

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.

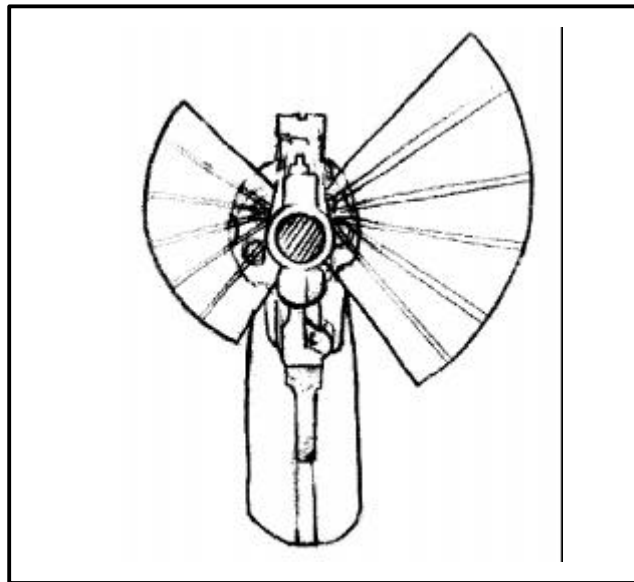
⁴⁵² Exhibit 142, Park Police Evidence Control Receipt, by Evidence Technician Peter Simonello, July 20, 1993.

Gunshot residue

Its having been found with the right thumb in the trigger guard mandates a finding that if Mr. Foster had fired the gun, it would have been with his right thumb. This has been the official conclusion from day one.

A close look at this claim proves that it too is false.

When a revolver is fired and the bullet leaves the cylinder and enters the barrel, the internal pressure expels gasses, burning and unburned powder, and particulate and vaporized lead, referred to as smoke or gunshot residue (GSR). The blast results in GSR being vented through the "barrel-cylinder gap" at high speed, forming a ring perpendicular to the gun's barrel. Since the weapon's frame prevents the GSR from emanating from the top, and the crane cylinder shaft deflects it at the bottom, it is expended out at an angle and forms two triangles, one to the left of the weapon and one to the right.

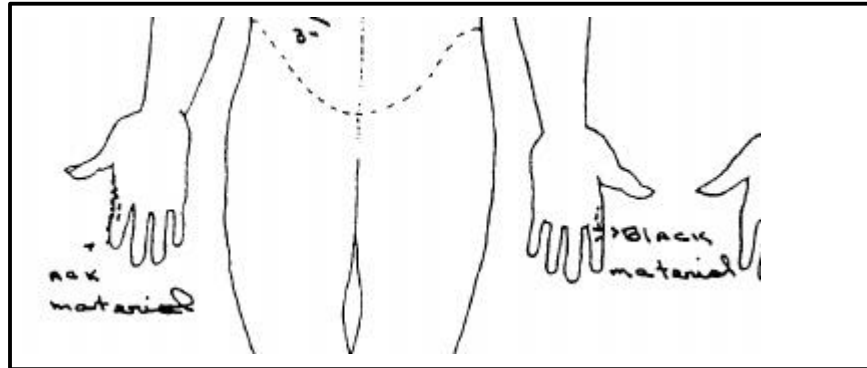


As the GSR escapes at an angle,
it separates like spokes of a wheel.

When these black soot-like escaping particles deposit themselves on a surface they strike, they form, roughly speaking, a visible line, directly in line with the barrel-cylinder gap, like the lines of deposits left on both of Mr. Foster's index fingers and the web between his right

Gunshot residue

thumb and index finger. Dr. Beyer drew the GSR deposit on Mr. Foster's hands in his Autopsy Report's "body diagram."



