

there are equally powerful countervailing interests supporting a person's right to be free from the intrusiveness which inevitably accompanies a seizure.

The U.S. Supreme Court has considered the question of seizures by the use of deadly force and has articulated a framework with which to analyze their constitutionality. In Tennessee v. Garner, 471 U.S. 1, 7 (1985), the Court stated that "there can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." When a police officer kills or mortally wounds a suspect while attempting to make an arrest, the ultimate seizure occurs. Not only is the suspect deprived of his life, in which he has the most fundamental interest, but society is deprived of the "judicial determination of guilt and punishment." Id. at 9. However, the Supreme Court recognized that effective law enforcement requires that deadly force be permissible in some circumstances.

In Garner, a burglary suspect fled the crime scene while a police officer pursued him. Although the officer identified himself and ordered Garner to stop, Garner continued to scale a fence. The officer, who saw no weapon and who was reasonably sure that Garner was unarmed, fired shots that killed Garner. The state statute permitted an arrest by all necessary means if the suspect had been provided notice of the officer's intent to arrest him yet persisted in fleeing or forcibly resisting arrest. The Supreme Court ruled this statute unconstitutional because it justified the use of unreasonable force, regardless of the danger that the suspect presented.

The Court in Garner enunciated a general theory permitting the use of deadly force by police officers:

[W]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given."

Id. at 11-12.

It was not until 1989 in Graham v. Connor, 490 U.S. 386, that the Supreme Court articulated an objective standard for evaluating the use of deadly force. In Graham, police had forcibly detained Graham, a diabetic, and prevented him from

drinking orange juice to prevent the onset of insulin shock. The police handcuffed Graham and ignored or rebuffed his attempts to explain and treat his condition. Graham sustained multiple injuries and was released when it was determined that he had done nothing wrong.

The Supreme Court rejected the subjective standard the district and appellate courts had imposed which had required Graham to show that the police had applied force "maliciously and sadistically for the very purpose of causing harm." *Id.* at 390-391 (citations omitted). The Court held that instead of a subjective standard "all claims that law enforcement officers have used excessive force -- deadly or not -- . . . should be analyzed under the Fourth Amendment and its 'reasonableness' standard. . . ." *Id.* at 395.

The Court proceeded to hold that "determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Id.* at 396 (citations omitted). Among the factors to be considered are "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396. No "bright line test" was articulated "because '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.'" *Id.* (citations omitted). Courts must consider the officers' conduct in light of the totality of the circumstances. *Id.*

The Graham court emphasized that "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* (citations omitted). Thus, police officers are accorded some deference because they are "often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Id.* at 397.

This test of "objective reasonableness" must be applied to both shots taken by Horiuchi. Because almost all excessive force cases are "fact intensive," Fraire v. City of Arlington, 957 F.2d 1268, 1269 (5th Cir. 1992), and this case is no exception, we must examine carefully the facts surrounding the shots to determine whether they met the constitutional test of objective reasonableness.

## (2) The First Shot

With respect to the objective reasonableness of each of Horiuchi's shots, we must examine them in conjunction with the factors enunciated by the Graham court -- the severity of the crime, whether the suspect posed an immediate threat to the safety of the officers or others, and whether he actively resisted arrest.

Before assuming their positions overlooking the Weaver compound, Horiuchi and the other agents had been briefed about the encounter at the Y. From this briefing, they knew that a marshal had been killed; that Weaver had sophisticated weapons experience; that the family had declared that they would never surrender to the federal government and were prepared for a confrontation with the government; that the family was generally armed when they left the cabin; and that the family made armed responses to approaching people and vehicles. [

b5 [they knew: that more than one shot had been fired at the "Y"; that Randy Weaver, Kevin Harris, and Sammy Weaver had been there; and that Kevin Harris had shot and killed Deputy Marshal Degan. In addition, they had been informed that, following the shooting, shots had been fired at an airplane and that there had been unconfirmed reports of an April 1992 shooting at a news helicopter near the Weaver compound.

