

First They Came for the Fascists . . .

By Gerry Spence

Excerpted from his book, *Freedom to Slavery: The Rebirth of Tyranny in America*, St. Martin's Press, 1993.

Randy Weaver's wife was dead, shot through the head while she clutched her child to her breast. His son was shot, twice. First they shot the child's arm probably destroyed the arm. The child cried out. Then, as the boy was running, they shot him in the back. Randy Weaver himself had been shot and wounded, and Kevin Harris, a kid the Weavers had all but adopted, was dying of a chest wound. The blood hadn't cooled on Ruby Hill before the national media announced that I had taken the defense of Randy Weaver. Then all hell broke loose. My sister wrote me decrying my defense of this "racist." There were letters to the editors in several papers that expressed their disappointment that I would lend my services to a person with Weaver's beliefs. And I received a letter from my close friend, Alan Hirschfield, the former chairman and chief executive officer of Columbia Pictures and Twentieth Century Fox, imploring me to withdraw. He wrote:

After much thought I decided to write this letter to you. It represents a very profound concern on my part regarding your decision to represent Randy Weaver. While I applaud and fully understand your motives in taking such a case, I nonetheless find this individual defense troubling. It is so because of the respectability and credibility your involvement imparts to a cause which I find despicable.

The Aryan Nation, The Brotherhood, and the Order are all groups dedicated to only one premise hatred of the unlike by the like. They deny the Holocaust and preach the gospel of ethnic debasement and racist supremacy. They are societal malcontents and misfits who espouse nothing worthwhile. It is the beliefs of these groups that Mr. Weaver represents.

Mr. Hirschfield went on to argue that my involvement would lend dignity to an illicit and repugnant movement:

This is not Huey Newton and the Black Panthers fighting 200 years of prejudice and second-class citizenship nor even the PLO seeking a homeland by terrorist methods. While I abhor terrorism of any kind, I do understand its politics. Not so with the philosophy of the groups Mr. Weaver stands for.

The issues involved are reminiscent of the recent national uproar over the Warner Brothers recording made by the rap singer Ice T which advocated killing cops. Other tracks on the CD were virulently anti-Semitic and homophobic. The right of Ice T to publicly record these songs was not the issue. What was troublesome to myself and others was the role of Warner Bros. in disseminating his message in the name of preserving their "creative integrity." I gave an interview on this subject and suggested that at least in business there was a line to be drawn between unbridled creative freedom and corporate responsibility. In Warner's case they could have chosen not to distribute this record (it still would have found a distributor); instead they trumpeted the creative freedom argument, and by lending their world-renowned prestige to the issue, they imparted to Ice T and his message a legitimacy wholly undeserved, and in doing so made the recording a national hit in contrast to his previous mediocre results.

My premise, therefore, is not the right of Weaver or anyone else to the best possible defense but rather the message sent when the finest trial lawyer in America undertakes that defense, simply to make that point. The message, I believe, will embolden those espousing the cause Weaver represents and encourage other mindless haters to join up. The resultant media attention will provide a platform previously never enjoyed by those people.

I clearly know this is not your intent in defending Mr. Weaver but I believe . . . there is a time when a person of your extraordinary talent and commitment, and knowing full well the notoriety that comes with your representation, perhaps demurs, rather than allow legitimacy and notoriety to a sick and twisted philosophy.

As you know, I am not a religious person . . . but I am keenly conscious of my heritage and the endless persecution Jews throughout the world have suffered. There is in my mind no worse group of people than those involved here, who espouse both hatred and violence against blacks and other minorities without purpose other than hatred itself. They don't need a homeland, they don't propose alternatives, and they don't want a solution other than the one Hitler sought. As a result of your involvement, these same

people will be given a greatly expanded voice at this trial.

It is because of this that I write and ask you to reconsider your decision to involve yourself in this case. I do so out of total respect and personal affection for you. And, of course, whatever your decision you will have the same respect and that same affection from me.

Your friend,

Alan J. Hirschfield

The next day I delivered the following by carrier to Mr. Hirschfield:

I cherish your letter. It reminds me once again of our friendship, for only friends can speak and hear each other in matters so deeply a part of the soul. And your letter reminds me as well, as we all must be reminded, of the unspeakable pain every Jew has suffered from the horrors of the Holocaust. No better evidence of our friendship could be shown than your intense caring concerning what I do and what I stand for.

I met Randy Weaver in jail on the evening of his surrender. His eyes had no light in them. He was unshaven and dirty. He was naked except for yellow plastic prison coveralls, and he was cold. His small feet were clad in rubber prison sandals. In the stark setting of the prison conference room he seemed diminutive and fragile. He had spent eleven days in standoff against the government, and he had lost. His wife was dead. His son was dead. His friend was near death. Weaver himself had been wounded. He had lost his freedom. He had lost it all. And now he stood face to face with a stranger who towered over him and whose words were not words of comfort. When I spoke, you, Alan, were on my mind.