Dr. Beyer's drawing of GSR on Mr. Foster's hands in the body diagram of the Autopsy Report

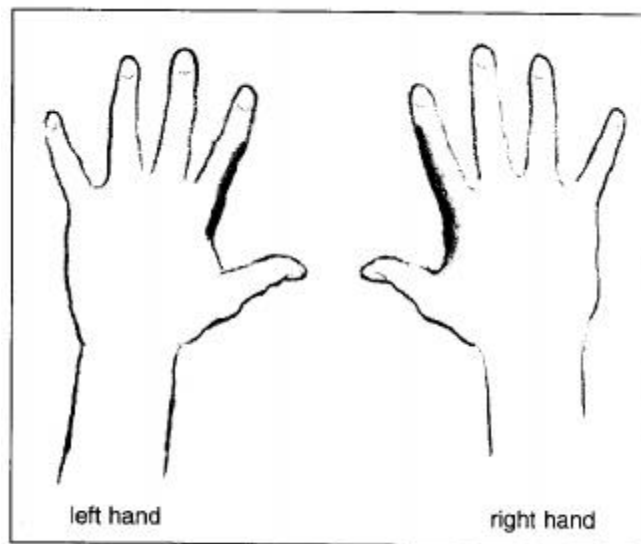
We want to approximate the length of the GSR line that Dr. Beyer drew. To do so, we first review what exists of the public record of where exactly the GSR began and ended. Simonello reported that the GSR was "between the thumb's joint (web area) and the fingertip"⁴⁵³ (of the forefinger), and Fiske's pathologists' similarly reported that it "extended from the distal joint to the web area of the thumb."⁴⁵⁴ It began at the first joint of the forefinger, and extended down into the web area. Since the proportions of everyone's hands are about the same, if we can approximate the length of Mr. Foster's hands from the tip of the forefinger down into the web area, we can approximate the length of line of GSR.

Because Mr. Foster, who was 6'4" inches tall, could hold a basketball palm-down with one hand, the length of his right index finger approached six inches in length from the top of his fingertip to the web area, and the third (last) phalange of his index finger was around an inch long, the length of the gunshot residue deposit was over five inches long.

⁴⁵³ Exhibit 134, Park Police Report Supplement by Evidence Technician Peter Simonello, July 26, 1993.

⁴⁵⁴ Exhibit 130, Forensic Pathology and Medical Examiner-related findings and Conclusions pertaining to the Investigation of the Death of Vincent Foster, Jr., undated.

Gunshot residue



Drawing of GSR on Mr. Foster's hands

Because we know the approximate length of the GSR, let's have a closer look at those two triangles. (Remember that since the weapon's frame prevents the GSR from emanating from the top and bottom of the weapon, it is expended out at an angle and forms two triangles, one to the left of the weapon and one to the right.) By looking at a replica of the official death weapon, we know the approximate angle at which the "spokes of a wheel" emanate from the weapon. If you know the angle, or degrees, of one corner of a triangle, and you know that the two sides which emanate from this corner meet the third side of the triangle, and you know the length of that third side of the triangle, you can figure out the length of the other two sides.

Now, to see where Mr. Foster's hands were in relation to the weapon when it was fired, we need only put the triangles where they go. The GSR lines on Mr. Foster's hands are the third side of the triangle. We know the position of his hands when the gun was fired.

The closer his hands were to the cylinder, the shorter the length of the GSR deposit. The minimum distance that Mr. Foster's right hand could have been from the center of the barrel when cylinder blast occurred, using the five-inch arc, is calculated as over two inches away, perpendicular from the barrel.

Gunshot residue

This exercise is telling. When the shot was fired, the web between his right thumb and index finger, and both of his index fingers, were in the gunshot residue trajectory of the cylinder-blast from the cylinder-barrel gap -- and that puts the right thumb too far away from the trigger to have pulled it. It would have been impossible for Mr. Foster's right thumb to reach the trigger at the same time as his right thumb-index finger web was in the trajectory of the GSR from the cylinder-blast.