[ [Horiuchi knew that a severe crime had been committed, and he knew that Weaver was resisting arrest with Harris' assistance.<sup>720</sup>

b5/b7C/b6 [ [Before Horiuchi fired his first shot, he had two opportunities to shoot, first at the young girl, and then at an unarmed man who was prodding the ground with a stick. Horiuchi did not shoot either person because he believed the young female was an unarmed child and that the man was not behaving in a threatening manner.

According to Horiuchi, he fired the first shot only after he heard and saw the helicopter. When the person whom he believed

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b5 [After engaging in the firefight that killed Degan, Harris retreated with Weaver to the cabin and emerged only when armed. There was no indication that Harris or any member of the Weaver/Harris group was going to surrender to law enforcement.

to be Harris reappeared at the side of the shed from which he had disappeared, he held his weapon at high port and scanned above and behind Horiuchi's position. Horiuchi believed that the man was looking for the helicopter. According to Horiuchi, the person was "watching the helicopter, and at times he would kind of bring his weapon up and [Horiuchi] perceiv[ed] that perhaps he was trying to get a shot off."<sup>721</sup>

The person in Horiuchi's sights moved along the side of the birthing shed, while holding his weapon high. Horiuchi believed that the person had seen the helicopter and was attempting to get to the other side of the birthing shed. Horiuchi concluded that the person was preparing to shoot at the helicopter with his scoped rifle.<sup>722</sup> He saw the individual watching the area where Horiuchi believed the helicopter was flying and saw the man "getting ready to take a shot at the individuals in the helicopter."<sup>723</sup> Horiuchi's "sight picture" on his rifle showed the man jumping or moving to a lower position, behind the birthing shed. [

<sup>724</sup>] Horiuchi "assumed that [the man] was raising [his arm] to grab inside the building to spin himself around the corner."<sup>725</sup> It was at this time that Horiuchi fired one shot. At the time Horiuchi shot, the man was at the corner of the shed, with his back toward Horiuchi. According to Horiuchi, he was aiming at the man's back at the time he fired the shot.<sup>726</sup> After the shot was fired, the man suddenly moved along the side of the birthing shed and disappeared from Horiuchi's vision.

<sup>721</sup> Horiuchi Trial Testimony, June 3, 1993, at 88, 90.

<sup>722</sup> Id. at 93; [

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<sup>725</sup> Horiuchi Trial Testimony, June 4, 1993, at 40-41.

<sup>726</sup> Id. at 42.

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At trial, Horiuchi was adamant that he never saw a gun in the hands of Randy Weaver, even though Weaver was armed at the time he was struck by Horiuchi's first shot.<sup>729</sup>

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We find reliable and reasonable his perceptions that: the target was an armed man; the helicopter was in flight; and that the movements of the man indicated a threat to the helicopter.

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<sup>729</sup> Horiuchi Trial Testimony, June 4, 1993, at 34-35.

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Weaver and Harris have stated that their actions were innocent and not indicative of aggressive conduct. According to them, they left the cabin to view Sammy Weaver's body in the birthing shed[

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[we believe that Horiuchi reasonably interpreted the actions of the three people as they ran from the cabin as aggressive.

The law requires that we give some deference to Horiuchi's perceptions of the threat to the helicopter and the individuals aboard it. Indeed, the Supreme Court in Graham cautions that "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, 386 U.S. at 396. In Graham the Supreme Court also advised that, in assessing the reasonableness of the use of deadly force, one must allow for the fact that police officers are often forced to make split-

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second judgments in circumstances, like those at Ruby Ridge, that are tense, uncertain, and rapidly evolving. As the Sixth Circuit emphasized in Smith v. Freland:

[W]e must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

954 F.2d at 347.

Applying these standards to the first shot taken by Horiuchi, we conclude that the shot meets the constitutional standard of "objective reasonableness." [

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### (3) The Second Shot ]

We now look at the immediacy of the threat factor to evaluate whether the second shot which Horiuchi took was justified. The second shot, after passing through the window of the cabin door, killed Vicki Weaver who was standing behind the door and also seriously injured Kevin Harris.

As a preliminary matter, the two conditions we found satisfied in regard to the first shot -- the reasonable conclusion that the suspects had been involved in a severe crime and that they were actively resisting arrest -- were satisfied at the time of the second shot. Again, our focus must be on whether the target of Horiuchi's shot posed an immediate threat to the officers or others.