"My name is Gerry Spence," I began. "I'm the lawyer you've been told about. Before we begin to talk I want you to understand that I do not share any of your political or religious beliefs. Many of my dearest friends are Jews. My daughter is married to a Jew. My sister is married to a black man. She has adopted a black child. I deplore what the Nazis stood for. If I defend you I will not defend your political beliefs or your religious beliefs, but your rights as an American citizen to a fair trial." His quiet answer was, "That is all I ask." Then I motioned him to a red plastic chair and I took a similar one. And as the guards marched by and from time to time peered in, he told his story.

Alan, you are a good and fair man. That I know. Were it otherwise we would not be such good friends. Yet it is your pain I hear most clearly exacerbated, I know, by the fact that your friend should represent your enemy. Yet what drew me to this case was my own pain. Let me tell you the facts.

Randy Weaver's principal crime against the government had been his failure to appear in court on a charge of possessing illegal firearms. The first crime was not his. He had been entrapped intentionally, systematically, patiently, purposely entrapped by a federal agent who solicited him to cut off, contrary to federal law, the barrels of a couple of shotguns. Randy Weaver never owned an illegal weapon in his life. He was not engaged in the manufacture of illegal weapons. The idea of selling illegal weapons had never entered his mind until the government agent suggested it and encouraged him to act illegally. The government knew he needed the money. He is as poor as an empty cupboard. He had three daughters, a son, and a wife to support. He lived in a small house in the woods without electricity or running water. Although he is a small, frail man, with tiny, delicate hands who probably weighs no more than a hundred twenty pounds, he made an honest living by chopping firewood and by seasonal work as a logger.

This man is wrong. His beliefs are wrong. His relationship to mankind is wrong. He was perhaps legally wrong when he failed to appear and defend himself in court. But the first wrong was not his. Nor was the first wrong the government's. The first wrong was ours.

In this country we embrace the myth that we are still a democracy when we know that we are not a democracy, that we are not free, that the government does not serve us but subjugates us. Although we give lip service to the notion of freedom, we know the government is no longer the servant of the people, but, at last, has become the people's master. We have stood by like timid sheep while the wolf killed first the weak, then the strays, then those on the outer edges of the flock, until at last the whole flock belonged to the wolf. They were not a part of the flock. We did not care much about those on the edges. They had chosen to be there. But as the wolf worked its way toward the center of the flock we discovered that we were now on the outer edge. Now we must look the wolf squarely in the eye. That we did not do so when the first of us was ripped and torn and eaten was the first wrong. It was our wrong.

That none of us have felt responsible for having lost our freedom has been a part of an insidious progression. In the beginning the attention of the flock was directed not to the marauding wolf but to our own deviant members within the flock. We rejoiced when the wolf destroyed them, for they were our enemies. We were told that the weak lay under the rocks while we faced the blizzards to rustle our food,

and we did not care when the wolf took them. We argued that they deserved it. When one of our flock faced the wolf alone it was always eaten. Each of us was afraid of the wolf, but as a flock we were not afraid. Indeed, the wolf helped us by destroying the weak and dismembering the aberrant element within. As time went by, strangely the herd felt more secure under the rule of the wolf. It believed that by belonging to this wolf it would remain safe from all the other wolves. But we were eaten just the same.

No one knows better than the children of the Holocaust how the lessons of history must never be forgotten. Yet Americans, whose battle cry was once "Give me liberty or give me death," have sat placidly by as a new king was crowned. In America a new king was crowned by the shrug of our shoulders when our neighbors were wrongfully seized. A new king was crowned when we capitulated to a regime that was no longer sensitive to people but to non-people to corporations, to money, and to power. The new king was crowned when we turned our heads as the poor and the forgotten and the damned were rendered mute and defenseless, not because they were evil but because in the scheme of our lives, they seemed unimportant, not because they were essentially dangerous but because they were essentially powerless. The new king was crowned when we cheered the government on as it prosecuted the progeny of our ghettos and filled our prisons with black men whose first crime was that they were born in the ghettos. We cheered the new king on as it diluted our right to be secure in our homes against unlawful searches and secure in the courts against unlawful evidence. We cheered the new king on because we were told that our sacred rights were but "loopholes" by which our enemies, the murderers and rapists and thieves and drug dealers, escaped. We were told that those who fought for their rights, the lawyers, were worse than the thieves who stole from us in the night, that our juries were irresponsible and ignorant and ought not be trusted. We watched with barely more than a mumble as the legal system that once protected us became populated with judges who were appointed by the new king. At last the king was crowned when we forgot the lessons of history, that *when the rights of our enemies have been wrested from them, our own rights have been lost as well, for the same rights serve both citizen and criminal.*

When Randy Weaver failed to appear in court because he had lost his trust in the government, we witnessed the fruits of our crime. The government, indeed, had no intent to protect his rights. The government had but one purpose as it remains today, the disengagement of this citizen from society. Those who suffered and died in the Holocaust must have exquisitely understood such illicit motivations of power.

