave their posts on the mountain and return to the command post at the base of the mountain.⁸⁹⁰

The articulated reason for the withdrawal of these personnel was bad weather.

He testified at trial:

Originally, I had thought we would keep them up there until maybe 10:00 at night or maybe midnight, but probably at 8:00 or so, I ordered them to come off the mountain.⁸⁹¹

887

888

889

890

Rogers Trial Testimony, June 2, 1993, at 78 ("at 8:00 or so, I ordered them to come off the mountain").

⁸⁹¹ Id. at 78.

b5/
b7C
b6

b5/
b7C
b6

b5/
b7C
b6

b5

b5/
b7C
b6

b6
b7C
b6
b7C
b5

The weather conditions prevented the HRT and SOG personnel posted on the mountain from remaining through the night because of the cold and the lack of visibility, which also prevented deployment of replacements.⁸⁹²

[

05/
/b7C
b6

]we believe that poor HRT command decisions unintentionally contributed to the circumstances that led to the removal of HRT personnel from the mountainside. This had an undesirable consequence: law enforcement personnel were unable to observe and contain activities in the area of the Weaver cabin during their 11 to 12 hour absence.

⁸⁹² We were informed that the HRT sniper/observers did not have cold weather gear.

⁸⁹³ [

]

⁸⁹⁴ [

]

b5
b6
b7C

**Page 260 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)**

[

b5/
b7C
b6

c. FBI Attempts to Resolve the Crisis

]

During the Ruby Ridge crisis, the two most significant decisions made by the FBI command were the employment of Rules of Engagement, discussed in detail above, and the utilization of third party, nongovernment negotiators when communications and negotiations with the Weavers did not progress. The decision to utilize the services of Bo Gritz [] contributed significantly to the ultimate resolution of the crisis. Furthermore, it showed flexibility in strategy and was an example of sound management.

b6
b7C

[

b5/
b7C
b6

]

b6
b7C

896 [

]

b6
b7C

897 [

]

[

b5/
b7C
b6

Communications between the negotiators and those inside the cabin were also hindered by the poor performance of communication devices employed during the negotiations. [

]

b5

900]

b6
b7C

898 [

]

899 [

b5

]

900 [

b5/
b7C
b6

]

[

b5/
b7C
b6

]

The failure of on-site supervisors to communicate accurate information appears to have had a negative impact on the attempt to resolve the crisis through negotiation.

(2) Balance of Tactical and Negotiation Strategies

In a crisis situation in which a deliberate assault option is considered a necessary part of overall strategy, a written operational plan for the assault must be submitted to FBI Headquarters for approval. On the other hand, emergency tactical operations, whether or not they will contribute to the ultimate resolution of the crisis, are the responsibility of both the Special Agents in Charge and the HRT command structure at the crisis site.

[

b5/
b7C
b6

]

b6
b7C

901 [

b6
b7C

] 902 [

]

**Page 264 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)**

**Page 265 of Report
has been withheld
in its entirety
pursuant to
5 U.S.C. 552(b)(3), Rule 6(e)
5 U.S.C. 552(b)(5),
5 U.S.C. 552(b)(6)
and
5 U.S.C. 552 (b)(7)(C)**

While we credit the argument that it was necessary to secure the site before negotiations could commence, we find much evidence that a negotiation strategy was not the highest priority of the FBI crisis management team. [

b5/
b7C
b6

d. Evidence of Vicki Weaver's Death]

It has been alleged that law enforcement officials knew that Vicki Weaver was dead before Randy Weaver spoke with Bo Gritz on August 28. The allegation accuses the FBI of covering up its knowledge of Vicki Weaver's death in order to conceal that it intentionally shot and killed her. We find no factual support for that position and find that the allegation is totally without merit. [

b5/
b7C
b6

b6
b7C
b6
b7C

912 [

913 []

]]

b5/ b7C []
b6

It is the conclusion of this inquiry that law enforcement personnel did not know of Vicki Weaver's death before Friday, August 28 when Randy Weaver informed Bo Gritz.