In our discussion above, we found that when Horiuchi fired the first shot, he made a judgment of threat and necessity based on his observation that the armed male posed an immediate threat of death or serious harm to the occupants of the helicopter. ]

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.<sup>735</sup>] Horiuchi feared that once the man returned to the cabin, he would have been more protected and could have shot at HRT personnel or the helicopter. Horiuchi felt that the man probably knew that law enforcement "couldn't shoot back in there without harming some of the children."<sup>736</sup>

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<sup>736</sup> Horiuchi Trial Testimony, June 3, 1993, at 111. [

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] Horiuchi testified at trial, "I had already made that determination after that first shot, so if I saw him again I was going to shoot at that individual again."<sup>738</sup>

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] At trial, Horiuchi characterized Harris' action as a "pause." Horiuchi Trial Testimony, June 4, 1993, at 86.

<sup>738</sup> Horiuchi Trial Testimony, June 3, 1993, at 111.

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At Ruby Ridge, FBI supervisors in charge of the crisis determined that, following the deployment of HRT sniper/observers around the cabin, a negotiation strategy was to be employed, [

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At trial he testified that it appeared that Harris "was trying to hold the door open or moving somebody out of the way" when Horiuchi fired.<sup>741</sup> When asked if he "knew there was somebody behind the door," Horiuchi responded that he "wasn't shooting at the individual behind the door."<sup>742</sup> [

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<sup>742</sup> Horiuchi Trial Testimony, June 4, 1993, at 61-62.

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[ We do not believe that the evidence indicates that Horiuchi actually saw Vicki Weaver or anyone else behind the door. The bullet holes in the curtain and the entry hole in the door's window are consistent with Horiuchi's testimony that the curtain obstructed his view.<sup>744</sup> We also find no evidence that Vicki Weaver was the intended target of the second shot as has been alleged. Horiuchi testified that he did not intend to shoot her.<sup>745</sup> Our review of the evidence has produced nothing to discredit those statements.

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Horiuchi testified that, once the subjects were in the cabin, they would be able to fire out and be protected from return fire because the HRT "probably would not have shot at anyone inside the house for fear of shooting the children." Horiuchi Trial Testimony, June 3, 1993, at 110-11.

<sup>744</sup> Horiuchi acknowledged that, had the curtain on the door been open, he could have seen Vicki Weaver. Horiuchi Trial Testimony, June 9, 1993, at 20-21.

<sup>745</sup> Id. at 140.

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"if the suspect threatens [an] officer with a weapon" or "there is probable cause to believe that [the suspect] has committed a crime involving the infliction of serious physical harm."<sup>751</sup>

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] Garner, 471 U.S. at 11). (Emphasis in

[ "deadly force may be used to prevent escape", if "the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction . . . of serious physical harm."<sup>753</sup> [

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] "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."<sup>754</sup> [

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deadly force "may not be used unless it is necessary to prevent [an] escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical harm."<sup>755</sup> Finally, the immediate threat requirement is reiterated by the Supreme Court in its conclusion that the "proper application" of the Fourth Amendment to the use of deadly force requires "careful attention" to a number of factors, which include not only "the severity of the crime at issue," but also "whether the subject poses an immediate threat."<sup>756</sup> ]

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[ ] we have concluded that the retreating subjects did not pose an imminent threat of physical harm.

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<sup>753</sup> [ ]  
<sup>753</sup> Garner, 471 U.S. at 11.

<sup>754</sup> Id. (Emphasis added.)

<sup>755</sup> Id. at 3. (Emphasis added.)

<sup>756</sup> Graham, 490 U.S. at 396. (Emphasis added.)

[ the Rules of Engagement had a significant effect on the snipers/observers' sense of danger and had encouraged their use of deadly force.<sup>757</sup>

] This inquiry finds that the Rules expanded the use of deadly force beyond the scope of the Constitution and beyond the FBI's own standard deadly force policy. [

] Having made these findings, we have proposed recommendations at the conclusion of this report. [

] We recommend referral of the matter of the second shot to the appropriate component of the Department of Justice for a determination of whether federal criminal prosecutive merit exists.

