

Photographs

report of that interview reflects Patrick's having seen the photograph, which appeared dark but otherwise clear.

"[H]e was also exhibited a 35mm photograph (partially underexposed) which was taken by Officer Peter Simonello, USPP at Fort Marcy parking lot on July 20, 1993. The photograph of Mr. Foster's Honda when viewed next to a light colored USPP vehicle appears extremely dark in color..."²²⁴

Richard Arthur testified that the FBI showed him what appeared to be 35-millimeter photographs of the body scene.

Q. I do have another question for you. Do you recall being shown photographs by the FBI?

A. Yes..

Q. What kind of pictures were they, if you know?

A. They were pictures of the body scene.

Q. Were they Polaroid pictures?

A. No, they weren't. They didn't appear to be Polaroid pictures. They appeared to be pictures that the Park Police took on the scene, 35-millimeter, I would say.

Q. Were they clear?

A. They appeared to be pretty clear.²²⁵

VI. EVIDENCE THAT THE OIC COVERED UP THE ABSENCE OF THE OFFICIAL MOUTH ENTRANCE WOUND & HEAD EXIT WOUND, AND THE EXISTENCE OF A NECK WOUND

Summary: Officially, there was an entrance wound in the soft palate and an exit wound about the size of a half-dollar about three inches below the top of the back of the head.

Witness accounts of a bullet wound in Mr. Foster's neck and the absence of the official mouth entrance wound and skull exit wounds: The Medical Examiner reported a gunshot wound to the neck, Paramedic Arthur was certain he saw a small caliber entrance wound on the neck, and there is

²²⁴ Exhibit 106, Report of FBI interview of Patrick Knowlton, May 12, 1994.

²²⁵ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

Wounds

no record of any of 26 persons who viewed Mr. Foster's body before the autopsy having seen either official entrance or exit wounds.

The autopsy: Three officials claimed that, on their own initiative and without prior discussion, each was responsible for rescheduling the autopsy from Thursday to Wednesday, July 21. Because the autopsy was moved up to 15 hours after the body's discovery, the two investigating Police Officers did not attend, in violation of SOP (standard operating procedure), having worked all night. Dr. Beyer began the autopsy before the Police arrived (in violation of SOP), during which time he removed the soft palate and tongue, the only evidence of both the actual and official entrance wounds. Dr. Beyer refused to tell the attending Police the identity of the man who assisted him in the autopsy. He did not know the caliber of weapon, so he left that portion blank on his Report of Autopsy. He and he alone reported that gunpowder was on the soft palate. But Dr. Beyer's own laboratory could find no traces of gunpowder on the tissue from the soft palate. The day of the autopsy, the FBI was apprised that its "preliminary results" showed "no exit wound." The attending Police reported that Dr. Beyer told them results of the x-rays. Dr. Beyer later claimed there were no x-rays. There was no official estimate of time of death. The evidence of the bullet trajectory is conflicting.

Bloodstains consistent with the neck wound: The OIC conceals that the bloodstains are consistent with the neck wound, but not with the official mouth wound. Blood present on Mr. Foster's neck, in his mouth, collar, right-side and back-side of his shirt is consistent with its having drained from the neck wound.²²⁶

Official excuse for blood on Mr. Foster's right side is that it drained from his mouth when an "early observer" moved the head to check for a pulse,

²²⁶ Officer Fornhill claimed he could not recall the appearance of the blood at the scene. Paramedic Gonzalez saw blood on the right side. Firefighter Hall saw blood on right collar. Paramedic Arthur saw the neck wound and blood coming from it. Pisani saw blood on the right shoulder. Wacha saw it in mouth and on the shirt. Ferstl saw blood around the mouth. Edwards' observations are unknown. Hodakievic saw blood under the head on the ground. Gavin saw blood out the mouth. Officers Rolla and Braun saw blood on right shoulder. Simonello saw blood close to the jawline and right shoulder. Abt saw it on shirt and right collar. There is no record of what Watson and the "intern" may have seen. Dr. Haut reported that blood on the back of the head was "matted," trauma to the neck, and that wound looked like it was caused by a "low velocity weapon." Ashford coded the death homicide and he did "not recall getting blood on his uniform."

Wounds

then repositioned it -- but Edwards did it to obscure or camouflage the existence of the neck wound: The OIC posits that (because no neck wound existed) the blood on Mr. Foster's right side had drained from his mouth when an "early observer" moved the head to check for a pulse, then repositioned it. The OIC conceals that no one admitted to having moved the head or seeing it being moved, and that no one tried resuscitation because Mr. Foster clearly appeared to have been dead for some time.²²⁷

The OIC conceals that the blood on the right shoulder and shirt could not have been caused by an "early observer" because all early observers saw these stains as they arrived.²²⁸

The OIC conceals that the blood was dry until after Edwards had been alone at the site.²²⁹ Edwards moved the head to cause blood to drain from

²²⁷ Dale testified that there was "no doubt he was dead." Fornshill denied having moved the head and related that neither Gonzalez nor Hall had moved the head. Gonzalez said that no one checked for a pulse because Mr. Foster was clearly deceased and had been for "2-4 hours." Hall saw no one touch the body and he "backed off" because he was not a "medic." Arthur "did not check for a pulse" because Mr. Foster "was obviously dead." Iacone said that "medics confirmed there would be no efforts to resuscitate."

²²⁸ Dale saw a "stain on his right shoulder." Gonzalez testified that he saw the bloodstain "on the right shoulder... [in the] clavicle area." Hall said it was soaked into the collar. Arthur saw it on the right shoulder of the shirt. Pisani saw blood on Mr. Foster's right shoulder. Wachu saw blood on the shirt. Pisani saw "blood on Mr. Foster's right shoulder."

²²⁹ Fornshill testified that the blood was "dried... dark in color... [and] flaking." Gonzalez testified that the blood he saw was "dry." Hall saw blood on the collar but not on face or shirt, and said that the photos showed blood that he did not see. Arthur testified the blood was not running. Pisani saw no blood on the face and said that the photographs showed more blood than he saw. Ferstl saw a small amount of blood around the mouth, which was "not fresh." Edwards, interviewed only in 1995, ordered Fornshill to leave the park, took Ferstl's photos and ordered him back to the parking lot, leaving Edwards alone at the site -- after which time the blood was wet. Hodakievic (perhaps at the site before and after Edwards) did "not recall" seeing any blood. Gavin saw blood "trickling out of the mouth and running down the right side

Wounds

the mouth to the neck to obscure and camouflage the existence of the neck wound.

The OIC conceals that the only witnesses who saw the blood transfer contact stain arrived at the site after Sergeant Edwards had been alone with the body.²³⁰

Blood quantity insufficient: The OIC conceals that the blood quantity observed was consistent with death caused by a small-caliber low-velocity bullet, and inconsistent with a point-blank shot to the mouth with .38 caliber high-velocity ammunition.²³¹

of the face." Rolla saw wet blood coming out of the nostril and mouth and down the face and also wet on the shirt and shoulder and ground. Abt saw both "dried and liquid" blood on the face. Simonello saw "blood running from the nose" and on the cheek near the jawline. Braun saw it in the nose and mouth area of the chin near the right shoulder and running down the right side of the face.

²³⁰ Rolla saw a transfer stain on the face. Abt saw a blood transfer stain on lower right cheek. Evidence Technician Simonello testified that he saw the transfer bloodstain "around the shirt collar, shoulder area."

²³¹ Dale said there was no blood around the head. Fornshill saw a "slight trail of blood" from the mouth and could not "recall any other blood." Gonzalez testified that the scene did not fit the usual .38 caliber gunshot head wound. Hall saw blood on the shirt and noticed no other blood. Arthur saw some around the mouth and nose but mostly on the right shoulder of the shirt. Pisani did not recall seeing any blood around the body. Wachsa saw blood only on the mouth and shirt. Iacone did not recall seeing any blood. Ferstl saw a "small amount" of blood around the mouth and did not recall any from the nose or on the shirt. Hodakievic, who apparently viewed the body both before and after Edwards had been alone with it, said "she did not notice any blood on the decedent's face or on his shirt." Lieutenant Gavin saw a "trickle... out of the mouth" and did not recall blood from nose nor on the shirt. Rolla said blood "was not all over the place, it was directly under his head." Abt said that aside from the blood on the shirt, there was no evidence in "immediate vicinity of [the] death scene." Simonello said there "wasn't a great deal" of blood. There is no record of Braun's having commented on the quantity of blood. Dr. Haut did "not see blood on Foster's face..., [the] volume of blood [on the back of the head was] small and he did not recall seeing blood on... [the] shirt." Harrison did "not recall

Neck wound

The OIC's claim of "blood-like stains" on the vegetation is contradicted by the accounts witnesses at the body site.²³²

Officially, Mr. Foster placed the barrel of the .38 caliber revolver loaded with two high-velocity cartridges against his soft palate. Officially, the exit wound, about three inches below the top of the back of the head, was about the size of a half-dollar. The absence of these wounds, as well as the existence of the bullet wound in Mr. Foster's neck, explains many of the anomalies in the case.

1. **Witness accounts of a bullet wound in Mr. Foster's neck and the absence of the official mouth entrance wound and skull exit wounds**
 - a. **Reports of Medical Examiner Haut and Paramedic Richard Arthur of the existence of a neck wound**

On July 19, 1997, four days after the OIC filed with the Court its interim Report on Mr. Foster's death, a researcher perusing Foster case documents at the National Archives found the *Report of Investigation by Medical Examiner*.²³³ Dr. Donald Haut, the only doctor to see the body at the park, wrote it. He listed 7:15 p.m. as being the time he viewed the body.

It was a lucky find. Haut's Report was found with documents that had been released by the Senate Banking Committee in January of 1995. There were forty-seven boxes of such records. There had been a great deal of speculation as to why Dr. Haut's *Report of Investigation by*

observing any blood" and filed no hazardous material (blood) report.

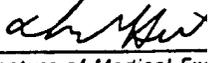
²³² Fornshill did not relate having seen any blood on the vegetation. Gonzalez testified that the scene was unusual in appearance for a gunshot wound to head. Pisani did not notice any blood around the body. Rolla reported "no blood on the plants or trees surrounding... [the] head." Abt observed no evidence in the "immediate vicinity of death scene." Dr. Haut remembered "no blood... on vegetation around the body." Ashford saw no blood on the ground.

²³³ Exhibit 103, Report of Investigation by Medical Examiner, July 20, 1993.

Neck wound

Medical Examiner, as well as the *Death Certificate*, also authored by Haut, was not in Senate Hearings volumes.

The "Cause of Death" section on the first page of the Report appears below.

CAUSE OF DEATH: PERFORATING GUNSHOT WOUND MOUTH- HEAD	MANNER OF DEATH: (check one only) <input type="checkbox"/> Accident <input checked="" type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Natural <input type="checkbox"/> Undetermined <input type="checkbox"/> Pending	AUTOPSY: AUTHORIZED I Pathologist - Autopsy No. .
I hereby declare that after receiving notice of the death described herein I took charge of the body and regarding the cause and manner of death in accordance with the Code of Virginia as amended; and that the stated herein regarding such death is correct to the best of my knowledge and belief.		
July 20, 1993 Date	Fairfax County City or County of Appointment	 Signature of Medical Examiner

Because the word "head" is not centered and there are some black marks to the left of it, it looks as if a different word had initially been typed in, but later whited out. In all likelihood, the falsifier decided not to center the word "head" because that would have required him to type over a whited-out word, and that would have been apparent on the photocopy. But the falsifier had failed to cover all of the original word, and we see what appears to be the bottom of a four-letter word.

That was not his only mistake. Because Haut's signature appeared on the front, maybe he didn't know that the Report has a backside. Under "Narrative Summary of Circumstances Surrounding Death," the following appears:

July 20, 1993 After anonymous call was received at 18:04 hours US Park Police officers found 48 yrs Caucasian male with self-inflicted gunshot wound mouth to neck on a foot path in Marcey [sic] Park... (emphasis supplied).

The OIC didn't provide an excuse for Dr. Haut's having reported the neck wound because Haut's Report was not in the public domain when the OIC filed its Report. We don't know what Dr. Haut wrote as the cause of death on the *Death Certificate*. Perhaps the OIC was as dishonest in revealing the contents of the *Death Certificate*, as it was about the *Report of Investigation by Medical Examiner*.

Neck wound

OIC, p. 27, fn. 27:

...Dr. Haut completed a "Report of Investigation by Medical Examiner" after the incident; the report is stamped with the date July 30, 1993. OIC Doc. No. DC-106A-1 to DC-106A-2. The report states that the cause of death was "perforating gunshot wound mouth-head" and the means of death was a "38 caliber handgun." Id. It states that the manner of death was "suicide." Id. Dr. Haut signed the death certificate. It states that the cause of death was "perforating gunshot wound mouth - head" and that the manner of death was "suicide" by "self-inflicted gunshot wound mouth to head."

The OIC even hides the date that the *Report of Investigation by Medical Examiner* was written, reporting only that *"the report is stamped with the date July 30, 1993."* Actually, it was stamped, "Jul 30 Received No Va Medical Examiner," evidencing when Dr. Beyer's office received it. Dr. Haut wrote it the night of the death. Written above "July 20, 1993," and Dr. Haut's signature, is the following declaration.

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with the Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

Dr. Haut was not the only medical personnel to report the existence of a bullet wound in Mr. Foster's neck. Richard Arthur is one of those observant witnesses who knows what he saw, no matter how many times he's told he didn't see what he remembered seeing. His account of the wound (and gun) has been quite problematic for the FBI. He's been interviewed five times. Each time, the FBI's report of his observations is a little more watered down.

At the time of Mr. Foster's death, Arthur had been a paramedic in the employ of Fairfax County for nine years. Luckily, we have his Senate deposition a year after the death, the only record of what Arthur saw which the FBI could not edit. He refused to alter his account of having seen the bullet hole in Mr. Foster's neck. He seemed

Neck wound

certain, and a little exasperated, when asked a year after Mr. Foster's death, July 14, 1994.

- Q. Let me ask you this: If I told you that there was no gunshot wound in the neck, would that change your view as to whether it was a suicide or not?
- A. No... What I saw is what I saw. I saw blood all over the right side of the neck, from here down, all over the shoulder, and I saw a small - what appeared to be a small gunshot wound here near the jawline. Fine, whether the coroner's report says that or not, fine. I know what I saw.²³⁴

According to the OIC's account of the fourth FBI interview with Arthur, in April of 1996, three years after the death, Arthur finally recanted.

OIC, p. 34, fn. 77:

...Another of the FCFRD personnel, Richard Arthur, initially said he saw what appeared to be a bullet wound on the neck. OIC, 1/5/95, at 63. After

²³⁴ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: Q. Let me ask you this: If I told you that there was no gunshot wound in the neck, would that change your view as to whether it was a suicide or not? A. No, because I mean -- I've read the reports and all that stuff and the report from Fiske came out and he says there's no gunshot wound to the neck and there was no sign of struggle and that it was definitely, from what I understand -- let me see if I can remember this right -- he used an old-style revolver, put it in his mouth upside down and pulled the trigger. What I saw is what I saw. I saw blood all over the right side of the neck, from here down, all over the shoulder, and I saw a small -- what appeared to be a small gunshot wound here near the jawline. Fine, whether the coroner's report says that or not, fine. I know what I saw. *** A. I saw what appeared to be a bullet hole, which was right around the jawline on the right side of the neck. Q. About how big? A. It looked like a small-caliber entrance wound, something with -- I don't want to say a .22 or whatever, but it was a small caliber. It appeared to be a smaller caliber than the gun that I saw. Q. Can you estimate how big it was? A. I can't say for sure about how big the hole was. I can't really estimate. There was blood all around it, blood down the side of the neck.

Neck wound

examining autopsy photos, which he said were taken from a better angle and a better view, he said he may have been mistaken about such a wound. 302, 4/24/96, at 1...

In 1994, Arthur testified he saw a "small gunshot wound here near the jawline... I know what I saw." In 1996, according to the OIC's FBI agents, "he said he may have been mistaken about such a wound."

No investigator interviewed Arthur before the first investigation was closed as a suicide. The FBI interviewed him the first time in March of 1994, during their second death investigation. From what we can tell of the FBI agent's handwritten notes of that interview, Arthur did not equivocate about having seen the bullet wound in Mr. Foster's neck.

"small caliber gunshot wound to neck right side near jaw line"²³⁵

According to the typed version of that March 16, 1994 FBI interview, Arthur "noted" only "what appeared" to be a bullet hole in the neck.

"He noted what appeared to be a small caliber bullet hole in Foster's neck on the right side just under the jaw line..."²³⁶

²³⁵ Exhibit 109, Handwritten notes of FBI interview with Paramedic Richard Arthur, March 16, 1994.

²³⁶ Exhibit 71, Report of FBI interview of Paramedic Richard Arthur, March 16, 1994: The deceased's clothes were not disheveled, the hill area was clean and there was nothing that struck him as unusual, except for the following things, which make him doubt that it was a suicide: the straight attitude of the body, the apparent caliber of the gun appeared bigger than the hole he thought he had observed just under the jawline, and that he remembered the barrel of the gun as being under Foster's thigh (possibly half-way)... He noted what appeared to be a small caliber bullet hole in Foster's neck on the right side just under the jaw line about half way between the ear and the tip of the chin. He did not note anything else he thought might be a bullet hole.

Neck wound

The FBI took another crack at Arthur five weeks later, on April 29, 1994. The handwritten interview notes of that FBI interview similarly reflects that Arthur saw the neck wound.

"It was a small caliber gun shot wound to neck right side near jaw line. High caliber weapon in hand."²³⁷

Again, the FBI watered down Arthur's account in its typed version of that interview, reporting that he "believed... was of the impression... was struck by his recollection... could not say for certain... the mark... was definitely a wound."

He believed that he saw a wound on the right side of Foster's neck near the jaw line. He was of the impression that this wound was caused by a small caliber gun shot and was struck by his recollection that the weapon in Foster's hand was a high caliber weapon. Arthur could not say for certain whether the mark he had seen on Foster's neck was definitely a wound.²³⁸

The history of Arthur's interviews with the FBI repeated itself under the OIC's investigation, during which time he was interviewed two more times, in January of 1995 and again in April of 1996. Finally, according to the FBI's still-secret report of the fifth interview with him, after viewing the "*autopsy photos*," which, the OIC claims, Arthur said were taken from a "*better angle and a better view*," he admitted "*he may have been mistaken*."

Typically, the underlying record contradicts the OIC's claim that Arthur said the autopsy photographs were taken from a "*better angle and a better view*." When he testified under oath years earlier that he knew what he saw, "whether the coroner's report says that or not," he also said that

²³⁷ Exhibit 180, Handwritten notes of FBI interview with Paramedic Richard Arthur, April 29, 1994.

²³⁸ Exhibit 82, Report of FBI interview of Paramedic Richard Arthur, April 29, 1994.

No record of official wounds

he examined the "small caliber entrance wound" at the scene from "two [to] three feet" away.²³⁹

b. No record of any of 26 persons who viewed the body before the autopsy having seen the official entrance and exit wounds

Of the twenty-six persons known to have seen Mr. Foster's body on July 20, 1993, ten were trained medical personnel (two medical doctors, two paramedics, and six fire & rescue workers). Of the remaining sixteen, ten were Park Police, one was a Fairfax County Police officer, one citizen, an unnamed intern, an unnamed morgue guard, and two White House officials.

There is no record of nineteen of these twenty-six witnesses having commented upon their observation of having seen any entrance wound. Another said "[i]t seemed like" he had seen an entrance wound because the "teeth had black marks on it." Another said he did not observe an entrance wound in the mouth and did not believe any photographs of a wound to the mouth exist. As we saw, Paramedic Arthur was sure he had seen a bullet hole on the neck on the right side. Another witness remembered a wound on the right side of the head. And the report of another witness's account is still secret. Not even one of these officials was

²³⁹ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: Q. Where was the blood coming from? A. To me it looked like there as a bullet hole right here. Q. In the neck? A. Yes, right around the jawline. Q. The neck and jawline underneath the right ear? A. Somewhere there. I would have to see a picture to point it out exactly where but there was a little bit of blood coming out of the mouth, too, and a little out of the nose but the main was right here. I didn't see any on the left side. I didn't see any on the chest or anything. *** Q. With respect to the bullet wound you think you saw in the - at the scene could you describe in some detail exactly what you thought you saw? A. I saw what appeared to be a bullet hole, which was right around the jawline on the right side of the neck. Q. About how big? A. It looked like a small-caliber entrance wound, something with -- I don't want to say a .22 or whatever, but it was a small caliber. It appeared to be a smaller caliber than the gun I saw. *** Q. How close to the body were you when you saw this? A. 2, 3 feet.

No record of official wounds

interviewed until months after the initial 17-day death investigation was closed.²⁴⁰ There is no record of the entrance wound until Dr. Beyer performed the autopsy and, as we shall see, his account is highly suspicious and appears to be contradicted by the scientific evidence.

Not one of the twenty-six eyewitnesses who had viewed Mr. Foster's body described seeing the official inch-and-a-quarter exit wound described by the OIC.

You wouldn't know any of this from reading the OIC's Report.

OIC, p. 20:

"Thirty-one witnesses, 19 of whom observed Mr. Foster's body, have provided relevant testimony about their activities and observations in and around the Fort Marcy Park area on July 20, 1993."

OIC, p. 24:

"Later, five of the Park Police personnel prepared typed reports: the responding beat officer (Ferstl), the two lead investigators (Rolla and Braun), Officer Hodakievic, and the identification technician..." (Simonello).

The OIC claims that there was an exit wound in the back of Mr. Foster's head about the size of a half-dollar.

OIC, p. 30-31:

"It [the autopsy report] describes exit wound as a wound of 1 1/4" x 1"

²⁴⁰ Exhibit 101, Deposition of Investigator Cheryl Braun, July 23, 1994: "Q. Do you know if anyone ever followed up with the EMS or fire fighting personnel in terms of taking statements from them? A. I am not aware if they did." Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: "[T]here was no official debriefing in regards to me being interviewed by the detectives or the investigators." Exhibit 74, Report of FBI interview of EMT Corey Ashford, February 23, 1994: "Ashford has not been interviewed by any other law enforcement agency regarding his actions surrounding the emergency response call related to Foster."

No record of official wounds

OIC, p. 31:

"The exit wound is depicted [in the autopsy report] as being present three inches from the top of the head, approximately in the midline, and there is an irregular wound measuring one and one quarter inch by one inch."^{fn68}

OIC, p. 31:

With respect to the wound, Dr. Beyer stated: "The entrance wound was in the back of the mouth, what we call the posterior oropharynx, where a large defect was present. There was also a soft palate tissue defect, and powder debris could be identified in the area of the soft palate and the back of the mouth."