e. Howen's Activities at Ruby Ridge

Howen was present throughout the crisis at Ruby Ridge. We find nothing inappropriate about his presence or his conduct. Indeed, considering the remoteness of the Weaver property and the need for expeditious applications for search warrants and Title III authority, we believe that there was a legitimate need for a representative of the U.S. Attorney to be at Ruby Ridge. [

b5/ b7C

b5/ b7C

]He was present at some of the interviews of the marshals, but primarily as an observer. The fact that he may have asked some questions and may have taken some notes was not improper. [

b5/ b7C b6

]there was no evidence that these conversations were improper. [

b5/ b7C b6

]there was no evidence that Howen was in a position of control at Ruby Ridge or that he exercised a decisionmaking function. No evidence was discovered that Howen had any role in the decision to deploy HRT or in the formulation or modification of the Rules of Engagement. [

b5/ b7C b6

b5/ b7C b6

] Similarly, there is no evidence that Howen acted improperly at walk throughs and searches or that he controlled the searches or selected the investigative methodology. []

[

b5/b7c
b6

]

We believe that, in the future, serious consideration should be given to including a representative from the U.S. Attorney's Office to law enforcement teams responding to crises like Ruby Ridge. The representative could assist law enforcement personnel in many matters such as participating in resolving the controversy and providing legal advice about issues arising during the crisis. We recognize, however, that in many instances the representative should not be the attorney responsible for prosecuting the case because this could lead to the charge that the prosecutor was a witness to the critical events at issue.

b5 [

4. Conclusion

[

b5

]

The FBI management team favored a tactical strategy and gave insufficient consideration to negotiations as a means to resolve the crisis. Negotiation experts at the site were not adequately informed and consulted during the crisis. [

b5

]

The late decision to use third party non-governmental negotiators was a sound management decision that displayed flexibility on the part of FBI management. Finally, Howen's conduct was proper and consistent with the role of a federal prosecutor. [

]

I. FBI Crime Scene Investigation

1. Introduction

The investigation of the events at Ruby Ridge from August 21-August 31, 1992, included several searches and attempts to gather evidence. There were three primary crime scenes and search areas. The first crime scene was at the intersection of two old logging roads known as the "Y"; the second was the Weaver cabin; and the third was the area around the cabin, including out buildings such as the birthing shed. During the searches of the crime scenes, a wide variety of objects was retrieved for use as evidence in the Weaver prosecution.

This section will address various allegations of errors, omissions, and misconduct relating to the crime scene searches. There have been allegations that the measurements taken during the searches were inaccurate; that the FBI staged or planted evidence; that the personnel, techniques, and equipment employed in the searches were inadequate because they lacked the requisite competence or technical efficiency; that third parties were allowed to infect the crime scene to cover up the government's wrongful conduct; and that the integrity of the crime scenes was not maintained.

2. Statement of Facts

a. Background

The FBI conducted searches of the Y area on August 24, August 27-31 and September 1, 1992. The FBI supervised searches of the Weaver cabin, grounds, and outbuildings on August 31 and September 1 and September 10, 1992. An additional search of the Y and the Weaver cabin and grounds was conducted on March 22 and March 23, 1993. The search teams consisted primarily of FBI personnel from the Salt Lake City and Seattle Divisions and the FBI Laboratory, augmented by personnel from the U.S. Marshals Service, the Bureau of Alcohol, Tobacco and Firearms, the Idaho Bureau of Investigation, and the Boundary County Sheriff's Office.

LS
/b7C
b6

]

**Pages 270-273 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)**

[

b5/b7C
b6

(2) The "Magic" Bullet

]

During the search of the Y crime scene on August 31, the

b6
b7C [

b5

936]

Considerable interest has been generated about an intact bullet [] discovered at the center of the Y during this search. This bullet was designated "L-1" and was referred to by defense counsel as the "magic bullet." [

b6
b7C

b5/b7C
b6

]

b6
b7C

932 [

]

b6
b7C

933 [

]

b6
b7C

934 [

]

b6
b7C

935 [

]

b6
b7C

936 [

]

937]

[] recalled that [] had from the FBI Laboratory photograph the bullet. Later [] realized that [] needed to obtain a letter designation from the photographer and then have a new picture taken with the letter designation.⁹³⁸ []

Thereafter, [] was instructed to end the search and return to the command post for a briefing.

