c. Late Production of the Calley Notes

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afternoon of August 22, FBI Special Agents [ ]on the]and George Calley interviewed Cooper at the courthouse at Bonners Ferry, Idaho. According to Calley,[ ]Calley was responsible for taking notes.[

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As one of the three marshals involved in the August 21 shootings at Ruby Ridge, the testimony of Cooper was critical to both the prosecution and the defense. The FD-302 of Cooper and the handwritten notes of that interview became very controversial documents in the Weaver case[

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consistently maintained that, after Harris had fired the shots that hit Degan, he fired a three-round burst at Harris who fell to the ground "like a sack of potatoes." Cooper then directed his weapon on Sammy but did not shoot him because he could not see if Sammy was carrying a gun and because Sammy had not fired at Degan. Later, Cooper fired a second three-round burst at no particular target but in the direction from which he had last received fire. After he took these shots, Cooper saw Sammy running out of view and up the trail leading to the cabin.[1668]

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Calley prepared two final FD-302s of the Cooper interview:

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,]Calley began taking notes of the Cooper interview on a yellow note pad. When Calley ran out of paper, [ ]gave him a white note pad on which to continue his notes.

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Trial Testimony of Larry Cooper, April 15, 1993, at 122-139.

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Thereafter, Calley drafted the 302 of Cooper on a white note pad.

b5 b6 b7C Calley placed all of the Cooper interview notes that were written on yellow paper in the [ ] envelope belonging to the Cooper 302 file. However, he placed that portion of the interview notes that were written on white paper together with the handwritten draft of the Cooper 302 in another file folder.[

b5 b7C b6 [ ] Before the trial began, the USAO produced the two final Cooper FD-302 interview statements[1677] and the 12-page set of rough notes of the August 22 interview of Cooper.[1678]

In late May 1993, 5 weeks after the trial had started, Calley discovered the missing portions of his interview notes and the draft 302 of Cooper in his desk.[1679] Calley immediately b6 b7C informed [ ] who contacted Howen.[

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[1677] See Government Response to Discovery Stipulation, filed October 23, 1992.

[1678] See Government Sixth Addendum to Response to Discovery Stipulation, filed February 26, 1993.

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On May 21, Howen produced the newly found Calley notes to the defense.[1684] [This production occurred several days after the Fadeley compensation controversy had erupted and the same day in which Howen's interview with Captain David Neal was disclosed.[1685]] Defense counsel Spence argued that some of these notes were written by Cooper not Calley because the handwriting was different and because it was not written in the third person.[1686] The court then stated:

> The Court is going to say that the Court is very disturbed by what has happened here or what appears to have happened here, because in this instance the Court does not think counsel should make representations to the Court that they do not know. If these are in fact partly the notes of Mr. Cooper, that is the way they should be referred to. If they are the notes of someone else, they are the notes of someone else. They should have been disclosed as soon as they were found, and when they are found in the desk drawer, that seems to me like maybe it is one of the most logical places to be looking, whether they be Mr. Cooper's notes or somebody that has interviewed Mr. Cooper. The blame probably trickles down beyond the U.S. Attorney's office.[1687]

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[1684] See Government Fourteenth Addendum to Response to Discovery Stipulation, filed May 21, 1993; Trial Transcript, May 21, 1993, at 10-11.

[1685] See discussion in subsection (d), infra.

[1686] Trial Transcript, May 21, 1993, at 10-11, 26.

[1687] Id. at 27-28.

The court then expressed extreme concern over the untimely disclosure of Howen's interview with Captain Neal and ruled that he was continuing the trial until Monday, May 24 to permit the defense time to interview Captain Neal.[1688]

When the trial resumed on May 24, defense counsel Spence argued that Cooper should be returned to the stand in light of the recent production of the Calley notes which Spence argued were partially authored by Cooper. Howen objected to this request and represented that all of the notes were written by Calley not Cooper thus nothing could be accomplished by recalling Cooper. The court took the matter under advisement.[1689]

d. Neal Notes

A pivotal issue in the Weaver trial was who fired the first shot at Ruby Ridge on August 21, 1992. The government argued that it was Kevin Harris while the defense maintained that it was Deputy Marshal Roderick when he shot the Weaver dog Striker. Because of the importance of this issue to the defense case, any information that the government had regarding this issue, including pertinent statements made by Roderick, was obviously important to the defense and required to be produced under the Brady and Jencks doctrines.

On April 23, 1993, the court recessed the trial until May 3rd.[

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.[1690] The next day, Howen interviewed Captain David Neal, commander of the CRT.[

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[1688] Id. at 28-29.