Civilian Dale

Dale testified that there were "No signs of" Mr. Foster's having been shot. Dale surmised that "he had been hit in the head."²⁴¹

Officer Kevin Fornshill

Reportedly the first official to view Mr. Foster's body was Park Police Officer Kevin Fornshill. According to the testimony of two Park Police on the scene, it would have been SOP for him to file a Report.²⁴² He did not.

²⁴¹ Exhibit 51, Deposition of Dale by Congressmen Burton, Mica and Rohrabacher, July 28, 1994: A. You see a somebody laying there dead, you go what happened here, did somebody shoot him? No signs of it. Was he in a fight? Was he hit in the head. Q. What did you think happened? What did it look like? A. Well, when I started looking to see if he had anything in his hands, he had been hit in the head, what does that tell you?

²⁴² Exhibit 104, Deposition of Park Police Officer Peter Simonello, July 14, 1994: "Q. In your experience, is it usual for the first officer on the scene to file a report? A. He has to file it." Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: "Yes. First officer on the scene would take the original case number and do the original case report and everything we do is under that number on subsequent..."

No record of official wounds

In fact, as he testified on deposition less than a year later, Fornshill was inexplicably not even interviewed about his observations at the scene.

Q. Did any of the detectives on the scene come and talk to you?

A. No...

Q. None of these guys ever talked to you about the crime scene?

A. No, not that I know of.²⁴³

On April 29, 1994, the FBI interviewed Fornshill for the first time. In the interviewing FBI agent's eleven pages of notes taken during the interview, there is no mention of any wounds observed by Fornshill. The notes only state that "Kevin was unaware of death cause."²⁴⁴

Firefighter Todd Hall Paramedic George Gonzalez

Paramedic Todd Hall was deposed on July 20, 1994 and was interviewed by the FBI March 18, and again on April 27, 1994. On the first anniversary of the death, when Hall was asked, "Did you see any entrance or exit wounds?" he was uncertain, testifying only that "[i]t seemed like I seen one, the mouth, the teeth had black marks on it when I found it."²⁴⁵ This description is consistent with a number

²⁴³ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Q. Did any of the detectives on the scene come and talk to you? A. No. Q. Do you know who the detectives were? A. I'm drawing a blank on that one... Q. None of these guys ever talked to you about the crime scene? A. No, not that I know of... Q. Did you ever talk to any of the other officers or people out there about what had happened? A. There was some conversation the next day after the news had announced whose body it was at Fort Marcy, and there was some conversation about that, but there was no official debriefing in regards to me being interviewed by the detectives or the investigators. [930]

²⁴⁴ Exhibit 108, Handwritten notes of FBI interview of Park Police Officer Kevin Fornshill, April 29, 1994.

²⁴⁵ Exhibit 67, Deposition of Paramedic Todd Hall, July 20, 1994.

No record of official wounds

of witnesses who reported seeing dried blood in the mouth and on the teeth. Moreover, there was no gunpowder on the teeth (see below) and Hall told Paramedic Arthur that Hall doubted that Mr. Foster's death was a suicide.²⁴⁶

Paramedic George Gonzalez, the third official to view Mr. Foster's body, related on deposition that he only "assume[d] there's an entrance wound from the mouth, because there was a lot of blood within the mouth,"²⁴⁷ although Gonzalez expressed doubts whether enough blood had emanated from the mouth to justify the conclusion that there was, in fact, an entrance wound there.²⁴⁸

Gonzalez told the FBI that he recalled a bullet wound on the upper right side of the head.²⁴⁹ Five months later, Gonzalez testified that he discussed the wound with another witness because he "was just wondering if he had the same recollection" of seeing a wound "on the side of the head."²⁵⁰

²⁴⁶ Exhibit 109, Handwritten notes of FBI interview with Paramedic Richard Arthur, March 16, 1994: "Todd thought odd - doubtful suicide"

²⁴⁷ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: Q. Did you ever see an entrance wound or an exit wound? A. I can only assume there's an entrance wound and that was from the mouth, because there was a lot of blood within the mouth, you could see that. It was dark and some of it had clotted already. I didn't see an exit wound.

²⁴⁸ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: Q. What about two paragraphs below that. "Gonzalez said he was surprised to find so little blood at the death scene of someone who appeared to have placed a 38 in his mouth and pulled the trigger." A. That's true. Q. But you didn't say a 38 though, because you didn't know what type of gun it was? A. No. I just said that there was very little blood for an accident such as this that occurred, such as this to occur. Q. That would be? A. A gunshot to the mouth. I said there wasn't a lot of blood.

²⁴⁹ Exhibit 111, Handwritten notes of FBI interview of Paramedic George Gonzalez, February 23, 1994: "Recalls seeing a hole in upper right front portion of head."

²⁵⁰ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: A. I think we were trying to -- I was trying to recall whether there was a gunshot wound on the side of the

No record of official wounds

Gonzalez testified that he "didn't see an exit wound,"²⁵¹ that the head was unusually intact,²⁵² and that it was peculiar that Mr. Foster's body was "laid out straight." He had never seen a body in that position as a suicide.²⁵³

head. I could not remember. I was just wondering if he had the same recollection. Q. So you were trying to remember where the entrance wound was? A. Yes, for some reason, I was trying to recall. Something in my mind said it was on the side of the head. There could have been a spot of blood or a run of blood. I couldn't remember at that time. That's why I was asking him.

²⁵¹ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994.

²⁵² Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: Q. If every time you'd gone to a suicide scene with a gunshot. [sic] It had been a mess, would you have said always, or every time I've had a gunshot wound suicide to the mouth, it's been a mess? A. Please repeat your question. Q. If your experience had been that every time you'd gone to a scene like this, it had always been a mess. Would you have said that to him? Would you have said, every time I've been to a scene like that, it's been a mess? (Pause). A. Let me describe a few situations that you'll maybe better understand the word "usually." Sometimes the head is either gone, decapitated. Okay, from say the mouth all the way up. Sometimes you have the whole frontal part of your face but with the back portion, the occipital region gone. Sometimes it's the side of the face if it's an angle or approach the gunshot from the side, this side of the face is usually gone. I guess when I say usually. I'm thinking of numbers and the majority of the numbers, to describe your question, as far as usually.

²⁵³ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: A. You have to understand when you say it's possible, it's almost like filling a void in our report, filling in a category in our department to describe the incident. It does not mean it's concretely, it just means it's a possible situation that may occur to our best knowledge. We can describe the situation in this category. Q. What might be some things that would cause that preliminary determination to change. A. I guess finding a scene that's unfamiliar or different than what you're accustomed to finding. It does not usually fit a normal call, not a normal call, but back to this word "usual" call, a suicide or something. Q. Actually, I've got some

No record of official wounds

Officer Franz Ferstl

The report composed by the second police officer at the body site, Evidence Technician Franz Ferstl, does not mention any wounds he may have seen.²⁵⁴ If the FBI asked Ferstl to describe the wounds he saw during its 1994 interview with him, it is not reflected in the report of that interview, nor anywhere else in the publicly available record.

Paramedic Richard Arthur
Firefighter Ralph Pisani
Firefighter Lieutenant James Iacone
Firefighter Jennifer Wacha

Paramedic Richard Arthur testified that he "didn't see the entrance wound in the mouth,"²⁵⁵ and that the entrance wound he saw in the neck looked like a "small sized bullet hole."²⁵⁶ Arthur concluded, "it just didn't look like a suicide."²⁵⁷ He also testified that he "didn't see" any exit wound.

other articles here we can talk about but, one, you've been quoted as saying that you noticed some peculiar aspects to the scene. Did anything strike you as peculiar or unusual about the scene? A. The fact that he was straight, laid out straight, yes. That's peculiar. Q. Have you ever seen a body in that position as a suicide? A. No.

²⁵⁴ Exhibit 112, Park Police Report of Officer Franz Ferstl, July 20, 1993.

²⁵⁵ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: "I didn't see the entrance wound in the mouth."

²⁵⁶ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: And from what I saw, a gunshot wound here looked like a small sized bullet hole, small caliber, and from the gun that I saw, it appeared to be a larger caliber like an automatic or something. It just didn't match up. *** [887] It just seems weird. And the bullet hole, the caliber from what I saw and that just didn't match up. Like I said, I'm not a forensic expert. Maybe he used a lower caliber bullet or somebody used a low cal bullet and low cal gun.

²⁵⁷ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: Q. Let me ask you one more question about that. If I told you that they found an entrance wound in the

No record of official wounds

Q. What about the exit wound at the back of the head?

A. Is there one? I didn't know there was one...
I didn't see the exit wound.²⁵⁸

Based on his experience, Arthur was surprised by the absence of an exit wound.

And I don't know -- I heard a .38 revolver was reported and to me, a .38 would have an exit wound. I've seen .38 gunshot wounds before to the head, and they've had exit wounds before. I don't know, maybe just out of some weird coincidence or something, this one didn't, but from what I saw in past things, .38s usually have an exit wound.²⁵⁹

There is no record of firefighters Ralph Pisani or Jennifer Wacha ever having been asked what wounds they may have seen. Lieutenant James Iacone "didn't look for or see wounds," according to the FBI's handwritten notes of its March 11, 1994 interview with him.²⁶⁰

Sergeant Robert Edwards

See Sergeant Edwards' movements in the maps above. Edwards never wrote any report of his involvement at the

upper part of his mouth -- A. That's what I remember from the reports. Q. -- and that was in a straight line to the exit wound in the back of the head, would that change your view as to whether it's a homicide or suicide? A. If that's what they found, and that's what they say they found, then fine. That's what they found. I know what I saw. Now, if I saw that, and that's what was there and that's what I saw and I saw the exit -- if it appeared that the man shot himself in the mouth or something, then fine, maybe he shot himself in the mouth and it was a suicide. But to me, from the positioning of the body and the gun that I saw and stuff, it just didn't look like a suicide.

²⁵⁸ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

²⁵⁹ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

²⁶⁰ Exhibit 77, Handwritten notes of FBI interview of Firefighter Lieutenant James Iacone, March 11, 1994.

No record of official wounds

scene, he was not interviewed during the first investigation, there is no record of the FBI having interviewed him during the Fiske probe, and there is no public record of what he may have observed.

Lieutenant Patrick Gavin Investigator Christine Hodakievic

Park Police Officer Christine Hodakievic's report does not mention any wounds she may have seen,²⁶¹ nor is there any record of her observations in the FBI's 1994 interview report, or anywhere else in the record. She only recalled being "informed" there was an exit wound.²⁶²

Lieutenant Patrick Gavin, the highest-ranking official at the body site, did not write a report. There is no mention of his observations of any wound in the FBI's Report of its 1994 interview with him, or anywhere else in the public record.

Investigator John Rolla Investigator Cheryl Braun Evidence Technician Peter Simonello Investigator Renee Abt Officer William Watson Intern with Officer Watson

John Rolla, the lead Park Police Investigator at the body site, did not mention any observations of an entrance wound in his report.²⁶³ He testified on deposition on July 21, 1994 that that he did not look or see for an entrance wound.

²⁶¹ Exhibit 76, Park Police Report of Investigator Christine Hodakievic, July 21, 1993.

²⁶² Exhibit 81, Report of FBI interview of Park Police Investigator Christine Hodakievic, May 2, 1994: "She recalls the medical examiner inquiring about an exit wound and being informed by investigator John Rolla that he, Rolla, had found an exit wound at the back of the head."

²⁶³ Exhibit 113, Park Police Report of Investigator John Rolla, July 21, 1993.

No record of official wounds

Q. What about his mouth, his teeth or whatever?

A. I didn't look at the teeth that closely. I knew the medical examiner would and the medical examiner's report [reported that] there were no broken teeth.²⁶⁴

(It is questionable whether a .38 revolver, with a relatively high sight and firing the official high caliber ammunition, would not have damaged teeth from the recoil.)

Rolla seemed uncertain of the exit wound, testifying only that there "appeared to be an exit wound"²⁶⁵ and that "the skull appeared to be fractured from the inside out."²⁶⁶ Rolla's description of a "mushy spot" stands in sharp contrast to Dr. Beyer's description of a one-and-a-quarter inch hole.

Q. Was there any attempt to find bone fragments or anything in the ground?

A. They searched the area... I still can't believe that the hole -- it's a small hole. They may put their finger through it, that's a big hole. His head was not blown out... I probed his head and there was no big hole there. There was no big blowout. There weren't brains running all over the place. There was blood in there. There was a mushy spot. I initially thought the bullet might still be in his head. Could have been the brain pushed up against that hole. There's no big hole

²⁶⁴ Exhibit 114, Deposition of Park Police Investigator John Rolla, June 20, 1995: "Q. What about his mouth, his teeth or whatever? A. I didn't look at the teeth that closely. I knew the medical examiner would and the medical examiner's report there were no broken teeth."

²⁶⁵ Exhibit 114, Deposition of Park Police Investigator John Rolla, June 20, 1995: "No trauma to the body other than what appeared to be an exit wound in the center rear portion of his head, blood under his head. There is no other trauma... it wasn't brains blown all over the place..."

²⁶⁶ Exhibit 113, Park Police Report of Investigator John Rolla, July 21, 1993: "I rolled the decedent over and observed a large blood stain three quarters down the back of the decedent's shirt. I observed trauma to the center portion of the back of the decedent's head. The skull appeared to be fractured from the inside out."

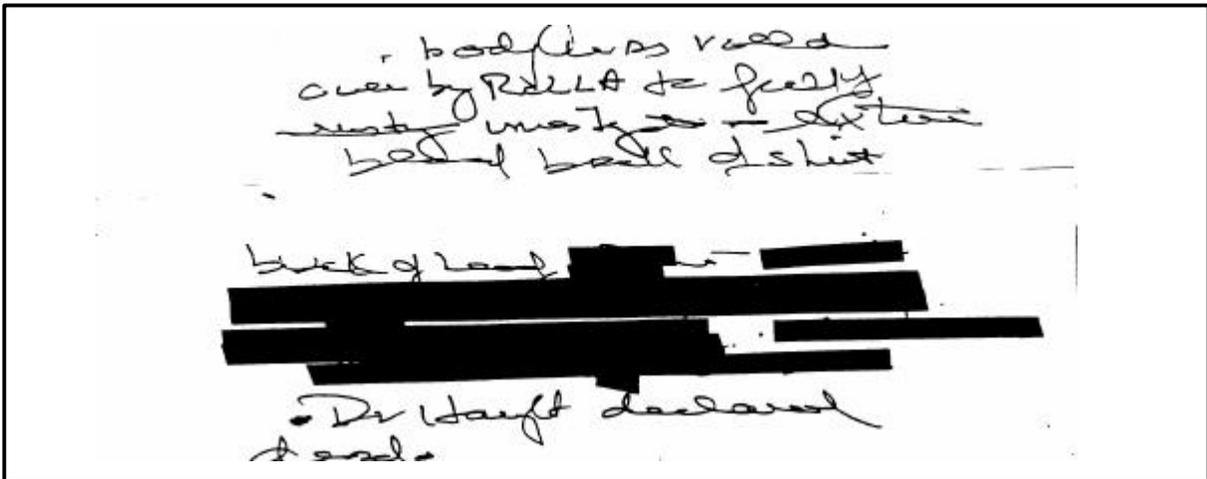
No record of official wounds

or big blowout in his head.²⁶⁷

* * *

[Dr. Haut] looked at the back of his head. I looked at the back of his head, and I was wearing gloves, I probed his head and I could feel -- what I felt in his head was mushy here. I did not, you know, there was hair, blood and other matter there, and I did not observe any blowout, like his brains had been blown out all over the place. It just appeared it was mushy there.²⁶⁸

Of the two pages of the handwritten interview notes of the FBI's 1994 interview with Rolla, immediately above the only redaction are the words "back of head."²⁶⁹



Handwritten notes of FBI interview of Park Police Investigator John Rolla:

Body was rolled over by Rolla to fully investigate – extensive blood back of shirt
back of head [redacted]
[line redacted]
[line redacted]
[line redacted]
Dr. Haut declared dead

²⁶⁷ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²⁶⁸ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²⁶⁹ Exhibit 115, Handwritten notes of FBI interview of Park Police Investigator John Rolla, April 27, 1994.

No record of official wounds

Park Police Investigator Cheryl Braun did prepare a two-page typed Report.²⁷⁰ It too does not mention any observation of any wounds, and there is similarly no record of her ever having commented on her observations of any wounds.

Park Police Evidence Technician Peter Simonello's Report does not mention any wounds,²⁷¹ nor does the FBI's Report of its April, 1994 interview with him.²⁷² Simonello testified on deposition that he did not observe any entrance wound in the mouth and added that he did not believe any photographs of a mouth wound existed.

Q. Did you come to realize at some point that there was a wound in the mouth of Mr. Foster?

A. I never observed that personally...

Q. Did you see any photographs? Do you know if anybody from the Park Police took photographs inside the mouth?

A. I saw the autopsy photographs, and I do not believe there's any that actually show the interior of the mouth.²⁷³

Simonello looked, saw what he testified he thought was an exit wound, but failed to describe what he saw.

Q. You said you saw the wound after the body was moved. Where did you see these wounds or wound?

A. What I saw was the wound to the back of the head.

Q. How close were you to the body when it was moved?

A. I was right up on it, within a foot or two.²⁷⁴

²⁷⁰ Exhibit 116, Park Police Report by Investigator Cheryl Braun, July 20, 1993.

²⁷¹ Exhibit 117, Park Police Report by Park Police Evidence Technician Peter Simonello, July 25, 1993.

²⁷² Exhibit 105, Report of FBI interview of Park Police Evidence Technician Peter Simonello, April 28, 1994: "[W]hen the decedent's body was turned on its stomach he observed a large pool of blood where he head had been situated. Simonello stated that he photographed his particular area and checked for the expended round with negative results."

²⁷³ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994.

No record of official wounds

Park Police Investigator Renee Abt did not write a report and there is no public record of her having observed an entrance or exit wound.

Neither SWAT Team Officer William Watson, nor the intern who reportedly accompanied him,²⁷⁵ wrote any reports, and there are no comments regarding any observations by either of them anywhere in the public record.

Dr. Donald Haut

The two Reports of the FBI's interviews with Dr. Donald Haut, the only doctor to view the body at the park, are silent on Haut's observations of the wounds he saw, although he wrote in his *Report of Investigation of Medical Examiner* that the wound was "mouth to neck."

The FBI's Report of its interview with him repeatedly refers to his having looked for an exit wound, but fails to relate whether he found one.

The purpose of lifting the right shoulder of the body was to check for an exit wound... Haut and a USPP officer raised Foster to look at the back of the head. The reason for looking at the back of the head was to locate an exit wound. He recalls seeing blood around the back of Foster's head... In examining the back of the head Haut describes the blood being clotted.

²⁷⁴ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994: Q. Did you see any wounds on the body? A. At first observation I did not. I just saw the blood. Q. Did you ever see any wounds on the body? A. When the body was turned over, there was a wound to the back portion of his skull... Q. You said you saw the wound after the body was moved. Where did you see these wounds or wound? A. What I saw was the wound to the back of the head. Q. How close were you to the body when it was moved? A. I was right up on it, within a foot or two. Q. Was there blood in the area? A. Yes. Q. Where was the blood? A. Pooling of blood directly underneath where his head had been, and then there was some blood along the back of his shirt, top portion of his shoulders, upper half of his back there was blood.

²⁷⁵ Exhibit 118, Handwritten notes by Investigator Renee Abt, July 20, 1993: "Post arrival Watson + intern"

No record of official wounds

Although the volume of blood was small, Haut did recall that the blood was matted and clotted under the head. Haut pulled on Foster's right shoulder turning him to the left in order to conduct his examination.²⁷⁶

The FBI's Report of its interview with Haut also notes that whatever wound he observed did not appear to be consistent with the official .38 caliber weapon.

"Haut believed that the wound was consistent with a low velocity weapon."²⁷⁷

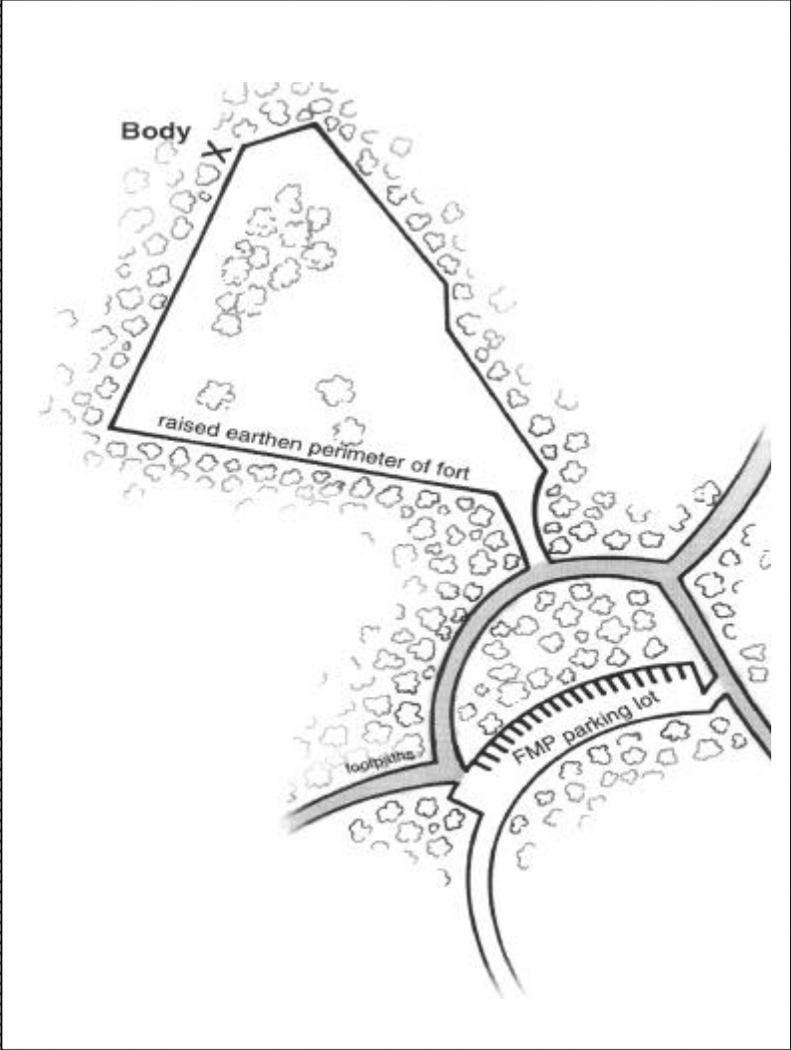
Firefighter Corey Ashford **Firefighter Roger Harrison**

Firefighter Roger Harrison helped Corey Ashford lift Mr. Foster's body into the body bag. Ashford coded the death a homicide. The FBI's Report of its 1994 interview is silent on what Ashford saw, so there is no public record of why he saw fit to code the death a homicide. Arthur testified that Ashford told him the head was intact, meaning that there was no exit wound.