Before leaving the Y area, [] picked up the L-1 bullet, marked it, and placed it in a plastic envelope that he put in his pocket.

After assisting in the search of the Weaver cabin, [] asked [] to return with [] to where the bullet had been found. [] was told to photograph the spot.⁹³⁹ []

937 []

938 See discussion in Section IV(O).

939 []

940 []

b5/b7C
b6 []

b5/b7C
b6 []

b5/b7C
b6 []

b5 []

b5/b7C
b6 []

b5/b7C
b6 []

**Page 276 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)**

[

b5/
b7C
b6

d. Searches of the Cabin and Surrounding Area

After Weaver and his family had surrendered, the cabin was searched on August 31, September 1, and September 10, 1992.]

b5/
b7C
b6

b6
b7C

946 []

947 []

b5/
b7C
b6

b6
b7C

948 []

949 []

b5/
b7C
b6

b7C b6

950 []

b6
b7C

951 []

**Pages 278-279 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)**

3. Discussion

a. Techniques Employed to Locate Evidence

The searches of the area near the Weaver residence, including the Y, coordinated by the FBI, have been criticized as disorganized, confused, and unsecured. [

b5

[

]

b5/
b7C
b6

]

963 [

b5/
b7C
b6

b6
b7C

964 [

965 [

]
]

b5/
b7C
b6

]

**Page 281 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)**

[

b5/
b7C
b6

c. The "Magic Bullet" and Allegations of Staged Evidence

]

The events surrounding the discovery and retrieval of the "magic bullet" generated allegations of staged or manipulated evidence.⁹⁶⁹ We have not found evidence of intentional concealment, staging, or a lack of a good faith on the part of the FBI or the other law enforcement agencies that assisted in the searches. However, we believe that poor judgment by those who conducted the crime scene searches created confusion and, as manifested by the "magic bullet" episode, that poor judgment harmed the government's case.

[

b5/
b7C
b6

]

⁹⁶⁹ For a discussion of the controversy at trial involving photographs of this bullet see Section IV(0).

b6
b7C
b6
b7C

970 []
971 []

**Page 283 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)**

4. Conclusion

In our view, three factors contributed significantly to the difficulty of conducting the crime scene searches. First, the searches were conducted during an ongoing effort to resolve the crisis. Second, an unusually large number of law enforcement personnel from a wide variety of federal, state, and local law enforcement components were at the site, adding to the confusion and congestion. Third, the terrain was extremely rough, uneven, and covered with dense foliage.

5/
b7C
b6

b5

b5

b6
b7C

973 []
974 []

b5/
b7C
b6

b5/b7C []
66

Many of the problems that attended the crime-scene searches could have been avoided had an experienced evidence-recovery team been summoned. []

b5/b7C
66

The use of the Evidence Response Team would certainly have added badly needed experience and expertise to the investigation and may very well have alleviated a number of the problems that we discuss here. The Ruby Ridge crime scene investigation was difficult. Those who conducted the search had participated in the tiring, tension filled operation that ultimately resolved the standoff. As a consequence, some aspects of the crime-scene search were confused and incomplete. The utilization of sophisticated, professional, evidence location, retrieval, identification, and preservation techniques in this case was necessary.

J. The FBI Laboratory

1. Introduction

The U.S. Attorney's Office for the District of Idaho ("USAO"), components of the FBI, the U.S. Marshals Service, local law enforcement agencies, and the trial court all criticized the performance of the FBI Laboratory ("Laboratory") during the course of the Weaver trial. In this section, we will examine the timeliness and quality of the Laboratory's response to requests for tests, its refusal to perform certain tests, and its neglect to do others.

2. Statement of Facts

a. FBI Laboratory Processing Procedure

It is FBI policy that when the Laboratory receives a request from a field office to examine evidence, a principal examiner is assigned to the matter. The examiner assigns a priority to the request. Cases for which the FBI is primarily responsible are given the highest priority, followed by cases involving violent crimes, cases involving crimes against property, and cases in which a judicial proceeding is unlikely. In practice, we found that pendency of a trial date is the overriding factor determining whether a case becomes a priority.

