252 66 67C Gritz and to overpower Weaver, if he did not surrender. 847 C

bollet.

August 31.<sup>848</sup>

The Weaver family surrendered on

## i. Decision to Send Howen to Ruby Ridge

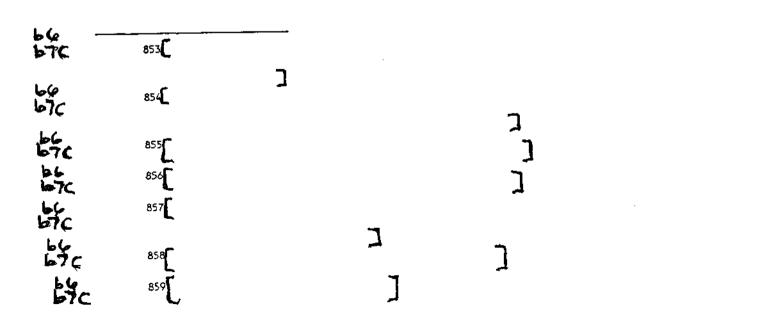
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In the afternoon of August 21. informed U.S. Attorney Ellsworth about the shooting at Ruby Ridge.<sup>849</sup> Shortly thereafter, Ellsworth informed Howen, the Assistant U.S. Attorney to whom the Weaver matter had been assigned, about the incident.

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AFC Ruby Ridge. Howen suggested to Ellsworth that he travel to b Ruby Ridge. Ellsworth agreed.<sup>853</sup>

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Discussion 3.

### FBI Decision to Remove Law Enforcement Personnel а. 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.<sup>890</sup>

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

He testified at trial:

Rogers 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

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.] 889 Testimony, June 2, 1993, at 78 ("at 8:00 or so, I ordered them to 890 come off the mountain").

<sup>891</sup> Id. at 78.

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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.<sup>892</sup>

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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.

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

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# c. FBI Attempts to Resolve the Crisis

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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.

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

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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

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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.

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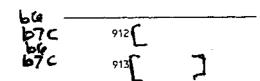
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Page 264 of Report has been withheld in its entirety pursuant to 5 U.S.C. 552(b)(5), 5 U.S.C. 552(b)(6) and 5 U.S.C. 552 (b)(7)(C) Page 265 of Report has been withheld in its entirety pursuant to 5 U.S.C. 552(b)(3), Rule 6(e) 5 U.S.C. 552(b)(5), 5 U.S.C. 552(b)(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.L

## 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.

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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.

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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.

that these conversations were improper.

Ithere was no evidence



, 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.



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.

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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.

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4. Conclusion

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.  $\mathbf{L}$ 

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

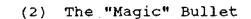
a. Background

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.

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During the search of the Y crime scene on August 31, the 66 67( 65 Ľ 536 J Considerable interest has been generated about an intact 65C discovered at the center of the Y during this This bullet was designated "L-1" and was referred to by bullet search. defense counsel as the "magic bullet." 54 67C 932 670 670 670 933 934 67C 935

275 [ ]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 instructe end the search and return to the command post for a briefing. was instructed to picked up the L-1 pullet, marked Before leaving the Y area, it, and placed it in a plastic envelope that he put in his pocket. After assisting in the search of the Weaver cabin,  $\begin{bmatrix} & & \\ & & \\ & & \end{bmatrix}$  to return with  $\begin{bmatrix} & & \\ & & \\ \end{bmatrix}$  to where the bullet Twas told to photograph the spot. 939 asked had been tound. [ 937 Ьб 938 See discussion in Section IV(0). 939 65/67C 94.0

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# d. Searches of the Cabin and Surrounding Area

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

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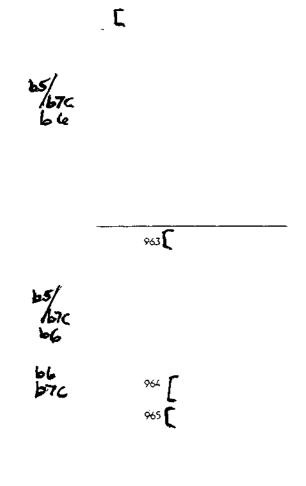
Pages 278-279 of Report have been withheld in their entirety pursuant to 5 U.S.C. 552(b)(5), 5 U.S.C. 552(b)(6) and 5 U.S.C. 552 (b)(7)(C)

## 3. Discussion

## a. <u>Techniques Employed to Locate Evidence</u>

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

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

The events surrounding the discovery and retrieval of the "magic bullet" generated allegations of staged or manipulated evidence.<sup>969</sup> 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.