I talked to Corey who put the body into the body bag. He classified it as a homicide... but I asked him if there was an exit wound, and he said no. He said the

²⁷⁶ Exhibit 181, Report of FBI interview of Dr. Donald Haut, April 14, 1994: The purpose of lifting the right shoulder of the body was to check for an exit wound... Upon arriving at the body, Haut recalls that the decedent was located on a foot path over a hill. Haut and a USPP officer raised Foster to look at the back of the head. The reason for looking at the back of the head was to locate an exit wound. He recalls seeing blood around the back of Foster's head...

²⁷⁷ Exhibit 73, Report of FBI interview of Dr. Donald Haut, April 12, 1994: "After examination of the back of Foster's head, Haut believed that the wound was consistent with a low velocity weapon. Haut recalled a separate case in which a .25 caliber rifle caused a much more devastating wound to the victim." Exhibit 119, Handwritten notes of FBI interview of Medical Examiner Dr. Donald Haut, April 12, 1994: "To look at back of head lifted with officer. Looking for wound of exit... Wound may be consistent w/low velocity weapon Haut recalls seeing .25 cal rifle [inserted] weapon wound that had much more devastating impact."

Body site	FORT MARCY PARK 8:07								
Firefighter Corey Ashford	<div data-bbox="573 216 1299 369" style="border: 1px solid black; padding: 5px;"> <p>When Ashford placed Foster's body in the body bag, he noticed that the head was "intact" and that there was very little blood. He concluded the death was a homicide and in his report coded the death a homicide by firearm.</p> </div>								
Firefighter Roger Harrison									
Inv. Christine Hodakievic									
Investigator John Rolla									
Investigator Rene Abt									
									
<p>Three more Firefighters, Bianchi, Makuch and Jacobs, arrived in the parking lot to help bag and transport the body.</p>		<table border="1"> <thead> <tr> <th data-bbox="1068 1497 1448 1554">Parking lot</th> </tr> </thead> <tbody> <tr> <td data-bbox="1068 1554 1448 1608">Firefighter Lt. Wm. Bianchi</td> </tr> <tr> <td data-bbox="1068 1608 1448 1663">Firefighter Andrew Makuch</td> </tr> <tr> <td data-bbox="1068 1663 1448 1717">Firefighter Victoria Jacobs</td> </tr> <tr> <td data-bbox="1068 1717 1448 1772">Investigator Cheryl Braun</td> </tr> <tr> <td data-bbox="1068 1772 1448 1827">Ev Tech Peter Simonello</td> </tr> <tr> <td data-bbox="1068 1827 1448 1894">Officer Franz Ferstl</td> </tr> </tbody> </table>	Parking lot	Firefighter Lt. Wm. Bianchi	Firefighter Andrew Makuch	Firefighter Victoria Jacobs	Investigator Cheryl Braun	Ev Tech Peter Simonello	Officer Franz Ferstl
Parking lot									
Firefighter Lt. Wm. Bianchi									
Firefighter Andrew Makuch									
Firefighter Victoria Jacobs									
Investigator Cheryl Braun									
Ev Tech Peter Simonello									
Officer Franz Ferstl									

No record of official wounds

head was intact when he picked it up. So that's just another thing that led me to believe that it could have been a homicide... Like I said, I asked him [Corey Ashford] if the head was intact and he said yeah. I asked him how he coded it as a homicide, and he said that's what he thought it was.²⁷⁸

The FBI's Report of its March 11, 1994 interview with Firefighter Roger Harrison also contains no reference to any wounds.

**Morgue witnesses -
Dr. Julian Orenstein
County Police Officer David Tipton
unidentified guard
William Kennedy
Craig Livingstone**

Dr. Julian Orenstein examined Mr. Foster's body twice on the evening of July 20, at Fairfax County Hospital. According to the FBI's Report of its April, 1994 interview with him, he examined the body once in the ambulance shortly after its arrival, and, when he learned that the body was a White House official, he went to the morgue and examined the body a second time.²⁷⁹ It was the first time Orenstein had ever gone to the morgue to examine a body.²⁸⁰ The second time he examined the body, in the morgue, he specifically looked for an exit wound.²⁸¹ The FBI's Report

²⁷⁸ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

²⁷⁹ Exhibit 121, Report of FBI interview of Dr. Julian Orenstein, April 14, 1994: Orenstein later went back to the morgue area of the hospital after hearing a discussion that the decedent was from The White House. He recalled that members of the Secret Service were coming to the hospital to view the body... At the morgue, Orenstein and Police Officer Dave Tipton, Fairfax County Police Department, lifted the body by the shoulders. Orenstein pulled the body forward noting that it had...

²⁸⁰ Exhibit 121, Report of FBI interview of Dr. Julian Orenstein, April 14, 1994: "Orenstein noted that this was the first instance he could recall where he went to the morgue to look at a decedent."

²⁸¹ Exhibit 121, Report of FBI interview Dr. Julian Orenstein,

The autopsy

of its interview with him does not relate what he may have seen on either occasion.

When Orenstein viewed the body the second time in the Morgue, Fairfax County Police Office David Tipton accompanied him and, according to the FBI's Report of its interview with Orenstein, Tipton helped Orenstein lift the body.²⁸² According to that same FBI Report of its interview with Orenstein, an unidentified morgue guard²⁸³ also viewed the body. There is no public record of Fairfax County Police Office David Tipton's having been interviewed,²⁸⁴ or of the unknown guard at the morgue, who also viewed the body.²⁸⁵

White House Officials Associate Counsel William Kennedy and Chief of Personnel Security Craig Livingstone both testified that they went to the hospital morgue where they viewed Foster's body. There is no record of what they observed.

2. The autopsy

All experts and both the Starr and Fiske reports depend primarily on Dr. Beyer's Report of Autopsy in concluding suicide in the park. The OIC cites the autopsy over eighty times, but reveals very little about it.

April 14, 1994: "Orenstein pulled the body forward noting that it had become rigid. The purpose for lifting the body by the shoulders was to locate and observe the exit wound on the decedent's head."

²⁸² Exhibit 121, Report of FBI interview Dr. Julian Orenstein, April 14, 1994.

²⁸³ Exhibit 121, Report of FBI interview of Dr. Julian Orenstein, April 14, 1994: "Dr. Orenstein was not aware of anyone else who saw Foster at the hospital other than himself, Officer Tipton and the morgue guard."

²⁸⁴ Exhibit 121, Report of FBI interview of Dr. Julian Orenstein, April 14, 1994.

²⁸⁵ Exhibit 121, Report of FBI interview of Dr. Julian Orenstein, April 14, 1994.

The autopsy

OIC, p. 34:

"Dr. Beyer's conclusions were reviewed by two sets of experts, one set retained by the OIC and the other by Mr. Fiske's Office. Their analyses of Dr. Beyer's findings and of the relevant laboratory analyses are outlined below. They confirm the conclusions reached at the autopsy."

a. Rescheduled

The body was discovered at 6:00 p.m. on Tuesday, July 20. The autopsy was initially scheduled for Thursday, July 22. But Dr. Beyer began the autopsy just thirteen hours after the body had been removed from the park. He had begun the autopsy sometime before 10:00 a.m. on Wednesday, July 21.

As of Tuesday evening, the White House understood that the autopsy was to be performed on Thursday, a day-and-a-half after the body had been discovered. Deputy Assistant to the President Bill Burton wrote that the autopsy had been scheduled for "7:00 a.m." Thursday morning.²⁸⁶

Captain Hume,²⁸⁷ Major Hines²⁸⁸ and Dr. Beyer each claim that they were responsible for rescheduling the autopsy.

²⁸⁶ Exhibit 122, Deposition of Deputy Assistant to the President Bill Burton, July 5, 1995: Q. Who wrote those notes? A. They're in my handwriting. Q. Now, directing your attention to 450, are those notes or writings that you took down on the evening of July 20 as you were getting basic information and phone numbers from various people regarding discovery of Mr. Foster's body? A. I can't tell from looking at them if I wrote them that evening or the next day. *** Q. Now it says here at the bottom, "autopsy 7:00 a.m., 7-22-93, two to three hours." A. I do not remember where I got that information. I do not remember where I got that information.

²⁸⁷ Exhibit 123, Deposition of Park Police Captain Charles Hume, July 22, 1994: "The only thing I asked Dr. Beyer if he could move the autopsy up to get that done as soon as possible."

²⁸⁸ Exhibit 124, Deposition of Park Police Major Robert Hines, July 25, 1994: "Q. But this was something that you initiated?"

The autopsy

The investigators on the case, Rolla and Braun, were told from two different sources that it was moved up "at the request of the White House."²⁸⁹

According to Sergeant Rule, Captain Hume moved the autopsy up at Chief Langston's request. Hume testified he moved it up to that morning at the request of the White House.²⁹⁰

As Rule, Rolla, Braun and Abt discussed the probable timing of the autopsy at the police station at 6:00 Wednesday morning, the autopsy had already been scheduled to occur just hours later at 10:00 a.m. And when Dr. Beyer's office told Rolla at 6:30 Wednesday morning that the autopsy would not be performed until the next day,²⁹¹ it had already been scheduled to be performed three and a-half-hours later.

On Wednesday morning at 10:00, Major Hines and Chief Langston met with White House staff at the White House to brief them on the case. The meeting lasted about "30

A. I initiated it, yes. Q. And no one suggested this to you?

A. Yes. And I've done that before."

²⁸⁹

Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994: A. Did someone tell you explicitly that the autopsy was being moved up because the White House had requested it? A. Yeah. Q. Who told you that? A. I believe I was speaking to Detective Squires. Q. Who is that? A. He is another detective in the office. But I am fairly certain that's who I was speaking to. But I am not positive on that. And yeah, I had been told that at the request of the White House the autopsy was moved up.

Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: "[The reschedule had been] specifically at the request of the White House."

²⁹⁰

Exhibit 123, Deposition of Park Police Captain Charles Hume, July 22, 1994: "Q. Okay. And do you recall who asked you to move the autopsy date? A. I believe it was Major Hines asked me... that request came from the White House."

²⁹¹

Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

The autopsy

minutes."²⁹² During that 10:00 White House briefing, according to Hines, the subject of funeral arrangements came up. According to Hines, he told White House personnel that an autopsy would have to be performed. Hines testified that, without being asked to do so, he volunteered to "try and get it scheduled [for] that day." Hines testified that "sometime after" that 10:00 a.m. meeting, he had his first discussion about the "timing or scheduling" of the autopsy. Hines claimed that after his White House briefing, he "asked the investigators to talk to the doctor to see if they would do the autopsy faster."²⁹³

Major Hines' account that he asked that the autopsy be moved up after the White House briefing obviously cannot be true. The autopsy had begun before 10:00 a.m., when Hines and Langston met at the White House for the briefing.

Dr. Beyer testified before the Senate that both the White House and the Park Police were wrong. Dr. Beyer insisted that it was his idea to change the scheduled time of the autopsy.

Q. Officer Rolla, you asked earlier about this question of moving up the autopsy. It is agreed

²⁹² Exhibit 124, Deposition of Park Police Captain Robert Hines, July 25, 1994: "Q. How long was the presentation at the White House? A. I would say about 30 minutes, 25, 30 minutes."

²⁹³ Exhibit 124, Deposition of Park Police Major Robert Hines, July 25, 1994: Q. You mentioned something about scheduling the autopsy. When did you first have any discussions about the timing or the scheduling of the autopsy? A. Well, at some time after that, you know. I said I would arrange for the autopsy, to try to get it scheduled that day if we could. Q. You said that at the White House? A. At the White House meeting, yes. Q. Why did it come up? A. I think they were talking about funeral arrangements. I don't recall who said what about it or what exactly was said. And I said we would have an autopsy. They asked when. And I said, well, I don't know, I'd try to find out. It was later I found out that it was scheduled for sometime later. And I asked the investigators to talk to the doctor to see if they would do the autopsy faster. Q. But did anyone at the White House specifically ask you to move the autopsy up? A. They did not. They did not.

The autopsy

that the autopsy was moved up by a day. Is that correct, doctor?

- A. Well, as soon as I heard about the case, I had the body transported over, and we make every effort to do an autopsy within less than 24 hours if possible. Therefore, once I could get the body over, we proceeded with the autopsy.
- Q. But did you receive a message, doctor, asking you to try to proceed faster than normal?
- A. No, sir.
- Q. It is my understanding that Major Hines, who is sitting behind you but not at the table, that his recollection is different, and that he believes that the request to move it up was in order to facilitate the transfer of the body to Arkansas. Is that accurate, Mr. Rolla? Do you remember that, Ms. Braun?
- A. (Ms. Braun). That was my understanding, when we left that morning, the autopsy was set for the day after the 22nd, and then I found out later on in the day that it had gotten moved up and that they did the post on the 21st.
- Q. And it was your understanding that that was in order to facilitate the transfer of the remains to Arkansas?
- A. (Ms. Braun). Yes, that is my recollection.
- Q. Now, doctor, whether or not there was any request to move the time of the autopsy up, this would obviously call into question whether or not there was any reason for so doing. And I ask you, sir, whether or not, in the course of any of the 20,000 autopsies you have performed, you have ever altered, changed, or adjusted the outcome of your autopsy to fit anybody's requirements or schedule?
- A. Not anybody else's schedule to me. We may alter it to fit our own schedule.²⁹⁴

The Report's entire discussion of the timing of the autopsy appears below.

OIC, p. 28:

"The autopsy occurred on July 21, 1993..."

²⁹⁴ Exhibit 125, Senate Testimony of Dr. James Beyer, July 29, 1994.

The autopsy

OIC, p. 29, fn. 63:

Id. at 9. Dr. Beyer had no conversations with members of the White House, the Foster family, or Foster family attorneys in connection with the autopsy. *Id.* at 6.

b. Failure of investigators to attend

After Park Police Sergeant Robert Rule learned that the autopsy had been moved up, he "called Investigator Rolla at home and told him they are going to do the autopsy today [Wednesday]." Rule said he wanted to give Rolla the opportunity to attend because "the investigators that actually worked the crime scene" should "go to the autopsy whenever possible."²⁹⁵ When Rolla "got the call [at home] at 8:30 a.m.," he had been asleep, having worked all night,²⁹⁶ and declined to attend the autopsy.

The OIC fails to address the issue of why Dr. Beyer performed the autopsy without the attendance of any of the investigating officers. That would have been standard operating procedure so investigators and the doctor can exchange information, according to Park Police Investigators Rolla²⁹⁷ and Braun.²⁹⁸ The OIC omits this fact.

²⁹⁵ Exhibit 126, Deposition of Park Police Sergeant Robert Rule, July 26, 1994: "You know, it is nice to have the investigators that actually worked the crime scene go to the autopsy whenever possible but it is not essential. So I called Investigator Rolla at home and told him that they are going to do the autopsy today."

²⁹⁶ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²⁹⁷ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: Q. Is it SOP to have someone who was at the scene of the death attend the autopsy? A. Yes. That would be normal operating procedure. As I say, there may be nothing - there may be questions, you like to explain the scene, and the doctor likes to hear besides reading the report and looking at the photographs. He can explain things if you have questions. The investigator may have questions that he needs to ask the doctor.

²⁹⁸ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994: "Q. Is it standard operating procedure

The autopsy

c. Entrance wound evidence removed

The OIC hides the fact that the autopsy began before the police arrived, in violation of the requirements of the Medical Examiner's Office.²⁹⁹

The OIC tells us (p. 28) that "[t]he autopsy occurred on July 21, 1993, in the presence of six persons" and (p. 64) that "six persons who attended the autopsy, and who therefore were able to examine the body itself, confirmed that there were no wounds on Mr. Foster's body other than the mouth-head bullet wound."

Park Police Detective James Morrissette attended the autopsy, and wrote a report regarding it. The OIC misrepresents the contents of that report.

OIC, p. 28:

"Officer Morrissette's report on the autopsy states: 'After briefing him with the available information surrounding the crime scene and the victim he started the autopsy on the victim.'"

The OIC deceptively omits the next sentence of Morrissette's Report.

"Prior to our arrival the victim's tongue had been removed as well as parts of the soft tissue from the pallet."³⁰⁰

for an investigator or someone who was at the death scene to attend the autopsy? A. Yes."

²⁹⁹ Exhibit 128, Deposition of Dr. James C. Beyer, July 13, 1994: Q. Doctor, did you personally make the decision that the Park Police should be present during the autopsy? A. That's a requirement of my office. Any time you have a gunshot wound and particularly one that might be of a suspicious character, the police have to be present during the autopsy.

³⁰⁰ Exhibit 127, Park Police Report of Park Police Detective James Morrissette, July 21, 1993.

The autopsy

Thus, the OIC implies that the Park Police Officers who attended the autopsy examined the body and confirmed that the only wound was the official mouth-head wound.

The function of the officers who attended the autopsy, Evidence Technicians Hill and Johnson, was to photograph the autopsy and collect and preserve evidence such as the clothing. Detective Morrissette's knowledge of the entrance and exit wounds came from what Dr. Beyer told him.³⁰¹ The other two people who attended the autopsy were Sergeant Rule³⁰² and Dr. Beyer's assistant.

d. Refusal to identify autopsy assistant

Normally, an associate pathologist in the Medical Examiner's Office, Dr. Field, would assist Dr. Beyer in performing the autopsy.³⁰³ But for Mr. Foster's autopsy, an "assistant" aided Dr. Beyer.³⁰⁴ The OIC did not identify him, only telling us (p. 28) that "*Dr. James Beyer, Deputy Chief Medical Examiner, conducted the autopsy, aided by an assistant.*"³⁰⁵

³⁰¹ Exhibit 128, Deposition of Dr. James Beyer, July 13, 1994: "I indicated to him [Detective Morrissette] where the entrance wound was, where the exit wound was, and I thought there was a strong suspicion of powder debris around the entrance site."

³⁰² Exhibit 126, Deposition of Park Police Sergeant Robert Rule, July 26, 1994.

³⁰³ Exhibit 128, Deposition of Dr. James Beyer, July 13, 1994: "If there's an autopsy to be done, normally we [Dr. Beyer & Dr. Field] do them together."

³⁰⁴ Exhibit 128, Deposition of Dr. James Beyer, July 13, 1994: "Q. As the deputy chief medical examiner, are there other medical personnel that work under you? A. I have an associate pathologist who works with me... Q. Did Dr. Field participate in this autopsy in any way? A. No."

³⁰⁵ See also, OIC, p. 31: "Dr. Beyer's assistant confirmed that Dr. Beyer inserted a probe through the path of the bullet... The assistant recalled that after the brain was removed and visually inspected, Dr. Beyer dissected it... and that no bullet fragments were located in the brain. 302, 9/11/95, at 2-3." OIC, p. 33: "Dr. Beyer's assistant, for example, said he did not see any other wounds..."

The autopsy

The OIC is not alone in its refusal to identify this man. Dr. Beyer refused to identify his assistant to the Park Police who attended the autopsy, as Sergeant Robert Rule related under oath.

"I asked just the name of his assistant and Dr. Beyers [sic] is kind of an older guy and very experienced and he put me in my place very quickly, he says you are dealing with me here, you don't need his name."³⁰⁶

e. Caliber of weapon unknown

Although Dr. Haut had not indicated to Dr. Beyer whether the death resulted from suicide or homicide,³⁰⁷ Dr. Beyer was unconcerned whether the sizes of the wounds were consistent with the official .38 revolver. He did not know what caliber the weapon was until after he had completed his Report of Autopsy,³⁰⁸ so he left that portion of the Report requesting the weapon's caliber blank.³⁰⁹ The only information Dr. Beyer did have going into the autopsy was that Mr. Foster "was found with a weapon in close vicinity to the body."³¹⁰

³⁰⁶ Exhibit 126, Deposition of Park Police Sergeant Robert A. Rule, July 26, 1994: Q. Do you remember any of conversations you had during the autopsy. A. One. I asked just the name of his assistant and Dr. Beyers (sic) is kind of an older guy and very experienced and he put me in my place very quickly, he says you are dealing with me here, you don't need his name. So we kind of knew who he was -- Dr. Beyers (sic) is a very nice guy but he is all business.

³⁰⁷ Exhibit 128, Deposition of Dr. James C. Beyer, July 13, 1994: "What did Dr. Haut tell you [on July 21st] was the probable cause of death? A. It appeared to be a gunshot wound. Q. Did he say it was a suicide? A. Not at that time, no."

³⁰⁸ Exhibit 128, Deposition of Dr. James C. Beyer, July 13, 1994: "Q. Doctor, do you know what type of cartridge was involved in this case? A. At the time of the autopsy, no, sir."

³⁰⁹ Exhibit 23, Report of Autopsy, Gunshot Wound Chart.

³¹⁰ Exhibit 128, Deposition of Dr. James C. Beyer, July 13, 1994: "Q. What other information [besides no signs of struggle] did you look to in this case? A. The police telling me that he was found with a weapon in close vicinity to the body. Q. Any other information? A. No."

The autopsy

f. Lab Report may contradict the existence of the official entrance wound

The gun could not have been shot without the discharge of gunshot residue, and there was none found on Mr. Foster's face,³¹¹ eye area,³¹² nose,³¹³ lips,³¹⁴ teeth,³¹⁵ or hard palate.³¹⁶

Two of the Fiske probe's four pathologists interviewed Dr. Beyer on March 31, 1994, then wrote a report of that interview. That Report evidences that Beyer told these doctors that he had found "large quantities" of gunpowder when he viewed sections of the soft palate under a microscope.

"5 slides... [containing] 13 sections of [the] soft palate... demonstrate large quantities of black foreign material... consistent with gunpowder residue".³¹⁷

This information was a cornerstone of the pathology panel's Report.

³¹¹ Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Face: ...No evidence of gunpowder residue, soot or stippling..."

³¹² Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Conjunctivae: No evidence of... gunpowder residue..."

³¹³ Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Nose: Unremarkable."

³¹⁴ Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Lips: ...No gunpowder residue identified."

³¹⁵ Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Teeth: Intact... No gunpowder residue identified."

³¹⁶ Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Hard palate: Intact and without evidence of gunpowder residue."

³¹⁷ Exhibit 129, Pathologists' Report of interview with Dr. Beyer, March 31, 1994.

The autopsy

"The large quantity of gunpowder residue present on microscopic sections of the soft palate indicates that Mr. Foster placed the barrel of the weapon into his mouth with the muzzle essentially in contact with the soft palate when he pulled the trigger."³¹⁸

The pathologists' Report was, in turn, a cornerstone of the Fiske Report, released to the public on June 30, 1994.

"Microscopic sections of Foster's soft palate... taken during Foster's autopsy reveal large quantities of gunpowder..."³¹⁹

The Fiske Report informs its readers that its "Pathologist panel was able to examine" these sections of the soft palate, implying that it had.

The pathology panel had apparently submitted their undated Report to the authors of the Fiske Report without having seen the FBI Lab's May 9, 1994 Report. That FBI Lab Report refers to an earlier report by Dr. Beyer's own laboratory.