(4) Use of the Helicopter to Draw Subjects Out of Cabin

This inquiry found no evidence to support the allegation that the FBI intentionally used the helicopter to lure the Weavers and Harris out of the cabin so that they would be a target for HRT snipers. [

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we found no evidence to support allegations of the helicopter's use in such a fashion.

(5) Surrender Announcement

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There was no attempt by the FBI to give notice to the individuals in the cabin prior to the shots taken by Horiuchi. However, immediately after the shots, at approximately 6:15 p.m., two armored personnel carriers were driven to the vicinity of the cabin and a surrender announcement was made. ]

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The Rules of Engagement underscore the importance of the timing of the surrender announcement [

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believe that more consideration should have been given to this crucial part of the operation, particularly in light of the Rules of Engagement in effect.

#### 4. Conclusion

We find that the decision to deploy the FBI's HRT and components of the U.S. Marshals Service SOG to the Ruby Ridge crisis site was proper. However, the Rules of Engagement drafted by the FBI were improper and failed to comply with constitutional standards regarding the use of deadly force by a law enforcement officer. The Rules were also a departure from the FBI's standard policy on the use of deadly force. Implementation of such Rules may have created an atmosphere that caused an HRT sniper/observer to take a shot that he would not otherwise have taken. The imprecision of the Rules resulted in wide misunderstandings regarding the authorized use of deadly force by law enforcement personnel. In addition, the Constitution requires that surrender announcements be given, where feasible, before deadly force may be employed. For this reason, we believe that the FBI should have given a higher priority to making a surrender announcement at the earliest possible opportunity.

We believe that in examining the "totality of the circumstances" surrounding the first shot taken by the sniper/observer, the shot met the constitutional standard of "objective reasonableness." Applying the same analysis, we believe that the second shot did not meet that standard.

b5 [ In this case, we conclude that the sniper/observer did not have a reasonable fear of an immediate threat to the safety of law enforcement personnel or others at the time the second shot was taken. ]

[ We conclude that the second shot violated the Constitution. We recommend that the circumstances surrounding the second shot be reviewed by the appropriate component of the Department of Justice for prosecutive merit.

G. FBI Internal Review of HRT Shots Taken on August 22, 1992

1. Introduction

The FBI is required to conduct an administrative inquiry into all shooting incidents in which a weapon is discharged by FBI personnel.<sup>760</sup> The FBI conducted an administrative inquiry of the circumstances surrounding the two HRT rifle shots on August 22, 1992 at Ruby Ridge.

The question has arisen whether the administrative inquiry conducted by the FBI's Shooting Incident Review Team ("Review Team") was sufficiently thorough. The conclusions reached in the Review Team's Shooting Incident Report have also been challenged. Problems associated with the production of the Shooting Incident Report to the prosecutors and to the defense are addressed in section IV(M) of this report.

2. Statement of Facts

When the HRT sniper/observers were removed from the mountainside on Saturday night, August 22, following the shooting, [

b5 Special Agent in Charge Glenn reported the shooting incident to FBI Headquarters shortly after it occurred on Saturday evening.<sup>761</sup> That notification initiated the process which resulted in the deployment of a Shooting Incident Review Team to Northern Idaho. ]

Before the crisis had been resolved, FBI Assistant Director Potts contacted the FBI Inspection Division to initiate an administrative inquiry into the shooting.<sup>762</sup> A Shooting Incident Review Team, consisting of eight supervisory and technical FBI personnel, was deployed to Ruby Ridge. They arrived at the site on August 31, shortly before Randy Weaver and his family surrendered.

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<sup>760</sup> Manual of Investigative Operations and Guidelines, December 19, 1986, at 1090.01.

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3. Discussion

We have concluded that the investigation conducted by the Shooting Incident Review Team was not sufficiently thorough.

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We agree with the report's findings that the first shot that struck Weaver was justified. [

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With respect to the second shot that struck Harris and Vicki Weaver, we find that the conclusion of the Review Team does not have sufficient foundation. [

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]we believe that the report lacks a sound basis  
for its conclusion that the second shot was justified.