[1689] Trial Transcript, May 24, 1993, at 2-7.

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Late in the afternoon of May 20, almost four weeks after the Neal interview, Howen informed defense counsel of the substance of the interview and provided them with a copy of his interview notes. At that time, Roderick had begun to testify. On the next day, defense counsel Nevin argued to the court that this disclosure was "pivotal" to the defense case[1697] and was in distinct conflict with the government's argument that Kevin Harris fired the first shot.[1698] Thereafter, defense counsel requested the court to recess the proceedings and to permit them the opportunity to interview Neal to determine the full extent of his testimony.[1699] Howen responded that he had disclosed the names of the CRT members long before the trial started and that he had not had an opportunity to interview them until the recess in April.[1700] Howen then stated:

> As counsel states when I talked to . . . Captain Neal, he made certain statements to me about Mr. Roderick coming forward. He was not able to put them in a sequence, his best recollection was because they were standing right next to the dog Mr. Roderick made a comment that he had shot the dog, and then there was an inquiry about how Mr. Degan had died, and Mr. Degan had died over here.[1701]

Howen then explained to the court that he was making the disclosure now because he had realized that he might not be calling Neal as a witness and "felt compelled to reveal this matter to defense counsel so they could examine him which is what

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[1695] (...continued)

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[1697] Trial Transcript, May 21, 1993, at 2, 33; [ ] b6/b7C

[1698] Trial Transcript, May 21, 1993, at 3-4.

[1699] Id. at 5-9.

[1700] Id. at 12-13.

[1701] Id. at 13-14.

I did yesterday."[1702] Lindquist represented to the court that Neal had not indicated to Howen any chronology as to when he shot the dog and that the first time that Howen had heard this information was during the interview. Although Lindquist conceded that the information disclosed in the Neal interview constituted Brady material he disputed that it was "pivotal."[1703]

After expressing its concern over learning about the newly discovered notes of Special Agent Calley, the court stated,

> The thing that is even more disturbing to the Court is whether or not this chronology of events with Mr. Neal was known about three weeks ago, because obviously we are talking about Brady material rather than Jenks [sic] material. It is exculpatory if it is even questionable about what was said by Mr. Roderick shortly after the event. It is critical to a fair hearing to have this ferreted out and known about before there is any further direct or cross-examination by Mr. Roderick. We have asked these jurors to come in here and we are taking two months out of their lives. Sometimes we pass off as cavalier the time of judges, the judges being the jurors, and it is totally inexcusable when we have to do what the Court is going to have to do today, and that is delay this trial over until Monday.
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> The Court has felt during this trial that there has been a lot of pressure on counsel. That there have been all kinds of things coming onto the Court's desk from both sides almost every day, from activities that you do through the night, and it is apparent that some things can be overlooked, some things may be not seen as important as they are, but this to the Court is a very embarrassing situation. The Court wants both sides to take stock of what has happened here and make doubly sure that this does not happen the rest of this trial.[1704]

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[1702] Id. at 14.

[1703] Id. at 16-18.

[1704] Id. at 27-29.

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e. The L-1 Bullet and L Bullet Photographs

On August 31, 1992, FBI Special Agent Larry Wages participated in the collection of evidence at the "Y" at Ruby Ridge. As evidence was located, it was marked with a flag, given a letter designation, marked on the evidence diagram and then was photographed.[1712] During the search, Wages located a bullet in the middle of the road and two other agents found additional brass and bullets. The bullet found by Wages later became known as the "L-1" bullet to the FBI and the "pristine" or the "Magic" bullet to the defense.

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] On May 25, Howen told the court that the agents had notified him that they had discovered a packet of search photographs, including pictures of the L series bullets, that had been stored at another location. Howen stated that they would produce these photographs to the defense later that day.[1728]

After the luncheon recess on May 25, defense counsel Spence complained about the late production of the photographs and argued that they should have been produced earlier in discovery.[1729] Howen argued that discovery was a continuing obligation and that he was producing materials as soon as he learned of them. He then stated, "I came to find out a couple of days ago, maybe a week or so ago, the photograph identified with the L-1 bullet was not as it was found. As a result of that, I was not going to use that particular photograph."[1730] In response to defense questions, Howen briefly explained that the bullets had been removed and then replaced later before the

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[1728] Trial Transcript, May 25, 1993, at 3.

[1729] Id. at 65-67.