"No ballshaped gunpowder was identified on the tissue samples from the inside of Foster's mouth, when examined at the Office of the Medical Examiner for Northern Virginia."³²⁰

That was a problem. So on June 13, 1994 the FBI issued another Lab Report attempting to explain this anomaly.

It was previously reported that no ball-shaped gunpowder was identified on the tissue samples from the inside of Foster's mouth... [but] these tissue

³¹⁸ Exhibit 130, Forensic Pathology and Medical Examiner-related Findings and Conclusions pertaining to the Investigation of the Death of Vincent W. Foster, Jr., undated.

³¹⁹ Exhibit 12, Fiske Report, June 30, 1994: "The Pathologist panel was able to examine microscopic sections of Foster's soft palate obtained during the autopsy. These sections reveal large quantities of gunpowder..."

³²⁰ Exhibit 95, FBI Lab Report, May 9, 1994.

The autopsy

samples were prepared in a way which is not conducive to retaining unconsumed gunpowder particles... [so] [t]he FBI Laboratory findings are not inconsistent with the pathologists' Report... in which the firearm was in Foster's mouth.³²¹

In short, the "large quantity of gunpowder residue [which was] present on microscopic sections of the soft palate" had vanished between the time that Dr. Beyer observed it and "when [it was] examined [by someone else] at the Office of the Medical Examiner for Northern Virginia."

The OIC killed this scientific anomaly with silence.

OIC, p. 32:

The [autopsy] report states that '[s]ections of the soft palate' were 'positive for powder debris,' and Dr. Beyer said that the gunpowder debris in the mouth was 'grossly present,' meaning that it could be seen with the naked eye, and was 'present in a large amount.'"^{fn72}

g. FBI apprised of "preliminary results" of "no exit wound"

A heavily redacted Teletype from the FBI's Washington Metropolitan Field Office to the FBI's Director (the acting FBI Director at the time was Floyd Clarke), confirmed that the FBI was apprised of the autopsy results on July 21, 1993, the same day it was performed. Far from what the OIC related, the Teletype reported the absence of an exit wound.

"[P]reliminary results include the finding that a .38 caliber revolver, constructed from two different weapons, was fired into the victim's mouth with no exit wound."³²² (emphasis supplied)

³²¹ Exhibit 27, FBI Lab Report, June 13, 1994.

³²² Exhibit 131, Teletype from the FBI's Washington Metropolitan Field Office to the Director of the FBI, July 23, 1993: "[T]o confirm referenced telcalls, on 7/21/93 [the day Dr. Beyer performed the autopsy]... preliminary results include the finding that a .38 caliber revolver, constructed from two

The autopsy

At the time the Teletype was sent from the FBI's Washington Metropolitan Field Office, Robert Bryant served as its Agent-in-Charge. He has since been promoted to Deputy Director, second in command to Mr. Freeh.

h. X-rays vanished

There are several conflicting reports regarding the x-rays. These include that x-rays were taken and readable, x-rays were taken but unreadable, that no x-rays were taken, that the x-ray machine was broken, and that it worked sometimes, but not for Mr. Foster's autopsy. Dr. Beyer could not explain how he told the Park Police the results of the x-rays he claimed not to have taken.

The OIC reports that x-rays had in fact been taken, but were unreadable. Yet, Detective Morrisette, who attended part of the autopsy, wrote that Dr. Beyer explained the results of the x-rays.

"Dr. Beyers [sic] stated that x-rays indicated that there was no evidence of bullet fragments in the head."³²³

The OIC's excuse is simply that Dr. Beyer somehow stated what the x-rays showed without having taken readable x-rays.

OIC, p. 76, fn. 224:

"...Dr. Beyer made that statement and reached that conclusion without x-rays..."

The OIC recounts that Dr. Beyer's unnamed "assistant recalled... taking the x-ray" with the "recently obtained new x-ray machine."

different weapons, was fired into the victim's mouth with no exit wound."

³²³ Exhibit 127, Report of Park Police Detective James Morrisette, July 21, 1993.

The autopsy

OIC p. 75-76:

The assistant stated that the machine sometimes would expose the film and sometimes would not. In this case, the assistant recalled moving the machine over Mr. Foster's body in the usual procedure and taking the x-ray. He said he did not know until near the end of the autopsy that the machine did not expose the film.^{fn222} In addition, like Dr. Beyer and the assistant, the administrative manager of the Medical Examiner's Office recalled "numerous problems" with the x-ray machine in 1993 (which, according to records, had been delivered in June of 1993).^{fn223}

The OIC offers no explanation of why the x-rays were not inspected "until near the end of the autopsy," as opposed to the beginning. (The Fiske Report had reported that x-rays had not been taken at all.³²⁴) The FBI's check of the records did not include a review of the service records for the new multi-thousand-dollar x-ray machine, according to an affidavit of an individual who did check.

[T]he technician who was responsible for installing and servicing this machine, Mr. Jesse Poore... denied that there had been any trouble with the machine, which he had installed in June 1993. He checked his records and reported that the machine was installed on June 15, 1993 and that the first service call was on Oct. 29, 1993 to make an adjustment to make the pictures darker.³²⁵

Thus, the OIC posits that the new x-ray machine had "numerous problems" making the pictures too dark. Yet, service was not requested for four months after its purchase, three months after Mr. Foster's autopsy, at which time service was requested because the pictures were too light.

On July 29, 1994, Dr. Beyer testified before the United States Senate Banking Committee.

³²⁴ Exhibit 12, Fiske Report, June 30, 1994: "The office X-ray machine was inoperable at the time of Foster's autopsy, and as a result no X-rays were taken."

³²⁵ *Exhibit 132, Affidavit of Reed Irvine re interview with Mr. Jesse Poore.

The autopsy

Senator FAIRCLOTH. Dr. Beyer, your autopsy report indicates that you took x-rays of Mr. Foster.

Dr. BEYER. I had anticipated taking them, and I had so stated on one of my reports.

Senator FAIRCLOTH. Your autopsy report says you took x-rays of Mr. Foster. Did you?

Dr. BEYER. No, sir.

Senator FAIRCLOTH. Why did you say you did if you didn't?

Dr. BEYER. As I indicated, I made out that report prior to actually performing the autopsy. We'd been having difficulty with our equipment, and we were not getting readable x-rays. Therefore, one was not taken.

Senator FAIRCLOTH. What was wrong with the x-ray machine?

Dr. BEYER. We had a new machine; we had new grids; and we had a new processor. We were having a number of problems.

Senator FAIRCLOTH. Why didn't you call Fairfax Hospital and arrange for a portable x-ray machine to be brought in for your use in such an important occasion?

Dr. BEYER. Because this was a perforating gunshot wound. If it had been a penetrating one, I would have gotten an x-ray of the head.

* * *

Senator FAIRCLOTH. Did you or the Medical Examiner's office have your servicing company come in and fix the x-ray machine?

Dr. BEYER. We were trying to remedy our problems. At that particular time we were not getting readable x-rays.

Senator FAIRCLOTH. When was it repaired?

Dr. BEYER. I have no x-rays in my files between July 6 to the 26. After July 26, 1993, we were getting x-rays.

Senator FAIRCLOTH. You mean for 20 days you ran a coroner's office and did autopsies without an x-ray machine?

Dr. BEYER. We don't take x-rays on very many cases. Primarily only gunshot cases.

Senator FAIRCLOTH. The Park Police officers who were present at the autopsy said you told them not only was an x-ray taken, you also told them the results of the x-ray. How do you account for the contradiction?

The autopsy

Dr. BEYER. I have no explanation because I did not take an x-ray.

Senator FAIRCLOTH. How did you tell the Park Police the results of an x-ray that you didn't take?

Dr. BEYER. I don't recall telling --

Senator FAIRCLOTH. Well, they do.

Dr. BEYER. I have no explanation.

* * *

Dr. BEYER. The equipment was not working, and I saw no need to take an x-ray.

Senator FAIRCLOTH. You saw no need to take an x-ray?

Dr. BEYER. No, sir.³²⁶

According to the OIC, Dr. Beyer "*checked the box [reporting that x-rays were made] before the autopsy.*"

OIC, p. 76:

"With respect to the check of the x-ray box on the report, Dr. Beyer stated that he checked the box before the autopsy while completing preliminary information on the form and that he mistakenly did not erase that check mark when the report was finalized."^{fn224}

The OIC's excuse does not address why Dr. Beyer would have checked "Yes" in anticipation of taking x-rays if "the equipment" had not been "working" for the last two weeks, particularly if he "saw no need to take an x-ray."

The Medical Examiner reported a gunshot wound to the neck, Paramedic Arthur was certain he saw a small caliber wound on the neck, and there is no record of any of 26 persons who viewed Mr. Foster's body before the autopsy having seen either the official entrance or exit wounds. Because Dr. Beyer removed the evidence of the entrance wound before the police arrived, and the x-rays vanished, we have only Dr. Beyer's word on which to rely.

³²⁶ Exhibit 125, Testimony of Dr. James C. Beyer before the United States Senate Banking Committee, July 29, 1994. [94-5] Compare H. Schneider, *Senate Banking Panel Turns To Foster Death; No New Evidence Emerges In Testimony*, Wash. Post, July 30, 1994.

The autopsy

In another case in which Dr. Beyer performed the autopsy, he is alleged to have ruled a homicide as being a suicide. Robert Bryant, while Agent-in-Charge of the FBI's Washington Metro Field Office, supported his conclusion.³²⁷

i. No official estimate of time of death

Dr. Beyer was unconcerned with the time of death at the autopsy, as he testified at his July 13, 1994, deposition.

- Q. Is it your practice never to provide a time of death analysis in your autopsy reports?
- A. We may assist them if it appears to be of a critical nature. Other than that, we don't put anything in the autopsy report.
- Q. What is your definition of a critical nature?
- A. If one had a case where a body -- there was no definite information concerning when the individual had last been seen, who had contact with him, who had a phone call with him. Any indication about the last time they had intake of food and they were found under suspicious circumstances. Then there might be some indication for attempting to make an estimate of time of death.
- Q. Do you think any of those factors were present in this case?
- A. Not that I was aware.
- Q. Did you subsequently become aware of whether any of those factors were present in this case?
- A. I made no determinations.³²⁸

The Fiske Report's brief reference to the time of death was in a footnote.

"As stated in the Pathologist Report, the available information is insufficient to determine the precise time of death during that afternoon. Pathologist Report, at paragraph 4."³²⁹

³²⁷ See website of Parents Against Corruption & Cover-up, <http://www.clark.net/pub/tburkett/pacc>.

³²⁸ Exhibit 128, Deposition of Dr. James C. Beyer, July 13, 1994.

The autopsy

The OIC followed suit.

OIC, p. 30, fn. 66:

"Officer Morrissette's report also indicates that Dr. Beyer stated at the autopsy 'that it appeared that the victim had eaten a 'large' meal which he [Dr. Beyer] believed to have occurred within 2-3 hours prior to death.' USPP Report (Morrissette) at 1. An exact time of death has not been established."

There are indications in the record from which the time of death can be approximated. The OIC chose to omit the sentence of Officer Morrissette's report following the one it chose to quote.

"He [Dr. Beyer] was unable to state positively what type of food was consumed but stated that it might have been meat and potatoes."³³⁰

By all accounts, Mr. Foster had a cheeseburger and French-fries between 12:30 and 1:00. So, according to Dr. Beyer's approximation from the digestion of his lunch, Mr. Foster died between 2:30 and 4:00 p.m.

Paramedic George Gonzalez in his Incident Report estimated that based upon the "pooling of blood in the extremities," Mr. Foster had been dead "2-4 hrs"³³¹ at 6:15 p.m., similarly putting the time of death between approximately 2:15 and 4:15 p.m.

j. Conflicting evidence of bullet trajectory

Dr. Beyer's Report of Autopsy reported a defect in the soft palate.³³² Fiske's pathology panel concluded, "Mr. Foster placed the barrel of the weapon into his mouth with the muzzle essentially in contact with the soft palate when

³²⁹ Exhibit 12, Fiske Report, June 30, 1994.

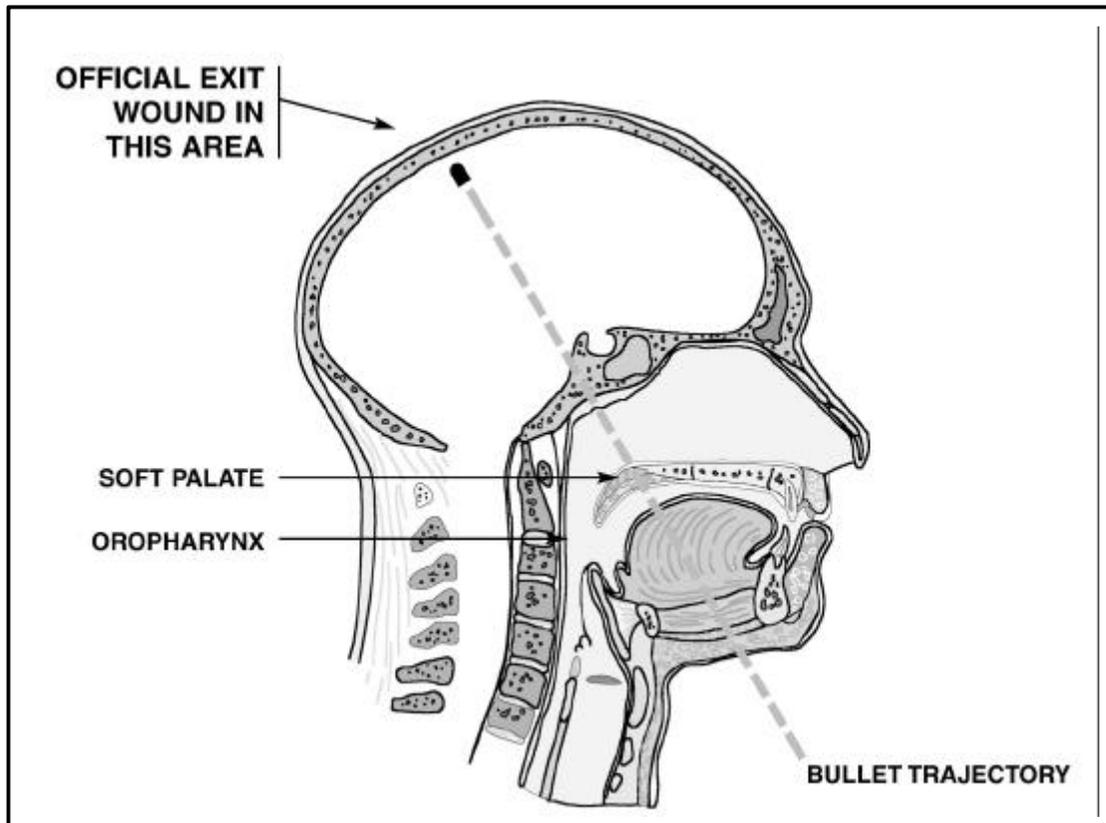
³³⁰ Exhibit 127, Park Police Report by Detective James Morrissette, August 2, 1993.

³³¹ Exhibit 133, Incident Report of Paramedic George Gonzalez, July 20, 1993.

³³² Exhibit 23, Report of Autopsy, July 21, 1993.

The autopsy

he pulled the trigger."³³³ Yet, Beyer's Autopsy Report claimed that the "entrance wound is in the posterior oropharynx."³³⁴ These accounts cannot both be true. A single bullet could not have pierced both the soft palate and the oropharynx and exited the top of the head, as the drawing below illustrates.



The posterior oropharynx is the back wall of the throat below the soft palate. The soft palate is the tissue that forms the aft portion of the roof of the mouth. The Report of Autopsy stated that the entrance wound was in the oropharynx. Fiske's pathologists concluded that the muzzle was placed against the soft palate. Both cannot be true. An entrance wound in the oropharynx could not have resulted in the reported official exit wound because the trajectory of an Intra-oral gunshot wound entering the oropharynx would have been too low. **BULLET TRAJECTORY:** Much of the evidence presented in this paper is offered to prove the trajectory shown above.

³³³ Exhibit 130, Forensic Pathology and Medical Examiner-related Findings and Conclusions pertaining to the Investigation of the Death of Vincent W. Foster, Jr., undated.

³³⁴ Exhibit 23, Report of Autopsy by Dr. James C. Beyer, July 21, 1993.

Bloodstains consistent with the neck wound

3. Bloodstains consistent with the neck wound

All six official experts (Fiske's four pathologists³³⁵ and the OIC's pathologist and forensic scientist) found nothing in any of the bloodstains on Mr. Foster's clothing or body repudiating the official conclusion. These experts opined that the way the blood was configured was consistent with how and where Mr. Foster officially died, from firing a high-velocity .38 caliber bullet into his mouth where his body lay.³³⁶

Not one of the twenty-one witnesses who viewed Mr. Foster's body at Fort Marcy Park described bloodstains consistent with the official mouth-entrance and head-exit wounds. Blood was present on the right side of Mr. Foster's neck, on his right collar, on his right shoulder, down his right shirtsleeve, and in his mouth.

It is logical that the blood that had soaked into the back of his shirt, and pooled on the ground under his head, had drained from the small caliber bullet hole observed in his neck. Blood on the right side of the front of the shirt would have drained from the neck wound, rather than from the official wound in the mouth. Blood absorbed into the back of the shirt could have drained from the neck wound as well as from a wound in the back of the head. And the blood that had accumulated in the mouth could have emanated from the wound caused by the small caliber bullet that had entered from under the jaw line.

³³⁵ Charles S. Hirsch, M.D., James L. Luke, M.D., Donald T. Reay, M.D., and Charles J. Stahl, M.D.

³³⁶ Exhibit 12, Fiske Report, June 30, 1994: The blood on Foster's right cheek and jaw is a "contact stain typical of having been caused by a blotting action, such as would happen if a blood-soaked object was brought in contact with the side of his face and taken away, leaving the observed pattern behind." Lab Report, at 9

OIC, p. 65: "Dr. Blackbourne concluded that 'Vincent Foster committed suicide on July 20, 1993 in Ft. Marcy Park by placing a .38 caliber revolver in his mouth and pulling the trigger.'"

OIC, p. 65, fn. 190: "The panel of pathologists reached the same conclusion. Pathologists' Report at 4."

Bloodstains consistent with the neck wound

Fifteen of the twenty-one witnesses who observed Mr. Foster's body at the park saw blood consistent with there being a wound in the right side of the neck. Of the other six witnesses, three could not recall the blood they saw, and there is no record of what the other three might have seen.

Officer Kevin Fornshill

Park Police Officer Kevin Fornshill, the first official at the body site, reportedly could not remember the amount or configuration of the blood he saw. But he did remember that there was no change in either "the amount or the texture of the blood on the face"³³⁷ between the time he first saw it and after the first two rescue personnel on the scene had inspected the body. As set forth below, those men, Gonzalez and Hall, saw blood on the right side, consistent with where one would expect it to have drained from the neck wound.

Firefighter Todd Hall Paramedic George Gonzalez

The only record of Firefighter Hall's observations, from the first time the FBI interviewed him in the spring of 1994, was that "Hall sighted blood on the right collar area of the decedent's shirt,"³³⁸ which was inches below where the neck wound was reported to have been.

³³⁷ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Q. You testified early on this afternoon that your view of the head of the body was momentarily obstructed while the paramedic person performed some sort of assessment, correct? A. Yes. Q. Prior to the obstruction, you had an opportunity to observe the position of the head? A. Yes. I did. Q. And immediately after the obstruction, you had an opportunity to view the position of the head? A. Yes. Q. Was there any change, in your opinion, in the position of the head at that point? A. Not that I could see. Q. Was there any change, at that point, in the amount of blood or the texture of blood on the face? A. No.

³³⁸ Exhibit 179, Report of FBI interview of Firefighter Todd Hall, April 27, 1994: "Hall sighted blood on the right collar area of the decedent's shirt."

Bloodstains consistent with the neck wound

Paramedic George Gonzalez testified that "there was blood on the right side of the body, the shirt area."³³⁹ He reportedly told the FBI that there was also blood in the mouth.³⁴⁰

Officer Franz Ferstl

The second police officer at the scene, Franz Ferstl, "did not recall" whether there was blood on Mr. Foster's shirt, according to the FBI's report on its May, 1994 interview with him. He did see a "small amount of blood around the mouth,"³⁴¹ consistent with what one would expect had the bullet entered from the neck.

Paramedic Richard Arthur
Firefighter Ralph Pisani
Firefighter Lieutenant James Iacone
Firefighter Jennifer Wacha

Paramedic Richard Arthur's account of the blood, provided in his deposition testimony less than a year after the death, was consistent with its having drained from the bullet wound he was certain he had seen in Mr. Foster's neck.

Q. Did you see any blood?

A. Yes.

Q. Where was the blood?

A. All down the right side neck, all down the right

³³⁹ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: "Q. Can you describe any blood you saw on the body?
A. Yes. There was some about the face. There was blood on the right side of the body, the shirt area."

³⁴⁰ Exhibit 135, Report of FBI interview of Paramedic George Gonzalez, February 23, 1994: "The visual inspection of Foster also included a look into Foster's mouth which revealed the presence of blood."

³⁴¹ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994: Ferstl advised that he observed a small amount of blood around the mouth, adding that the blood did not appear fresh. Ferstl did not recall any blood coming from the nose, nor did he recall any blood on the shirt... He stated that the shirt was very clean and he does not recall any blood stains or dirt stains on the shirt.

Bloodstains consistent with the neck wound

shoulder all the way to about here.

Q. Where was the blood coming from?

A. To me, it looked like there was a bullet hole right here.

Q. In the neck?

A. Yes, right around the jawline.

Q. The neck and jawline underneath the right ear?

A. Somewhere there. I would have to see a picture to point it out exactly where, but there was a little bit of blood coming out of the mouth, too, and a little out of the nose but the main was right here. I didn't see any on the left side. I didn't see any in the chest or anything.

Q. For the record, when you say in the main right here --

A. It was all from here, the neck all the way down to the right.

Q. Down the right shoulder?

A. Yeah, down to the right shoulder to about here.

Q. And so was it pooled blood or was the shirt just damp with blood?

A. Pooled meaning -- what do you mean? Was he lying in a pool of blood?

Q. Was there standing blood or was it just --

A. Was it going down the arm?

Q. Was it pooled there or dripping?

A. I didn't see any blood dripping...³⁴²

According to the FBI's April 1994 report of its interview with Firefighter Ralph Pisani, he saw "blood on Foster's right shoulder..."³⁴³

Firefighter Lieutenant James Iacone did "not recall observing any blood," according to the FBI's March, 1994 interview with him.³⁴⁴

³⁴² Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

³⁴³ Exhibit 136, Report of FBI interview of Firefighter Ralph Pisani, April 27, 1994: "Pisani was located in a position where he was looking over the left side of the body and was able to see blood on Foster's right shoulder... Pisani did not recall seeing any blood located around the body."