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4. Conclusion

The inquiry conducted by the FBI's Shooting Incident Review Team was not sufficiently thorough. The Review Team's conclusion regarding Horiuchi's second shot did not adequately consider the circumstances that distinguished the first shot from the second.

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H. Law Enforcement Operations at Ruby Ridge From August 22, 1992 Until August 31, 1992.

1. Introduction

Following the death of Deputy Marshal Degan, the FBI assumed primary jurisdiction over the investigation of the events relating to his death. The FBI's handling of the investigation at Ruby Ridge has been criticized on several grounds: that the FBI's command and control of the crisis site was not handled properly in that insufficient emphasis was placed on negotiations to resolve the crisis; [

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Soon after learning on August 21, 1992 about the shooting incident at Ruby Ridge, U.S. Attorney Maurice Ellsworth authorized Assistant U.S. Attorney Ronald Howen to travel there to assist law enforcement personnel with legal matters. Howen arrived late in the evening of August 21st and spent the next ten days with law enforcement personnel who had responded to the crisis. ]

Questions have been raised as to whether it was appropriate for Howen to have been at Ruby Ridge and whether some of his activities were improper and conflicted with his role as the federal prosecutor in the case. Foremost among these allegations is that he was an active participant in tactical decisions, negotiations, and searches which transformed him into a witness in the investigation at Ruby Ridge.

2. Statement of Facts

a. Removal of Law Enforcement Personnel From the Mountain Following Horiuchi's Shots.

When the personnel carriers were near the Weaver cabin delivering the initial announcement and installing telephone communications equipment, worsening weather conditions were reported on the hill. (

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Rogers and Special Agent in Charge Glenn agreed to withdraw the sniper/observers and establish an inner perimeter around the cabin area the following morning [

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The sniper/observers were withdrawn after dark on Saturday evening, August 22.<sup>773</sup> ]

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Upon returning to the command post after the shooting, the HRT sniper/observers were debriefed [and were instructed to document their actions and observations in FD-302 investigative reports. ] Glenn had reported the shooting incident to FBI Headquarters earlier in the evening.

b. Command and Control Structure

The death of Deputy Marshal Degán entailed violations of federal criminal statutes that gave the FBI primary jurisdiction over the investigation.<sup>776</sup> Eugene Glenn, Special Agent in

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<sup>773</sup> HRT Commander Rogers testified that he originally planned to keep the sniper/observers on the mountain until 10:00 p.m. or midnight. Because of the weather, he ordered them off the mountain at approximately 8:00 p.m. Rogers Trial Testimony, June 2, 1993, at 78.

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<sup>776</sup> Local authorities maintained jurisdiction over the investigation of the other deaths and injuries that occurred at Ruby Ridge.

Charge of the FBI's Salt Lake City Division, was assigned primary responsibility for managing the federal law enforcement response to the crisis. [

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In addition to intelligence gathering, the primary concerns of local and federal law enforcement were to rescue the surviving marshals, along with the body of Deputy Marshal Degan, apprehend the subjects without further loss of life, and prevent their reinforcement by sympathizers. ]

State and local officers and a few representatives of the Marshals Service and the border patrol were the first law enforcement officials on the scene. [

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group of interested citizens began to gather. ] Soon after, a [

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local law enforcement agencies responded promptly and established a controlled access point at the bridge leading to the Weavers' cabin. Idaho State Police officers and a dispatcher arrived [

.777] On August 21, 1992, Idaho Governor Cecil Andrus declared a state of emergency in Boundary County, proclaiming that:

the nature of the disaster is the occurrence and the imminent threat of injury and loss of life and property arising out of the standoff situation in Boundary County.<sup>778</sup>

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778 See Undated Proclamation signed by Idaho Governor Cecil Andrus, August 21, 1992. ]



This proclamation allowed law enforcement agencies on the scene to use certain emergency services, such as Idaho National Guard resources.<sup>779</sup>

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Glenn arrived at the crisis site at approximately 9:30 p.m. on Friday, August 21, [

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] arrived before the FBI's Hostage Rescue Team (approximately 50 agents) and the Marshals Service Special Operations Group (approximately 58 agents). [

