

# TRAVERSE APPENDIX

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**COPY**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NORTH DAKOTA  
3 SOUTHEASTERN DIVISION

4 United States of America,  
5 Plaintiff,

6 vs.

C3 83-16

7 Scott Paul, Yorie Vol. Kahl,  
8 David Ronald Broer and Joan Kahl,  
9 Defendants.

10 T R A N S C R I P T

11 of

12 P R O C E E D I N G S

13 May 12, 1983

14 (Opening Statements)

15  
16  
17 U. S. District Courthouse  
18 Old Federal Building  
19 Fargo, North Dakota

20 BEFORE: CHIEF JUDGE PAUL BENSON  
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Tr. App. 001

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bb.

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1           There may very well be a question in your mind at  
2 the end of this case as to why Marshal Muir or the others  
3 involved picked this particular time and place to attempt the  
4 arrest of Gordon Kahl, and that, I suppose, is a question  
5 which many of you will ask yourselves. Certainly I have  
6 asked it and everyone else connected with the case has asked  
7 it. Simple fact of the matter is, we'll make a real attempt  
8 to answer it for you because it really doesn't matter.  
9 Simple fact of the matter is, the people could give you the  
10 best explanation of why they picked that particular time and  
11 place are dead, we will never hear their testimony, that's  
12 Marshal Muir and Deputy Chesire. You may see bits and pieces  
13 of that answer but if you're waiting for the Government to  
14 present a lot of evidence on it, you'll be waiting in vain.  
15 That's not what this case is about.

16           If you're looking ultimately for a definitive  
17 final answer to who fired each shot in this case which hit a  
18 law enforcement officer, if you're looking for proof certain  
19 as to which gun fired which shot, which individual defendant  
20 fired which shot, you again will not find it in the evidence  
21 in this case simply because the evidence doesn't exist.  
22 Again, two of the best witnesses are dead. Ballistics  
23 unfortunately failed simply because the shells all  
24 disintegrated to bits and pieces that couldn't possibly match  
25 up with a weapon if we did have weapons. We have only



1 recovered one weapon.

2           Witnesses will, I think, very clearly suggest to  
3 you who fired some shots which hit some individuals,  
4 particularly Marshal Chesire, Deputy Marshal Chesire, but  
5 with regards to others, particularly Marshal Muir, Hopson,  
6 Schrabel, we really don't know which gun fired the bullets  
7 that hit them. And the point is that, as I believe the Court  
8 will instruct you at the end of the trial, and the theory of  
9 the case under which we are proceeding, it really doesn't  
10 matter. The case will quite simply be tried on the basis  
11 that all those who are willful participants and, and that's  
12 the key word, willful participants in this shooting, are  
13 responsible for the outcome. It's as simple as that.  
14 Whether it was their bullet which hit the man or whether it  
15 wasn't, if they were firing with deadly affect, they're  
16 simply not to be let off because they weren't as lucky as the  
17 man firing next to him. And the simple unfortunate fact is  
18 there is physically no way to match which bullets did which  
19 deadly wound in those cases.

20           Again, only the shooters, only the people that  
21 were shooting weapons are charged with murder in the case.  
22 The others are not. David Broer and Mrs. Kahl are not  
23 charged with murder, they're charged with other things, not  
24 murder. Two shooters are charged with murder, Scott Faul and  
25 Yorie Kahl. With regard to them, I think we'll have no

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1 about what Joan did. There is not much to defend about what  
2 Joan did. You will recall in the opening statement of the  
3 government, prosecuting attorney, he mentioned the name Joan  
4 Kahl I believe four times. I don't know why it was she was  
5 here. I have told you why she is here. She is charged in  
6 those two courts. She is also charged in another court of  
7 conspiring to impede Gordon's arrest. Listen to the testimony.

8 I did not intend to give an opening statement at  
9 this time but when Mr. Virje pointed out that somehow or  
10 another he was concerned that his client who's not facing any  
11 murder charge was going to get lost in the shuffle, I thought  
12 you know, this could happen to that nice lady sitting right  
13 there because you're going to think that she is sitting there  
14 because she done something wrong.

15 Carl Wigglesworth from this witness stand is  
16 going to testify that he's a U. S. Marshal, that that night  
17 he arrested her that he made a phone call to the United  
18 States Attorney and asked them about what they should do with  
19 her and told the United States attorney's office they wanted  
20 to hold her as a source and couldn't they please come up with  
21 some charges.

22 Thank you.  
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REPORTER'S CERTIFICATE

I, Douglas T. Ketcham, a general shorthand reporter, 1122 1/2 First Avenue North, Fargo, North Dakota, do hereby certify that the foregoing eighty-two (82) pages of typewritten material constitute a full, true and correct transcript of my original stenotype notes, as they purport to contain, of the transcript of proceedings reported by me at the time and place hereinbefore mentioned.

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Dated this 7th day of December, 1984.

Tr. App. 006

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs

CRIMINAL NO. 03 83-16

SCOTT PAUL, YORIE VON KAHL,  
DAVID RONALD BROER, aka  
David Ronald Brewer  
and JOAN KAHL,

Defendants.

TRANSCRIPT

of

PROCEEDINGS

May 27, 1983

8:15 o'clock, A.M.

U. S. District Courthouse  
Old Federal Building  
Fargo, North Dakota

BEFORE: CHIEF JUDGE PAUL BENSON

2

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I N D E X

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*gwa* →

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By Mr. Crooks

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OFFERED

RECEIVED

Government Exhibit No. 104

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1 you that it means that you must find the Defendants must have  
2 intended to kill a human being and must have acted on purpose  
3 and in disregard of the consequences of their actions on  
4 these human lives. The facts and circumstances in this case  
5 literally scream with malice aforethought and premeditation.

6 Deadly weapons. That term is clear. I believe  
7 the judge will instruct you that a loaded gun is a deadly  
8 weapon. Just plain and simple as that. These are all deadly  
9 weapons.

10 The Government's case depends on willful  
11 participation of these individuals. The Government's case  
12 does not rest on linking any specific bullet with any  
13 specific shooter either for Ken Muir or Bob Chesire on these  
14 two counts. That simply cannot be done. What we have in  
15 this case are three shooters. Two of them are on trial but  
16 all of them fired and they fired with deadly effect. And  
17 these actions I believe you will find are willful  
18 participation.

19 I believe the judge will instruct you that no one  
20 Defendant must be proven to have done every act of these  
21 offenses in Counts one and two. Each Defendant can be found  
22 guilty being a willful participant helping the crime succeed  
23 and that's our theory in this case. I believe the judge will  
24 instruct you that along these same lines that this term is,  
25 you will hear this from, I believe it's called aiding and

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1 likely. You can believe that Bob Chesire is dead and you  
2 know it. That's the evidence. We don't know would fired  
3 first. The evidence is pretty clear that we believe Yorie  
4 Kahl fired first.

5 Now the time I have been speaking to you here,  
6 almost an hour, little over a hour, I said a lot about the  
7 missing people in this case, about their death and the things  
8 that happened out on the road. The death photos that the  
9 doctor, Doctor Petty and other doctors used to tell you what  
10 happened to those individuals, how they died, the brutalized  
11 photos, the stripped of personality photos, they tell one  
12 story. Very powerful. It's wrapped up in three words,  
13 first degree murder.

14 But now I have some photographs of the  
15 individuals involved in this case who aren't here. Let me  
16 put this one up. Ken Muir, Government Exhibit No. 6. Take a  
17 look at that one when you get back to the jury room. Said  
18 quite a bit about the charge in this case, about the oaths of  
19 office, about their authority, who they were. But this is  
20 what this case is about, Ken Muir and Bob Chesire. I'll show  
21 you him in a minute. Murder in the first degree. This case  
22 of murder is about these two human beings. Yes, they worked  
23 for the United States Marshal service and that gives us the  
24 jurisdiction here. The important thing is that they were men  
25 they were men, who were murdered, they had wives and families



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1 have no idea what it is, what it looks like, but Mr. Bounds  
 2 apparently did go to the West Fargo Police Department and  
 3 retrieve some sort of a pistol. So I didn't want to leave  
 4 the thing just completely hanging until we are all done with  
 5 arguments.

6 THE COURT: We'll recess at this time and we'll  
 7 reconvene without the jury at 1:00 o'clock.

8 MR. VINJE: Thank you, Lynn.

9 MR. KENNELLY: Your Honor, on the record Mr.  
 10 Crooks said anonymous call to me. It wasn't to me, it was to  
 11 me at my office. I did not receive the call, I was here in  
 12 court.

13 (Whereupon, the following was within the hearing  
 14 of the jury.)

15 THE COURT: Members of the jury, I am going to  
 16 change the time today a little. We are going to recess at  
 17 this time but we will not reconvene for the continuation of  
 18 the arguments until 1:30. I will however meet with counsel  
 19 at 1:00 o'clock.

20 (Recess Taken.)

21 (Whereupon, the following was had in chambers  
 22 outside the presence of the jury.)