[1730] Id. at 69-70.

photographs were taken. From their subsequent remarks, this was obviously the first time that defense counsel Nevin and Spence had learned about the circumstances surrounding the photographing of the L bullets.[1731]

Howen told the court that due to how the L series photographs had been taken, he did not believe that it would be appropriate to offer them into evidence. In addition, he seemed to indicate that some of the photographs produced that morning had been taken by either Michael Taister or Cyrus Grover before the bullets were removed but that Larry Wages, the testifying agent, had not been present during the taking of these photographs and thus was unaware of them.[1732] Howen then explained that Wages had removed the bullet when a photographer was unavailable and later had returned with a photographer to take the picture.[1733]

Following an afternoon recess, Spence complained that Howen had just informed him that the entire "L" series of photographs -- not just the L-1 -- had been photographed after the bullet or bullet fragment had been removed and then replaced. Spence then recounted the recent untimely disclosures that the prosecution had made including the Neal interview and the Cooper interview notes. With regard to the L series photographs, Spence maintained that they constituted Brady material that should have been disclosed "long ago" and requested the court to impose sanctions against the government and to inform the jury of what had occurred.[1734] Defense counsel Nevin echoed the concerns articulated by Spence.[1735]

Howen accepted responsibility for the late production of the photographs and told the court that it was not until the lunch recess that he was advised that the entire L series not just the L-1 photograph had been taken after having been removed and then

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[1731] Id. at 72-73.

[1732] Trial Transcript, May 25, 1993, at 73-78. Two days later, Howen stipulated that two of the photographs were taken by Cyrus Grover and depicted the L-1 bullet before it was picked up. Trial Testimony, May 27, 1993, at 126-27.

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[1733] Trial Transcript, May 25, 1993, at 77.

[1734] Id. at 125-30.

[1735] Id. at 130-32.

replaced. Howen argued that he had produced the materials as soon as he became aware of them and that he did not believe that the defense request for sanctions was appropriate.[1736] The court accepted Howen's representations that the information and the photographs had been disclosed as soon as they had been discovered and refused to impose sanctions or to inform the jury as requested by the defense.[1737]

Two days later, Larry Wages testified and described the August 31 search at the Y and explained that the items seized were given the designation of "L". He then testified that in the early afternoon he was informed that Mike Dillon wanted him to go to another area. Because the bullets had not been photographed with a letter and number designation, Wages decided to take the evidence with him. Thereafter, he picked up the L-1, L-2 and L-3 bullets, marked the location where the bullet had been with a wire flag or a piece of wire, placed the bullets in a plastic bag, labeled them and then took them with him. At about 6:00, he returned to the Y, replaced the bullets and had Kelly Kramer, the photographer, take a picture of the bullets with the letter and number designation.[1738]

Towards the end of the direct examination, Howen asked Wages a series of questions about how Howen learned the circumstances surrounding how the L series photographs were taken. Wages testified that he had first discussed this subject with Howen about one week before the trial started, that Howen had taken notes of this discussion and that Wages had reminded Howen of this conversation during the weekend preceding Wages' scheduled testimony.[1739] Based on comments that defense counsel made later that day, it appears that Howen had not notified defense counsel about his prior knowledge until the previous night when he had agreed to inform the court of this knowledge.[1740]

On cross-examination, Wages admitted that he had not marked the direction in which the bullet was pointing and, thus, he may not have replaced it in exactly the same position. In addition,

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[1736] Id. at 132-35.

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[1737] Trial Transcript, May 25, 1993, at 135-37.

[1738] Trial Testimony of Larry Wages, May 25, 1993, at 14-21.

[1739] Id. at 37-39.

[1740] Trial Transcript, May 27, 1993, at 102-03.

Wages testified that Rampton had called him sometime in early January 1993 and inquired why the search times on the 302 that he prepared on the search and the search times on pertinent documents did not agree concerning the time that the search ended. At that time, Wages explained to Rampton the circumstances surrounding the taking of the photographs.[1741]

f. The Late Production of the Shooting Incident Report and Supporting Materials and the October 26, 1993 Court Order

The circumstances surrounding the late production of the subpoenaed version of the shooting incident report and supporting materials were discussed earlier in Section IV(M) of this report. One of the newly produced documents included a diagram of the Weaver cabin prepared by HRT sniper Horiuchi which detailed the second shot that Horiuchi took on August 22, 1992. As a result of this late disclosure the court ordered Horiuchi to return for additional cross examination and imposed sanctions on the Government by requiring it to pay the court costs and attorneys fees caused by the delay.[

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Almost four months after the jury returned its verdict, Judge Lodge issued an order imposing a $1920 fine against the FBI. This fine represented the attorneys fees paid to defense counsel when Horiuchi returned for cross examination. In this order, Judge Lodge criticized the FBI efforts to produce discoverable materials including Jencks and Brady documents and stated that one of the primary reasons that a continuance of the February 2, 1993 trial date was necessary was because of the failure of the government to produce certain critical items of evidence such as the ballistics evidence and the weapons seized. He then stated:

> In hindsight, it is clear that even prior to this meeting, the Assistant United States Attorneys Howen and Lindquist were receiving less than full cooperation from the FBI and that items of evidence were not being produced timely. It later became clear that a pattern of delay and lack of cooperation was manifesting itself despite the efforts of the local Assistant United States Attorneys. Once the items and information were received in the local office of the United States Attorney, Howen and Lindquist continually assured the court that

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[1741] Wages Trial Testimony, May 25, 1993, at 130-31.