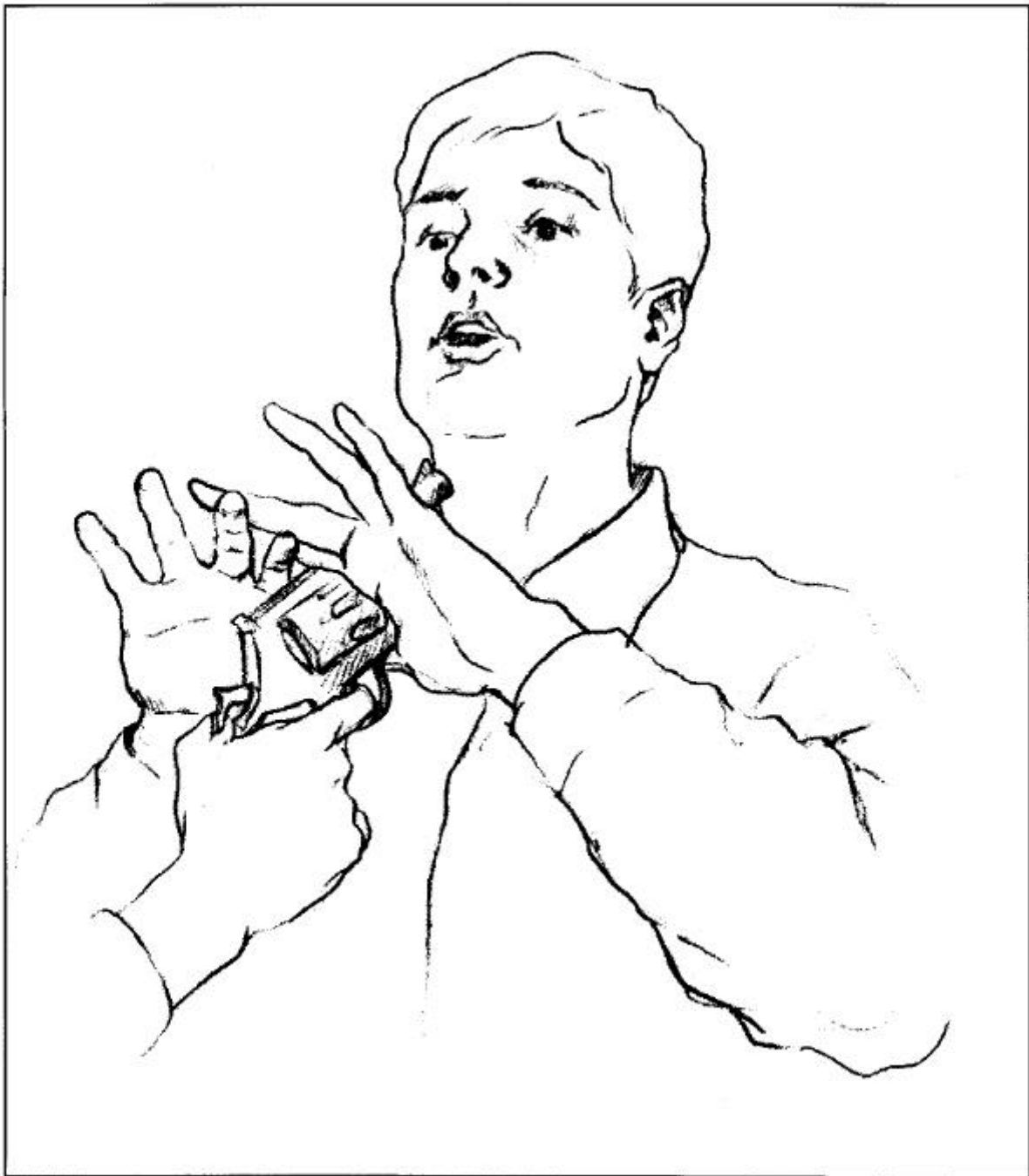
Contrary to the official version, he did not pull the trigger of the official death weapon with his right thumb. The only possible way to have gunshot residue deposited on the right index finger and web area and left index finger, a sufficient distance from the barrel-cylinder gap to provide the five-inch length of the residue pattern, is if the weapon was fired by the hand of another. The residue patterns were made when Mr. Foster held his hands with the palms facing the revolver's cylinder, consistent with his hands being in a defensive posture.