23 THE COURT: Mr. Crooks, do you have something now  
 24 you want to present?

25 MR. CROOKS: Yes, I do, Your Honor. It would

Tr. App. 012

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1 appear that Gordon Kahl has, as I guess I predicted,  
2 attempted to make some sort of a dramatic play and he has  
3 apparently turned in Yorie Kahl's wounded .45 automatic.  
4 Bill Bounds is the one FBI agent who has been involved in  
5 recovery of it. It was indeed recovered from a container,  
6 not really a trash container but a container out at West  
7 Acres. Mr. Kennelly had brought it to my attention that his  
8 secretary had received an anonymous call a couple days ago  
9 informing her that something of importance would be found in  
10 a trash container. The Marshal Service was notified and they  
11 did indeed go out looking in trash containers at West Acres,  
12 and this morning we received information that in a container,  
13 not a trash container but a barrel out there, one of the  
14 maintenance men indeed found a .45 automatic and from  
15 examining it and from the description that's been given in  
16 court it would appear to me that it probably is indeed the  
17 one that we had discussion of. It has a cracked butt, there  
18 is indeed a lead cartridge imbedded in it.

19 THE COURT: Bullet you mean?

20 MR. CROOKS: Bullet, yes. Imbedded in the butt.  
21 I have asked Bill to put it in a case or something and so the  
22 defense, and in a case or something, so the defense, and  
23 there is the weapon. What we or you or anybody else want to  
24 do with it I guess is the reason for my bringing it to the  
25 Court's attention. I would ask that that bag not be opened

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1 for obvious reasons. And that's it I guess. Basically,  
 2 obviously if anyone wants to do anything with it it's there.  
 3 Obviously the gun has been discussed. There has been no  
 4 substantial issue in this trial that he did not receive a  
 5 bullet in the pistol. Been some dispute as to what that  
 6 bullet was, obviously, but nobody's contending, I guess, that  
 7 I'm not sure what this adds if anything other than the  
 8 demonstrative exhibit. I guess Sogard is the one that's been  
 9 most interested in it and I suppose it's up to him what he  
 10 may want to do about it.

11 MR. SOGARD: Well, obviously, this is the first  
 12 time I have had an opportunity to examine the gun. Mr.  
 13 Crooks indicated --

14 MR. CROOKS: Me, too.

15 MR. SOGARD: -- before the break that there was  
 16 something along this line that was coming in. I obviously  
 17 feel that it is important to my case because it substantiates  
 18 exactly what my client recollects in terms of the sequence.  
 19 I think, I do not know what the slug inside --

20 THE COURT: Just a moment. You say substantiates  
 21 what your client remembers in terms of sequence, is that what  
 22 you said?

23 MR. SOGARD: That right.

24 THE COURT: And what do you contend that  
 25 sequence --

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supposedly  
not arrived.*

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MR. SOGARD: Well, I would contend that he remembers having the air knocked out of him while he was up. He says he did not specifically remember exactly where he was hit but he remembers being at the pole, that he remembers staggering back, remembers losing air on occasion.

THE COURT: Just to help us decide how to proceed from this point on, I asked the Court reporter to examine his transcript and to read to me what Yorie Kahl's testimony was and so I asked to bring it with him and I would like to have you read that portion and any portions that counsel might want.

(The requested portion of the record was read by the reporter.)

THE COURT: I just anticipated what you would probably suggest. I wanted to give everybody a chance to review what Yorie's testimony was with reference to this and now I would like to hear any recommendations or suggestions as to where we go from here. I think, obviously, somebody is trying to manipulate this trial and I am obviously very much distressed about that.

MR. SOGARD: I understand. If I could just point out, would be another matter, Your Honor, relative to the importance of the pistol and that is, of course, the testimony of Mark Lanenga, which I don't know it's necessary to be read, but simply put to us is he indicated that he was

*Tr. App. 015*

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1 listening and he heard the first shot and sounded to him like  
2 a pistol shot.

Identify exactly what is we!

3 THE COURT: I think everybody's familiar with  
4 that. But I don't want to waste time going into rehashing  
5 all the evidence. I felt this was important for everybody to  
6 hear and as a basis for making a decision as to where we  
7 proceed from here and I obviously do not make decisions  
8 without hearing from both sides. So I would like to hear  
9 from you people as to what you suggest, how you suggest we  
10 proceed from this point.

11 MR. SOGARD: Well, I must state that I believe  
12 that now that this evidence is available I believe that Yorie  
13 could identify the pistol as his. I believe Scott Paul may -

14 THE COURT: I'm not inclined to reopen the  
15 evidence other than perhaps to allow this to be placed into  
16 evidence. I am sure that nobody would dispute the fact that  
17 this is Yorie's weapon and I would suggest rather than have  
18 him identify the weapon we simply, if we are going to receive  
19 it in evidence that it be stipulated into evidence.

20 MR. CROOKS: Well, I think the Court has really  
21 anticipated, I was essentially waiting to see what defense  
22 wanted to do or chose to do. I guess it wasn't a mystery.  
23 But essentially I don't contend at all if Gordon Kahi had  
24 gone to the effort, which he obviously had done, to get the  
25 evidence planted where it could be found and attempt to

Tr. App. 016

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1 . manipulate the trial in some way. No particular reason to  
2 think that isn't the gun. I assume it is. I have no obvious  
3 way of knowing but I assume it is.

4 THE COURT: Excuse me just a moment.

5 MR. CROOKS: Also got a wound, the broken pistol  
6 grip. Just from my recollection I would assume it's going to  
7 match the one we have in evidence. So I guess basically I  
8 would be prepared to indicate that as far as the Government  
9 is concerned we would stipulate that this is the gun that the  
10 discussion has been about. As I indicated, the gun proves  
11 absolutely nothing that hadn't been in evidence already other  
12 than being a demonstrative exhibit. There never was any  
13 dispute that he got, that his gun got hit. We certainly did  
14 not.

15 MR. SOGARD: Would the Government be willing to  
16 stipulate that the bullet lodged in there is a .38?

17 MR. CROOKS: No. Willing to stipulate that that  
18 bullet is what it appears to be and I assume that it's very,  
19 obviously to me it's a larger caliber bullet. But I have no  
20 idea what it is. It's a larger caliber bullet. Obviously  
21 it's not a .223 bullet. Basically the jury can determine  
22 itself. I don't know how I could stipulate what that bullet  
23 is without a ballistics test and certainly there is no  
24 justification that I can think of why we should terminate the  
25 trial for three days to make a determination of what that

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1 bullet is. It probably is a .38, I don't dispute that, but I  
2 can't say. I'm not a ballistics expert and nobody else here  
3 is. Obviously not a .223.

4 THE COURT: We are not going to terminate the  
5 trial.

6 MR. SOGARD: I understand that. I wish the Court  
7 to understand my difficulty in that since this has appeared  
8 obviously if we would have had access to it at the  
9 appropriate time there would be no question what type of  
10 bullet was lodged on the butt of the weapon, could be  
11 established, and I think that would further buttress Yorie's  
12 statements and the statements by Scott Faul and I think it's  
13 significant. And that is why I asked the Government whether  
14 or not they were so willing to stipulate it. We know that  
15 this is, we believe it's the gun. We know the only weapons  
16 that were fired that day were a .223 or .38. It's large  
17 enough. And the Government is willing to stipulate, that  
18 goes a long way to curing any major problems that I see with  
19 just plain letting the gun in.

20 MR. CROOKS: The point is Warren, I have no idea  
21 what it is other than it's very obvious to me it's something  
22 bigger than a .223 round. I just don't know. I have no idea  
23 for instance, if that bullet wasn't planted there by Gordon  
24 Kahl when he conveniently turns it in. I don't know that. I  
25 assume that's not, probably not the case. That probably is

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1 the bullet that was there when Scott Paul looked at it. But  
 2 the point is I really don't know that. I'm not prepared to  
 3 start stipulating to caliber. If the jury wishes to look at  
 4 it, I guess they can see it as well as we can. It's very  
 5 obviously not a .223 round, it's some kind of low velocity  
 6 bullet or it would have shattered into a million pieces.

7 THE COURT: Mr. Sogard, would you be willing to  
 8 show it to Mr. Kahl and ask him if he can identify it?

9 MR. SOGARD: Certainly.

10 YORIE KAHL: It is my weapon.

11 MR. NODLAND: May Mr. Paul look at it?

12 THE COURT: Sure

13 MR. FISHER: Look at Government's Exhibit No. 51A  
 14 you will probably see the grips match that as well. Those  
 15 are in evidence.

16 MR. SOGARD: The little pieces look like it.

17 MR. FISHER: Looks like it. We don't know. I  
 18 didn't compare them.

19 MR. NODLAND: Your Honor, for the record I would  
 20 object to the introduction of this at this time. Under the  
 21 circumstances of the trial we are in I would move for a  
 22 mistrial and I would move for a severance.

23 THE COURT: What is your position, Mr. Sogard?

24 MR. SOGARD: Well, if the Government, since the  
 25 Government is unwilling to stipulate as to the caliber of the

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1 bullet inside the pistol lodged, and I believe that that is  
2 critical to the establishment of my case and it is vitally  
3 necessary, I would move for a mistrial on the grounds it is  
4 not possible for my client at this time without having the  
5 introduction of that evidence to have a fair trial

6 THE COURT: Assuming that I were to deny your  
7 motion for a mistrial, what is your position with reference  
8 to that weapon?