> they were producing the materials for the defense as quickly as arrangements could be made.[1742]

Judge Lodge recounted the incidents when the Government had been late in producing discoverable material during the Weaver trial. First, he noted that seven of the addenda to the government's discovery response, which were filed on the eve of trial and during the trial, contained FBI materials.[1743] Next, the court traced the history of the defense effort to obtain a copy of the Horiuchi personnel file. The court then noted that on May 18, 1993, five weeks into the trial, the FBI produced lab reports of the test firings of the weapons. Next, the court discussed the late disclosure of the Calley notes, the Neal interview, the package of photographs taken by the FBI and the circumstances surrounding the taking of the L series photographs. The final offending incident was the late production of the shooting incident materials in response to the defense subpoena.[1744]

After discussing the importance of discovery to the rights of the defendant and the obligation of the government to produce such materials, including Brady materials, as quickly as possible, the court stated:

> Here, the FBI failed to produce materials in a timely fashion. They failed to provide Jencks and Brady materials. They failed to obey orders and admonitions of this court. Their failures necessitated the initial continuance of the trial of this matter. Once the matter had begun, their continued failures necessitated continuous discussion between court and counsel and continuous prodding of the FBI by the court. The culmination of this was the late receipt of the Horiuchi materials. . . .

[1742] Order in United States v. Weaver, No. CR 92-080-N-EJL, filed October 26, 1993, at 2.

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[1744] Order, October 26, 1993, at 3-8.

> The failure to provide the Horiuchi materials was the latest transgression in a series of transgressions. This failure occurred on day 33 of a trial at which the government presented evidence a total of 37 days. At the time of the Horiuchi material incident it was unclear how much longer the government would be presenting its case. The court was concerned with the length of trial for a host of reasons, not the least of which was the fact the court was the only active judge in the district, responsible for matters in Coeur d'Alene, Moscow, and Pocatello, Idaho, and all administrative matters in the district. In this light, the FBI's recalcitrance was especially frustrating. The court had an obligation to the defendants to ensure they had all the materials to which they were entitled and an obligation to the federal litigants in the District of Idaho to keep the calendar moving. The actions of the FBI impeded the court in both of these areas. With no idea as to how much information was yet to be divulged by the FBI, and no idea how much longer the government's case in chief would take, the failure to produce the Horiuchi materials forced the court's action. Previous orders and admonitions had proved to be of no value. Accordingly, the court had no option but to impose a sanction both as punishment for ignoring previous orders and to secure compliance and cooperation during the remainder of the trial.[1745]

Thereafter, the court concluded that the FBI had failed to comply with its discovery obligations under Rule 16 and found the FBI to be in contempt of court in violation of 18 U.S.C. § 401. In support of its ruling, the court held:

> The FBI was a principal participant in the Weaver/Harris criminal proceeding. Its behavior served to obstruct the administration of justice in that proceeding. Its behavior brought about delays and countless arguments outside the presence of the jury. These delays and arguments, which obstructed the progress of the trial, would not have been necessary had the FBI acted as it had been directed to act. The failure to act occurred in the courtroom where the government, through its agent, was directed

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[1745] Id. at 9-10.

> to act. All performance by these government agents revolved around this court and this trial. All work performed by the [sic] these agents directly impacted these defendants. The actions of the government, acting through the FBI, evidence a callous disregard for the rights of the defendants and the interests of justice and demonstrate a complete lack of respect for the order and directions of this court.[1746]

3. Discussion

a. Response of the Government to the Defense Subpoena for FBI and Marshals Service Manuals and Personnel Files

Issues were raised during our investigation as to whether the government responded appropriately to the defense subpoenas seeking the production of the FBI and Marshals Service manuals and certain personnel files. With regard to the response of the government to the production of the manuals, we find their efforts to be acceptable.[

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]Pursuant to Fed. R. Crim. P. 16(a)(1)(C), the government is obligated to produce upon request discoverable materials that "are within the possession, custody or control of the government." This obligation is not limited to the materials within the possession of the prosecutor but rather extends to all materials over which the prosecutor has knowledge and access. See United States v. Bryan, 868 F.2d 1032,

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[1746] Id. at 13.