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When Glenn arrived, the primary goal of the law enforcement effort was to rescue the marshals on the mountain and stabilize the situation until additional federal resources arrived. Glenn ordered that a perimeter be established around the command post/staging area to ensure safety, to prevent Weaver and his associates from coming into the area during the night, and to contain a crowd of Weaver sympathizers and supporters.<sup>782</sup>

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[ ] When Richard Rogers, Commander of HRT, and Duke Smith, Associate Director of the U.S. Marshals Service, arrived early Saturday morning, August 22, Glenn [ ] briefed them on the situation.<sup>784</sup>

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[ ] On Sunday morning, a 360 degree inner perimeter around the Weaver cabin site and a forward command post near the cabin were established, and they were maintained for the remainder of the crisis.<sup>785</sup>

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785 Rogers Trial Testimony, June 2, 1993, at 82-90.

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c. Tactical Operations and Discovery of Sammy Weaver's Body

On Sunday morning, August 23, Rogers, [ ] took two teams of HRT personnel to the vicinity of the Weaver compound in armored personnel carriers. Using a bullhorn, Rogers made repeated announcements to the Weaver cabin for about 30 minutes to convince the occupants to negotiate.<sup>789</sup>

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[ ] was not present during this attempt to communicate with those inside the cabin.<sup>790</sup>

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On Sunday evening, August 23, [ ] personnel carriers began to remove outbuildings, such as the birthing shed and the water tanks, near [ ]

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<sup>789</sup> Rogers testified that he was trying to "get them to come out, pick up the phone, establish a dialogue, and let's move on with this and establish some kind of communications." Rogers Trial Testimony, June 2, 1993, at 82.

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<sup>791</sup> Rogers Trial Testimony, June 2, 1993, at 82-83.

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the Weaver cabin to protect tactical personnel, should it become necessary to mount an emergency assault on the Weaver cabin. Removal of the outbuildings would also tighten the inner perimeter around the cabin by removing visual and physical obstructions to HRT and SOG personnel.<sup>796</sup>

During the clearing of the birthing shed, the body of Sammy Weaver was discovered unexpectedly.<sup>797</sup> There is no evidence that law enforcement personnel knew of Sammy Weaver's death before this discovery.<sup>798</sup>

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discovery of Sammy Weaver's body brought about renewed efforts to negotiate with the Weaver group. ] The

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<sup>796</sup> Rogers Trial Testimony, June 2, 1993, at 94.

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<sup>798</sup> Rogers Trial Testimony, June 2, 1993, at 106. ]

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<sup>799</sup> [

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b5 [

from the Weaver cabin.<sup>800</sup>

] However, there was no response

d. Change from Rules of Engagement to the FBI Standard Deadly Force Policy

On Wednesday, August 26 at 10:53 a.m. (PDT), the Rules of Engagement in effect since the arrival of the Hostage Rescue Team were revoked. At Glenn's direction, the FBI's standard policy became the guideline for the use of deadly force by law enforcement personnel deployed on the cabin perimeter.<sup>801</sup>

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Rogers stated that by Wednesday the level of threat had diminished because the subjects had fired no shots since the original firefight and they had not committed any aggressive acts. HRT personnel had established well protected positions, completely surrounding the Weaver cabin. The subjects posed no immediate threat, and consequently the Rules of Engagement were changed to the FBI's standard deadly force policy. Rogers denied that the revocation of the Rules was related to the discovery of Sammy Weaver's body.<sup>806</sup>

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<sup>806</sup> Rogers Trial Testimony, June 3, 1993, at 74-75. [

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e. Evidence of Vicki Weaver's Death

On Friday, August 28, at approximately 5:00 p.m., Bo Gritz, a nongovernmental negotiator started a series of discussions that ultimately led to the resolution of the crisis without additional violence. Gritz was the first person to be told that Weaver's wife was dead and the first aside from those in the cabin to observe Vicki Weaver's body.

Law enforcement personnel state that the initial evidence that Vicki Weaver was dead came in the first few moments of the first conversation Gritz had with Randy Weaver on August 28.