9 MR. SOGARD: I would move the Court to introduce  
10 the weapon into evidence. I would ask that the Court allow  
11 testimony to be taken for the limited purpose and heard by  
12 the jury by Mr. Kahl and by Mr. Faul identifying the weapon  
13 as the one that they found on Yorle. But I must state for  
14 the record that I do not believe it would be curative to  
15 merely allow the introduction of it without being able to  
16 establish that the bullet lodged in it was a .38.

17 THE COURT: Mr. Vinje, what is your position?

18 MR. VINJE: Your Honor, if in fact the Court  
19 grants a mistrial to Mr. Kahl and Mr. Faul, I would move that  
20 the Court allow the jury to go ahead and consider and reach a  
21 verdict as to my client, David Broer. I don't feel that this  
22 evidence is --

23 THE COURT: You're objecting to granting a  
24 mistrial?

25 MR. VINJE: I would request at this point that

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the matter be severed and if in fact a mistrial is granted as to two that it not be granted as to David Broer. I guess I'm just not requesting one as to David Broer.

THE COURT: Mr. Ramlo.

MR. RAMLO: First, I would move that Joan Kahl's case be severed from the others. In the event that that's denied, I would move for a mistrial and the reason for that being that Joan Kahl is charged in the conspiracy to assault. Assault carries with it the connotations of the spill over from all of the testimony about force, about guns, about firearms and I believe that the first shot is very important to her defense if she is in fact tried with the other people, which she has been so far. In establishing the first shot theory, I think it's critical to establish the ballistics that's in the gun towards establishing that bullet did in fact come from and was fired by Ken Muir's gun.

MR. CROOKS: Well, I have a couple additional observations.

MR. RAMLO: Let me finish.

MR. CROOKS: I'm sorry. I thought you were done.

MR. RAMLO: For that reason I would move for a mistrial. In the event that that's denied, I would object to the gun being admitted into evidence.

MR. CROOKS: Well, I guess my additional comment is quite simple, that counsel contends that this weapon shows

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1 something about who fired the first shot. Legally, as we  
2 have argued, and I was prepared to argue even before it was  
3 found, it doesn't really matter who fired the first shot.  
4 Secondly, there is no evidence other than the quarter mile  
5 off hearing of Mr. Lenanga that a .38 was the first shot.  
6 All the evidence from every other witness has been either  
7 directly to the contrary or not contributory. And the third  
8 thing is I have agreed, there is no doubt in my mind Gordon  
9 Kahl has turned in Yorie's weapon. Very obvious why he's  
10 done it. And I have no question at all as to authenticity of  
11 the weapon, and apparently Mr. Faul has confirmed that it  
12 looks like it was when he saw it. I guess I have no reason  
13 to think that it isn't in the same condition it was when he  
14 left him in the barn. As to what kind of a shell that is, I  
15 guess my only feeling is I'm not sure what counsel's asking  
16 for. There has been no particular issue as to whether or not  
17 he was hit by Mr. Muir, he was or wasn't. I guess in a way  
18 that's somewhat helpful to me. It basically shows that  
19 Marshal Muir at least got credit for hitting someone during  
20 this shoot-out. But I guess I'm not sure what real position  
21 I should take. If it's a question of ballistics examination  
22 for that shell casing, obviously I would stipulate that it's  
23 a .38. I can't say whether that's a .38 or whether it isn't.  
24 But I'm not going to try to sneeze over the question of  
25 whether or not it's a .38. It quite obviously appears to me

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1 it is most likely some larger shell and it very likely is a  
2 .38, certainly not a .223, I don't know what else it would be  
3 just as counsel suggests. But really aren't many issues  
4 about that revolver or that pistol that are important to that  
5 jury one way or the other. Counsel has made the argument  
6 this morning and I was prepared to make a little contrary  
7 argument which basically says so what. I guess I'm still in  
8 the position of so what.

9 THE COURT: Are you resisting the motion for  
10 mistrial?

11 MR. CROOKS: Obviously I resist the motion for  
12 mistrial and basically I will stipulate to whatever the Court  
13 wishes to have me stipulate to. I don't want to try this  
14 thing over again for a relatively innocuous exhibit. It  
15 doesn't prove or establish anything. The evidence, basically  
16 the evidence has already been completed on the significance  
17 of this gun. All this does is visibly demonstrate here is  
18 the gun. We have already gotten the pistol grips.

19 THE COURT: What explanation do we give the jury  
20 for the gun having been discovered?

21 MR. CROOKS: I don't know. I would guess the  
22 information we give to the jury is just exactly how the gun  
23 was found.

24 THE COURT: I think that's a conclusion that I  
25 had reached. I think I will --

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1 MR. CROOKS: All else fails, try the truth I  
2 guess.

3 THE COURT: I will have you put the agent on the  
4 stand. I will reopen the evidence to that limited extent and  
5 put the agent on the stand and have him testify as to where  
6 this gun came from. Now you can put Mr. Kahl on the stand,  
7 simply have him identify it as his gun, that's it, and we go  
8 on from there. I'll receive it in evidence.

9 MR. CROOKS: Basically I guess the response is I  
10 will certainly stipulate that this is his gun. I have no  
11 doubt in my mind. I guess I would prefer to simply do it  
12 without calling Mr. Bounds or calling anybody else. I would  
13 simply rather make a statement for the record so the jury  
14 understands what it is, put an exhibit sticker on it and put  
15 it into evidence. That would be my preference. Jury can  
16 have it and look at it and see what they can see.

17 THE COURT: Do you have any anything more?

18 MR. SOCARD: Just I would, if it's --

19 THE COURT: I can't force people to stipulate,  
20 that's the point. That's why I stated that I will have you,  
21 if they don't, if the Defendants do not wish to stipulate,  
22 then we will have Mr. Bounds testify simply as to where this  
23 gun came from now. If you want Mr. Kahl to take the stand  
24 and identify this as his gun, I will allow him to do that.  
25 If you don't want him to, if you do not agree to that, I will

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1 simply allow Mr. Crooks to state for the record that he will  
2 agree, that he will concede that is Yorie Kahl's weapon.

3 MR. SOGARD: My response --

4 MR. CROOKS: I guess maybe before Warren responds  
5 I would assume the statement I would make would be quite  
6 simple, that after somebody, I don't think particularly Mr.  
7 Kennelly wants his name mentioned, but after someone  
8 connected with this case received an anonymous call, this  
9 weapon was found in a trash container at West Acres shopping  
10 mall and as far as I'm concerned we hereby stipulate that  
11 this is Yorie Kahl's weapon that has been discussed in the  
12 case and --

13 THE COURT: I think that should include as to  
14 when it was found.

15 MR. CROOKS: It was found today.

16 MR. RAMLO: Where does that leave us? Will there  
17 be a statement to caliber of the bullet in there, an  
18 agreement as to the caliber?

19 THE COURT: Obviously not. I don't know. Are  
20 you going to make any statement as to, in your statement, Mr.  
21 Crooks, would you say anything about the caliber of the  
22 bullet?

23 MR. CROOKS: Well, I hate to play ballistics  
24 expert. I will be willing to state that in my expert  
25 judgment after many years of carefully examining casings

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that's not a .223 round, I know that for certain.

THE COURT: How do you feel about that? I might as well let you know what the position of the Court is, and the record may as well show it, that there is, I'm denying the motion for a mistrial, I'm denying the motion for severance. I am going to permanent the evidence to be, the case to be reopened for the purpose of receiving that evidence and that evidence is what you see there and I am going to permit, in view of Mr. Kahl having identified it as his weapon, if it is not, if you do want to put Mr. Kahl on, have him identify it as his weapon, I will permit you to do that. If you do not want to, then I will, but I will not permit you to go any further than that.

MR. SOGARD: I understand, Your Honor.

THE COURT: Just a minute. I'm not through. If you do not wish to do that, then I will simply ask Mr. Crooks to offer the weapon into evidence and to request that the case be reopened to offer the weapon into evidence as additional evidence, to give an explanation as to where it came from today and that's it. We'll go on from there.

MR. SOGARD: I'm premising my response based upon what the Court has said that it was denying the motion for mistrial.

THE COURT: Yes, that's correct.

MR. SOGARD: I want the record to be clear on

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that point.

THE COURT: Okay.

MR. SOGARD: On that basis I, after the denial of the motion, I have no objection to Mr. Crooks being allowed to place the matter into evidence. I would place Yorie Kahl on the stand to identify it as his weapon and I assume that any cross, if any is allowed, would only be subject for that purpose

THE COURT: I would not want any cross.

MR. CROOKS: You hold yourself to that, there won't be any cross.

THE COURT: I do not intend there be any cross and I simply want to give you the opportunity to have him identify it for the record and let Mr. Crooks simply state that he will stipulate that that's his weapon. You can have your choice.

MR. SOGARD: Another request I make to the Court, Mr. Faul, with Mr. Nodland's approval, to identify the gun as in the condition that he saw it.