Although the FBI Lab had earlier concluded that "it cannot be concluded that the... revolver produced these gunshot residues,"⁴⁵⁵ its May 9, 1994 Report reached the opposite conclusion.

Apparent gunshot residue (smoke) was noted... on the side of the right forefinger and web area of the victim's right hand. These residues are consistent with the disposition of smoke from the... cylinder blast when the K1 revolver is fired...

⁴⁵⁵ Exhibit 27, FBI Lab Report, June 13, 1994: "It cannot be concluded that the K1 revolver produced these gunshot residues..."

Gunshot residue



Mr. Foster held his hands with the palms facing the revolver's cylinder -- consistent with his hands being in a defensive posture

Gunshot residue

The position of the victims [sic] hand... is consistent with, but not limited to, the following position of the right hand during firing: Pulling the trigger of the K1 revolver with the right thumb...⁴⁵⁶

There is no record of any of the investigators ever having considered the possibility of Mr. Foster having positioned his hands in a defensive posture.

OIC, p. 26:

"They [Park Police] observed no signs of a struggle.

OIC, p. 28:

"Nonetheless, the evidence from the scene -- including the gun, the apparent residue, the nature of the wound, the blood, the lack of any signs of struggle -- points to the conclusion that death resulted from suicide by gunshot."

The OIC reports Dr. Lee's conclusion that the gunshot residue on Mr. Foster's hands *"indicated that Mr. Foster held the weapon when it was fired."*

⁴⁵⁶ Exhibit 95, FBI Lab Report, May 9, 1994: Apparent gunshot residue (smoke) was noted in the Q60, Q112, Q125, Q126, photographs on the side of the right forefinger and web area of the victim's right hand. These residues are consistent with the disposition of smoke from the muzzle blast or cylinder blast when the K1 revolver is fired using ammunition like that represented by specimens Q1 and Q2 when this area of the right hand is positioned near the front of the cylinder or to the side of and near the muzzle.

* * *

The position of the victims [sic] hand in the Q77, Q79 and Q97 photographs relative to the revolver and the apparent disposition [sic] of gunshot residue (smoke) visible in the Q60, Q112, Q125, Q126 and Q127 photographs is consistent with, but not limited to, the following position of the right hand during firing: Pulling the trigger of the K1 revolver with the right thumb, single or double action, or having the right thumb inside the trigger guard with the web area and side of the right forefinger near the front of the cylinder.

Gunshot residue

OIC, p. 44:

Dr. Lee concluded, "[b]ased on laboratory observations and the examination of the scene photographs," that "the revolver . . . is consistent with the weapon which resulted in the death of Mr. Vincent Foster. The barrel of this weapon was likely in Mr. Foster's mouth at the time the weapon was discharged. Gunshot residue noted on Mr. Foster's right hand and the lesser amounts of deposits on his left hand indicated that Mr. Foster held the weapon when it was fired."^{fn117}

The footnote to this passage refers the reader to Dr. Lee's secret report.

OIC, p. 44, fn. 117:

"Lee Report at 488."

Thus, there is no way of learning how Dr. Lee could have concluded that Mr. Foster could have fired the gun with his right thumb, and have gunshot residue deposited on the web area between it and his right index finger, contrary to the demonstration above.

Ignoring the absence of gunpowder on Mr. Foster's face,⁴⁵⁷ the OIC also reports Dr. Blackbourne's concurrence.

OIC, p. 62:

Finally, Dr. Blackbourne stated that "[w]hen a revolver is fired, smoke issues out of the space between the cylinder and the barrel. This smoke will be deposited on skin, clothing or other objects close to the cylinder gap. The autopsy report documents that smoke deposits were noted on the radial aspect of both right and left index fingers."