³⁴⁴ Exhibit 78, Report of FBI interview of Firefighter Lieutenant James Iacone, March 11, 1994: "Iacone does not recall observing any blood."

Bloodstains consistent with the neck wound

The FBI reported in March of 1994 that Firefighter Jennifer "Wacha thought blood may have been on the victim's mouth as well as on his shirt."³⁴⁵

Lieutenant Patrick Gavin Investigator Christine Hodakievic

Lieutenant Patrick Gavin, the highest ranking official at the body site, told the FBI he saw a "trickle" of what appeared to be blood "coming" out of the mouth, according to the FBI's report of its April 1994 interview with him. That report relates that Gavin did not "recall any blood or blood stains on the shirt," but that blood "could have been" on the shirt although he did "not recall seeing it."³⁴⁶

The OIC recites that Officer Hodakievic told the FBI on February 7, 1995 that she "*recalls 'lot of blood' underneath the decedent's head.*" A week later, according to the OIC, she was "*describing blood on the ground and on the back of head and shirt when body moved.*"

Absent from the OIC's rendition of Officer Hodakievic's observations, from its secret reports, is any description of where on the body Hodakievic saw the blood.

³⁴⁵ Exhibit 74, Report of FBI interview of Firefighter Jennifer Wacha, March 11, 1994: "Wacha thought blood may have been on the victim's mouth as well as on his shirt. She could not recall the volume."

³⁴⁶ Exhibit 98, Report of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994: Lieutenant Gavin advised that he took a cursory look at the body and his only recollections are that there was a trickle or what appeared to be blood coming out of the mouth, running down the right side of the face. He stated that the face was pointing up toward the sky. He did not recall seeing blood coming from the nose, nor does he recall any blood or blood stains on the shirt. Lt. Gavin stated that there could have been more blood present on the shirt or face, but that he does not recall seeing it.

Exhibit 80, Handwritten notes of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994: "Only blood he recalls is trickle coming out mouth - can't recall blood coming from nose - nor does he recall blood on shirt. Only made a cursory look - doesn't mean blood wasn't there. Could have."

Bloodstains consistent with the neck wound

OIC, p. 67, fn. 192:

...Hodakievic 302, 2/7/95, at 4 (recalls "lot of blood underneath the decedent's head"); Hodakievic OIC, 2/14/95, at 16, at 16 (describing blood on the ground and on the back of head and shirt when body moved)...

Investigator John Rolla
Investigator Cheryl Braun
Evidence Technician Peter Simonello
Investigator Renee Abt

Park Police investigator John Rolla testified that he saw blood on the ground directly under the head.³⁴⁷ In his report composed after midnight on the evening of the death, Rolla wrote that he saw blood on the "right shoulder area" of the shirt.³⁴⁸ These observations are consistent with blood having flowed from the neck wound.

Park Police investigator Cheryl Braun testified that she saw blood "[i]n the nose area and in the mouth area."³⁴⁹

³⁴⁷ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: A. I observed a pool of blood under his head that was wet and beginning to dry and clot, and it was directly under his head. It was not all over the place, it was directly under his head, running down this way. *** Q. What about on the ground? A. I believe there was some blood mark on the ground, I don't remember. But most of the blood under his head, where his head was, yes, there was blood on the ground, but most of the blood that had run down was absorbed in his clothes.

³⁴⁸ Exhibit 113, Report by Park Police Investigator John Rolla, July 21, 1993: "I observed blood in his nose and mouth area, on his right shoulder area and underneath his head. The blood on the ground and on his shirt appeared to still be wet. There was no blood on the plants or trees surrounding the decedent's head." Exhibit 100, Report of FBI interview of Park Police Investigator John Rolla, April 27, 1994: "Rolla also observed a deposit of blood on the decedent's shirt in the area of the right upper shoulder which also appeared to be wet but drying."

³⁴⁹ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994: Q. Was there blood on the body? A. Yes, there was. Q. Where? A. In the nose area and in the mouth area. And there were lots of flies in the eyes, nose, and mouth. There was also the blood in the -- on his shirt in the area of his right shoulder.

Bloodstains consistent with the neck wound

Park Police Evidence Technician Peter Simonello testified that "[t]here was some blood on the right shoulder, and there was some blood, I believe, near the right rib cage."³⁵⁰

Park Police investigator Renee Abt recorded in her contemporaneous notes that there was a "large blood pattern [on the] right shoulder and right collar of [the] shirt."³⁵¹

Dr. Donald Haut

Dr. Donald Haut's account, memorialized in the FBI's report of its 1994 interview with him, is that he had seen "matted" blood on the back of the head.³⁵² Dr. Haut's *Report of Investigation of Medical Examiner* did not record any wound in the skull, but did note trauma to the neck.³⁵³

According to the FBI's handwritten notes of the interviewing agent's interview with him, Dr. Haut opined that the "[w]ound may be consistent [with a] low velocity weapon [and that] Haut recalls seeing .25 cal. (rifle) weapon that had much more devastating impact."³⁵⁴ The FBI's typed report of that interview is in accord.³⁵⁵

³⁵⁰ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994.

³⁵¹ Exhibit 118, Handwritten contemporaneous notes of Park Police Investigator Renee Abt, at 7:10 p.m., July 20, 1993: "Large blood pattern Rt shoulder + collar of shirt dried and liquid."

³⁵² Exhibit 73, Report of FBI interview of Dr. Donald Haut, April 12, 1994: "Although the volume of blood was small, Haut did recall that the blood was matted and clotted under the head."

³⁵³ Exhibit 103, Medical Examiner Report of Investigation by Dr. Donald Haut, July 20, 1993.

³⁵⁴ Exhibit 119, Handwritten notes of FBI interview of Dr. Donald Haut, April 12, 1994: "Wound may be consistent w/ low velocity weapon. Haut recalls seeing .25 cal. (rifle) weapon that had much more devastating impact."

³⁵⁵ Exhibit 73, Report of FBI interview of Dr. Donald Haut, April 12, 1994.

Official excuse for blood on Mr. Foster's right side

Firefighter Corey Ashford

Firefighter Corey Ashford was not interviewed during the initial investigation.³⁵⁶ In his July 20, 1993, narrative report, Ashford coded the death as a homicide by assault with a firearm. According to the FBI's February 1994 interview with him, it was "believed by Ashford that Foster was the victim of murder," and he "did not recall getting blood on his uniform."³⁵⁷

- 4. Official excuse for blood on Mr. Foster's right side is that it drained from his mouth when an "early observer" moved the head to check for a pulse, then repositioned it -- but Edwards did it to obscure or camouflage the blood evidence of the existence of the neck wound**

Because the neck wound did not officially exist, the experts hired by Mr. Fiske's probe set forth their theory of why blood was found on Mr. Foster's right side, yet the head was observed and photographed facing straight up.

All official experts agree on how the blood ended up on the right collar, right shoulder, and right front shirt. They all concluded, each relying in large part on their predecessors,³⁵⁸ that there was no wound on the neck,³⁵⁹ so it had to have come from his mouth.

³⁵⁶ Exhibit 74, Report of FBI interview of Corey Ashford, February 23, 1994: "Ashford has not been interviewed by any other law enforcement agency regarding his actions surrounding the emergency response call related to Foster."

³⁵⁷ Exhibit 74, Report of FBI interview of Paramedic Corey Ashford, February 23, 1994: Ashford did not recall seeing any blood on Foster's body, noting that he was not looking for it at the time. It was initially believed by Ashford that Foster was the victim of a murder... Ashford did not recall seeing any blood while placing Foster in the bag. Ashford did not recall any blood getting on his uniform or on the disposable gloves he wore while handling the body.

³⁵⁸ OIC, p. 64, fn. 188: ...Similarly, Dr. Hirsch, an expert pathologist retained during the Fiske investigation, examined the autopsy photographs and stated that he saw flecks of dried blood depicted on the neck and that he saw "nothing in the photographs", and there certainly is nothing described in the autopsy to make me suspect that

Official excuse for blood on Mr. Foster's right side

All these retained experts agree on how this must have occurred. Blood had accumulated in the mouth postmortem while the head was in a straight-up³⁶⁰ position, an "early observer" turned Mr. Foster's head to the right,³⁶¹ the blood

there is in any way any trauma to the side of his neck." OIC, 2/16/95, at 43, 45. The panel of pathologists further stated that, apart from the wound through the back of the head, "there was no other trauma identified." Pathologists' Report at 1...

OIC, p. 64, fn. 188: "...The scene and autopsy photographs were reviewed during Congressman Clinger's probe and the Senate's inquiry into Mr. Foster's death, both of which concluded that he committed suicide by gunshot through the back of the mouth out the back of the head..."

³⁵⁹ OIC, p. 64, fn. 188: "Dr. Beyer, who conducted the autopsy, was shown an enlarged autopsy photograph of the side of the neck and said, "I see blood, but I don't see any trauma." OIC, 2/16/95, at 15..." OIC, p. 64, fn. 188: "...Dr. Blackbourne stated that a mark on the side of the right upper neck, just below the jawline, seen in autopsy photographs, represents small fragments of dried blood and does not represent any form of injury. Id...." OIC, p. 64, fn. 188: "...Dr. Lee reviewed the scene and autopsy photographs and evidence and indicated that there was only an entrance wound through the back of the mouth and an exit wound out the back of the head. Lee Report at 89-92, 486..."

³⁶⁰ OIC, p. 66: "The Polaroids... [and] witnesses... describe the position of the head as facing virtually straight, not tilting noticeably to one side or the other."

³⁶¹ Exhibit 130, Forensic Pathology and Medical Examiner-Related Findings and Conclusions Pertaining to the Investigation of the Death of Vincent Foster, Jr., undated: "The finding of the head facing forward and the right sided blood stains are mutually exclusive. We conclude that a rightward tilt of his face was changed to a forward orientation by one of the early observers before the scene photographs were taken." OIC, p. 64: "Dr. Blackbourne concluded that the blood... suggests that an early observer may have caused movement of the head."^{fn188} OIC, p. 66: "[T]he expert pathologists and Dr. Lee... concluded... that the head made contact with the right shoulder... [when] rescue personnel at the scene handled the decedent's head..." OIC, p. 65, fn. 189: "...For obvious reasons, the head must have been facing to the right when the body was found or have been turned to the right when the body was examined at the scene..."

Official excuse for blood on Mr. Foster's right side

drained out onto the right collar, right shoulder, and right front shirt, after which this early observer repositioned the head in the same straight-up position.

This excuse was first offered on May 9, 1994 by the FBI Lab. It claimed "that the head moved or was moved..." although it claimed not to know the "specific manner" of how it happened.

The contact stain on the right cheek and jaw of the victim is typical of having been caused by a blotting action, such as would happen if a blood-soaked object was brought in contact with the side of his face and taken away, leaving the observed pattern behind. The closest blood-bearing object which could have caused this staining is the right shoulder of the victim's shirt. The quantity, configuration and distribution of the blood on the shirt and the right cheek and jaw of the victim are consistent with the jaw being in contact with the shoulder of the shirt at some time. The available photographs depict the victim's head not in contact with the shirt and therefore indicate that the head moved or was moved after being in contact with the shoulder. The specific manner of this movement is not known.³⁶²

The Fiske probe's panel of pathologists (Drs. Hirsch, Luke, Reay, and Stahl) noted that "[t]he finding of the head facing forward and the right sided blood stains are mutually exclusive." It offered the same excuse of the head having been moved in its undated, three-and-a-half page report, entitled *Forensic Pathology and Medical Examiner-Related Findings and Conclusions pertaining to the Investigation of the Death of Vincent W. Foster Jr.*

According to multiple observers at the scene, the head was facing forward when Foster's body was found, an observation confirmed in scene photographs. There were linear blood stains coursing across the right side of the face, emanating from the nose and mouth. A broad transfer-type blood smear was present at the right side of the chin and neck, precisely corresponding to a similar blood stain of the right collar area of the shirt. For obvious reasons, the

³⁶² Exhibit 95, FBI Lab report, May 9, 1994.

Official excuse for blood on Mr. Foster's right side

head must have been facing to the right when the body was found or have been turned to the right when the body was being examined at the scene. In either circumstance, blood accumulated in the nose and mouth from the bullet defect of the soft palate and base of the skull would have spilled over the face and soiled the right shoulder and collar of the shirt. The finding of the head facing forward and the right sided blood stains are mutually exclusive. We conclude that a rightward tilt of his face was changed to a forward orientation by one of the early observers before the scene photographs were taken.³⁶³

The OIC joins this conclusion and relies on Dr. Beyer to dismiss evidence of the neck wound.

OIC, p. 33:

"Dr. Beyer said that observation of Mr. Foster's body revealed no wounds on the neck..."

The official explanation, that the head was turned to the right then repositioned, is correct. But it was Sergeant Robert Edwards who turned then repositioned the head, not an "early observer" and not to check for a pulse.

Before Edwards was alone at the body site, there was already blood on the right collar, right shoulder and right shirtsleeve, as well as a small amount of blood on the face. Blood had also accumulated in the mouth. The blood on the skin was dry. The blood on the right side of the body had drained from the wound in the right side of the neck.

In order to hide the existence of the neck wound (which would be inconsistent with suicide), Sergeant Edwards provided an excuse for the blood being on the right side of the body -- it should have been on the front if the death were suicide by intra-oral gunshot. Edwards turned Mr. Foster's head to the right, his chin rested on his shoulder and the blood that had accumulated in the mouth spilled onto the right shoulder, joining the blood that was already there. A trickle of blood also drained laterally

³⁶³ Exhibit 130, Forensic Pathology and Medical Examiner-Related Findings and Conclusions pertaining to the Investigation of the Death of Vincent W. Foster Jr., undated.

Official excuse for blood on Mr. Foster's right side

from Mr. Foster's mouth and nose across the right side of his face. Edwards then repositioned the head in the "straight up" position. The chin being in contact with the bloody shoulder resulted in the presence of a contact blood stain on the chin.

In spilling the blood toward the small caliber bullet wound in Mr. Foster's neck, and down onto his right shoulder and collar, Edwards obscured and camouflaged the existence of the bullet wound in Mr. Foster's neck. By moving the head to the right, Edwards sought to make it appear that the blood on Mr. Foster's right side collar and right shoulder, which had in fact drained from the neck wound, had emanated from his mouth when the head was turned. As we shall see, among the evidence of Edwards' wrongdoing is that before he was alone at the body site, the blood was dry. After Edwards' actions, the blood appeared wet.

In a lengthy footnote, the OIC implies that either Firefighter Todd Hall or James Iacone was probably the "early observer" who moved the head to the right (whereupon the blood drained out) and then repositioned it. The strongest evidence the OIC offers to support its hypothesis is Hall's statement, "*I recall attempting to check the carotid pulse,*" and Iacone's still-secret FBI interview Report relating that "*Iacone checked for pulse.*"

The balance of this footnote states that Fornshill described the paramedics' movements "*around head of body*" (without providing that description - the referenced report is secret),³⁶⁴ that one paramedic "*believe[s]*" that a Firefighter did check the pulse,³⁶⁵ that another Park Police officer was "*notified*" by a paramedic that he and another paramedic had checked for vital signs,³⁶⁶ that a Park Police

³⁶⁴ OIC, p. 66, fn. 191: "...Fornshill OIC, 1/11/95, at 92-93, 104-105 (describing movements of FCFRD personnel Hall and Gonzalez around head of body)..."

³⁶⁵ OIC, p. 66, fn. 191: "...Gonzalez Senate Deposition, 7/20/94, at 19 ('I believe Todd [Hall] did' check the pulse); Gonzalez OIC, 1/10/95, at 56-57 (Hall may have checked for pulse)..."

³⁶⁶ OIC, p. 66, fn. 191: "...USPP Report (Hodakievic) at 1 (Gonzalez [sic] notified me that . . . Gonzalez [sic] and Hall checked the body for vital signs and found none)..."

Official excuse for blood on Mr. Foster's right side

officer "advised" another Park Police officer that "a medic checked the subject's neck for a pulse,"³⁶⁷ and that yet another Park Police officer "learned" that personnel "felt for a pulse in the carotid artery."³⁶⁸

In sum, upon a close reading of the following lengthy footnote, it is obvious that the FBI could find no one to report they moved the head or saw anyone else move it.

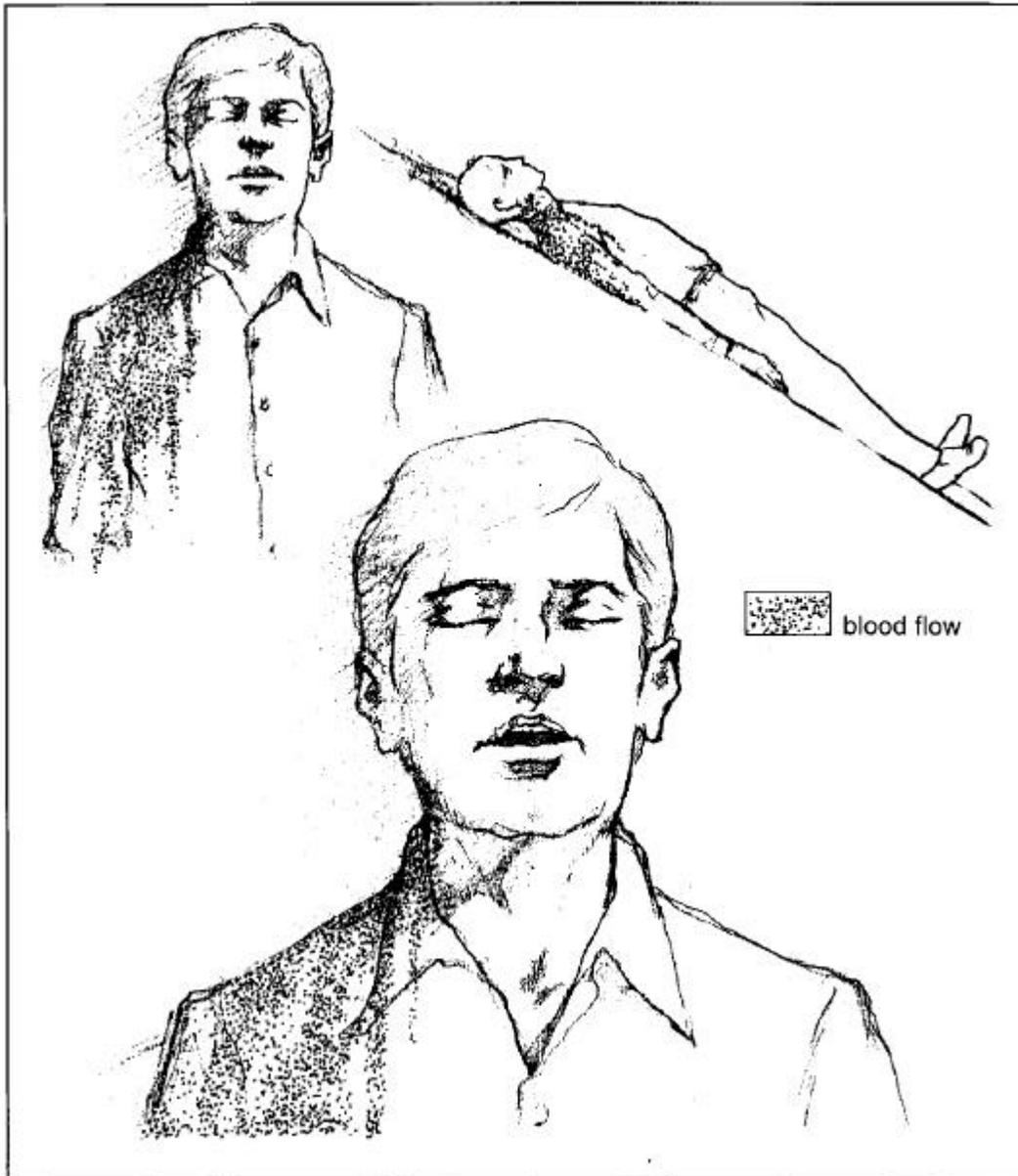
OIC, p. 67, fn. 191:

Fornshill OIC, 1/11/95, at 92-93, 104- 105 (describing movements of FCFRD personnel Hall and Gonzalez around head of body); Hall Senate Deposition, 7/20/94, at 22 ("I recall attempting to check the carotid pulse."); Gonzalez Senate Deposition, 7/20/94, at 19 ("I believe Todd [Hall] did" check the pulse); Gonzalez OIC, 1/10/95, at 56-57 (Hall may have checked for pulse); USPP Report (Hodakievic) at 1 (Gonzalez [sic] notified me that...Gonzalez [sic] and Hall checked the body for vital signs and found none."); Iacone OIC, 1/10/95, at 22 (Iacone checked for pulse); USPP Report (Ferstl) at 1 ("Ofc. Fornshill advised that a medic checked the subjects [sic] neck for a pulse"); Gavin OIC, 2/23/95, at 15, at 15 (learned at scene that FCFRD personnel "felt for a pulse in the carotid artery and got none."). The action of checking for vital signs and an airway may have caused some spillage of blood and may have caused the head to make contact with the right shoulder.

The last sentence of this footnote makes yet another wholly unsupported claim, which is that this unknown individual also checked for an airway.

³⁶⁷ OIC, p. 66, fn. 191: "...USPP Report (Ferstl) at 1 ('Ofc. Fornshill advised that a medic checked the subjects [sic] neck for a pulse')..."

³⁶⁸ OIC, p. 66, fn. 191: "...Gavin OIC, 2/23/95, at 15, at 15 (learned at scene that FCFRD personnel 'felt for a pulse in the carotid artery and got none.')..."