I realize I just tossed a new variable in there.

THE COURT: Yes, you did.

MR. NODLAND: Well, our position is we object to the procedure being followed. Mr. Faul does not wish to do anything.

THE COURT: Very well. Mr. Faul will not be

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required to return to the stand.

MR. SOGARD: And I assume that the Court would not permit me any further comment on the arrival of this evidence?

THE COURT: I'm not inclined to. Do you --

MR. CROOKS: I guess my, the point's already been argued. The only thing that's changed is now we have another thing for the jury to look at. The argument has been made.

THE COURT: I would allow, even though it does not directly affect him, rather than reopen the argument I would allow Mr. Ramlo to make whatever comment he may feel appropriate under the circumstances because you still have, you have not yet made your argument. I'm not going to reopen this case to more arguments.

MR. SOGARD: Then I think at this point on the record the Government should do as you indicated. I would not put Mr. Kahl on the stand and object to the proceeding.

MR. CROOKS: Let me ask this, Warren, before we get to it do you want me to stipulate that this is Yorie's weapon? I assume so, but I don't want to be doing that --

MR. SOGARD: I will stipulate that it's Yorie's weapon.

MR. CROOKS: I don't really care. I don't want the stupid thing in evidence. Point is, if you want me to say that, I will say that, if you don't want me to say that,

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I will not say that.

THE COURT: Let me interject a point here. If you don't want that weapon in evidence, it won't go in evidence. I'm putting it in just because --

MR. CROOKS: That's the point, I don't want --

THE COURT: If you don't want it in evidence, you're objecting to that, I'm giving you an opportunity at this point to have that weapon put in evidence.

MR. SOGARD: Your Honor, I would ask for a short five minute recess so I can ponder that. I think the Court realizes that this is a decision that is going to require something other than a snap judgment.

THE COURT: You can think as you go back into the courtroom. When we get into the courtroom you may approach the bench and give me your decision.

MR. SOGARD: Thank you.

THE CLERK: Your Honor, I want some clear indication as to what exhibits go into evidence as as far as the actual shells and the casings, the bullets.

THE COURT: What do you mean, go into evidence?

THE CLERK: I should say go to the jury.

THE COURT: That's a good point. I would not, certainly would not be inclined to allow any of the bullets to go into the jury room.

MR. FISHER: Live rounds?

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1 THE COURT: Live rounds, right.

2 MR. CROOKS: I have no preference either way.

3 MR. CROOKS: They have been sealed in bags but  
4 obviously the bags could be broken or whatever. I don't  
5 really care unless anybody else cares.

6 THE COURT: The weapons have been rendered  
7 inoperable.

8 MR. VINJE: Your Honor, my only comment would be  
9 that perhaps at least one .223 round could be taken in there  
10 in the presence of one of the marshals or something to that  
11 effect because some of those people on the jury aren't going  
12 to know the size of a .223 for comparison purposes with the  
13 .45 if in fact it goes in.

14 THE COURT: If that's agreeable, I will simply  
15 allow the exhibit, live rounds to go to the jury with the  
16 understanding that the marshal, attending marshal will pick  
17 them up after the jury has had an opportunity to go to the  
18 jury room. They can be passed around to the jury or we can  
19 pass it around in the courtroom before the jury retires and I  
20 think maybe that would be a better procedure. Then I will,  
21 before the jury retires, I will pass it around, tell them  
22 that I'm not going to so they do not have the responsibility  
23 of dealing with an exhibit consisting of live rounds, I will  
24 have the rounds passed to the jury and then it will not go  
25 into the jury room.

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THE CLERK: Thank you.

(Whereupon, the following was within the hearing of the jury.)

THE COURT: Counsel approach the bench.

(Whereupon, the following was had outside the hearing of the jury.)

THE COURT: You had your five minutes?

MR. SOGARD: Yes, I have. I have decided and I have discussed the matter with Mr. Crooks, I wish the gun to be placed into evidence. I understand he will do so and he will make a statement as to the, explanatory statement as to how it arrived.

THE COURT: Very well.

MR. NODLAND: On the record I would renew a motion for a mistrial. In the alternative, I would move for a continuance on the grounds that I am being denied a right of confrontation, a right to conduct ballistics test, a right of final summation and the right to have adequate time to prepare for me whatever implications it might have. I also think it's prejudicial to the jury at this point as far as my client is concerned.

THE COURT: You resist the motion?

MR. CROOKS: Yes.

THE COURT: The motion is denied.

(Whereupon, the following was within the hearing

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1 of the jury.)

2 THE COURT: Members of the jury, one of the  
3 reasons we broke early for lunch is because there was an  
4 unexpected development in this cases which Mr. Crooks will  
5 comment on at this point.

6 MR. CROOKS: Your Honor, as I have stated in  
7 chambers but I'll stated for the benefit of the jury, an  
8 anonymous call was received, ultimately relayed to the  
9 Government, as to the whereabouts of possible evidence in the  
10 case. On today's date special Agent Bounds went to the West  
11 Acres shopping, or let me back up. On today's date special  
12 Agent Bounds was informed that a maintenance man at the West  
13 Acres shopping center had indeed found a weapon in a trash  
14 container under, or a container in that area which was  
15 reported to about three different agencies. Ultimately Mr.  
16 Bounds, Special Agent Bounds retrieved that weapon. I have  
17 brought it to the attention of the Court this morning and  
18 that's why we approached the bench and we have now got the  
19 actual exhibit. We have taken it up in chambers and  
20 essentially what I have done, and agreed to do is that I will  
21 stick a Plaintiff's Exhibit sticker on it, number 104, we  
22 will stipulate that this from all appearance appears to be  
23 the weapon which has been discussed earlier in this trial and  
24 the one that Yorie Kahl had in his shoulder holster. There  
25 is a very obvious bullet wound in the pistol grip area of the

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1 pistol. There is also what very clearly appears to be a  
2 bullet still embedded in that area which without making me  
3 any kind of a ballistics expert I will agree is certainly not  
4 a .223 round. Whatever it is would appear to be a larger,  
5 softer, slower velocity bullet than that. And we will  
6 stipulate that this gun appears from the prior descriptions  
7 of witnesses to be in about the same condition it was in when  
8 prior witnesses observed it on or after February 13th, and  
9 without further fanfare I would offer Exhibit 104 for  
10 whatever use the jury may wish to make of it.

11 THE COURT: You wish to respond to the offer, Mr.  
12 Sogard?

13 MR. SOGARD: I just indicate that I understand  
14 that Mr. Crooks is correct and it's without objection.

15 THE COURT: Mr. Ramlo.

16 MR. RAMLO: I would renew my prior objections  
17 made in chambers, Your Honor, and rest on those objections.

18 THE COURT: Mr. Nodland.

19 MR. NODLAND: I have made my previous motions.

20 THE COURT: You stand on your objection?

21 MR. VINJE: No objection, Your Honor.

22 THE COURT: 104 is it?

23 THE CLERK: That is correct.

24 THE COURT: Exhibit 104 is received. The case is  
25 reopened for the purpose of simply receiving this additional

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1 exhibit in the case and the case is again closed and we will  
2 proceed with the arguments.

3 MR. CROOKS: I would simply also add, Your Honor,  
4 just for the caution of the jury when they are in the jury  
5 room to advise them that this weapon has been checked to  
6 determine whether or not it's loaded. It is not loaded. We  
7 would also ask the jury not to open the bag or in any way  
8 handle this because obviously we have had no opportunity to  
9 process it for finger prints, ballistics or whatever. We  
10 placed it in a plastic bag so you can see it. If you can  
11 move the butt plate around you will be able to see the  
12 embedded round in it. Please do not open the bag or touch  
13 the weapon in any way.

14 MR. RAMLO: Your Honor, may I approach the bench  
15 for one other point before we begin?

16 THE COURT: You may.

17 (Whereupon, the following was had outside the  
18 hearing of the jury.)

19 MR. RAMLO: I'm concerned that since the ball has  
20 sort of fallen in my court to argue about the gun and talk  
21 about the gun, it has nothing do with Mrs. Kahl's case, yet I  
22 think that in fairness to everyone there should be some  
23 explanation of it and I'm more or less left to do it. I'm  
24 wondering if there is some way we can explain to the jury  
25 that his argument is done, he's not going to comment any

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1 his voice. But the point is that's Bob's voice on those  
2 tapes. Anyone that knows Bob's voice can recognize that  
3 voice and Tony Nicholson was a good friend of his and he did.  
4 And he reported that he was hit and then he reported that he  
5 was hit bad and about that time I would assume he got it,  
6 died. Now you can sequence those wounds anyway you want.  
7 Really doesn't make any difference to me. Doesn't make any  
8 difference to the Government's case. We have not pretended  
9 ever from the start of this case on that we can give you an  
10 accurate sequencing of those wounds or that we can put a  
11 bullet with a name on it in any of those wounds. You can  
12 make some guesses but that's all you can do. There is  
13 nothing else to say who exactly fired which shots. But  
14 counsel missed the entire point. The question is what does  
15 the Government have to prove beyond a reasonable doubt.  
16 You're not going to hear anything in those instructions about  
17 proving that a certain bullet hit whatever. What we are  
18 expecting to prove beyond a reasonable doubt is willful, mind  
19 you, willful participation in the death of human beings with  
20 regard to those murders. That's what we are required to  
21 prove, aiding abetting, assisting, willful participation,  
22 nothing more, nothing less. And I will go through in a few  
23 moments again some of the things that I think point to  
24 willful participation. Counsel said the pledge to the flag.  
25 Again, he forgets the testimony. This meeting didn't start



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1 point is, does it sound like he just zinged one over at Yorie?  
2 Perhaps he did. He very obviously, and I guess if you look  
3 at that I would say it probably is a 38 round. And I'd say,  
4 and I must say I do it somewhat uncomfortably, it makes me  
5 feel somewhat good to know that Ken at least hit somebody  
6 before he died and I say that very honestly, that he didn't  
7 forfeit his life at least hitting one of those guys. That's  
8 a personal feeling. But he had every right to do it.