⁴⁵⁷ Exhibit 129, Fiske's pathologists' Report of interview with Dr. Beyer, March 31, 1994: "Face: ...No evidence of gunpowder residue, soot or stippling..."

Gunpowder

2. Gunpowder

The authors of the Report use the terms gunshot residue and gunpowder interchangeably, which is inaccurate. Gunshot residue is expelled from the weapon. It may include gasses, burning and unburned gunpowder, and particulate and vaporized lead, and is sometimes simply referred to as "smoke."

Forty-four times in its 114 page Report, the OIC uses one of the following terms, "black gunshot residue-like material," "gunpowder residue," "gunpowder debris," "unburned and partially burned gunpowder," "partially burned gunpowder particles," "gunpowder," "gunshot residue," "powder debris," "ball smokeless powder" and "black material residue."

a. Type found not used by Remington

Only once, under its *Glasses* section, does the report identify the type of gunpowder found.

OIC, p. 58:

"The FBI Laboratory found one piece of ball smokeless powder on the eyeglasses, and it was 'physically and chemically similar to the gunpowder identified in the cartridge case."^{fn164}"

Remington manufactured the two cartridge cases, labeled .38 Sp HVL. "HV" stands for high velocity.

The official version is that Mr. Foster put the bullets in the revolver recovered from his hand, and fired the gun. Because Remington has never used ball smokeless powder in the manufacture of any of its HV .38 caliber cartridges,⁴⁵⁸ for the official version to be true, the bullets would have to have been "reloads." (Reloading is done to save money or obtain particular firing

⁴⁵⁸ *Exhibit 141, Letter from Sporting Arms and Ammunition Manufacturers Institute, Inc., (SAAMI), February 23, 1998: "In its ammunition, Remington used propellants mostly manufactured by Dupont and Hercules. Both Dupont and Hercules manufactured flake type propellants. Winchester Western manufactured a flattened, spherical propellant which was named 'Ball Powder.'"

Gunpowder

characteristics.) The OIC does not reveal whether reloaded ammunition was found in the gun.

Another curious finding was the existence of two types of gunpowder which were dissimilar. The FBI Lab found two such particles, one on the "debris collected from the clothing," and one on "a piece of paper used to dry Foster's clothes." The Fiske Report excused the finding of two types of gunpowder on Mr. Foster's clothing by explaining that "[i]t is possible that the clothes were contaminated while in this [Park Police station] room."⁴⁵⁹ OIC may have felt it necessary to mention this anomaly. It did so in a footnote, but proffered no explanation, merely repeating the FBI Lab's perfunctory conclusion that the finding was irrelevant.

OIC, p. 46, fn. 125:

FBI Lab Report, 6/13/94, at 2. In debris collected from the clothing, the FBI Laboratory found approximately 20 gunpowder particles that were similar to the gunpowder in the fired cartridge case of the gun found in Mr. Foster's hand, and two that were not. The Laboratory stated that one of the two dissimilar particles was "not consistent with having originated from a fired cartridge" and the other one was found "on a piece of paper used to dry Foster's clothes." Id. at 3. From these facts, the Laboratory stated that these two particles are "not likely associated with this investigation." Id.

b. Present on broken eyeglasses found 17 feet upränge

Mr. Foster's eyeglasses were found in a densely foliated area at least thirteen feet from his feet and nineteen feet from his head, with gunpowder on them, up-

⁴⁵⁹ Exhibit 12, Fiske Report, June 30, 1994: The FBI Lab found that these particles did not originate from the fired cartridge in Foster's gun. These particles are believed to be the result of contamination some time after the clothing was removed from Foster's body... Foster's clothes were laid out to dry for four days on the floor... adjacent to the laboratory... equipped with an exhaust fan... It is possible that the clothes were contaminated while in this room.

Gunpowder

range (in the opposite direction from the bullet trajectory). The FBI Lab did not attempt an explanation of this anomaly.