The principal examiner forwards items of evidence to the appropriate unit within the Laboratory, prepares a report when the examination has been completed, and returns the items to the field office with the report.

matter.] The Laboratory generated twelve reports in the Weaver

b5/
b7C
b6

b5/
b7C
b6

b. Timeliness and Neglected Tests

On January 8, 1993, a conference was held in the chambers of U.S. District Court Judge Lodge. The defense requested that the trial date of February 2, 1993 be postponed because of the volume of information and documents to be reviewed and because not all of the Laboratory examinations had been completed. Judge Lodge admonished the government to provide the results of the examinations quickly. Assistant U.S. Attorney Howen told the court that he was attempting to comply with the court's instructions, but that he had no control over the delay caused by the FBI Laboratory.⁹⁷⁵

Following Weaver's sentencing, Judge Lodge issued a contempt order against the FBI and levied a fine because the prosecution had "receiv[ed] less than full cooperation from the FBI" and the Bureau had not produced items of evidence "timely."⁹⁷⁶ The court referred to the FBI's "recalcitrance" and held that the Bureau had "evidence[d] a callous disregard for the rights of the defendants and the interests of justice and demonstrate[d] a complete lack of respect for the order and directions of [the] court."⁹⁷⁷

⁹⁷⁵ Transcript of proceedings in United States v. Randall C. Weaver and Kevin L. Harris, CR 92-080-N-EJL, on January 8, 1993.

⁹⁷⁶ Order, October 26, 1993, at 2.

⁹⁷⁷ Id. at 10, 13.

⁹⁷⁸ [

⁹⁷⁹ [

b5

b5

]

]]

After the chambers conference, the FBI Laboratory received eight requests for examinations in the Weaver matter, [

b5

The first examination that appears to have been neglected was a request on August 27, 1992 to determine whether two pieces of metal were once part of Degan's canteen clip. The second neglected examination was a request on September 9 to compare blood samples of Vicki and Sammy Weaver with blood found on two jackets and a pair of pants.⁹⁸¹ The third was a request on]

980 [

b5
b7C
b6

b6
b7C

981 []

]

October 28 to determine whether holes in Degan's backpack and the clothing it contained had been caused by a bullet.⁹⁸²

There was no response to these requests in the Laboratory report of December 23, 1992. The field office again requested these examinations on January 5, 1993. The Laboratory responded on January 22. A more detailed discussion of these tests follows.

(1) Degan's Backpack

[

b5
b7C
b6

(2) Blood and Hair Examinations

]

After being retrieved from Ruby Ridge, Deputy Marshal Degan's body was taken to a morgue for an autopsy, which was performed on August 22, 1992 [

b5
b7C
b6

]

b6 b7C	982 []
b6 b7C	983 []
	984 []
b5 b7C b6 b7C	985 []

]]

[

b5
b7C
b6

The FBI Hostage Rescue Team discovered Sammy Weaver's body, while clearing the birthing shed near the Weaver cabin on August 23, 1992.] conducted an autopsy on August 25.

]

b5
b7C
b6

On August 31, 1992,] conducted an autopsy of Vicki Weaver's body,]

]

b5
b7C
b6

]

b6
b7C
b6
b7C

986 []
987 []
988 []

]]

b5
b7C
b6
b5/b7C
b6

989 []
990 []

]

b5

]

[

b5/
b7C
b6

]

b6
b7C

On January 4, 1993, blood samples taken from Degan, Sammy Weaver and Vicki Weaver were obtained from _____ and sent to the Laboratory.⁹⁹⁴ The examinations were completed and reported on January 21. On January 28, pursuant to a court order, samples of Harris' hair were taken and forwarded to the FBI Laboratory.

b6
b7C

When the FBI Laboratory received a request for additional blood and hair comparisons on January 5, 1993, _____ realized

991 [

b5/
b7C
b6

[

]

b5/
b7C
b6

]

b6
b7C

993 [

]

b6
b7C

994 [

]

that the FBI did not have the blood samples. The samples were submitted on January 6.⁹⁹⁵ The examinations were completed and provided to the USAO on January 15 and given to the defense on January 27.

c. Refusal to Perform Tests and Hiring of Independent Experts

In one instance, the Laboratory refused to conduct a requested examination and, in several instances, the Laboratory determined that certain examinations were not possible.