1036 (9th Cir.), cert. denied, 493 U.S. 858 (1989). A prosecutor is "deemed to have knowledge of and access to anything in the possession, custody or control of any federal agency participating in the same investigation of the defendant." Id. To conclude otherwise would "unfairly allow the prosecution access to documents without making them available to the defense." United States v. Robertson, 634 F. Supp. 1020, 1025 (E.D. Cal. 1986), aff'd, 815 F.2d 714 (9th Cir.), cert. denied, 484 U.S. 912 (1987).

b6 b7C [ ] the prosecutor in the case, was responsible for coordinating the government's response to its discovery obligations.[

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Turning to the response of the government to the defense subpoena for the personnel files, we note at the outset that the court expressed concern over the manner in which the FBI responded to the subpoena for the Horiuchi personnel file but made no mention of the response of the Marshals Service to a similar subpoena for the personnel files of the marshals at Ruby Ridge on August 21, 1992. As framed, the subpoenas requested the complete personnel files of the named individuals. We find that the protective order sought by the government was solidly based in the law. Indeed, the court ultimately concluded that a Henthorn review rather than production of the entire personnel file was an adequate response to the request.[

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b. Failure to Disclose Financial Compensation Arrangement with Informant Fadeley

There can be no doubt that the defense was entitled to have been informed that Fadeley might receive an award for his work on the Weaver case. Although we find the government responsible for this failure to provide critical information to the defense, we do not believe that the omission was improperly motivated.

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c. Late Production of the Calley Notes

Five weeks into the trial and after the testimony of Deputy Marshal Cooper, Special Agent Calley found notes in his desk that he had taken during his interview of Cooper as well as part of his draft FD-302 of the interview.[

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]Responsibility for this incident must rest with the FBI.

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the materials that were being produced to the USAO in discovery. All documents associated with the interviews of the marshals present at Ruby Ridge on August 21, 1992 were critical to both the prosecution and the defense. Indeed, such documents were among those that both sides were most anxious to review. Thus, we would have expected the FBI to have been more thorough in its examination of these materials before it produced them.[

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d. Late Disclosure of the Neal Interview

Under the rule articulated by the Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963), the prosecution has an affirmative duty to disclose to the defense evidence that is both favorable to the accused and material to either guilt or punishment. Failure to make disclosure of such evidence violates the due process rights of the defendant "irrespective of the good faith or bad faith of the prosection." Id. at 87. The prosecution has the constitutional obligation to disclose such information even in the absence of a specific request from the defense. See United States v. Agurs, 427 U.S. 97 (1976).

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The prosecutor is only required to disclose materially favorable evidence. Evidence favorable to the accused is evidence which, if disclosed and used effectively, may make the difference between conviction and acquittal. United States v. Bagley, 473 U.S. 667, 676 (1985), citing, Brady v. Maryland, 373 U.S. 83, 87 (1963) and Napue v. Illinois, 360 U.S. 264, 269 (1959). Evidence is material only if there is a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." United States v. Bagley, 473 U.S. at 682. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. Id. See also Pennsylvania v. Ritchie, 480 U.S. 39 (1987). For example, evidence which supports an affirmative defense or corroborates the defendant's testimony is materially favorable evidence which must be disclosed. United States v. Hibler, 463 F.2d 455, 459-60 (9th Cir. 1972).

The prosecutor is not obligated to disclose all information in his case file which might be helpful to the defense, United States v. Agurs, 427 U.S. at 109-11, nor is he required to disclose "every bit of information that might affect the jury's decision." United States v. Little, 753 F.2d 1420, 1441 (9th Cir. 1984). The prosecutor has no duty to disclose evidence which is neutral or inculpatory. United States v. Bryan, 868 F.2d 1032, 1037 (9th Cir. 1989). However, if a prosecutor fails to disclose evidence that results in depriving a defendant of his right to a fair trial, that prosecutor has breached his "constitutional duty to disclose." United States v. Agurs, 427 U.S. at 108. It is for this reason that a "prudent prosecutor will resolve doubtful questions in favor of disclosure." Id. See also United States v. Miller, 529 F.2d 1125, 1128 (9th Cir.), cert. denied, 426 U.S. 924 (1976).

Applying these standards to the information that Howen learned at the Neal interview, we must conclude that the information was subject to disclosure as Brady material as well as being a statement of Roderick that should have been produced as Jencks material. One of the critical issues in the case was who fired the first shot at Ruby Ridge. To the extent that Howen had any knowledge or information about this issue he was constitutionally obligated to produce it to the defense. We deem the substance of his April 24 interview with Captain Neal to constitute such information.