"No determination can be made as to the position of the Q3 glasses at the time of death."⁴⁶⁰

The Fiske Report did. The glasses flew off Mr. Foster's head and "bounced" through dense foliage, up-range, "down the hill."

One obvious scenario is that the eyeglasses were dislodged by the sudden backward movement of Foster's head when the gun was fired, after which the glasses bounced down the hill.⁴⁶¹

The OIC killed this anomaly with silence.

OIC, p. 58:

"The analyses and conclusions of the experts and investigators in this and prior investigations reveal that the location where the glasses were found is consistent with the conclusion that Mr. Foster was wearing the glasses at the time the shot was fired."^{fn166}

The footnote to that sentence refers the reader to Dr. Lee's (still secret) report.

OIC, p. 58, fn. 166:

"E.g., OIC Investigators' Memorandum (Lee)."

In the photograph of the eyeglasses as found below the body,⁴⁶² a stick shields the view of where the stem appears to be broken away from the frame, and the stems are inexplicably closed.

⁴⁶⁰ Exhibit 27, FBI Lab Report, June 13, 1994.

⁴⁶¹ Exhibit 12, Fiske Report, June 30, 1994.

⁴⁶² Exhibit 143, Photograph of eyeglasses found at scene.

Gunpowder

c. Reportedly found in soil over a year later

The OIC implies that Dr. Lee found evidence corroborating the official version of events from his discovery of "gunpowder-like particles" in the soil from "the berm on which Mr. Foster's body was found."

OIC, p. 58-59:

As part of his examination, Dr. Lee went to Fort Marcy Park with OIC investigators and obtained soil and other materials from the berm on which Mr. Foster's body was found.^{fn167} Dr. Lee examined the soil samples; he reported that "[a] few unburned and partially deformed gunpowder-like particles were recovered from the soil in the area where Vincent Foster's body was found."^{fn168} It cannot be determined "whether these particles were deposited on the ground at the time of Mr. Foster's death or at any other period of time."^{fn169}

The OIC admits that Dr. Lee could not determine when these particles might have been deposited on the berm. But it does not tell us whether these particles were, in fact, gunpowder, and if so, whether it was ball shaped. Moreover, the Report tells us that, if there was a search during the initial FBI/Park Police investigation, it was not "intensive."

OIC, p. 58, fn. 167:

"Lee Report at 422. [N]o intensive review of the area under and around Mr. Foster's body occurred on July 20 or during the 1993 Park Police investigation."

But the OIC fails to apprise its readers that, according to the Fiske Report, the FBI did conduct an intensive search.

"The area immediately beneath where Foster's body was found was searched by... FBI lab personnel [who] excavated to a depth of approximately eighteen inches, searching the soil through various screening methods."⁴⁶³

⁴⁶³ Exhibit 12, Fiske Report, June 30, 1994.

Guns at the park

This sort of dishonesty, as we have and will continue to see, pervades the OIC's Report.

3. The guns at the park

The OIC's claim (p. 79) that *"the descriptions provided by the first two persons to observe the gun, as well as of numerous others, are consistent with the gun retrieved from the scene,"* is not true.

Civilian Dale

The civilian witness who officially discovered the body, Dale, did not see a gun in Mr. Foster's hand. The majority of the OIC's discussion of the observations of a gun officially retrieved from Mr. Foster's hand (77-79) is devoted to explaining that the gun was there but that Dale had simply missed seeing it. The Report tells us that the gun was hard to see from the view depicted in the *"Polaroids taken from above the head,"* and according to *"several witnesses."* The OIC concludes that, based on its *"careful evaluation,"* the gun was, in fact, in Mr. Foster's hand.

OIC p. 78:

"The totality of the evidence leads to the conclusion that the gun recovered from Fort Marcy Park was in fact in Mr. Foster's hand when C5 happened upon the body, but that C5 simply did not see it."^{fn227}

OIC, p. 77-78:

That is supported, moreover, by the testimony of several witnesses establishing that the gun was difficult to see in Mr. Foster's hand when standing in a position above the head on the top of the berm."^{fn226}
That is further confirmed by Polaroids taken from above the head that reveal the difficulty of seeing the gun from that angle.