During trial preparation, the USAO entered into contracts with three forensic specialists:[

b6
b7C

]these people were retained because the FBI Laboratory was unwilling or unable to provide assistance in their areas of expertise.⁹⁹⁶

(1) Refusal to Conduct Test

[

b5/
b7C
b6

]

(2) Shooting Reconstruction

Early in the trial preparation, [] told the FBI case agents that the case needed an expert to reconstruct the shooting events at the Y on August 21 to corroborate the marshals' testimony. The agents replied that "there's no such thing."

b6
b7C

995 []

996 []

b6
b7C

997 []

b6
b7C

b6
b7C [] a shooting reconstructionist, on the basis of the physical evidence, can determine, among other things, the "directionality" of a bullet's trajectory.⁹⁹⁸

[] called the FBI Laboratory and was told that the Laboratory does not do shooting reconstructions. [

b5/
b7C
b6 the best shooting reconstructionists in the country [] to find one of

[] was told that the Laboratory did do shooting reconstruction []

b5/
b7C
b6

b6
b7C

998 []
999 []

b5/
b7C
b6

1000 []

b5/
b6/
b7C b6

1001 []

[

b5/
b7C
b6

(3) Wound Ballistics and Metal Detection

]

[

b5

(4) Acoustic Testing

]

[

b5/
b7C
b6

]

1002 [

b5/
b7C
b6

b6
b7C

1003 [

1004 [

]

b5/
b7C
b6

] See Section IV(N) of this report for additional discussion about this acoustical test.

b5 [

d. Failure to Comply with Discovery]

b6
b7C

The final issue raised by Judge Lodge about the FBI Laboratory concerns the mailing of notes and test firings of the weapons. The defense orally requested production of notes and the test firings at the end of the first week or the beginning of the second week in May 1992.

[

b5/
b7C
b6

The prosecution advised the court that the test firings were available for defense review]

b6
b7C
b6
b7C
b6
b7C

1005 [

1006 []

1007 []

]

b6
b7C

on May 18. [] this delayed the trial and produced additional discovery problems.

3. Discussion

In analyzing the performance of the FBI Laboratory, we interviewed field and Laboratory personnel; analyzed field communications requesting examinations and transmitting physical evidence; audited Laboratory reports and tracking of examined articles; assessed criticisms by agencies and interested parties; inspected the crime scenes; and reviewed grand jury testimony, court proceedings, and autopsy reports.

a. Problems with Delays in Test Results

Our investigation revealed that Judge Lodge, as well as the trial team, the FBI field agents, and their supervisors were not satisfied with the response of the FBI Laboratory in this case.¹⁰⁰⁸ In exploring the delays in conducting and reporting examinations, we discovered a lack of coordination, communication, and cooperation within the FBI. Unfortunately, these delays had significant impact on the government's discovery obligations and the way the government was perceived by the court and at trial.

[

b5

1008 [

b5
b7C
b6

1009 [

b5
b7C
b6

(continued...)

]

]

]

[

b5

When Laboratory tests require additional evidence or specific instructions, communication with the most knowledgeable people, the case agents or the prosecutors, should be continuous.

[

]

b5

1009 (...continued)

[

]

b5
b7C
b6

1010 [

]

b6
b7C

1011 [

]

b5

b6
b7C

1012 [

]

]

[

b5/
b7C
b6

We are not convinced that the delays were the result of unnecessary requests by the prosecution team. Rather, we find a lack of initiative by the Laboratory in conducting examinations beyond the specific request. The use of private experts apparently renewed the Laboratory's interest in and commitment to the case. That was a costly and unnecessary expense. Our inquiry found that nothing done by the independent examiners fell outside the FBI's expertise.]

In addition we find that the Laboratory's failure to respond in a timely manner contributed to the trial judge's perception that the government was not meeting its discovery obligations. Although the FBI Laboratory did much significant and professional work, the problems apparent in delays and lack of initiative should be remedied.]

b5

b6
b7C

1013 []