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] Although the Supreme Court has yet to rule on the timing of when exculpatory evidence must be produced, most courts require that Brady material must be disclosed in time for effective use at trial. As the Ninth Circuit held in United States v. Gordon, 844 F.2d 1397, 1403 (1988), "Brady does not necessarily require that the prosecution turn over exculpatory material before trial . . . . [but] disclosure must be made at a time when disclosure would be of value to the accused." When exculpatory information is disclosed at trial, a Brady violation only occurs if the defendant was prejudiced by the delay in disclosure. See United States v. Aichele, 941 F.2d 761, 764 (9th Cir. 1991).

It was not until the midst of Roderick's testimony -- the witness to whom this information was pertinent -- that Howen made disclosure to the defense.[

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However, from a strictly analytical perspective, the defendants were probably not prejudiced from the action and, thus, a Brady violation did not occur. When this problem surfaced, the court called a recess to give defense counsel an opportunity to interview Neal. Thereafter, they were able to

explore the issue with Neal and to use this information when conducting their cross-examination of Roderick. Furthermore, based on the jury verdict returned on the assault on a federal officer charges it is difficult to conclude that the defendants suffered prejudice from the late disclosure of this information.

Even if the defendants did not suffer any actual prejudice by the delay in revealing the Neal interview, [ ] Although there are no internal Department of Justice guidelines governing the appropriate time for disclosure of Brady materials, we believe that the prompt disclosure of exculpatory information is the better practice. The American Bar Association has adopted such a rule. Standard 3-3.11(a) of the ABA Standards for Criminal Justice: The Prosecution Function (3d ed. 1992) provides that,

> A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

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[ ] We found no evidence in our investigation that Howen's decision was improperly motivated. [

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e. The L Bullet Photographs

Several days after the controversial disclosures of the Calley notes and the Neal interview, Howen was tasked with informing the court of yet another serious omission by the government. As with the Neal interview, the responsibility for failing to inform the court and defense counsel earlier about the circumstances surrounding the taking of the L series photographs[1756] must be assigned to Howen

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We do not believe that Howen intentionally withheld this information from the court and defense counsel

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[1756] An evaluation of the conduct of the FBI in removing, replacing and photographing the evidence as described by Wages is discussed in Section IV(I) of the report.

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]There was no evidence found indicating that anyone from the government intentionally concealed these pictures.[

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1762] We think that the USAO must accept responsibility for this oversight.

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4. Conclusion

The late disclosures by the government of important information during the Weaver trial were unnecessary, were embarrassing and damaged the integrity of the government.[1765] As was previously discussed in section IV(M) of our report, the late production of materials related to the shooting incident report were particularly devastating to the prosecution. The FBI is responsible for that incident. We hope that corrective procedures are instituted to prevent a similar occurrence in the future. The FBI is also responsible for the late production of the Calley notes. Although we do not view that incident as having been intentional, we think that if more care and attention had been directed to the original search and production of the materials, it would have been avoided.

The FBI was not singularly responsible for the late disclosure of information -- the USAO also neglected to reveal information in a timely fashion. Although the predominant blame for the late disclosure of the information pertinent to the Fadeley compensation arrangement rests with BATF[ ] we find that[ ]should have been more aggressive in discovering this crucial information. The failure to reveal the Neal interview and the circumstances surrounding the taking of the L series photographs were also extremely damaging to the credibility of the government. Both incidents were avoidable; both incidents were the fault of[ ]Although we do not find evidence of improper motivation, we remain concerned by the lack

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of timeliness of disclosures, and faulty judgment in assessing the importance of these issues.

V. RECOMMENDATIONS

Law enforcement officials confronted fundamental and recurring problems of crisis management at Ruby Ridge.

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We offer recommendations emanating from the Ruby Ridge situation.

1. The Policy for the Use of Deadly Force and the Authorization Structure for Rules of Engagement Must be Standardized for All Federal Law Enforcement Agencies.

We believe that all federal law enforcement officers should be governed by a standard deadly force policy. Thus, we recommend that the Department of Justice establish a universal policy on the use of deadly force to govern the law enforcement components within the Department and to serve as a model for other agencies.

We have concluded that the special Rules of Engagement in force at Ruby Ridge violated the Constitution of the United States. We also found that the poorly drafted and ambiguous rules created confusion among those who were obliged to make instantaneous, life and death decisions while attempting to obey the requirements of the rules.

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when special rules of engagement are necessary, established review and authorization procedures must be in place.