9 Counsel simply ignores altogether the entire  
10 theory of aiding and abetting. What is this case all about?  
11 Counsel seems to argue that if Yorie Kahl didn't fire that  
12 first shot and he didn't hit Bob with that first shot, since  
13 he went down fairly soon, then he isn't guilty of anything.  
14 In a word that's ridiculous. That's not the law. He's a  
15 willful participant in this chain of events which leads to  
16 two murders. He's guilty of murder, two murders. He's as  
17 guilty as if he shot both men through the head at close range  
18 or whether he didn't.

19 The Court will instruct you as to the law.  
20 Counsel has argued inferentially that the marshals were out  
21 to ambush somebody. I have some notes prepared on that. I'm  
22 not going to give them. It's hogwash. These marshals on the  
23 Sunday afternoon had nothing better to do but go on the  
24 prairies of North Dakota and hunt down and murder in cold  
25 blood Gordon Kahl? That is absolutely hogwash. Not only

DOUG KETCHAM &amp; ASSOCIATES

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1 and when they go out there with our authority that we have  
2 just given them. They have the right to expect that every  
3 one of us respects that authority and goes with them  
4 peacefully. Then we have men like Judge Bengon to decide  
5 when the officer is right or wrong, then we have prosecutors  
6 like myself that decide whether or not I really want to  
7 prosecutor that man that you have arrested and then you have  
8 defense attorneys that get up and argue why the man shouldn't  
9 be convicted. But you don't murder the officer, that's not  
10 the way we solve our legal problems in the United States of  
11 America. That's the way these men handled that problem that  
12 day. No court, no judge, no little verdict. Dead, dead,  
13 case over. And they have the audacity to claim that they  
14 killed in self defense. That nine minute gap in those tapes.  
15 They have the audacity to say, "we thought they were  
16 hooligans, we had no clue they were peace officers." Ladies  
17 and gentlemen, the witnesses have placed these men in certain  
18 positions saying they are police officers, they have red  
19 lights saying they are police officers. There is no real  
20 doubt in anybody's mind that a wanted man is in that car and  
21 the people that know it are his wife and his friends, and  
22 when they announce they want him, they aren't going to let  
23 the officers have him. They spread to a defensive position,  
24 they aim at the officers, they turn and fire, the officers  
25 fall dead to the pavement, three of them are wounded. That's

DOUG KETCHAM &amp; ASSOCIATES

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experience as jurors or what you personally think of the case or anything like that but do not discuss what went on in the jury room or how you arrived at your verdict. If there is nothing more, court adjourned.



C3-83-16 US v. S.Faul, Y. Kahl, D. Broer, J. Kahl

INSTRUCTION NO. 1

MEMBERS OF THE JURY:

Now that you have heard the evidence and the argument, it becomes my duty to give you the instructions of the court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the court.

\* Therefore, you cannot be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law  
\* than that given in the instructions of the court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

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INSTRUCTION NO. 24

The official federal status of Kenneth B. Muir, Robert S. Cheshire, Jr., James Hopson, Carl Wigglesworth, Bradley Kapp and Steven Schnabel is a jurisdictional element of the offenses charged in the indictment which must be proved by the government. Knowledge, however, by the defendants of the identity or official character of the persons assaulted or killed is not an essential element of the offenses charged in the indictment.

Therefore, the government need not prove that those accused of assaulting or killing the law enforcement officers were aware of the law enforcement officers' official identities at the time the assaults or killings allegedly occurred.

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INSTRUCTION NO. 25

By law the United States Marshals Service has been delegated the responsibility of serving federal arrest warrants. Pursuant to this law the United States Marshals Service had the duty to serve the probation violation warrant which was outstanding for Gordon Kahl issued by the United States District Court for the Western District of Texas on March 30, 1981.

In their official capacities the United States Marshals and Deputy United States Marshals possess the authority to make arrests on outstanding federal warrants without physically possessing the original warrant. They are also authorized to make arrests for federal offenses committed in their presence without a warrant if they have reasonable grounds to believe that the person to be arrested has committed or is committing an offense.

The United States Marshal and his deputies are authorized by law to seek the assistance of state and local law enforcement officers in making an arrest. Any state or local law enforcement officer who agrees to offer his assistance is then vested with the same powers as is a deputy United States Marshal.

The United States Marshal and his deputies have been authorized by Congress to carry firearms and to utilize them in the performance of their duties.

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AFFIDAVIT

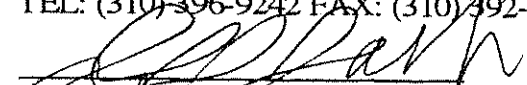
On Saturday June 13, 1992 I interviewed on videotape Vernon Wegener at Medina, ND.

The purpose of the interview was to talk with Mr. Wegener about his participation in the February 13, 1983 roadblock incident involving Gordon Kahl and his family and friends and U.S. Marshals and the subsequent trial in Fargo, ND which involved Joan Kahl, Yorie Kahl, Scott Faul, David Broer and Vernon Wegener. Those original videotapes (Betacam tape) remain in my possession in unedited form.

During our interview and during our travel time to and from the shooting site, Mr. Wagener stated to me that he had been told by the FBI at the end of his 47 days of incarceration after the 2/13/83 shootout that he never should have been arrested. He went on to say that the FBI offered to relocate him to another part of the country and provide him with a new job and identity. He told them he was just going to go home. Mr. Wagener said he never really knew what he was charged with, but that he accepted a plea bargain in exchange for his testimony during the trial. In referring to his preparation for his testimony Mr. Wagener described meeting in Judge Paul Benson's chambers with the prosecutor Lynn Crooks and the judge and being rehearsed and coached by them in preparation for his testimony. "They had this little hearing in the judge's chambers, more or less rehearsal. Ask this, respond this way. Wow, (I thought) is this the way this shit works, all rehearsed, the judge right there, all laid out. All pre-planned an pre-rehearsed. I thought this was a joke." stated Wagener on tape.

This original, unedited videotape of my interview with Vernon Wagener for our documentary DEATH & TAXES is available for review by the attorneys or judges involved with this case.

THIS STATEMENT WAS MADE BY JEFFREY F. JACKSON  
WEDNESDAY, JANUARY 13, 1999 AT:  
1111 INDIANA AVE., VENICE, CA 90291  
TEL: (310) 396-9242 FAX: (310) 392-9242

  
JEFFREY F. JACKSON

**ACKNOWLEDGMENT FOR NATURAL PERSONS**

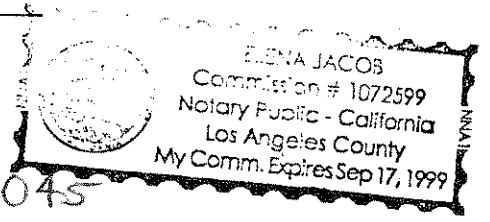
STATE OF CALIFORNIA, )  
) ss.  
COUNTY OF LOS ANGELES )

On this 13<sup>th</sup> day of January, 1999,

before me personally appeared Jeffrey F. Jackson, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Elena Jacobs  
Notary Public

My commission expires: Sept 17-1999



COUNTY OF STUTSMAN            )  
  )ss  
STATE OF NORTH DAKOTA        )

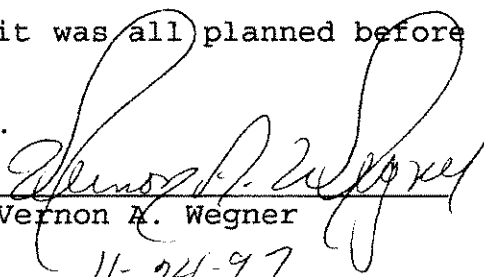
AFFIDAVIT OF VERNON WEGNER

I, Vernon Wegner, being over the age of 21, and of sound mind, do depose and say:

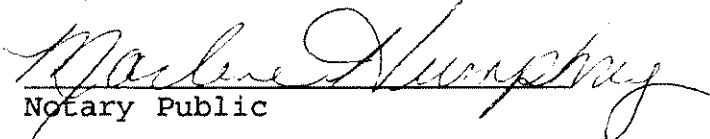
1. On February 13, 1983, I attended a political meeting with David Broer in Medina, North Dakota. When we left I was riding in a car owned by Gordon Kahl and driven by Yorie Kahl. Also in the car was Joan Kahl and Scott Faul.
2. About a quarter mile north of Medina we encountered a road block and unsuccessfully attempted to turn around.
3. We were confronted by armed men. They said they were U.S. Marshals, but nobody was in uniform, marked cars, or presented any ID. I didn't know who they were.
4. Scott and Yorie got out of the car. Scott Faul appeared to try to escape what looked like a deadly confrontation and ran into the woods nearby.
5. A gun battle erupted in which 2 U.S. Marshals were killed and one wounded as well as Yorie Kahl.
6. David Broer and I left the area and returned home to Streeter.
7. I surrendered to Jack Miller, Stutsman County Deputy Sheriff for questioning and was held in the Fargo, North Dakota jail for 47 days, until I was released pursuant to a plea arrangement.
8. My attorney arranged a plea agreement in exchange for favorable testimony at the trial of Yorie Kahl, Joan Kahl, Scott Fahl and David Broer.
9. The day before I testified at trial, I was taken into a room next to Judge Benson's chambers in the Federal Court house in Fargo, North, Dakota. It was more or less a rehearsal of what was going on the next day. They told me, "We are going to ask you these questions and you're supposed to respond this way." The judge was right there. He knew what was going on the next day. This is the way it was laid out. It was all preplanned and pre-rehearsed.
10. Judge Benson was present at this rehearsal as well as my attorney, Jonathan Garass, another guy from the U.S. Marshals whose name I don't recall and Assistant U.S. Attorney Lynn Crooks.

11. I thought that was kind of a joke, it was all planned before we got out in front of the jury.

Further more the affiant sayeth not.

  
Vernon A. Wegner  
11-24-97  
Date

24 Subscribed in my presence and duly sworn to before me, this  
day of November, 1997.

  
Notary Public  
MARLENE HUMPHREY  
Notary Public, STATE OF NORTH DAKOTA  
My Commission Expires MAR. 10, 2002

FILED  
AUG 28 2012  
EDWARD J. KLECKER, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

SCOTT WILLIAM FAUL,	)	
	)	
PETITIONER,	)	Civil No. A-3-99-41
	)	(Criminal No. C3-83-16)
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	Honorable Kermit Edward Bye
	)	Circuit Judge
RESPONDENT.	)	

**AFFIDAVIT OF VERNON WEGNER**

STATE OF NORTH DAKOTA	)	
	)	ss.
County of Stutsman	)	

I, Vernon Wegner, of Post Office Box 919, Jamestown, North Dakota, telephone number 701-251-1075, hereby swear and aver that the following is true and correct to the best of my knowledge and belief:

1. I was a defendant with Scott Faul, Yorie Kahl and others in a case which went to trial in May of 1983.
2. After spending 47 days incarcerated but prior to trial, I entered into a plea agreement by which I agreed to testify at my co-defendants' trial.
3. During trial and shortly before being called to testify, I was called to the

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federal courthouse in Fargo, North Dakota and taken to a room with many law books. The room was located behind the courtroom where the trial was being conducted.

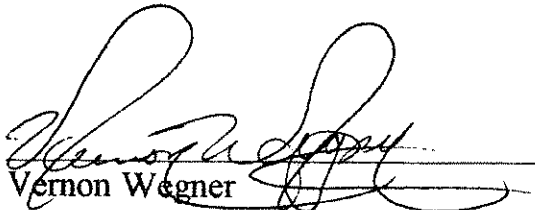
4. In that room, I met with Judge Benson, prosecutor Lynn Crooks, my attorney Jonathan Garrass and one other person whose identity I do not recall at this time. We all sat around a long table during the meeting.

5. Mr. Crooks stated to me that he did not want to have any surprises in the courtroom during my testimony and told me a number of questions that he was going to ask me. I would tell him how I was going to answer the questions and Mr. Crooks would then suggest to me and my attorney how to phrase my answers.

6. I was familiar with Judge Benson at that time since I had appeared before him in my case; there is no doubt in my mind that it was Judge Benson who was present and sitting at the table for the entire meeting for the preparation of my testimony.

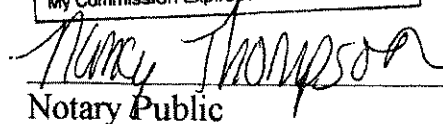
FURTHER THE AFFIANT SAYETH NAUGHT.

Dated this 27<sup>th</sup> day of August, 2002.

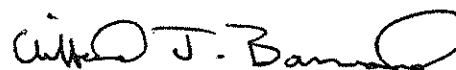
  
Vernon Wegner

Subscribed and sworn to before me by Vernon Wegner this 27<sup>th</sup> day of August, 2002.

NANCY THOMPSON  
Notary Public, STATE OF NORTH DAKOTA  
My Commission Expires APRIL 21, 2005

  
Notary Public

Respectfully submitted,



Clifford J. Barnard  
Colorado Registration No. 8195  
Attorney at Law  
1790 30th Street, Suite 280  
Boulder, Colorado 80301-1033  
Telephone: (303) 449-2543  
Facsimile: (303) 444-6349

#### CERTIFICATE OF SERVICE

I hereby certify that I did on this 28th day of August, 2002, mail a true and correct copy of the foregoing *Affidavit of Vernon Wegner* by placing it in the U.S. mail, postage prepaid and addressed to the following:

Assistant U.S. Attorney Scott Schneider  
220 E. Rosser Avenue, Room 372  
P.O. Box 699  
Bismarck, North Dakota 58502-0699  
Telephone: (701) 530-2420

John T. Goff, Esq.

Montgomery, Goff & Bullis  
P.O. Box 9199  
Fargo, North Dakota 58106  
Telephone: (701) 281-8001

Wm J. Bullis





March 29, 1995

The Honorable Mr. Edward Reilly, Chairman  
U. S. Parole Board  
5550 Friendship Blvd.  
Chevy Chase, Maryland 20815

Dear Chairman Reilly,

I am writing to you on behalf of a number of American police officers, attorneys, judges, public officials and others to ask you to read the following Criminal Justice Professionals Affidavit pertaining to the investigation of the 1983 Gordon W. Kahl case. We, the undersigned, feel the enclosed information will be of assistance to you in the upcoming parole hearing relating to federal prisoner, Yorie Von Kahl.

We wish to thank you in advance for taking the time to read the accompanying affidavit of our investigation.

Yours sincerely,

Officer Gerald J. McLamb, Ret.  
Executive Director  
American Citizens & Lawmen Association

AFFIDAVIT OF CRIMINAL JUSTICE PROFESSIONALS  
(The Gordon W. Kahl Case)

The following is a recap of the police officer investigation into the Medina, North Dakota, police action which involved the U.S. Marshal Service and Gordon W. Kahl, and occurred on February 13, 1983. Phoenix, Arizona Police Officer Gerald J. McLamb was the chief investigator until August 1990. Mesa, Arizona Police Officer A. Rick Dalton has taken over as chief investigator.

My name is Gerald J. McLamb and I am now retired from the Phoenix Police Department. We officers at the American Citizens & Lawmen Association have been asked to assist in tendering this report in support of the paroling of Mr. Yorie Von Kahl by numerous private citizens, police and public officials, from across the nation. Please find that several of those present active and retired government officers have signed and/or have leant their names to this affidavit in support of the parole of Mr. Kahl. We have taken this course of action because we have come to understand, through much investigation, i.e. statements from those directly involved, investigative leads, testimony, reviewing evidence, police reports, and court transcripts of the case, that a serious injustice has been done, and continues, in this case.

An independent police investigation into this case was launched in June, 1986 because of information received from criminal justice professionals and the private sector that there were problems with the official reports on the events surrounding the Kahl case. I, then, Police Officer Gerald J. McLamb, was assisted initially in this investigation by 10 fellow U.S. law enforcement professionals from 9 separate states. The initial group of police/attorney investigators from federal, state and local jurisdictions, represent professional experience as Police Chiefs, U.S. Marshals, Sheriffs, Deputy Sheriffs, Police Investigators (Detectives), Police Academy Teachers, Patrol Officers, District/government attorneys, private attorneys. These initial professionals who joined the investigation and research, have a combined experience of over 180 years in law enforcement and other areas within the criminal justice system. Of those police/attorney professionals who joined our independent, 9 state, investigative team, only one had any prior knowledge of, or had met, the homicide suspect known as Mr. **Gordon W. Kahl** (Mr. Yorie Kahl's father.) That officer was the former U.S. Marshal for North Dakota, Bud Warren. He stated that the reason he joined our investigative team was because he was convinced that an injustice had been done to the Kahl family. He knew Mr. Gordon W. Kahl and family in a official capacity, before and up to, the tragic events that transpired in February 1983. After the initial months of the investigation, other professionals within the criminal justice field joined our investigative team.