I have said that I was attracted to the case out of my own pain. Let me tell you the facts: A crack team of trained government marksmen sneaked onto Randy Weaver's small isolated acreage on a reconnaissance mission preparatory to a contemplated arrest. They gave Randy no warning of their coming. They came without a warrant. They never identified themselves.

The Weavers owned three dogs, two small crossbred collie mutts and a yellow lab, a big pup a little over a year old whose most potent weapon was his tail, with which he could beat a full-grown man to death. The dog, Striker, was a close member of the Weaver family. Not only was he a companion for the children, but in the winter he pulled the family sled to haul their water supply from the spring below. When the dogs discovered the intruders, they raised a ruckus, and Randy, his friend Kevin, and Randy's 14-year-old son Sam grabbed their guns and followed the dogs to investigate.

When the government agents were confronted with the barking dog, they did what men who have been taught to kill do. They shot Striker. The boy, barely larger than a ten-year-old child, heard his dog's yelp, saw the dog fall, and, as a 14-year-old might, he returned the fire. Then the government agents shot the child in the arm. He turned and ran, the arm flopping, and when he did, the officers, still unidentified as such, shot the child in the back and killed him.

Kevin Harris witnessed the shooting of the dog. Then he saw Sam being shot as he turned around and ran. To Kevin there was no alternative. He knew if he ran these three intruders, whoever they were, would kill him as well. In defense of himself, he raised his rifle and shot in the direction of the officer who had killed the boy. Then, while the officers were in disarray, Kevin retreated to the Weaver cabin.

In the meantime, Randy Weaver had been off in another direction and only heard the shooting, the dog's yelp, and the gunfire that followed. Randy hollered for his son and shot his shotgun in the air to attract the boy.

"Come on home, Sam. Come home."

Over and over he called.

Finally he heard the boy call back: "I'm comin', Dad." Those were the last words he ever heard from his son.

Later the same day, Randy, Kevin, and Vicki Weaver, Randy's wife, went down to where the boy lay and carried his body back to an outbuilding near the cabin. There they removed the child's clothing and bathed his wounds and prepared the body. The next evening, Weaver's oldest daughter, Sarah, 16, Kevin

and Randy went back to the shed to have a last look at Sam. When they did, the government snipers opened fire. Randy was hit in the shoulder. The three turned and ran for the house where Vicki, with her ten-month-old baby in her arms, stood holding the door open. As the three entered the house Vicki was shot and slowly fell to her knees, her head resting on the floor like one kneeling in prayer. Randy ran up and took the baby that she clutched, and then he lifted his wife's head. Half of her face was blown away.

Kevin was also hit. Huge areas of muscle in his arm had been blown out, and his lung was punctured in several places. Randy and his 16-year-old daughter stretched the dead mother on the floor of the cabin and covered her with a blanket, where she remained for eight days as the siege progressed.

By this time there were officers by the score, troops, armored personnel carriers, helicopters, radios, television, robots, and untold armaments surrounding the house. I will not burden you with the misery and the horror the family suffered in the standoff. I will tell you that finally Bo Gritz, Randy's former commander in the Special Forces, came to help in the negotiations. Gritz told Randy that if he would surrender, Gritz would guarantee him a fair trial, and before the negotiations came to an end, Randy came to the belief that I would represent him. Although Gritz had contacted me before he spoke to Randy, I had only agreed to talk to Randy. But the accuracy of what was said between Gritz and me and what was heard by Randy somehow got lost in the horror, and Randy's belief that I would represent him if he surrendered was, in part, his motivation for finally submitting to arrest.

And so my friend, Alan, you can now understand the pain I feel in this case. It is the pain that comes from the realization that we have permitted a government to act in our name and on our behalf in a criminal fashion. It is the pain of watching the government as it now attempts to lie about its complicity in this affair and to cover its crimes by charging Randy with crimes he did not commit, including murder. It is the pain of seeing an innocent woman with her child in her arms murdered and innocent children subjected to these atrocities. Indeed, as a human being, I feel Randy's irrepressible pain and horror and grief.

I also feel your pain, my friend. Yet I also know that in the end, if you were the judge at the trial of Adolf Eichmann, you would have insisted that he not have ordinary counsel, but the best counsel. In the same way, if you were the judge in Randy's case, and you had the choice, I have no doubt that despite your own pain you might well have appointed me to defend him. In the end you would know that the Holocaust must never stand for part justice, or average justice, but for that most notable of ideals that even the enemies of the Jews themselves must receive the best justice the system can provide. If it were otherwise, the meaning of the Holocaust would be accordingly besmirched.