Recently, the Department of Justice established the Office of Investigative Agency Policy, headed initially by the Director of the FBI. We suggest that Office may be best equipped to develop a standardized policy on the use of deadly force and to formulate procedures for formulating and authorizing special rules as needed.

2. Crisis Response Teams Need to be Created

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it is imperative that specially trained crisis managers, familiar with relevant tactical, behavioral, and scientific disciplines, be available to

respond to crises.

65 We recommend that specially trained crisis managers should be deployed for that purpose.

We enthusiastically endorse

that the FBI Crisis Response Team include specially trained prosecutors to provide legal support to tactical teams.

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we propose periodic joint training exercises by enhanced Crisis Response Teams, HRT, FBI SWAT teams and other federal and local law enforcement agencies.

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3. A Multi-Agency Review with DOJ Representation Should be Established to Review Shooting Incident Reports

We found that the FBI review of the shooting incident at Ruby Ridge was not sufficiently thorough or accurate. We recommend that all internal reviews of shooting incidents by federal agencies be scrutinized by a board of representatives of law enforcement agencies prior to the close of the internal review process. The board should include at least one DOJ attorney with special expertise in this area.

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4. Coordination Must Be Improved Between the FBI and Prosecutors in Regard to Discovery

Significant problems in the Ruby Ridge prosecution arose in the discovery process. The FBI delayed giving prosecutors the documents they needed for trial preparation and to provide to the defense in discovery.

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We recommend that

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the FBI should denominate a unit within the Bureau to coordinate and monitor discovery in a timely and thorough manner. Finally, the Department of Justice should establish guidelines governing the production of FBI material.

5. Coordination Among the FBI Crime Scene Investigation Team, the FBI Laboratory, and the Prosecutors Must Be Improved

Our report is critical of the crime scene investigation at Ruby Ridge.

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To increase the chances of a successful prosecution, FBI Headquarters should mandate that its evidence response team be used in situations like Ruby Ridge to conduct systematic and thorough crime scene investigations.

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We also recommend that the FBI assign an agent familiar with the theory of the case, the evidence, anticipated defenses, and FBI forensic capabilities to coordinate the prosecution's interaction with the Laboratory.

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We also recommend that the FBI reevaluate its policy on memorializing witness interviews

6. U.S. Attorneys' Offices Should Establish A Formal Indictment Review Process

We recommend that significant indictments be formally reviewed by a committee of Assistant U.S. Attorneys within a particular office, who have been thoroughly briefed on the theory of the case, the evidence, and anticipated defenses or problems.

7. Other Recommendations

We recommend that our analysis of the conduct of Assistant U.S. Attorney Ronald Howen be referred to the Executive Office for United States Attorneys for whatever action it deems appropriate.

Finally, we recommend that our findings concerning the events surrounding the shooting of Vicki Weaver by the FBI sniper/observer on August 22, 1992 and the Rules of Engagement under which he operated be referred to the appropriate component of the Department of Justice for an assessment of its prosecutive merit.

VI. CHRONOLOGY OF EVENTS

DATE	EVENT
January - May 1985	U.S. Secret Service ("USSS") investigates allegations from neighbors of Randy Weaver that Weaver threatened to kill President Reagan, Idaho Governor John Evans and other unspecified law enforcement officials. USSS learns through interviews that Weaver associates with members of the Aryan Nations.
	USSS interviews Weaver who denies affiliation with Aryan Nations and denies making threats against President Reagan and Governor Evans. No charges are filed against Weaver as result of alleged threats.
	On February 28, 1985, Weaver and his wife, Vicki Weaver, file affidavit with Boundary County Idaho clerk claiming that false allegations made to USSS were part of a plot designed to provoke federal authorities into storming their home. Weaver writes he "may have to defend myself and my family from physical attack on my life."
	[redacted]
July, 1986 - July 1989	BATF informant Kenneth Fadeley introduced to Weaver at World Aryan Congress, Hayden Lake, Idaho. Fadeley meets Weaver again in January 1987 and at July 1987 and July 1989 Aryan World Congresses. At July 1989 Congress, Weaver invites Fadeley to his house to discuss forming group to fight against "Zionist Organized Government" (ZOG).
October 11, 1989	BATF informant Fadeley meets with Weaver at restaurant in Sandpoint, Idaho at which time Weaver says he could supply sawed-off shotguns.