YEAR OF INCIDENT - 1983 Similar investigations were begun by police academy instructors, such as myself, across the nation because of the loss of life of police officers due to the Kahl shootout in North Dakota. It is standard procedure to review how officers in our nation become disabled or lose their lives, so that police academies may instruct new recruits to any threat or needed change in

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procedure that will stop or lessen the chance of a recurrence.

After much review, the officers involved in the investigation into the shootout in North Dakota have discovered some of the causes of the violent confrontation involving Gordon W. Kahl and the U.S. Marshals in North Dakota.

## THE REPORT

**ABOUT THE INVESTIGATION:** Our initial duty is to find out why any police action evolves into violence and to conclude if there was a way that it could have been avoided. There is no valid reason for police academy investigations into the loss of life of police officers or private citizens to focus on if a particular subject was violence-prone or why any subject that is violence-prone commits violence. That is generally left to the psychologists. Our main concern is the protection of the public and police personnel, i.e. - Were there any tactical or judgement errors on the part of the police officers involved that did, or might have, lessened, curtailed, or exacerbated the violence?

Most of the time in such investigations, because of the very thorough training that all police officers (federal, state and local) receive, we find that the officers used good judgment, followed proper training and tactics, and that the violence could not have been avoided. This is the case with a high number of such "cause of death" investigations involving police officers. Our investigation of the Kahl case has led investigators to believe that this is **not** one of those cases.

Our findings based on the known facts brought out in the investigation show that at the least, misjudgment and errors of federal agents were the main cause of the violent confrontation. Several of those errors and misjudgments are delineated here for your information. However, before listing some of the police errors found in the Kahl arrest scenario, the following must be understood by any non-law enforcement persons reading this report.

## LAW ENFORCEMENT TRAINING

All law enforcement officers are well trained in performing arrests of non-violent and violent subjects. Much of the civilian population is unaware that law enforcement is no longer handled in the OLD WEST style of policing where each lawman "made it up as he went along" when it comes to police operations. For at least the last 20 years police arrest policies and tactics have been standardized for the most part throughout the profession. If officers were not well trained with long practiced and accepted tactics and policies, that work to eliminate or reduce the likelihood of violence, there would be many more deaths and injuries to law officers and private citizens during the many thousands of arrests that are successfully completed every day across the U.S..

Through the normal course of daily law enforcement activity, which requires regular use of those basic policies and tactics, an officer is unable to forget this training. These tactics become a reflexive response. The officers are also trained to understand that when these basic policies and tactics are

ignored or violated by arresting officers, the likelihood of violence and injury is increased. Most importantly it should be understood that in cases where it is obvious, after investigation, that officers did not follow basic policies and/or tactics of arrest, it is logical to conclude that the investigation will show that the explanations or reasons for these breaches of policies and tactics will be something **other than** improper training or forgetfulness.

### INVESTIGATIVE FINDINGS

Investigation has determined the following in regards to the police action plan and implementation of said plan, involving the North Dakota incident of February 13, 1983.

1) FEDERAL OFFICERS VIOLATED ORDERS FROM WASHINGTON HEADQUARTERS: Per facts and documents brought out in testimony, at trial and per North Dakota Assistant U.S. Marshal Bud Warren's testimony, a 1981 teletype from Washington D.C. U.S. Marshals' headquarters, Enforcement Branch, instructed that the **misdemeanor** warrant for Gordon W. Kahl "is to be put away and not served on subject Gordon W. Kahl" -(See trial testimony of U.S. Marshal B. Warren.) Federal officers violated this direct order from superiors putting in motion the police action that would lead to the confrontation with subject Kahl.

2) PROPER NOTIFICATION OF POLICE ACTION : No marked or recognizable police vehicles were used in the police road block. Under orders from Asst. U.S. Marshal Ken Muir, the only officer (Medina police officer Steve Schnabel) who tried to display his badge, just before the execution of the roadblock, was told to remove it before the service of the warrant was attempted. Basic arrest policy and procedures for U.S. police agencies dictate that on any warrant arrest at least one police officer will be in full police uniform or marked police units (cars) will be used so that the subjects to be arrested, and the local public, will be put on lawful notice of the police action. This basic policy also allows for there being no misunderstanding, and no excuse, for not obeying the arresting officers who are conducting a lawful arrest.

3) PLANNING: No normal pre-arrest planning meeting was held prior to the attempted service of the misdemeanor arrest warrant on subject Kahl. This violation of policy and tactics caused a serious tactical disaster.

A. NO SERVICE OF WARRANT: If there had been a pre-arrest planning meeting before the attempted arrest, there would have most probably not have been an attempt to serve the warrant. At such a meeting the Marshals would more than likely have decided not to violate orders of supervisors in Washington in regards to serving the Kahl misdemeanor warrant.

B. TIME, PLACE AND TACTICS: If it were decided to go forward with the violation of orders, such a planning meeting would have provided a serious look at **basic** policies and procedures that demand more secure and sound methods, time and place, to affect the arrest of Kahl. For example, it was known that Kahl was often seen walking by himself, in town, at the grocery store, hardware store, and working alone in the farm field , etc.. The type, time and place of this police action

unnecessarily threatened the lives of police personnel and innocent civilians.

C. **INSUFFICIENT MANPOWER:** A planning meeting would have reminded officers that **basic** policy and procedure requires that superior manpower and arms are to be used if it is believed that there is the potential for violence in any warrant service or arrest. If a pre-arrest planning meeting had been held, the attempted service could have been called off due to insufficient manpower. After the incident, officials testified that the reason Kahl had to be taken that Sunday was that "he had been spotted at the clinic". The idea is to make a reasonable defense for our deceased fellow officers by making the situation sound like the police action had to be accomplished at that very moment,...that Kahl could not have been arrested at any other time. Our investigation points to the fact that the warrant was over 2 years old. Each U.S. Marshal in North Dakota would have known about the warrant for those years. As we listed in "B" above, during those years Kahl was seen regularly in and around town, in the fields working, etc,. There was not exigent circumstances to arrest Kahl on that day in February 1983.

**OTHER KNOWN FACTS (Before police action of 2-13-83):** It was believed by the Marshals in command that there would be a violent confrontation in the arrest of Kahl on the misdemeanor warrant, per testimony of Medina Police Chief Daryl Graff. He stated that when asked to participate (on the day of the shootings) by U.S. Marshals Muir and Cheshire, he was told that there was going out to be a shoot-out with Kahl, and "would he like to come along".

In addition, per testimony of former North Dakota U.S. Marshal Bud Warren, he was told by Marshal Ken Muir that they expected violence when they (U.S. Marshals) went out to "arrest" Kahl. He too, was asked if he would like to come along? Both of these law enforcement professionals refused to "go along" on the confrontation, and stated that they warned Ken Muir and Cheshire not to attempt to serve the misdemeanor warrant at that time or in that manner. In addition, U.S. Marshall Bud Warren reminded Marshal Muir that orders from Washington Headquarters were to **not serve the misdemeanor warrant on Kahl.**

Both lawmen, U.S. Marshal Warren and Police Chief Darrel Graff, after the shoot-out, stated that the reason they did not "go along" was because they knew that the Marshals not only expected, but inferred in their words and attitudes, that they intended to push for a violent confrontation with Kahl. The testimony of these two lawmen (Warren and Graff) as to why the Marshals wanted a violent confrontation with Kahl, was that U.S. Marshal Muir and others considered Kahl a "big mouth" and disagreed with Kahl's outspoken political views which were contrary not only to their own political beliefs, but also to those of the current political and judicial leadership in North Dakota, and the then current federal government administration. (These same feelings were also expressed to members of our investigative team by the two police officials.)

As to the insufficient manpower: Before the federal officers initiated the felony stop they were made aware by Sheriff Deputy Bradley Capp that there would be six private citizens in the group which they intended to stop at the roadblock. The federal officers decided to effect the stop with only six law officers. This is a violation of accepted arrest policies and tactics. If the officers had followed well defined and long practiced arrest policies and tactics, they would have called off the attempted arrest

of Kahl until superior manpower could be mustered.

D. IDENTIFICATION OF KAHL: According to basic training and tactics, at any pre-arrest planning meeting, each member of the police action team would have been provided with a picture ID of Kahl. (Photo was on file with federal government.) This is important, since it is necessary that each officer know, for sure, who it is that they are attempting to arrest. According to interviews and trial testimony, in the Kahl arrest attempt, only one of the officers (Deputy Bradley Capp) could recognize Kahl. The others did not know which one of the six people they had stopped at the roadblock was Kahl. During the confrontation several officers called out, "Which one is Kahl?" It is noted that Kahl's son was shot twice by officers and Gordon Kahl was not hit. Pictures of the arrestee in the hands of all officers are basic policy before such police action.

