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DOJ OIG Releases Memo to FBI Director Regarding Evidence Handling and Crime Scene Maintenance Procedures at Law Enforcement-Involved Shooting Incidents

Department of Justice (DOJ) Inspector General Michael E. Horowitz announced today the release of a [Management Advisory Memorandum](#) to the Federal Bureau of Investigation (FBI) Director regarding a potential conflict between FBI post-shooting evidence handling and crime scene maintenance procedures and the FBI Hostage Rescue Team's (HRT) practice of identifying and removing sensitive items, such as night vision goggles, weapons, or unexploded flash bang grenades, from a crime scene.

The DOJ Office of the Inspector General (OIG) identified these concerns in connection with the FBI HRT's role in a law enforcement-involved shooting that occurred following an armed militia's seizure of the Malheur National Wildlife Refuge near Burns, Oregon. On January 26, 2016, one of the militia members was shot and killed by two Oregon State Police (OSP) officers when he left the refuge and drove at high speed toward a law enforcement roadblock that was being manned by OSP officers and FBI HRT operators. At the scene, all of the FBI HRT operators denied having fired a shot. As a result, state and local law enforcement personnel—not the FBI—assumed control of the scene and conducted the shooting investigation, which subsequently determined that the shooting by OSP officers was justified.

During the course of the shooting investigation, state and local law enforcement investigators became aware of FBI aerial surveillance video taken at the scene shortly after the January 26 shooting that depicted FBI HRT personnel moving around the scene in the dark, using flashlights to look under and around vehicles, examining the area near the roadblock, and appearing to pick up objects from the roadway. The FBI HRT agents denied searching for or picking up ammunition casings and instead told OSP detectives that, consistent with FBI HRT practice, they were conducting a sensitive items check. The actions of FBI HRT personnel became an issue when state and local law enforcement investigators subsequently determined that eight shots were fired on January 26, two more than the six shots that could be attributed to the two OSP officers. Further, investigators only found two shell casings at the scene, with both being discovered off the roadway in the snow using metal detectors. None of the casings from the six shots taken while law enforcement was standing in the roadway were recovered.

The OIG identified several areas in which HRT's practice of identifying and removing sensitive items following a shooting either are not squarely addressed by or potentially conflict with the FBI's procedures for evidence handling, crime scene management, and agent-involved shooting incident investigations. The FBI's evidence handling and crime scene management procedures prohibit the removal of items from a shooting scene and require any items seized to be documented. However, by their terms, these procedures only contemplate an FBI-led investigation of the shooting and do not explicitly apply where the FBI coordinates with state and local law enforcement outside of an FBI-led task force, and where state or local law enforcement takes control of the scene and conducts the shooting investigation. Nor do FBI procedures

provide guidance concerning whether and how FBI agents may identify and remove sensitive items from a crime scene.

The OIG made four recommendations to the FBI to address the concerns we identified. The FBI agreed with all four recommendations.

Memorandum: Today's memorandum is available [on the OIG's website here](#).

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