Alan, I agree with your arguments. They are proper and they are true. I agree that my defense of Randy Weaver may attach legitimacy and a dignity to his politics and religion. But it may, as well, stand for the proposition that there are those who do not condone this kind of criminal action by our government. I view the defense of Randy Weaver's case as an opportunity to address a more vital issue, one that transcends a white separatist movement or notions of the supremacy of one race over another, for the ultimate enemy of any people is not the angry hate groups that fester within, but a government itself that has lost its respect for the individual. The ultimate enemy of democracy is not the drug dealer or the crooked politician or the crazed skinhead. The ultimate enemy is the New King that has become so powerful it can murder its own citizens with impunity.

To the same extent that Randy Weaver cannot find justice in this country we, too, will soon be deprived of justice. At last, my defense of Randy Weaver is a defense of every Jew and every gentile, for every Black and every Gay who loves freedom and deplores tyranny. Although I understand that it will be easy for my defense of Randy Weaver to be confused with an endorsement of the politics of the Aryan Nation, my challenge will be to demonstrate that we can still be a nation where the rights of the individual, despite his race, color, or religion, remain supreme. If this be not so, it is because we have forgotten the lessons of our histories the history of the American Revolution as well as the history of the Holocaust.

And so my friend, Alan, if I were to withdraw from the defense of Randy Weaver as you request, I would be required to abandon my belief that this system has any remaining virtue. I would be more at fault than the federal government that has murdered these people, for I have not been trained to murder but to defend. I would be less of a man than my client, who had the courage of his convictions. I would lose all respect for myself. I would be unable to any longer be your friend, for friendship must always have its foundation in respect. Therefore, as my friend, I ask you to not require this of me. I ask, instead, for your prayers, your understanding, and your continued love.

As ever,

Gerry Spence

Epilogue

Excerpted from
The Massacre of the Branch Davidians
A Study of Government Violations of Rights, Excessive Force and Cover Up
January 28, 1994
By the *Committee for Waco Justice*
P.O. Box 33037, Washington, D.C. 20033

BATF and FBI Crimes Against Randy Weaver

In July, 1993, the jury acquitted Weaver and Harris for [U.S. Marshal William] Degan's murder, saying Harris had acted in self-defense. The jury also rejected charges that the two men conspired to provoke a confrontation with federal officers. Weaver was convicted of failing to appear for the weapons charges trial and was sentenced to 18 months in prison, with credit for time already served.

Weaver's defense attorney was Gerry Spence, who had won notable trial victories for Karen Silkwood's children [Silkwood, a whistleblower who exposed the lack of safety at nuclear plants, was killed in a suspicious automobile accident] and Imelda Marcos. Spence did not call any witnesses or present a defense, but simply told jurors the government had failed to prove its case.

[After the verdict] Spence told reporters, "A jury today has said that you can't kill somebody just because you wear badges and then cover up those homicides by prosecuting the innocent." Juror Janet Schmierer of Boise, Idaho said, "I think they [the federal government] built their whole scenario out of how they perceived someone else should be living their lives, and if someone believed differently . . . they must be abnormal." Spence also said, "federal law enforcement agents should be indicted for murder in the deaths of Mrs. Weaver and Samuel." [1]

During the trial, it was revealed that FBI agents had fabricated evidence (staged critical photographs), failed to provide the defense with information they were legally obligated to give it, and delayed in producing requested information and evidence.

In November, 1993, Judge Edward Lodge rebuked the FBI, saying its behavior in fabricating evidence and delaying presentation of crucial evidence "served to obstruct the administration of justice." He asserted, "the Government, acting through the FBI, evidenced a callous disregard for the rights of the defendants and the interests of justice."

The Justice Department and FBI are now investigating possible criminal misconduct on the part of FBI agents and officials in the killing of Weaver's wife and son. Significantly, these are many of the same agents and officials who were in charge of the FBI's actions against the Branch Davidians, in Waco, Texas.

According to a November 25, 1993, *New York Times* article, "some FBI officials said they also feared that a separate investigation by a state prosecutor in Boundary County, Idaho, where the incident took place, could lead to homicide charges against FBI agents." According to the *Washington Times*, in December, 1993, FBI Director Louis J. Freeh told FBI agents that indictments against some FBI agents were a "virtual certainty." [2]

Notes:

[1] Michael Hedges, "FBI fined for delays in trial of Weaver," *Washington Times*, October 29, 1993.

[2] Jerry Seper, "FBI agents likely to face charges in deadly siege," *Washington Times*, December 14, 1993, A14.