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

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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. ב

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Many of the problems that attended the crime-scene searches could have been avoided had an experienced evidence-recovery team been summoned.  $\ensuremath{\mathsf{L}}$ 

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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.

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The Laboratory generated twelve reports in the Weaver

matter.

## b. <u>Timeliness and Neglected Tests</u>

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.<sup>975</sup>

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."<sup>976</sup> 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."<sup>977</sup>

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

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<sup>976</sup> Order, October 26, 1993, at 2.

<sup>977</sup> <u>Id</u>. at 10, 13.

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

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.<sup>981</sup> The third was a request on

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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.

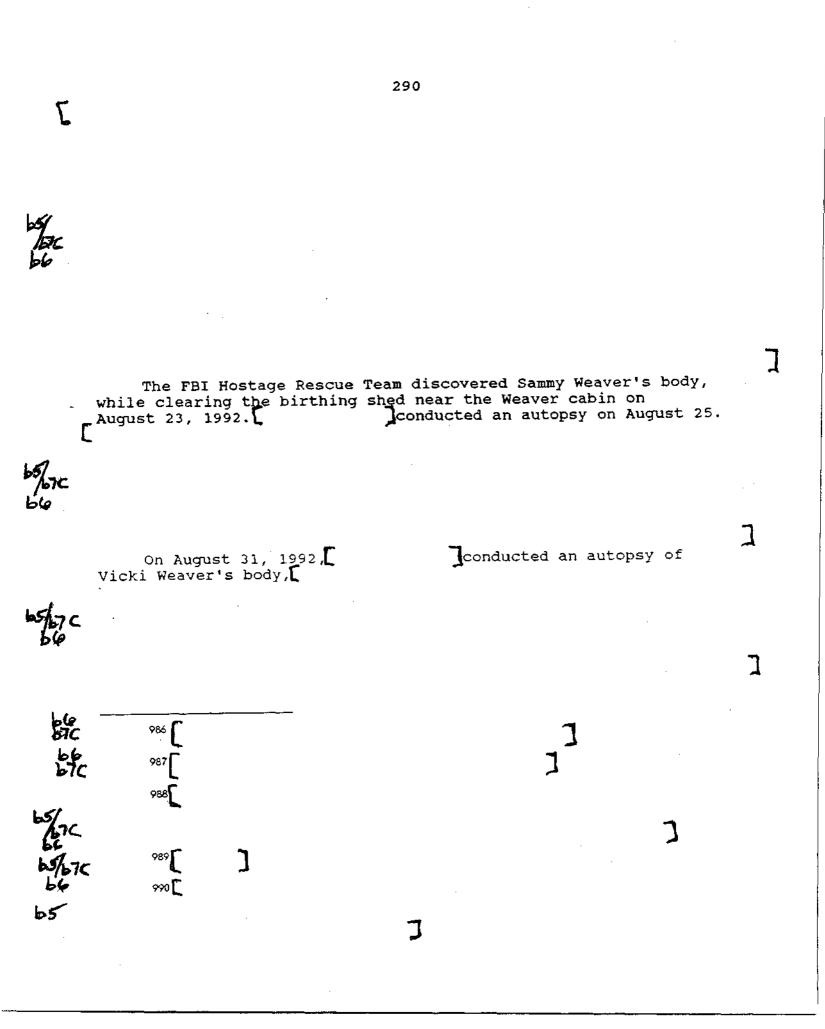
(1) Degan's Backpack

## (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

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On January 4, 1993, blood samples taken from Degan, Sammy Weaver and Vicki Weaver were obtained from and sent to the Laboratory.<sup>994</sup> 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. ]