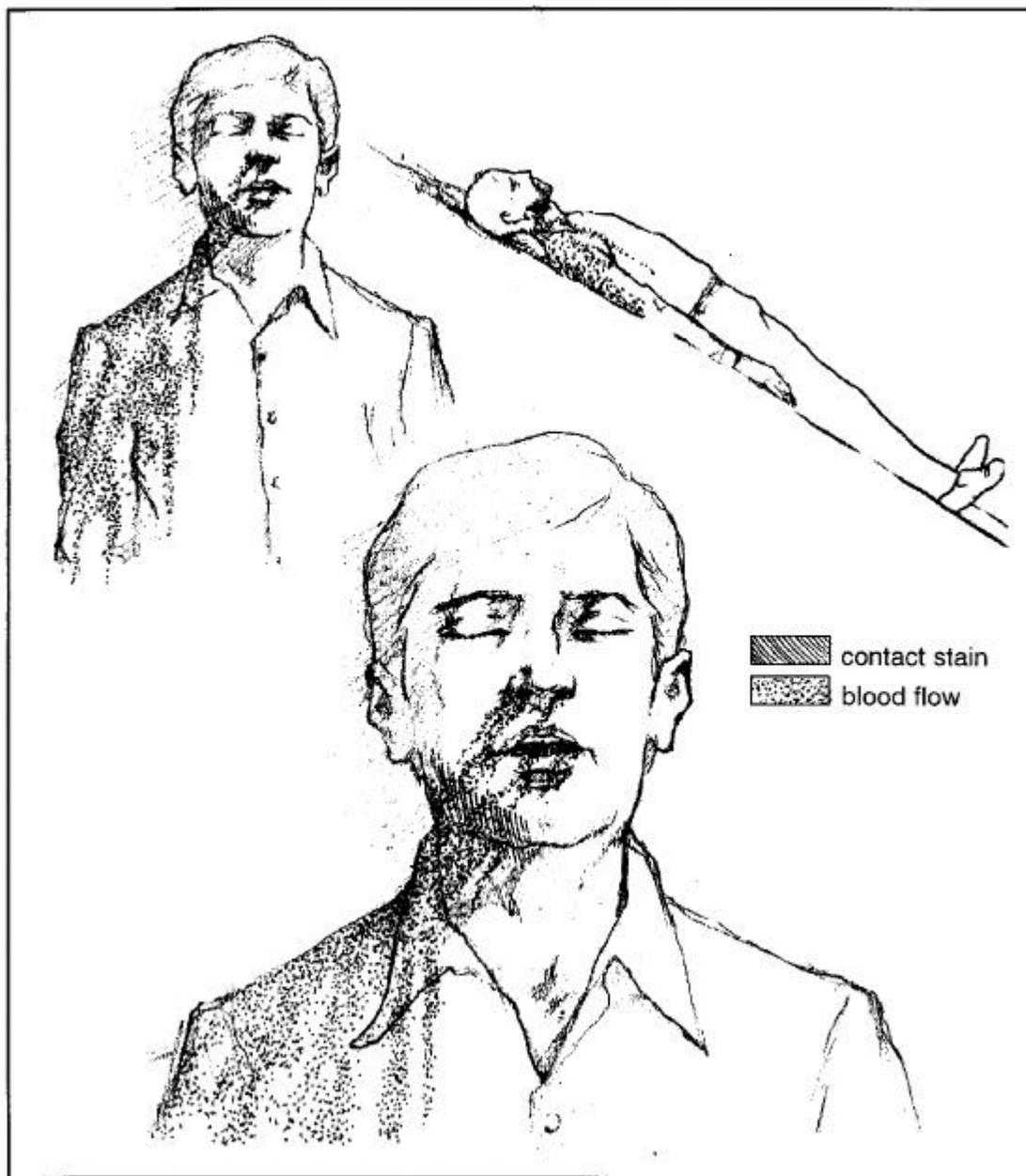
Before

These illustrations show Mr. Foster's body as it appeared to the early observers who saw the body before Sergeant Edwards was alone at the body site. There was very little blood on Mr. Foster's face, and it all appeared dark and dry. Illustrations clockwise from the bottom: (1) this close-up view shows very little blood on the face and some inside his mouth and nose. Also shown is blood on the right collar and shoulder of the shirt. (2) This illustration shows a bird's-eye view of the dried blood soaked into the right collar, shoulder and down the sleeve. (3) This side view depicts the body lying straight, face up on an incline with the arms straight at the sides [a gun in his right hand is not shown].



The movement of Mr. Foster's head

The OIC and its experts concluded that Mr. Foster's head was moved at the scene. We agree.



After

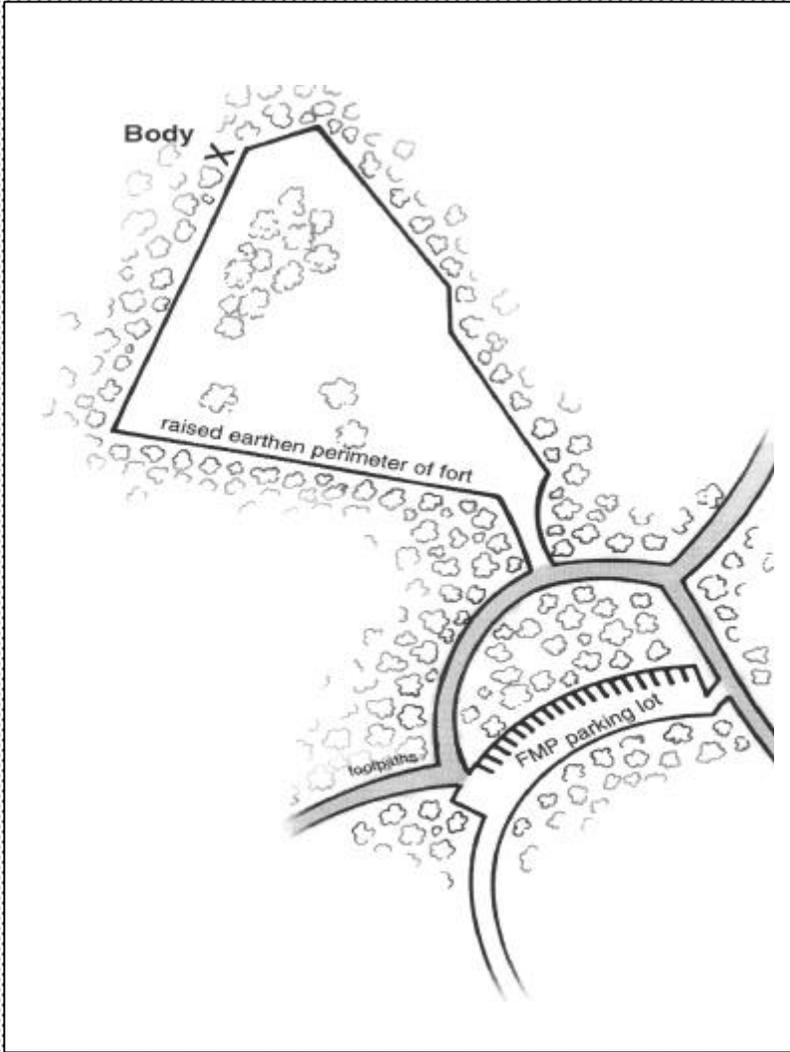
These illustrations show Mr. Foster's body as it appeared to observers who viewed the body after Sergeant Edwards was alone at the body site. There was now more blood on Mr. Foster's face, and a blood contact stain. The blood was now both dry and wet. Clockwise from the bottom, illustrations show: (1) additional wet blood on the face and shirt, some of which is flowing from the nose and mouth. A contact stain is also now on the right chin from its contact with the bloody shoulder of the shirt. (2) This bird's-eye view shows the additional blood on the face and shirt, and shows the new contact stain on the face. (3) This side view depicts the bloodstains on the right side of the shirt. It also shows the additional blood on the face and the contact stain.

Body site	FORT MARCY PARK	6:27	<u>See</u> endnote 15.
------------------	------------------------	-------------	------------------------

Sergeant Robert Edwards

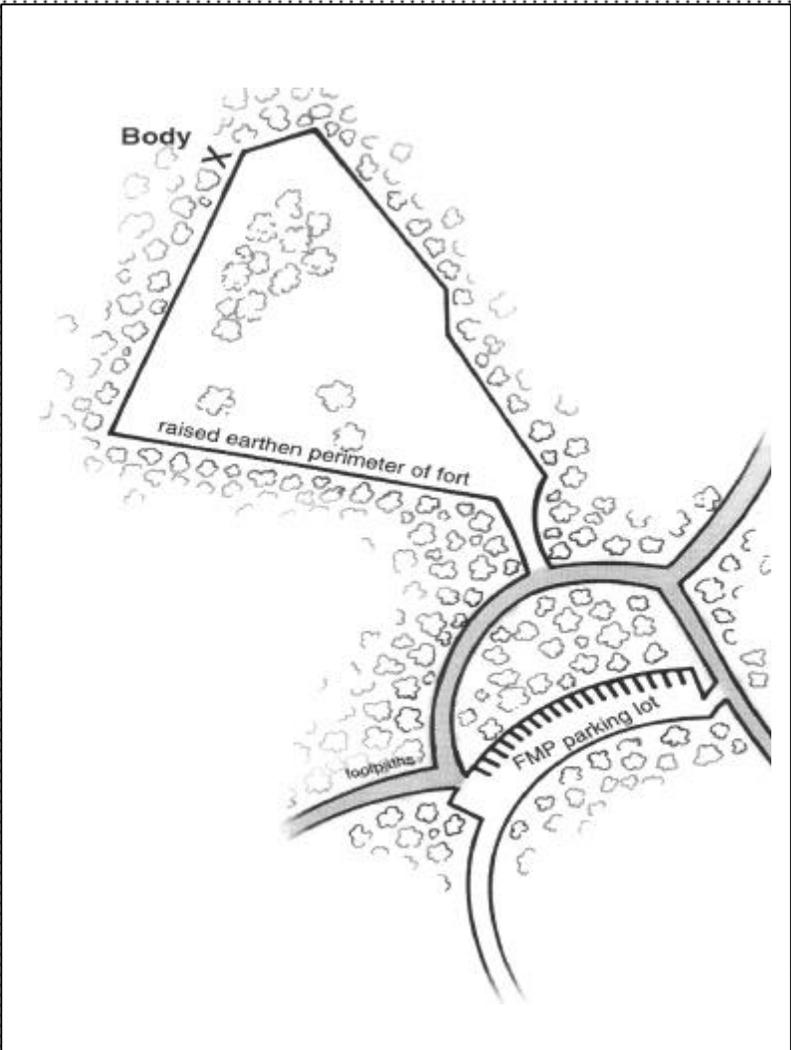
After Ferstl left, Edwards was alone with the body.

Officer Franz Ferstl



Fornhill left the park just before Investigators John Rolla, Cheryl Braun and Renee Abt arrived in the parking lot. Fornhill did not prepare a report and was not interviewed for a year. The civilian couple reported to the police that they had seen other cars and people in the lot.

Parking lot
Lieutenant Patrick Gavin
Inv. Christine Hodakievic
Officer Julie Spetz
Paramedic Richard Arthur
Firefighter Ralph Pisani
Firefighter Lt. James Iacone
Firefighter Jennifer Wacha
Firefighter Todd Hall
Paramedic George Gonzales
Male Civilian
Female Civilian

Body site	FORT MARCY PARK 6:42-6:43		<u>See endnote 21.</u>
Sergeant Robert Edwards	<p>Sometime during the over 15 minutes that Sergeant Edwards was alone with the body, an untraceable .38 caliber black revolver replaced the automatic pistol in Mr. Foster's hand. Edwards also moved Mr. Foster's head to the right side, causing blood to flow out of the mouth onto his right side (and leaving a stain on the right cheek from its contact with the bloody right shoulder). This made it appear that the blood already on the right side, which had in fact drained from the right side neck wound, had come from the mouth. He thus concealed the existence of the neck wound (inconsistent with suicide), and made it appear as if Mr. Foster may have been shot in the mouth (consistent with suicide). The official explanation for the contact blood stain on the right cheek is that it had appeared when an unknown fire and rescue worker checked the pulse.</p>		
Lieutenant Patrick Gavin			
Inv. Christine Hodakievic			
<p>Gavin looked at the scene, saw blood trickling out of Mr. Foster's mouth, and thought he had been mugged. Because Ferstl remained in the lot, Hodakievic was the only witness who saw the body both before and after Edwards had been alone with it. Hodakievic's report addressed only the activities in the parking lot. When she later saw photographs of the body, she said the appearance of the body had changed from when she had seen it.</p>			
<p>Evidence Technician Peter Simonello arrived in the lot.</p>			
<p>Ev Tech Peter Simonello</p>			
	Investigator John Rolla	Officer Julie Spetz	Parking lot
	Investigator Cheryl Braun	Officer William Watson	Male Civilian
	Officer Franz Ferstl	Intern with Officer Watson	Female Civilian

No "early observers" caused bloodstains on the right side

- a. **No reports of "early observers" having moved the head or seen it being moved and resuscitation was not attempted**

The OIC's conclusion is unsupported. The first nine observers of the body, Dale, Fornshill, Hall, Gonzalez, Arthur, Pisani, Wacha, Iacone and Ferstl, all of *the "early observers,"* denied moving the head or seeing anyone else move it.

Additionally, all witnesses testified that the body clearly appeared to have been dead for some time, so it would have been obviously uncalled-for to move the victim in an attempt to try to resuscitate him.

Moreover, contrary to the OIC's implication, logic dictates that neither Hall nor Iacone would have even examined the body. They were not paramedics, but were each accompanied by a paramedic.

Civilian Dale

Dale, the first person to officially view the body at around 5:45 p.m., would not have attempted to revive Mr. Foster because, as he testified, there "was no doubt he was dead."³⁶⁹

Officer Kevin Fornshill

Park Police Officer Kevin Fornshill denied having moved the head. The handwritten notes taken on April 29, 1994 by the FBI of its interview of Fornshill related that neither Gonzalez nor Hall moved the head. Those notes state that Fornshill reported that there was "no blood on shirt or head [and that the head was in the] same position after EMTs [examined the body, and that there was] nothing different after EMTs [examined the body]."³⁷⁰

³⁶⁹ Exhibit 51, Deposition of Dale by Congressman Dan Burton July 28, 1994: "Q. Now you found the body and you realized -- you thought he was dead? A. Well, there was no doubt he was dead."

³⁷⁰ Exhibit 108, Handwritten notes of report of FBI interview of Park Police Officer Kevin Fornshill, April 29, 1994.

Body site	FORT MARCY PARK 6: 17 <u>See</u> endnote 6.					
Officer Kevin Fornshill	<p>During Paramedic Gonzalez's evaluation, he saw a gun in Mr. Foster's right hand. He concluded that Mr. Foster was obviously dead, had been for "two to four hours," and made no attempt at resuscitation. Because of the straight position of the body and the lack of blood, both Hall and Gonzalez concluded that the death appeared suspicious. Hall reportedly saw a female Park Police officer before leaving the site, possibly Hodakievic.</p>					
Firefighter Todd Hall						
Paramedic GeorgeGonzalez						
Officer Franz Ferstl	<table border="1"> <tr> <td>Parking lot</td> </tr> <tr> <td>Paramedic Richard Arthur</td> </tr> <tr> <td>Firefighter Ralph Pisani</td> </tr> <tr> <td>Firefighter Lt. James Iacone</td> </tr> <tr> <td>Firefighter Jennifer Wacha</td> </tr> </table>	Parking lot	Paramedic Richard Arthur	Firefighter Ralph Pisani	Firefighter Lt. James Iacone	Firefighter Jennifer Wacha
Parking lot						
Paramedic Richard Arthur						
Firefighter Ralph Pisani						
Firefighter Lt. James Iacone						
Firefighter Jennifer Wacha						
<p>Officer Franz Ferstl, who had received the first call to respond to the park, reached the parking lot and headed up to the body site.</p>	<table border="1"> <tr> <td>South of the lot</td> </tr> <tr> <td>Male Civilian</td> </tr> <tr> <td>Female Civilian</td> </tr> </table>	South of the lot	Male Civilian	Female Civilian		
South of the lot						
Male Civilian						
Female Civilian						

No "early observers" caused bloodstains on the right side

Firefighter Todd Hall
Paramedic George Gonzalez

Todd Hall, a firefighter, would not have provided any medical treatment to Mr. Foster, as he testified in 1994.

Q. Did anybody else touch him that you recall seeing?

A. The medics, George and Arthur, when they got there.

Q. They touched him?

A. I assume they did. That's their job.

Q. Did you see them touch him?

A. No. I pretty much backed off and let them take over.

Q. Why is that?

A. Because they are the medics.³⁷¹

On the first anniversary of the death, in response to the question whether anyone checked to see if Mr. Foster was alive, Paramedic Gonzalez perfunctorily testified, "He was dead."

Q. What did you see when you got to the body?

A. I saw a dead male. He'd obviously been dead for some time. His skin color was pale. He had a white shirt on, his mouth was open. His eyes were slightly open, and he had flies about his eyes, nose, mouth...

Q. Did anyone check to see if he was alive or dead, check the pulse or anything?

A. He was dead.³⁷²

³⁷¹ Exhibit 67, Deposition of Firefighter Todd Hall, July 14, 1994: Q. Who was the driver, who was the medic? A. I was the driver. George Gonzalez was the officer in charge, and Richard Arthur was the second man... Q. Did you hear anyone say, well, he's dead? A. I don't remember hearing it. I pretty much assumed he was. Q. Did anybody else touch him that you recall seeing? A. The medics, George and Arthur, when they got there. Q. They touched him? A. I assume they did. That's their job. Q. Did you see them touch him? A. No. I pretty much backed off and let them take over. Q. Why is that? A. Because they are the medics.

³⁷² Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994.

No "early observers" caused bloodstains on the right side

Gonzalez had opined in his report composed the evening of the death that the body appeared to have been dead for two to four hours.³⁷³

Officer Franz Ferstl

Officer Ferstl did not move Mr. Foster's head because he did not get closer than "three to five feet from the head."³⁷⁴

Paramedic Richard Arthur Firefighter Lieutenant James Iacone

Richard Arthur, the only paramedic in the group of four that arrived at the site minutes after Fornhill, Hall and Gonzalez, testified that Mr. Foster "was obviously dead."³⁷⁵ According to the FBI's report of its interview with him, "in Arthur's judgement, Foster was obviously dead and so he did not check for a pulse."³⁷⁶

The FBI reported that Iacone told the interviewing agent that upon his arrival at the body site, after Mr. Foster had been examined, "the medics confirmed there would be no efforts to resuscitate the patient."³⁷⁷ Paramedic

³⁷³ Exhibit 133, Narrative report of Paramedic George Gonzalez, July 20, 1993: "Had been approx dead 2-4 hrs"

³⁷⁴ Exhibit 96, Report of FBI interview of Officer Ferstl, May 6, 1994: "Ferstl stated that he did not see Officer Fornhill or the medical technicians touch or move the body in any manner. Ferstl advised that he did take a look at the body from a position at the top of the berm, looking down at the body from approximately three to five feet from the top of the head."

³⁷⁵ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: "[F]rom what I saw and from what it looked like, he was obviously dead."

³⁷⁶ Exhibit 110, Report of FBI Interview with Paramedic Richard Arthur, March 16, 1994.

³⁷⁷ Exhibit 78, Report of FBI interview of Firefighter James Iacone, March 11, 1994: "After Iacone's group arrived at the location of the body the medics confirmed there would be no efforts to resuscitate the patient."

No "early observers" caused bloodstains on the right side

Arthur explained in his testimony that Iacone's unit came as "extra personnel just in case for carrying equipment, if CPR is needed, the medics can do the IVs and stuff, they [Iacone's unit] can do the manual labor."³⁷⁸

Firefighters would not have checked for a pulse or have cleared Mr. Foster's airway after the paramedics had concluded that Mr. Foster was obviously dead. So, the OIC's theory that one of the "early observers" moved then repositioned the head is clearly without foundation.

OIC, p. 66:

The testimony and contemporaneous reports point to the conclusion that rescue personnel at the scene handled the decedent's head to check for vital signs and an open airway.

³⁷⁸

Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994: Q. Who went out to Fort Marcy Park with you? A. On the medic unit, the driver was Todd Hall. The officer was Sergeant George Gonzalez and Richard. I was in the back. On the fire engine I want to say it was Ralph Pasany [sic] driving. At the time I think he was a sergeant but he's now a lieutenant. I should remember his name -- Icahn [sic]. Jay Icahn [sic], and then in the bucket of the engine. -- Q. The bucket being the middle? A. Well, you've got the driver, the officer and the two firefighters sit backwards and stuff, they're called buckets. In the bucket it was Jennifer Walker [sic], firefighter Jennifer Walker [sic]. Q. Why does the fire truck go -- A. On certain dispatches, they're automatically dispatched, such as if there's a broken arm, it would just be a medic unit or an ambulance. If it's a shooting, heart attack, stabbing, something that calls for lots of work, lots of manpower where you may need to do a lot, they automatically send an engine just for assistance. The call came in as a -- if I remember correctly, it was a body lying next to a cannon, unknown situation, don't know if the patient is alive, dead, don't know if a hanging, whatever. We had no idea, so they automatically sent a medic unit and an extra personnel just in case for carrying equipment, if CPR is needed, the medics can do the IVs and stuff, they can do the manual labor.

All "early observers" saw bloodstains as they arrived

- b. No "early observer" could have caused right side bloodstains because they all saw these stains as they arrived

Civilian Dale

Dale, the first witness to officially discover the body, testified that there was a "stain on his right shoulder... that could have been blood."³⁷⁹

Firefighter Todd Hall Paramedic George Gonzalez

Firefighter Todd Hall, who accompanied Gonzalez, remembered blood on the collar of Mr. Foster's shirt.³⁸⁰

Paramedic George Gonzalez, in the group of the third and fourth "early observers," saw the blood stain on the shirt before the head was moved.

- Q. Can you, be a little more specific, where on the face or how much?
- A. There wasn't that much on the face. There was some like I would say either a stream of blood. Primarily blood around the lip and inside the mouth was the contained area of blood. And just on the right shoulder, it looked like the blood was under the shirt because it had stained through

³⁷⁹ Exhibit 51, Deposition of Dale by Congressmen Burton, Rohrabacher, and Mica, July 28, 1994: A. On his right shoulder. It was a stain -- the stain on his shoulder was -- Q. Was it red? Or was it blood? A. No. It was light purple, almost the identical to the color of the wine cooler. Q. So you don't think it was blood. A. I do not think it was blood. In the very center of -- it looked like he had thrown up on his right shoulder. In the very center there was one small spec area, probably no larger than a silver dollar that was black, that could have been blood in the very center of it.

³⁸⁰ Exhibit 67, Deposition of Paramedic Todd Hall, July 20, 1994: "Q. Did you notice any of this pooling of blood, cyanotic, or something? A. All I recall is a couple of drops on his collar." Exhibit 179, Report of FBI interview of Firefighter Todd Hall, April 27, 1994: "Hall sighted blood on the right collar area of the decedent's shirt."

All "early observers" saw bloodstains as they arrived

the white shirt.

* * *

Q. Did you see any wet blood on the shirt?

A. I just saw a stain, a blood stain.

Q. Can you estimate about how big it was on the shirt?

A. It can be deceiving. It was just in this area right in here, right about in this area of the clavicle area.

* * *

Q. Was the blood in that phase dry or what?

A. Dry.³⁸¹

**Paramedic Richard Arthur
Firefighter Ralph Pisani
Firefighter Jennifer Wacha**

Richard Arthur, the only paramedic in the group of four who arrived at around 6:22 p.m., testified on deposition that he saw blood all down the right shoulder area of Mr. Foster's shirt.³⁸² The FBI's report of its interview with Firefighter Ralph Pisani notes that he saw "blood on Foster's right shoulder..."³⁸³ Firefighter Jennifer Wacha told the FBI that she "thought blood may have been on the victim's... shirt."³⁸⁴

³⁸¹ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994.