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<sup>809</sup> This conversation also confirmed that Harris had been wounded by HRT rifle shots on August 22. At the conclusion of the conversation, Gritz briefed Rogers and Glenn. [

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**Page 243 of Report  
has been withheld  
in its entirety  
pursuant to  
5 U.S.C. (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)**



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f. Initial Steps Toward Negotiation

On August 22, Glenn and Rogers focused much of their energy on the procurement and outfitting of two armored personnel carriers with a telephone and enough line to reach the command post from the Weaver compound, a distance of approximately one mile.

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.810 ]

The initial negotiations strategy was to approach the Weaver cabin, read a surrender statement over a loudspeaker, and attempt to resolve the crisis through the surrender of the Weaver group. The surrender announcement was to be read after tactical personnel had established a 360-degree perimeter around the Weaver compound. If the Weaver group did not surrender following the announcement, a hostage phone was to be delivered and telephone wire was to be laid down the mountain from the cabin to the command post.

Immediately after Horiuchi's shots, HRT Commander Richard Rogers decided to drive two armored personnel carriers to the cabin area to deliver a telephone and establish communications with those inside the cabin.<sup>817</sup> ]

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<sup>817</sup> Rogers Trial Testimony, June 2, 1993, at 67-69.

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b7C  
b6

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The telephone was placed approximately twenty yards from the cabin. Both carriers left, laying wire for the phone as they returned down the mountain. Continuous attempts to contact the Weaver group by ringing the telephone were made throughout the night. There was no response.

g. Continuing Efforts of the FBI Hostage Negotiators

In mid-morning, Sunday, August 23, following the return of the HRT sniper/observers to their positions, Rogers took the two carriers back to the position near the Weaver cabin where they had been the previous night. The telephone was in the same position they had left it the night before. This required all communication with the cabin to be made by bullhorn or megaphone. Rogers spoke to the group in the cabin for approximately 30 minutes encouraging them "to come out, pick up the phone, establish dialogue, and let's move on with this and establish some kind of communications".<sup>819</sup>

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Two assault teams were deployed from the carriers to establish a 360-degree cordon around the cabin. According to Rogers, the assault personnel could not be seen from the cabin. After this deployment, between 20 and 21 assault personnel were around the cabin continuously until the resolution of the crisis on August 31.<sup>820</sup>

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<sup>819</sup> Rogers Trial Testimony, June 2, 1993, at 82.

<sup>820</sup> Id. at 83, 90-91, 93.

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b7C

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pursuant to  
5 U.S.C. (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)**

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The first contact with Randy Weaver occurred on Wednesday, August 26. In mid-morning, [ ] told Weaver that the personnel carrier would approach the cabin to transfer the telephone to the robot and that the robot would approach the cabin with the telephone to improve communications. [

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h. Efforts of Nongovernmental Negotiators

Around 3:00 p.m. on August 26, Weaver said that he wanted to speak with his sister [

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On Friday, August 28, [ ] unsuccessfully tried to establish contact with her brother. Later that day, Randy Weaver stated that he would talk to Bo Gritz.<sup>831</sup> Glenn approached Gritz, and he offered to assist in negotiating with Weaver. [ ]

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On Friday afternoon, Gritz was briefed by Rogers and FBI negotiators. [ ]

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Law enforcement components at Ruby Ridge [ ] first learned that Weaver, Kevin Harris, and Vicki Weaver had [ ]

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<sup>831</sup> Mr. Gritz was an independent candidate for President of the United States at the time. [ ]

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been shot and that Vicki Weaver was dead from Gritz' conversation with Weaver on August 28.<sup>836</sup>

On Saturday morning, August 29, Gritz received permission to return to the Weaver residence with [ ] a friend of the Weaver family, [ ]

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On Sunday morning, [ ] who was assisting Gritz in his campaign for President, began assisting Gritz in the negotiations. [ ]

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[ ] In mid-morning, Harris decided to surrender.<sup>840</sup>

Gritz resumed conversations with Weaver, who agreed to the removal of Vicki Weaver's body from the cabin. [ ]

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b5/b7C [ Weaver's body to the forward command post. <sup>841</sup> ] Gritz carried Vicki  
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trial, Rogers testified that he vetoed an arrangement with <sup>846</sup> ] At

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846 [ ]