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When the FBI Laboratory received a request for additional b7C blood and hair comparisons on January 5, 1993, realized

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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. <u>Refusal to Perform Tests and Hiring of</u> <u>Independent Experts</u>

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:

These people were retained because the FBI Laboratory was unwilling or unable to provide assistance in their areas of expertise.<sup>996</sup>

(1) Refusal to Conduct Test

#### (2) Shooting Reconstruction

**b**(e) **b7C** 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."

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bic Ja shooting reconstructionist, on the basis of the physical evidence, can determine, among other things, the "directionality" of a bullet's trajectory.<sup>998</sup> [Laboratory and was told that the Laboratory does not do shooting reconstructions.] to find one ot

the pest shooting reconstructionists in the country

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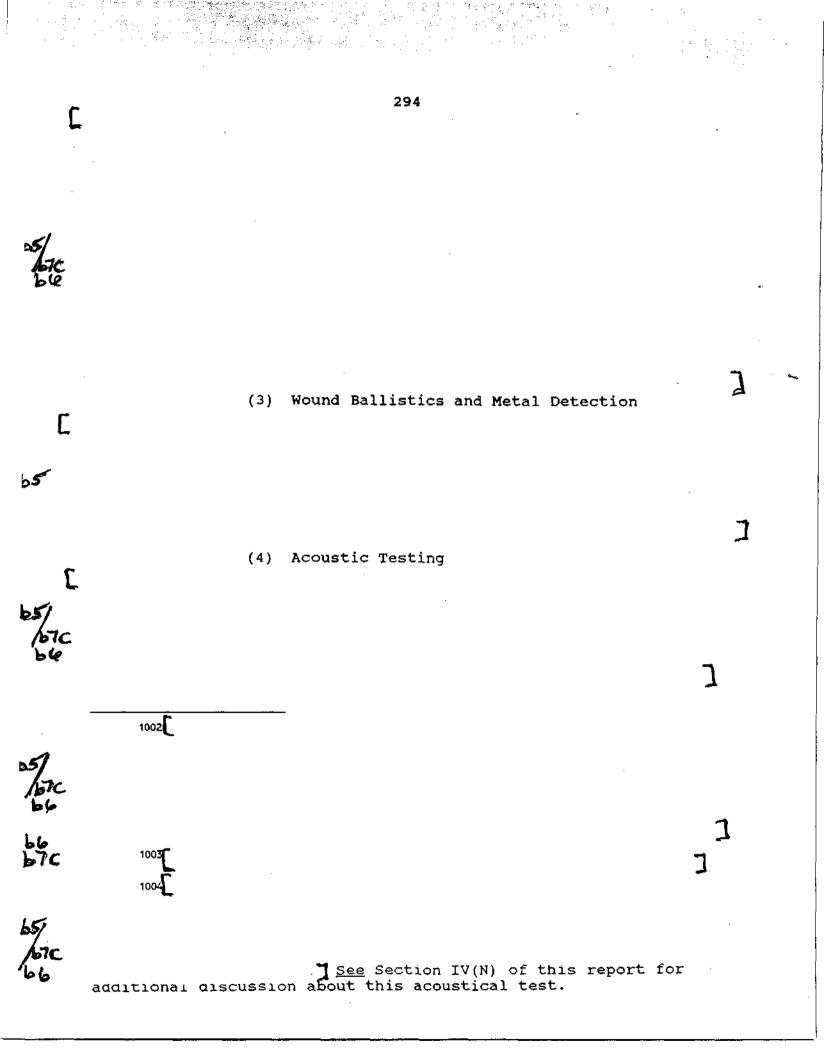
shooting reconstruction

Was told that the Laboratory did do

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## d. Failure to Comply with Discovery

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.

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

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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.<sup>1008</sup> 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.

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ב When Laboratory tests require additional evidence or specific instructions, communication with the most knowledgeable people, the case agents or the prosecutors, should be continuous. Ľ 65 ] <sup>1009</sup>(...continued) Ľ 5/ 167C 1 66e 67c 1010 ·] 1011L 65 ד 67C 1012 ]

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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. J

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.