³⁸² Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994. Exhibit 82, Report of FBI interview of Paramedic Richard Arthur, April 29, 1994: "Arthur recalls seeing blood on the decedent's right shoulder." Exhibit 180, Handwritten notes of FBI interview of Paramedic Richard Arthur, April 29, 1994: "Blood on right shoulder."

³⁸³ Exhibit 136, Report of FBI interview of Firefighter Ralph Pisani, April 27, 1994.

³⁸⁴ Exhibit 72, Report of FBI interview of Firefighter Jennifer Wacha, March 11, 1994: "Wacha thought blood may have been on the victim's mouth as well as on his shirt. She could not recall the volume."

The blood was dry until after Edwards had been alone with the body

c. The blood was dry until after Edwards had been alone at the body site

Civilian Dale

Dale, the witness who discovered the body, testified that "the blood was dried hard and black"³⁸⁵ and that there were "not streams of blood on the side of his face."³⁸⁶

Officer Kevin Fornshill

The handwritten notes taken by the FBI of its interview with Park Police Officer Kevin Fornshill, taken April 29, 1994, state that Fornshill saw a "trickle of dried dark blood corner of right side of mouth and possibly flake, spotty not flowing."³⁸⁷

According to Fornshill's testimony, the blood he saw was "dried... dark in color... [and] flaking... like paint on a wall."³⁸⁸ Fornshill did not mention any wet or flowing blood.

³⁸⁵ Exhibit 51, Deposition of Dale by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.

³⁸⁶ Exhibit 51, Deposition of Dale by Congressmen Burton, Mica and Rohrabacher, July 28, 1994.

³⁸⁷ Exhibit 108, Handwritten notes of report of FBI interview of Park Police Officer Kevin Fornshill, April 29, 1994: "Trickle of dried dark blood corner of right side of mouth and possibly flake, spotty not flowing No other blood on face... No blood on shirt or head same position after EMTs. No change in body etc after his initial observation."

³⁸⁸ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: A. The lips were slightly parted and I do recall flies coming in the area of the lips, perhaps even entering the mouth itself because the lips were parted. Again, I didn't tilt the head enough, but slightly resting to one side and there was a trail of blood coming down the corner of the mouth, down to the chin. *** Q. Did you say you could see blood on the face? A. Yes. The blood would have been a trail of dried blood because I remember it was flaking too. It was dark in color. The texture was flaking up, you know, kind of curling like paint on a wall sometimes. It was trailing down from the lip or the corner of the lip on down.

The blood was dry until after Edwards had been alone with the body

Firefighter Todd Hall
Paramedic George Gonzalez

Hall testified that the pictures he had been shown by the FBI did not depict what he had seen when he viewed the body. He speculated that the head had been moved after he had viewed the body, before the photographs had been taken.

- Q. Did you notice any of this pooling of blood, cyanotic, or something?
- A. All I recall is a couple of drops on his collar. That's all I recall.
- Q. Do you remember seeing any blood on his face?
- A. No, I remember his face being straight when I was going to check because whatever turned his head, from the pictures I saw, there was more blood than I recall seeing. And that may be because, in the pictures, his head had been turned and that may have caused the bleeding, the blood to flow.³⁸⁹

³⁸⁹ Exhibit 67, Deposition of Paramedic Todd Hall, July 20, 1994: Q. Tell me again, what was the position of the head when you first saw the body? A. I'd say it was in a line, looking up into the sky. Q. In the pictures you saw with the FBI? A. Yes. It was turned to the side, and blood was coming out of its mouth. Q. It was turned to? A. I think it was turned to the right. Q. So when you saw it, it was straight up. Did you notice blood off the side? A. No, All I noticed was a couple of drops on the collar. *** Q. Did you notice any of this pooling of blood, cyanotic, or something? A. All I recall is a couple of drops on his collar. That's all I recall. Q. Do you remember seeing any blood on his face? A. No, I remember his face being straight when I was going to check because whatever turned his head, from the pictures I saw, there was more blood than I recall seeing. And that may be because, in the pictures, his head had been turned and that may have caused the bleeding, the blood to flow. *** Q. And you said you saw some blood on the face? A. I recall seeing a couple of drops of blood on his collar and that's it. Q. Do you recall if it was wet or dry? Could you tell? A. It had pretty much soaked into his collar. Q. When you say his collar, on the right, which side? A. I recall it being over here. Q. Which side are you indicating? A. My left, his left. Q. His left side. Do you remember seeing any other blood on any other part of the clothes? A. No. Q. What about on the face? A. No.

The blood was dry until after Edwards had been alone with the body

When asked if the blood he saw was wet or dry, Hall responded that the blood "had pretty much soaked into the collar." And Hall did not observe any contact stain on the face.

When Paramedic George Gonzalez testified on the first anniversary of the death, in response to the question, "Was the blood in that phase dry or what?" answered, "Dry."³⁹⁰

Officer Franz Ferstl

Park Police Officer Franz Ferstl, the second police officer at the body site, related to the FBI that his "primary responsibility was to secure the crime scene." Ferstl first looked at the body, returned to his police cruiser to retrieve police crime scene tape, and then returned to the body site where he saw that the Fire & Rescue personnel had left. "He stated that to the best of his recollection, on returning a second time to the death scene, the body appeared to be in the identical position it was when he first observed it."³⁹¹

According to the FBI's report of its interview with him, Ferstl "advised that he observed a small amount of blood around the mouth, adding that the blood did not appear fresh."³⁹²

**Paramedic Richard Arthur
Firefighter Ralph Pisani**

Paramedic Richard Arthur described the blood he saw as dry, not running. He also saw the blood on the shirt.

³⁹⁰ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994.

³⁹¹ Exhibit 96, Report of FBI interview of Officer Franz Ferstl, May 2, 1994.

³⁹² Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994: Ferstl advised that he observed a small amount of blood around the mouth, adding that the blood did not appear fresh. Ferstl did not recall any blood coming from the nose, nor did he recall any blood on the shirt... He stated that the shirt was very clean and he does not recall any blood stains or dirt stains on the shirt.

The blood was dry until after Edwards had been alone with the body

A. I took a quick look, saw what appeared to be a bullet hole, saw the blood on the side of the neck, so I guess I assumed it was a bullet hole.

Q. Was the blood dry?

A. It wasn't running...

* * *

Q. How big would you say the blood stain was on the shirt that you observed?

A. Well, from -- maybe an inch or so up from the elbow on the right elbow up the sleeve and like from the collar bone all the way around. It was like all around here.³⁹³

According to the FBI's April 27, 1994 interview with Firefighter Ralph Pisani, he observed "blood on Foster's right shoulder... [but] did not recall seeing any blood on Foster's face."³⁹⁴ According to the FBI's handwritten notes of that interview, Pisani's recollection of the blood he saw on the face differed from that depicted in the photograph the FBI showed him.³⁹⁵

Sergeant Robert Edwards

No one reported having observed anyone move the head. Only Sergeant Edwards was alone with the body. Edwards did not write a report and there is no record of the FBI having interviewed him during the Fiske probe. The only record of Edward's having been interviewed is a reference to a secret

³⁹³ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

³⁹⁴ Exhibit 136, Report of FBI interview of Firefighter Ralph Pisani, April 27, 1994: Pisani was located in a position where he was looking over the left side of the body and was able to see blood on Foster's right shoulder. Pisani did not recall seeing any blood on Foster's face. Pisani further noted that he did not approach closer than ten feet to the body. Pisani did not see anyone touch the body while he was at the scene.

³⁹⁵ Exhibit 137, Handwritten notes of FBI interview of Firefighter Ralph Pisani, April 27, 1994: "From photos: didn't recall blood on face."

The blood was dry until after Edwards had been alone with the body

report in a footnote in the OIC's Report regarding Edwards' apparent denial that he had photographed the body.³⁹⁶

Lieutenant Patrick Gavin
Investigator Christine Hodakievic

Lieutenant Patrick Gavin told the FBI that when he arrived at the park, "Investigator Hodakievic met him at the parking lot and later directed him up to where the body had been discovered." Gavin told the FBI he saw "a trickle" of what appeared to be blood "coming" out of Mr. Foster's mouth and "running down" his face.³⁹⁷

Hodakievic did not report any observations of blood in the report she wrote on July 20, 1993. We believe that she saw Mr. Foster's body before and after Edwards was alone with the body. According to the FBI's report of its interview with her, "[s]he advised that she did not notice any blood on the decedent's face or on his shirt but recalls his arms being straight at his side."³⁹⁸

Investigator John Rolla
Investigator Cheryl Braun
Evidence Technician Peter Simonello
Investigator Renee Abt

Investigator Rolla testified that the "blood coming from the right nostril and the right corner of his mouth down the side of his face... appeared to still be wet."³⁹⁹

³⁹⁶ OIC, p. 74, fn. 215: "OIC, 1/12/95, at 7, 199-203. Investigator Abt recalled Sergeant Edwards taking Polaroids, OIC, 1/12/95, at 11, but Sergeant Edwards said he only carried the Polaroid camera and the Polaroids taken by Ferstl, but does not recall taking any Polaroids himself, OIC, 1/12/95, at 7, 199-203."

³⁹⁷ Exhibit 98, Report of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994.

³⁹⁸ Exhibit 81, Report of FBI interview with Christine Hodakievic, May 2, 1994.

³⁹⁹ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: I noticed blood coming from the right nostril and the right corner of his mouth down the side of his face. It appeared to still be wet, but drying. Flies were buzzing around his face, starting to -- no eggs

The blood was dry until after Edwards had been alone with the body

The blood was "trickling from his right nostril and the right side of his mouth."⁴⁰⁰ Since Rolla observed the face "straight up" in the same position as observed by Officer Ferstl, who reported that earlier "the head was pointed straight up toward the sky,"⁴⁰¹ the head had been moved and returned to the straight up position.

Rolla testified that "[t]he blood on the ground and on his shirt appeared to still be wet."⁴⁰² The FBI's report of its April 27, 1994 interview of Rolla similarly reports that the "[f]acial blood... emanating from the right side of the decedent's mouth... was still wet..., [the] blood under the decedent's head... appeared wet, [and that] blood on the decedent's shirt in the area of the right upper shoulder... also appeared to be wet..."⁴⁰³

were laid yet, I think they were just making their way to do that.

⁴⁰⁰ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: "[T]he blood was still wet. Q. The blood on the body? A. The blood under his head was just starting to gel. It was still wet. The edges, I think the edges where there was less blood were starting to gel."

⁴⁰¹ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994.

⁴⁰² Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: "I observed blood in his nose and mouth area, on his right shoulder area and underneath his head. The blood on the ground and on his shirt appeared to still be wet. There was no blood on the plants or trees surrounding the decedents head."

⁴⁰³ Exhibit 100, Report of FBI interview of Park Police Investigator John Rolla, April 27, 1994: Facial blood consisted of blood leading from the right nostril to the right side of the face and blood emanating from the right side of the decedent's mouth. He further advised the facial blood was still wet but starting to dry. He also observed a pool of blood under the decedent's head which appeared wet, but was also in the process of drying. Rolla also observed a deposit of blood on the decedent's shirt in the area of the right upper shoulder which also appeared to be wet but drying.

The blood was dry until after Edwards had been alone with the body

Park Police Investigator Cheryl Braun testified that she saw blood "[i]n the nose area and in the mouth area... [and] on his chin in the area of his right shoulder."⁴⁰⁴ The FBI reported that Braun stated that she "clearly recalls blood in the area of the nose running down the right side of the face."⁴⁰⁵

Park Police Evidence Technician Peter Simonello also testified that he observed "blood running from the nose... on the lower part of the cheek towards the chin, the jawline..."⁴⁰⁶

An entry in Park Police Investigator Renee Abt's notes, written at the scene at 7:10 p.m., notes that she saw both "dried and liquid" blood.⁴⁰⁷ The FBI's report of its May 1994 interview with Abt is in accord.

Investigator Abt advised that upon arriving at the scene she took personal responsibility for taking notes on the death scene and as such observed the decedent from a series of vantage points... She stated that... portions of the facial blood appeared

⁴⁰⁴ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994: Q. Was there blood on the body? A. Yes, there was. Q. Where? A. In the nose area and in the mouth area. And there were lots of flies in the eyes, nose, and mouth. There was also the blood in the -- on his shirt in the area of his right shoulder.

⁴⁰⁵ Exhibit 91, Report of FBI interview of Park Police Investigator Cheryl Braun, April 28, 1994: "Braun states that she clearly recalls blood in the area of the nose running down the right side of the face; she can't say for sure, but she vaguely recalls some trace of blood around the mouth and also traces of blood on the right shoulder of the shirt."

⁴⁰⁶ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994: "There was some blood running from the nose. There was some blood on the lower part of the cheek towards the chin, the jawline. There was some blood on the right shoulder, and there was some blood, I believe, near the right rib cage."

⁴⁰⁷ Exhibit 118, Handwritten contemporaneous notes of Park Police Investigator Renee Abt, at 7:10 p.m., July 20, 1993: "Large blood pattern Rt shoulder + collar of shirt. Dried and liquid"

Blood transfer contact stain after Edwards was alone with the body

dry while other portions appeared to be liquid in nature.⁴⁰⁸

d. The only witnesses who saw the blood transfer contact stain arrived at the site after Sergeant Edwards had been alone with the body

Edwards' movement of the head, causing blood to flow from the mouth and nose to conceal that blood had drained from the neck onto the collar and shirt, caused the contact stain. Witnesses who viewed the body before Edwards' arrival did not see it. Rolla, Simonello, and Abt did.

Rolla testified that he saw a transfer stain "on his face" and that it was "pretty apparent" that Mr. Foster's head had touched his shoulder.⁴⁰⁹

Park Police Evidence Technician Peter Simonello reportedly told the FBI that he saw a "blood transfer pattern on the right cheek."⁴¹⁰ The transfer bloodstain

⁴⁰⁸ Exhibit 99, Report of FBI interview of Park Police Investigator Renee Abt, May 2, 1994: Investigator Abt advised that upon arriving at the scene she took personal responsibility for taking notes on the death scene and as such observed the decedent from a series of vantage points. She advised that after viewing a series of enlarged Polaroid photographs obtained from USPP that these photographs were a true and accurate depiction of the decedent's body and the surrounding area which she personally observed on July 20, 1993. She stated that in her opinion, portions of the facial blood appeared dry while other portions appeared to be liquid in nature.

⁴⁰⁹ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: A. There was blood on his shoulder, possibly like a transfer stain. Q. What's a transfer stain? A. A transfer stain is -- blood wasn't initially in one location or another. It was on his face -- or on his shirt, not his face. One touched the other. But at this point his face was up, straight up, when I saw him... Q. In your opinion, at some point, the right side of his head touched with the right side of his shoulder? A. Yes. I think it's pretty apparent.

⁴¹⁰ Exhibit 105, Report of FBI interview of Park Police Evidence Technician Peter Simonello, April 28, 1994: He specifically recalls blood staining around the chin area

Blood transfer contact stain after Edwards was alone with the body

was, according to Simonello's sworn testimony, on the "lower cheek near the jawline."

Q. You had mentioned a transfer stain on the shirt is that correct?

A. Yes.

Q. Could you describe that, as you first saw it.

A. Well, the transfer stain I saw, there was blood on his lower cheek near the jawline. The lower edge was very clean -- the blood stain and the lower edge appears to be a straight sharp edge, and I saw blood on the part of his shirt which I believe is around the shirt collar, shoulder area. I deduced that the stain was made because his face was against there at one time. The sharp edge, therefore, coming from the edge of the shirt not allowing the blood to get below that point on his face, and that's what I felt was a transfer stain.

* * *

Q. Do you know if the head was moved before you saw it?

A. I can only deduce that it was because of the stain I saw, but no one told me it was, and I have not been able to find -- no one ever said anything since that that it has been, but I felt it had to have been sometime in contact with that shirt prior to my arrival.⁴¹¹

Park Police Investigator Abt reported to the FBI that she observed a contact transfer blood stain on the "lower right cheek."⁴¹²

and from the nose down the right cheek. Simonello also observed blood along the right side of the decedent's mouth and specifically recalls what he labeled as a blood transfer pattern on the right cheek as well as noticing the presence of a few flies around the decedent's nostrils.

⁴¹¹ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994.

⁴¹² Exhibit 99, Report of FBI interview of Park Police Investigator Renee Abt, May 2, 1994: Additionally she did observe a segment of blood on the decedent's lower right cheek which appeared to be transferred blood and specifically mentioned observing a number of flies on the decedent's face to include flies in the mouth and in the

Blood quantity insufficient

5. Blood quantity insufficient

All six official experts (Fiske's four pathologists⁴¹³ and the OIC's pathologist and forensic scientist) posit that the amount of blood was consistent with how and where Mr. Foster officially died, from firing a high-velocity .38 caliber bullet into his mouth where his body lay.⁴¹⁴

The OIC concludes its two-page *Quantity of Blood* discussion with a mischaracterization of skeptics' opinions regarding the lack of blood at the scene. The OIC claims that skeptics opine that "*blood must already have drained from the body elsewhere.*"⁴¹⁵ That is decidedly not the basis of the skepticism. The skepticism is based on insufficient blood at the scene to justify the conclusion that Mr.

nostrils with numerous other flies swarming around the body.

⁴¹³ Charles S. Hirsch, M.D., James L. Luke, M.D., Donald T. Reay, M.D., and Charles J. Stahl, M.D.

⁴¹⁴ OIC, p. 65: "Based on all of the above evidence, analysis, and conclusions, Dr. Blackbourne concluded that 'Vincent Foster committed suicide on July 20, 1993 in Ft. Marcy Park by placing a .38 caliber revolver in his mouth and pulling the trigger. His death was at his own hand.'^{fn190}" OIC, p. 65, fn. 190: "Blackbourne Report at 5. The panel of pathologists reached the same conclusion. Pathologists' Report at 4..."

⁴¹⁵ OIC, p. 68: There has been occasional public suggestion, premised on the supposedly low amount of blood observed at the Fort Marcy scene, that blood must already have drained from the body elsewhere and the fatal shot therefore must have been fired elsewhere. As revealed by the foregoing descriptions of the evidence, the underlying premise of this theory is erroneous: A quantity of blood was observed at the park under the body and on the back of the head and shirt. Moreover, the suggestion fails to account for the blood that subsequently drained from Mr. Foster's body during movement to the autopsy. The blood-quantity evidence, even when considered in isolation from other evidence, does not support (and indeed contravenes) a suggestion that the fatal shot was fired at a place other than where Mr. Foster was found at Fort Marcy Park.^{fn197}

OIC, p. 68, fn. 197: "There are also a number of other items of evidence that contradict any such suggestion, as noted elsewhere in this report."

Blood quantity insufficient

Foster died there by a shot directly into the mouth from the official high-velocity .38 caliber ammunition. How much blood may have drained elsewhere is not relevant.

Not one observer saw a quantity of blood consistent with the official .38 caliber gunshot wound to the mouth.

The accounts of the body scene witnesses the OIC uses to support its blood-quantity claim are embodied in its two-page discussion under the heading *Quantity of Blood*.

OIC, p. 66-67:

"Many who saw the body at Fort Marcy Park after it was lifted and rolled over at the scene described a quantity of blood behind Mr. Foster's head, under his body, and on the back of his shirt.^{fn192}"

The lengthy footnote to this passage sets forth the OIC's version of the accounts of five of the twenty-one witnesses who saw the body; Park Police Investigator Abt, Medical Examiner Haut, Park Police Investigator Hodakievic, Park Police Investigator Rolla and Park Police Identification Technician Simonello.⁴¹⁶

⁴¹⁶ OIC, p. 67, fn. 192: Abt OIC, 2/9/95, at 30 ("We noted that there was a good amount of blood again on the back portion of the shirt and the collar, things like that."); Haut OIC, 2/16/95, at 13 ("[o]n the ground, underneath his head, there was a pool of congealed blood"); Hodakievic 302, 2/7/95, at 4 (recalls "lot of blood underneath the decedent's head"); Hodakievic OIC, 2/14/95, at 16, at 16 (describing blood on the ground and on the back of head and shirt when body moved); USPP Report (Rolla) at 1-2 ("I observed blood... underneath his head... I rolled the decedent over and observed a large blood stain three quarters down the back of the decedent's shirt."); Rolla 302, 4/17/96, at 4 ("When Rolla rolled the body he observed new, wet blood pouring out of the nose and possibly the mouth of the decedent. Rolla also observed a pool of blood, approximately 4 inches across, which had been under the head and neck area. Rolla also observed the back of the shirt was soaked with blood from the collar to the waist."); USPP Report (Simonello) at 1 ("When the body was turned onto its stomach I observed a large area of blood where the head had been resting. . . . I also observed a larger area of blood where the victim's back had been, coinciding with blood stains on the back of shirt."); Simonello 302, 2/7/95 at 3 ("after the body was rolled,

Blood quantity insufficient

The OIC reports that a large quantity of blood was found under Mr. Foster's body when it was rolled over. Yet, according to those who were present, the quantity of blood at the scene was insufficient to support the official conclusion that he died from a point-blank shot to the mouth with .38 caliber high-velocity ammunition.

Additionally, the Report relates (p. 58⁴¹⁷) that "Dr. Lee stated that one photograph of the scene 'shows a view of the vegetation in the areas where Mr. Foster's body was found. Reddish-brown, blood-like stains can be seen on several leaves of the vegetation in this area.'^{fn170}" The footnote to this passage tells us that this finding would be consistent with the official version "[i]f these stains are, in fact, blood spatters," but does not tell us whether Dr. Lee opined that the "blood-like" substance depicted in the Polaroid is blood.

OIC, p. 59, fn. 171:

"Dr. Lee said that '[i]f these stains are, in fact, blood spatters, this finding is consistent with the shot having been fired at the location where Mr. Foster's body was found.' Id."

Civilian Dale

When Congressman Burton asked Dale, the civilian who officially discovered the body, whether there was any blood around the head, Dale replied, "None."⁴¹⁸

Simonello observed a large blood pool under the head of the decedent and on the back of the decedent's shirt").

⁴¹⁷ OIC, p. 59: Dr. Lee stated that one photograph of the scene "shows a view of the vegetation in the areas where Mr. Foster's body was found. Reddish-brown, blood-like stains can be seen on several leaves of the vegetation in this area."^{fn170} He also noted that "[a] close-up view of some of these blood-like stains can be seen in [a separate] photograph."^{fn171}

OIC, p. 112-113: "Dr. Lee observed blood-like spatter on vegetation in the photographs of the scene."