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DATE	EVENT
October 24, 1989	Weaver sells two sawed-off shotguns to BATF informant Fadeley in a park in Sandpoint, Idaho. Fadeley breaks contact with Weaver following November 30, 1989 meeting, when Weaver accuses Fadeley of being a "cop".
[ ] [	]
June 12, 1990	BATF agents [ ] and [ ] approach Weaver in Sandpoint, Idaho, and attempt to enlist him as an informant regarding illegal activities of Aryan Nations members. Weaver says he won't be a "snitch."
December 13, 1990	A federal grand jury in the District of Idaho indicts Weaver for manufacturing and possessing unregistered firearms in violation of 26 USC § 5861(d), (f).
January 17, 1991	BATF agents, posing as stranded motorists, arrest Weaver on weapons charge. Weaver tells the arresting agents, "nice trick; you'll never do that again."
January 18, 1991	Weaver arraigned before U.S. Magistrate Judge Stephen M. Ayers in Coeur d'Alene, Idaho. Judge Ayers appoints Everett Hofmeister as counsel for Weaver, releases Weaver on a $10,000 Personal Recognizance Bond and directs Weaver to appear at U.S. District Court for trial on February 19, 1991.
January 22, 1991	Weaver calls Karl Richins pursuant to the terms of his conditions of release.
February 5, 1991	U.S. District Court Clerk in Boise, Idaho, sends a notice to the parties that the trial date has been changed to February 20, 1991

DATE	EVENT
February 7, 1991	The U.S. Attorney's office in Boise, Idaho receives two letters from Vicki Weaver dated January 22, 1991 and February 3, 1991 and addressed to "the Queen of Babylon." Because the letters appeared to contain veiled threats they are provided to the Boise office of the U.S. Marshals Service for a threat assessment.
February 7, 1991	U.S. Probation Officer Karl Richins sends Randy Weaver a letter requesting Weaver to contact him and then erroneously refers to the trial date as March 20, 1991 rather than the correct date of February 20, 1991.
February 20, 1991	Weaver does not appear for trial on either February 19 or February 20 and Chief U.S. District Court Judge Harold Ryan issues a bench warrant for Weaver.
[ ] [	]
March 14, 1991	A federal grand jury in the District of Idaho indicts Weaver for failure to appear.
[ ] [	] requests assistance from the Marshals Service's Special Operations Group ("SOG").
[ ] [	] The decision is made to send SOG team to Idaho to gather information to develop plan to arrest Weaver.

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DATE	EVENT
June 17-24, 1991	SOG reconnaissance team travels to Northern Idaho and conducts assessment of the Weaver case. The team develops a plan for the safe arrest of Weaver[ ]
July 9, 1991	Deputy Marshal[ ]and Weaver's appointed counsel, Everett Hofmeister, meet with [ ]and ask[ ]to try and convince Weaver to surrender.[ ]
[ ]	[ ]
October 9, 1991	[ ]and[ ]ask[ ]a friend of the Weavers, to convey an offer of negotiations to Weaver. The marshals formulate formal surrender terms.
[ ]	[ ]
October 17, 1991	Assistant U.S. Attorney[ ]sends letter to[ ]and[ ]directing that all contact with Weaver must be through Weavers' appointed counsel, Everett Hoffmeister.[ ]
March 4, 1992	Deputy Marshal Cluff and Chief Deputy Marshal Evans drive up to Weaver property in an unmarked vehicle. They are met by Randy Weaver, who is armed with a rifle. Weaver tells Cluff and Evans that they are trespassing and the marshals leave without incident.

DATE	EVENT
March 27, 1992	Acting Marshals Service Director Henry Hudson was briefed on developments in the Weaver case. Hudson asks U.S. Attorney Maurice Ellsworth to consider dismissing warrant and reissuing it under seal. Ellsworth rejects the proposal. Hudson directs that any plan to arrest Weaver must eliminate possibility of harm to Vicki Weaver and the Weaver children.
	Marshals Service Enforcement Division Branch Chief Arthur Roderick is given primary responsibility for devising a suitable plan to arrest Weaver. Three phase operation plan is developed.
April 2-12, 1992	During Phase I of their operation plan, the marshals conduct surveillance of the Weaver property and determine technical requirements for additional surveillance.
April 13, 1992	Acting Director Hudson approves operation plan for Phase II, during which surveillance cameras would be utilized to gather information about Weavers' daily actions so that options could be developed for Phase III, the actual arrest of Weaver.
April 17 through 1st Week of May, 1992	Marshals install surveillance cameras on ridges overlooking Weaver property and make three fact-finding trips onto the Weaver property.
April 18, 1992	Marshals Service are informed that the television crew from Geraldo Rivera's program "Now It Can Be Told" may have been shot at while flying over the Weaver property in a helicopter.
May 5, 1992	Marshals Service surveillance camera stolen from the north ridge overlooking the Weaver property.