E. SERVICE OF WARRANTS WHEN SUBJECT IS ARMED: No arrest would have been attempted since pre-arrest intelligence given out at the planning meeting would have determined that Kahl had a gun with him that day. Without **exigent circumstances** basic policy and tactics dictate that if a subject is armed or has the availability of weapons, another time and place is to be chosen for attempted service of a warrant, a time when the subject may not be able to attain a weapon before officers can affect the arrest. This does not mean that on attempted service, if a person runs for a gun, that the police are to withdraw and attempt the arrest another day. What this basic policy and tactic means is that there are always choices as to time, place and circumstances when choosing a plan for service or arrest. In the case of the Kahl arrest attempt, the officers knew before hand that Kahl was armed. In fact, it was known in advance that several other people in the Kahl party were armed. This is, at the very least, a serious lack of good judgment on the part of the federal officers. At the very least, this is poor judgment and against all training, policy and tactics to try to arrest Kahl when he and others had the availability of weapons. There being no exigent circumstances for affecting the arrest of Kahl at such a time, the police action would have been called off.

F) SERVICE WHEN SUBJECT IS WITH FAMILY OR PEERS:

Policy and tactical procedures dictate that we do not place in jeopardy, any other members of the public, during a **planned** service of a warrant. If this were not basic police policy and procedures, it would be "basic common sense" that when there are no exigent circumstances, no attempted service of a warrant will be conducted when the subject to be arrested is with family, friends or associates. There are several valid reasons for this, but we will list only two of them here:

A). No service of warrant when innocent civilians may be put in harm's way.

B). No service of warrant when subjects of the arrest has the ability to summon family, friends or associates to their aid.

4) ELEMENT OF SURPRISE: Basic policy and tactics state that if the element of surprise is lost,

the service of the warrant is to be rescheduled. According to testimony of Sheriff Deputy Bradley Capp, he advised federal Marshals by radio before the roadblock was initiated, that he had been spotted by some of Kahl's friends in attendance, surveiling the group with binoculars and that the group had reacted to the knowledge of the surveillance. Again, according to basic policy and tactics the operation would have been called off, lacking any exigent circumstances, at that moment and place since the subjects, if they were so inclined, would have had time to prepare and attempt to counter any police action.

5) UNNECESSARY PROVOCATION: Testimony of those at the scene speaks to the use of demeaning, threatening and provocative language by federal officials toward the subjects stopped at the roadblock.

In their academy training, Police officers are given training in basic psychology in how to handle different types of suspects. The reason for this is that an understanding of basic psychology saves lives. For example, if one is to address a Biker, gang member, or hard core ex-con, and hopes to get that type individual to obey orders, it may require the language such as was used on the 63 year old decorated war veteran, church-attending, farmer named Gordon Kahl, his wife, son and friends. Officers are also trained as to what problems can arise from using such strong, offensive language on the average, religious, family oriented, idealistic - type Americans. (Testimony of the federal law enforcement officers who knew Kahl and family for a number of years assessed him and his family as we have described them above, i.e. average, church-going, family oriented, idealists.) It is basic psychology instruction that when such tactics are used on the above described type of American it tends to unnecessarily provoke the subject. If a known quantity, a type such as this man Kahl, was ever to stand up, be tough, and exercise his "family honor" machismo, it would be when officers yell epitaphs in front of family and friends, such as "God damn it, we're going to blow your fucking heads off!" (actual quote from officers at scene), or "We will kill you SOB's!", or other sundry inflammatory, and denigrating names and terms.

What we are expressing is that we teach officers that under certain circumstances, the type of aggressive, demeaning, authoritarian address that Marshals Muir and Cheshire used on Kahl, family and friends, is appropriate and works very well used on the right personality profile, i.e. Bikers, gang members, hardened ex-cons, etc. . However, officers are trained well to understand that psychodynamics such as "family honor", "peer pressure", etc. come into play when such tactics are used in the **wrong circumstances**, such as the Kahl family. The training of these officers would have been such that they would have known this method of communicating would not only fail in getting Kahl to comply with their orders, but would very likely press him to stand up and "challenge authority" in front of his family and friends, and thus exacerbate the already tense situation at the roadblock.

THE ROGUE OFFICER: Our point in bringing this up is that the technique used by the U.S. Marshals at the roadblock is classic, and is recognized by seasoned officers as one commonly used when rogue officers have decided, for whatever reason to become "punitive". "Punishment" by law enforcers, being completely outside police officers' lawful scope of authority, is never spoken of "officially" in law enforcement circles. Officially, it does not happen. But, between those officers

who make such bad decisions, it is sometime called an "attitude adjustment". To give an example, sometimes such rogue officers will determined that the subject of their unlawful attention, "needs to go to jail", "needs a ass whipping", etc., etc.. To accomplish either one of these ends, one such "technique" would be applied thusly: The **wrong** psychological approach is purposely applied to a **known** class or type of individual, or group, and the astute rogue officer expects the resultant reaction - before hand. Probably the classic and simplest analogy is the rogue, provocateur, officer using racial epitaphs, or a variety of other "motivator" to get the desired reaction. In other words, it is a technique that exceptionally bad officers use when they wish to provoke a confrontation that results in the confronted subject recoiling in the reaction the officer(s) hoped for, that allows them to take a certain desired action, i.e., physically abuse, take the person to jail on a charge of disturbing the peace, fighting/assault on officers, etc. . As disturbing as it is to mention, this technique will at times also be used to give some officer(s) a "valid" reason to kill the subject of their unwarranted attention. (A good example of this would be out of **retaliation** or **vengeance** when a suspect is captured or cornered, who is suspected of killing a fellow police officer.)

This police officer investigative team, with over a combined 180 years of police experience, (at the federal, state and local levels), believes that the command officers at the roadblock understood that their using the improper psychological, authoritative approach, on a known quantity, such as subject Gordon W. Kahl, might result in a violent reaction.

#### CONTROLLED POLICE POWER:

What is largely unknown to the civilian population is that the application of Police Power is a known, long understood and practiced SCIENCE, seldom accomplished by happenstance. To make this point, one will take notice that all of the herein listed, **misapplied**, or **ignored**, police policies, procedures and tactics are based on basic psychology and common sense and have been used successfully for decades nationwide to effect safe police operations. As we have stated before, they are basic training in virtually every police academy across the nation.

#### CASE SUMMATION:

It is always difficult for police investigators to find and/or admit fault on the part of themselves or their peers. It is especially difficult to find it necessary to lay fault at the feet of fallen fellow officers. However, we understand that critique of successful and unsuccessful police operations is vital to the future welfare of both the law enforcement officer and the private citizen. After much consideration and study of the documented facts surrounding the Medina, North Dakota police action involving the Kahl family, the following facts are known:

It is the conclusions of these criminal justice/police officer investigators:

- That the loss of life and injuries to all parties were caused in the main by police officer error in judgment and/or misconduct. Certainly, if not for the violations, the confrontation of Feb. 13, 1983 would not have occurred.

- That according to decisions made in the Washington D.C. headquarters of the U.S. Marshals Service,



the Kahl warrant had been set aside and the North Dakota Assistant U.S. Marshals Bud Warren and Kenneth Muir had been advised that the warrant was not to be served.

- That Marshal Kenneth Muir acted in violation of orders of superiors when he made the decision to attempt to serve the Kahl warrant.

- It is further concluded that, aside from the violation of orders from superiors, had the U.S. Marshals used proper **basic** arrest policies and tactics, the arrest of Kahl most probably could have been carried out without a violent confrontation.

The most critical examination of this police action caused investigators to conclude the following: Since all of the participating federal officers were known to be experienced, well trained and practiced in basic policies and tactics of arrest, and chose to knowingly violate such policies, or fail to apply them, it is probable that said officers had motives other than the peaceful arrest of the subject known as Gordon W. Kahl on February 13, 1983.

#### POLITICAL CASE:

From the beginning, until the present, all of the persons we have interviewed - - many who testified at the trials in North Dakota, several jurors, and various others who knew the Kahl family or our fellow police officials involved in the incident - - all have agreed on one thing: This was, and still is, a politically sensitive case. After thousands of combined hours of investigation, our investigators completely agree. To re-state: In the view of these police investigators, we know most assuredly that, from the aforementioned, alleged arrest scenario, to the utterly astounding biased "trial by jury" of the Kahl family and friends by the governmental and judicial friends of the deceased U.S. Marshals, to the alleged "shootout" between lawmen and federal fugitive Kahl in Arkansas on June 3, this is an exceptional and uniquely handled, **POLITICAL** case.

### A BRIEF CRITIQUE OF THE TRIAL OF KAHL RELATIVES AND FRIENDS

#### INVESTIGATIVE FINDINGS

Our investigation of the North Dakota trials is of a cursory nature as it is not the purview of police academy instructors to critique the judiciary. This is one reason that it was exceptionally good to have those with criminal law/trial experience as part of the team. It is out of our concern for justice that we list several areas of concern that troubled this police officer/attorney investigative team.

1) U.S. Marshal (for North Dakota) Bud Warren, in August of 1987, stated to the investigative team, of which he, himself, was a part, that because of the political nature of this case, the close friendships between the judge, prosecutor and the dead Marshals, the defendants in the Kahl case could not, and did not, get a fair trial. Several of the officers/attorney investigators, were witness to Marshal Warren's statements. The Chief Judge of the 8th Circuit Court of Appeals, in his dissenting opinion, backs up Marshal Warren's assessment of the prosecution and trials of the Kahl case defendants: "The record amply demonstrates the defendants did not, and could not receive a fair trial in the District of