⁴¹⁸ Exhibit 51, Deposition of Dale taken by Congressmen Burton, Mica & Rorabacher, July 28, 1994: "Q. But you didn't

Blood quantity insufficient

Officer Kevin Fornshill

Park Police Officer Kevin Fornshill testified that he "saw only a slight trail of blood coming out of the mouth," and that he did not "recall any other blood."⁴¹⁹

The FBI's report of its interview with Fornshill notes only that he saw a trickle of dried blood in Mr. Foster's mouth.

At this position, he noticed a trickle of dried, dark blood at the corner of the right side of the decedent's mouth but did not view any other blood on the face or for that matter on the decedent's shirt or trousers.⁴²⁰

see any blood as close as you got around the head or anything like that? A. None."

⁴¹⁹ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Q. Did you see any blood on the body? A. Yes. Q. Where did you see the blood? A. There was a slight trail of blood coming out of the mouth on the right hand side over the lips and down the chin. Q. Any other blood? A. Not that I could see, no, sir. *** Q. Did you see any other blood on the body? A. No, I don't recall any other blood.

⁴²⁰ Exhibit 138, Report of FBI interview of Park Police Officer Kevin Fornshill, April 29, 1994: According to Private Fornshill, his initial observation of the body was from the body's left side at a distance of approximately 6 feet, moving in a 180 degree arc, viewing the body from both the top looking down directly at the body, as well as moving to the right side of the body. While admitting that his initial observation of the body was probably less than 15 seconds, he does recall that while to the left hand side of the body, that the hair on the head was neatly in place, the mouth was slightly open and he could observe the top teeth. He indicated from this position, he also viewed flies moving around the lips and around the mouth area and specifically recalls that the decedent's shirt was white in color, clean and apparently starched with the collar open. He further observed that the decedent's trousers were in his opinion extremely neat and devoid of any dirt, debris or soil. Fornshill then recalls moving to the right of the body on the top of the crest of the hill where he noticed that the decedent's complexion was grayish in color and that the head was slightly tilted to the right. At this

Blood quantity insufficient

The handwritten notes of that interview similarly relate that Fornshill reported seeing a "trickle of dried dark blood [on the] corner of [the] right side of [the] mouth... [and] no other blood on [the] face... [and] no blood on [the] shirt."⁴²¹

There is no record of Fornshill's having seen blood on the ground. When asked what he observed on the ground, he testified that he was looking but "didn't see anything."⁴²²

position, he noticed a trickle of dried, dark blood at the corner of the right side of the decedent's mouth but did not view any other blood on the face or for that matter on the decedent's shirt or trousers.

⁴²¹ Exhibit 108, Handwritten notes of report of FBI interview of Park Police Officer Kevin Fornshill, April 29, 1994: "Trickle of dried dark blood corner of right side of mouth and possibly flake, spotty not flowing. No other blood on face... No blood on shirt or head same position after EMTs. No change in body etc. after his initial observation."

⁴²² Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Q. Was there anything unusual about the ground around the body that you noticed? A. It's funny you should ask that, because I even went so far, I sort of strained. I remember shifting my weight again and looking down the embankment. If I was here on the top of the embankment, I looked down to check and see if there was anything else, any items, any ground disturbed, any twigs broken, leaves disturbed, anything like that. I didn't see anything. Perhaps there may have been. I don't know. I was looking for luggage, clothing, anything at all like that. Q. Was there any trash or human debris? A. Nothing like that at all, because I made a point of visually looking for that. Q. The ground appeared to you to be undisturbed? A. Yes. Q. Was it still light outside around this time? A. Yes, it was. Q. Do you wear glasses or contact lenses? A. No. Q. Did you say you could see the hands from your vantage point? A. No, I didn't see the hands. Q. You could see the feet and the face but not the hands? A. Yes. Q. How long were you looking at the body before you were joined by the EMS personnel? A. Geez, a matter of seconds, 15, 20 seconds perhaps. Q. Did you look for a gun in the vicinity of the body? A. No. I didn't. Q. Did you notice anything unusual about the body or the vicinity? A. No, other than the fact that there was a body in the park. Q. Based on this scene, you determined that this was a suicide? A. When the EMS personnel came up and they said, there's a gun

Blood quantity insufficient

Officer Fornshill testified that he "viewed the grass and foliage around the death scene,"⁴²³ but saw blood only around the mouth of the victim.

Firefighter Todd Hall

Paramedic George Gonzalez

Firefighter Todd Hall reportedly saw blood on the collar of the shirt and nowhere else.⁴²⁴ He testified that he did not see any blood on the decedent's face.⁴²⁵

Paramedic George Gonzalez noted that the condition of Mr. Foster's head did not fit what he had "usually" observed in prior occasions of a .38 caliber gunshot to the head.

Q. If your experience had been that every time you'd gone to a scene like this, it had always been a

in his right hand, do you see the gun. Then I'm straining and looking for the gun. I couldn't see the gun. But when they told me that. I made the assumption, which I shouldn't have, and made a broadcast and said it appeared to be an apparent suicide.

⁴²³ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: "Q. You had an opportunity to view the grass and foliage around the death scene and in particular around the location of the body? A. Yes."

⁴²⁴ Exhibit 66, Report of FBI interview of Firefighter Todd Hall, March 18, 1994: "Hall thought there were only a couple of drops of blood on Foster's shirt collar. Foster's body was further described have had flies moving in and out of the mouth. No other blood was noticed on the body."

⁴²⁵ Exhibit 67, Deposition of Paramedic Todd Hall, July 20, 1994: Q. Do you remember seeing any blood on his face? A. No, I remember his face being straight when I was going to check because whatever turned his head, from the pictures I saw, there was more blood than I recall seeing. And that may be because, in the pictures, his head had been turned and that may have caused the bleeding, the blood to flow.

Exhibit 67, Deposition of Paramedic Todd Hall, July 20, 1994: "Q. Do you remember seeing any other blood on any other part of the clothes? A. No. Q. What about on the face? A. No."

Blood quantity insufficient

mess. Would you have said that to him? Would you have said, every time I've been to a scene like that, it's been a mess? (Pause).

- A. Let me describe a few situations that you'll maybe better understand the word "usually." Sometimes the head is either gone, decapitated. Okay, from say the mouth all the way up. Sometimes you have the whole frontal part of your face but with the back portion, the occipital region gone. Sometimes it's the side of the face if it's an angle or approach the gunshot from the side, this side of the face is usually gone.⁴²⁶

Officer Franz Ferstl

The FBI's report of its May, 1994 interview with Franz Ferstl, the second police officer at the scene, states that he "observed a small amount of blood around the mouth... [and that he] did not recall any blood coming from the nose, nor did he recall any blood on the shirt [and that] the shirt was very clean and he does not recall any blood stains... on the shirt."⁴²⁷

Paramedic Richard Arthur
Firefighter Ralph Pisani
Firefighter Lt. James Iacone
Firefighter Jennifer Wacha

Paramedic Richard Arthur testified that he saw blood "[a]ll down the right side neck [and] shoulder... coming from... a bullet hole... [i]n the neck... [and] a little bit of blood coming out of the mouth... and nose." He saw no blood "on the left side... [or] chest."⁴²⁸

The FBI's report of its interview with Firefighter Ralph Pisani notes that he "did not recall seeing any blood

⁴²⁶ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994.

⁴²⁷ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994.

⁴²⁸ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

Blood quantity insufficient

located around the body."⁴²⁹ The FBI's report of its interview with Firefighter Lieutenant James Iacone recounts that he did not "not recall observing any blood."⁴³⁰ The only blood Firefighter Jennifer Wacha observed was on the mouth and shirt.⁴³¹

Sergeant Robert Edwards

See Sergeant Edwards' movements in the maps above. He never wrote any report of his involvement at the scene. He was not interviewed during the first investigation. There is no record of the FBI having interviewed him during the Fiske probe. There is no record of what he may have observed.

Lieutenant Patrick Gavin Investigator Christine Hodakievic

Lieutenant Patrick Gavin, the highest ranking official at the body site, reportedly told the FBI he saw "a trickle or what appeared to be blood coming out of the mouth... [and that] [h]e did not recall seeing blood coming from the nose, nor does he recall any blood or blood stains on the shirt."⁴³²

The OIC recites that Officer Hodakievic told the FBI on February 7, 1995 that she "*recalls 'lot of blood'*"

⁴²⁹ Exhibit 136, Report of FBI interview of Firefighter Ralph Pisani, April 27, 1994.

⁴³⁰ Exhibit 78, Report of FBI interview of Firefighter Lieutenant James Iacone, March 11, 1994: "Iacone does not recall observing any blood."

⁴³¹ Exhibit 72, Report of FBI interview of Firefighter Jennifer Wacha, March 11, 1994: "Wacha thought blood may have been on the victim's mouth as well as on his shirt. She could not recall the volume."

⁴³² Exhibit 98, Report of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994. Exhibit 80, Handwritten notes of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994: "Only blood he recalls is trickle coming out mouth - can't recall blood coming from nose - nor does he recall blood on shirt. Only made a cursory look - doesn't mean blood wasn't there. Could have."

Blood quantity insufficient

underneath the decedent's head." A week later, according to the OIC, she was "*describing blood on the ground and on the back of head and shirt when body moved,*" although the OIC does not provide that description.

OIC, p. 67, fn. 192:

"...Hodakievic 302, 2/7/95, at 4 (recalls 'lot of blood' underneath the decedent's head); Hodakievic OIC, 2/14/95, at 16, at 16 (describing blood on the ground and on the back of head and shirt when body moved)...

In the spring of 1994, Hodakievic reportedly told the FBI that she "did not notice any blood on the decedent's face nor any blood on the decedent's shirt."⁴³³ It is unknown whether these reported observations of Hodakievic refer to the first time she viewed the body or when she returned to the body with Lieutenant Gavin.

Investigator John Rolla
Investigator Cheryl Braun
Evidence Technician Peter Simonello
Investigator Renee Abt

Besides Haut and Hodakievic, the Report's footnote 192 cites Investigator Rolla, Evidence Technician Simonello, and Investigator Abt.

The FBI's version Rolla's April 1996 account is that "*[w]hen Rolla rolled the body he observed new, wet blood pouring out of the nose and possibly the mouth of the decedent. Rolla also observed a pool of blood, approximately 4 inches across, which had been under the head and neck area. Rolla also observed the back of the shirt was soaked with blood from the collar to the waist.*"

Rolla had testified that the blood "was not all over the place, it was directly under his head on the ground."⁴³⁴

⁴³³ Exhibit 81, Report of FBI interview of Park Police Investigator Christine Hodakievic, May 2, 1994.

⁴³⁴ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: A. I observed a pool of blood under his head that was wet and beginning to dry and clot, and it

Blood quantity insufficient

His report, prepared on the evening of the death, specifically notes that "[t]here was no blood on the plants or trees surrounding the decedents (sic) head."⁴³⁵

Park Police Investigator Cheryl Braun's two-page typed report, prepared hours after viewing the body at the park, inexplicably failed to include any mention of the wounds or blood she may have observed.⁴³⁶ She later testified before the Senate that "everything was consistent with a suicide,"⁴³⁷ but she was not asked why she had earlier testified that the determination of suicide was made before she looked at the body.⁴³⁸

was directly under his head. It was not all over the place, it was directly under his head, running down this way. *** Q. What about on the ground? A. I believe there was some blood mark on the ground, I don't remember. But most of the blood under his head, where his head was, yes, there was blood on the ground, but most of the blood that had run down was absorbed in his clothes.

⁴³⁵ Exhibit 113, Report by Park Police Investigator John Rolla, July 21, 1993.

⁴³⁶ Exhibit 116, Report of Park Police Investigator Cheryl Braun, July 20, 1993.

⁴³⁷ Exhibit 177, Senate testimony of Park Police Investigator Cheryl Braun, July 29, 1994: Q. Let me just stop you there. My time is up. I want to, if I may, just ask one question, and then I will yield because I do not want to trespass on the time either. Did either of you see anything at the time that caused you to think that this might not be a suicide or the way it apparently would have appeared to you? In other words, when you arrived, saw the scene, and saw the body, was there anything that struck either of you that would have caused you to say, maybe this was not a suicide. Was there anything that stuck out at that time that you recall now, or that you made a point of at the time? Ms. Braun. A. No. When we arrived at the scene and I went up to the scene, everything was consistent with a suicide.

⁴³⁸ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994: Q. Did he [Edwards] say he thought that the death was by suicide? A. I don't recall exactly how he did it, and he did show the pictures to it that he had snapped. Q. Was it your understanding that a determination had been made as to the cause of death? A. I think we more made that determination. You know, like I

Blood quantity insufficient

According to the OIC, in February of 1995, Park Police Evidence Technician Peter Simonello told the FBI that *"after the body was rolled, Simonello observed a large blood pool..."* The OIC fails to relate that, less than a year after the death, Simonello testified that he expected more blood patterns than he observed.

Q. In the interview with the FBI, however, it appears you did see some blood on the shirt, and I'll hand you that. You might want to look at the top paragraph of that page.

A. Okay.

Q. Do you have any explanation for that inconsistency?

A. No. I remember seeing a teeny droplet of blood. One time I thought it was on his finger but it may have been on his shirt or vice versa. There wasn't a great deal of it which I would have wanted to see, a patterning.⁴³⁹

said, when we first got the call. It was for a dead body. Then I asked if it was natural or of suspicious nature. And I was told suspicious, so I had them close the gate. Then once we got there, maybe actually I do remember speaking to Lieutenant Gavin. So maybe it was Lieutenant Gavin who might have -- it might have been Lieutenant Gavin then who actually initially explained what the scene was, because I had some knowledge of it when I went to speak with the couple and ask them if they had heard anything or seen anything and ask them about other vehicles that were in the area. Yeah, I would say it was Lieutenant Gavin actually. Q. Did Lieutenant Gavin mention anything about suicide? A. I can't recall. I don't -- I don't recall if he or if that was what we -- it seems to me that we had made that determination prior to going up and looking at the body.

⁴³⁹

Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994: Q. In that report you indicate that you saw one droplet of blood on the right index finger and no blood splatter on the shirt sleeves. Do you see that? A. Uh-huh. Q. In the interview with the FBI, however, it appears you did see some blood on the shirt, and I'll hand you that. You might want to look at the top paragraph of that page. A. Okay. Q. Do you have any explanation for that inconsistency? A. No. I remember seeing a teeny droplet of blood. One time I thought it was on his finger but it may have been on his

Blood quantity insufficient

The OIC reported that the entrance wound in the soft palate was a contact wound.⁴⁴⁰ Yet, Simonello testified that there was no tissue or blood on the gun, and that "[i]n a contact wound type of situation... [w]hen the gas expands and withdraws, it sometimes pulls material into the barrel..."⁴⁴¹

Simonello's report, composed July 26, 1993, recounted that there was "no discernible forward or back spatter blood evidence on the victim's shirtsleeves."⁴⁴² The questions raised by the appearance of the scene were not limited to the absence of blood spatter, as he testified less than a year after the death.

shirt or vice versa. There wasn't a great deal of it which I would have wanted to see, a patterning.

⁴⁴⁰ OIC p. 62 fn. 183: "Mr. Foster placed the barrel of the weapon into his mouth with the muzzle essentially in contact with the soft palate when he pulled the trigger."

⁴⁴¹ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994: Q. Did you see any blood on the gun when you recovered it? A. I recall seeing one small speck or droplet of blood on the barrel. Q. Is there any type of chemical analysis that would be typically done on a gun? A. Analysis for what? Q. Other than blood. I guess, maybe DNA or something like that. A. You can do DNA. In a contact wound type of situation with a gun, from my readings, there can be a drawback into the barrel of tissue or blood. When the gas expands and withdraws, it sometimes pulls material into the barrel in a contact wound or suicide type.

⁴⁴² Exhibit 134, Park Police Report Supplement by Evidence Technician Peter Simonello, July 26, 1993: There was blood staining around the chin area and from the nose down the right cheek. Blood stains also were found on the right shoulder and neck area as well as the right ribcage area of the shirt... A cursory examination of the victim's hands for blood spatter evidence revealed one droplet on the right index finger, above the second joint. No discernible forward or back spatter blood evidence on the victim's shirtsleeves.

Blood quantity insufficient

A. Then, upon closer observation of everything that we had there. I started filing away certain questions I wanted to have answered, things that didn't -- I didn't have immediate answers to before I came to a conclusive -- an opinion that was conclusive. And those things were transfer blood stain, how did that happen? Is this gunpowder on his hand, went through my head and that cylinder blast I'm talking about, to have that checked out. Why was there a spot of blood down here... on his shirt... near the lowest rib, in that area of the rib cage on the right side. These are things that I couldn't answer immediately and so we wouldn't come to a conclusion until we had all these questions as far as we could to get them answered. I wondered about the fact that I didn't see a lot of blood spattered on his white shirt -- his arms of his white shirt. Spatters -- when a high-velocity bullet hits, blood is turned in teeny, tiny droplets. I saw one or two drops, but not indicative of a pattern.

Q. Where did you see those drops?

A. I think one drop was on his finger, his right hand. I think there was a very small drop. And there may have been one on his chin, but not -- I thought why isn't there more? That was my thinking there. The other thing is how did he shoot the gun. I saw his thumb trapped in there, but I wonder how you -- why would you want to shoot a gun that way? I wondered about the glasses. Are those his glasses? If they're not his glasses, whose glasses are they? And I also played the guessing in my head, how could this have been done? If he didn't do it, could it be done by somebody else and if so, how? Those are my general impressions of the scene.⁴⁴³

Simonello's puzzlement as to why he did not see "a lot of blood spatter[s]," but only "one or two" from the "high-velocity bullet" stands in sharp contrast to the OIC's claim.

⁴⁴³ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994.

Blood quantity insufficient

According to the OIC, in February of 1995, Investigator Renee Abt said, "*we noted that there was a good amount of blood again on the back portion of the shirt and the collar, things like that.*" The FBI's report of its interview with Abt relates that she noted blood in the area of the right shoulder, "checked out the immediate vicinity of the death scene but did not observe any items of an evidentiary nature."⁴⁴⁴ This would include blood.

Dr. Donald Haut

Dr. Donald Haut, the only doctor to view Mr. Foster's body at the scene, had written on the back page of his Report (if not the front) that the Police "found... [a] gunshot wound mouth to neck." He told the FBI ten months after the death that the volume of blood was small.

[H]e did not see blood on Foster's face... Haut believed that the wound was consistent with a low velocity weapon. Haut recalled a separate case in which a .25 caliber rifle caused a much more devastating wound to the victim... [and the] volume of blood [on back of the head] was small.⁴⁴⁵

According to the FBI's report of its interview with him in April of 1994, "Haut did not recall seeing blood on the decedent's shirt or face and no blood was recalled on the vegetation around the body."⁴⁴⁶

Yet the OIC ignores Haut's earlier accounts and quotes their FBI agents as reporting that in February of 1995, Dr. Haut said he saw "*[o]n the ground, underneath his head, there was a pool of congealed blood.*"

⁴⁴⁴ Exhibit 99, Report of FBI interview of Park Police Investigator Renee Abt, May 2, 1994.

⁴⁴⁵ Exhibit 73, Report of FBI interview with Dr. Donald Haut, April 12, 1994.

⁴⁴⁶ Exhibit 181, Report of FBI interview of Dr. Donald Haut, April 14, 1994.

Blood quantity insufficient

Firefighter Corey Ashford
Firefighter Roger Harrison

Firefighters Cory Ashford and Roger Harrison lifted Mr. Foster's corpse into a body bag. In Ashford's July 20, 1993, report, he coded the death as a "96," which stands for homicide by assault with a firearm.⁴⁴⁷ The FBI's report of its February 1994 interview with him contains at least some of his observations. The interviewing agent wrote "it was initially believed by Ashford that Foster was the victim of a murder...", implying that he later changed his opinion.

Ashford did not recall seeing any blood on Foster's body, noting that he was not looking for it at the time. It was initially believed by Ashford that Foster was the victim of a murder... Ashford did not recall seeing any blood while placing Foster in the bag. Ashford did not recall any blood getting on his uniform or on the disposable gloves he wore while handling the body... Ashford lifted Foster from behind the shoulder, cradling the victim's head... Ashford did not recall seeing any blood while placing Foster in the bag...⁴⁴⁸

The FBI interviewed Ashford again in April of 1994. That report also relates that Ashford did not recall seeing any blood.

Ashford did not recall seeing any blood on the ground at the location of Foster's body during this evaluation."⁴⁴⁹

Harrison was interviewed when the FBI contacted him in March of 1994. That report notes that "[h]e did not notice any blood at the scene."⁴⁵⁰ The FBI's report of its March,

⁴⁴⁷ Exhibit 120, Incident report of Firefighter Corey Ashford, July 20, 1993.

⁴⁴⁸ Exhibit 74, Report of FBI interview of Firefighter Corey Ashford, February 23, 1994.

⁴⁴⁹ Exhibit 139, Report of FBI interview of Firefighter Corey Ashford, April 27, 1994.

⁴⁵⁰ Exhibit 140, Report of FBI interview of Firefighter Roger

The guns

1994, interview with Harrison recounts that there was not enough blood to warrant his filing of a hazardous material report.

"If there was a quantity of blood present on Foster's body, a hazardous material report would have been filed noting the condition and amount of blood."⁴⁵¹

VII. EVIDENCE THAT THE OIC COVERED UP THAT MR. FOSTER DID NOT FIRE OR OWN THE GUN FOUND AT THE PARK

Summary: The OIC hides that the gunshot residue patterns on Mr. Foster's hands prove that he did not fire the weapon.

The OIC conceals that Remington, the manufacturer of the ammunition found in the gun, has never used "ball smokeless powder," the type of ammunition found on the body and clothing. Gunpowder and blood on the eyeglasses proves he was wearing them when the shot was fired, but they could not have landed where they were found. The OIC claims that Dr. Lee found "gunpowder like" particles in the soil at the park over a year after the death. The OIC mentions that the FBI lab found two types of powder on Mr. Foster's clothing, but offers no explanation.

The OIC conceals that a semi-automatic handgun was in Mr. Foster's and before the official revolver was placed in his hand. The OIC misrepresents that Mr. Foster owned the gun found in his hand.

1. Impossibility of gunshot residue patterns on hands having been caused by self-inflicted wound

The official death weapon is a black 1913 .38 Colt Army Special six-shot revolver, with a four-inch barrel.⁴⁵²

Harrison, March 11, 1994: Harrison did not recall if there was any blood on body... He did not notice any blood at the scene... Harrison did not recall seeing any blood on Foster and did not recall seeing any blood on individuals handling the body. If blood had been present on Foster's body, a hazardous materials report would have been filed noting the condition and the amount of blood. Harrison did not recall anyone at the scene getting blood on them from the wounds associated with the death of Foster.

⁴⁵¹ Exhibit 140, Report of FBI interview with Firefighter Roger Harrison, March 11, 1994.

⁴⁵² Exhibit 142, Park Police Evidence Control Receipt, by Evidence Technician Peter Simonello, July 20, 1993.