The majority of what we know of Dale's version is in the transcript of his sworn statement, given before Congressmen Burton, Mica and Rohrabacher, on July 28, 1994, at Dale's home. The OIC's explanation wholly ignores that testimony. Dale repeatedly and unequivocally testified

Guns at the park

that Mr. Foster's hands were "palms up,"⁴⁶⁴ the opposite of the "palms down" depiction in the Polaroid photographs taken long after Dale had left the scene. In an obvious attempt to hide from him that the crime scene had surely been tampered with, FBI agents Larry Monroe and Bill Columbello (the same agents who interviewed Patrick Knowlton) "led [him] to believe that the hands were [palms] up."⁴⁶⁵ The agents refused all of Dale's four requests to let him see the scene photographs⁴⁶⁶ to verify what he had seen, each time explaining that it would "jeopardize their investigation."⁴⁶⁷

⁴⁶⁴ Exhibit 51, Sworn testimony given by CW before Congressmen Burton, Mica and Rohrabacher, July 28, 1994: I looked to see if he had anything in his hands and that's when I saw his hands both palms up... His -- both palms were face up, thumbs out to the side... The palms were face up... Right beside him neatly... Q. But in the report they say you believed that the palms were up but you say there is no doubt? A. I never said -- I said I believe it. I mean I know it... Both palms, neatly at his side and they were just like that... Nothing in the hands... The palms were up... Absolutely. Q. How sure are you that the palms were up? A. As sure as I'm standing right here. I am absolutely and totally unequivocally, the palms were up. I looked at both palms. There was nothing in his hands. I didn't look at one and assume the other. I looked at both of them. Q. How long did you spend over the body? Five seconds? 10 seconds? A. Oh, no. Two minutes.

⁴⁶⁵ Exhibit 51, Sworn testimony given by CW before Congressmen Burton, Mica and Rohrabacher, July 28, 1994: After having seen the photo of the hand and the gun I'm sure the hand had been moved because the palms were both face up when I saw Mr. Foster's body... That is not a picture of what I saw. The man's palms were straight up... they wouldn't show me the pictures and led me to believe that the hands were up and the gun was concealed on other side... There was no gun in his hand.

⁴⁶⁶ Exhibit 51, Sworn testimony given by CW before Congressmen Burton, Mica and Rohrabacher, July 28, 1994: Q. You -- the FBI -- you asked the FBI what, about the picture... A. Numerous times... If you will show me the picture of... his hands that you said there was no gun in -- that I said there was no gun in and you said there was, then I could tell you point blank if somebody had tampered with it, with Mr. Foster's body.

⁴⁶⁷ Exhibit 51, Sworn testimony given by CW before Congressmen

Guns at the park

The FBI showed Dale its April, 1994 report of its interview with him, which states "*the possibility does exist that there was a gun on rear of hand [sic] that he might not have seen,*"⁴⁶⁸ and had him sign it.

OIC, p. 77, fn. 225:

"OIC, 2/23/95, at 52-53. C5 also had previously reviewed and adopted the interview report containing that statement. See 302, 4/14/94, at 4 (reviewed and initialed by witness)."

Officer Kevin Fornshill

The OIC's discussion of Officer Fornshill's involvement under its *Observations of Gun at Scene* section is limited to parenthetically noting that he did not the gun.

OIC, p. 77:

"...([A]lthough Officer Fornshill himself did not see or look for it, but rather was told of it by the others)."

Fornshill's explanation for being incurious, offered in a lengthy footnote under its *Fort Marcy* discussion, thirty-three pages before its *Observations of Gun at Scene* section, is that Paramedic Todd Hall told him there was a gun in the hand.

Burton, Mica and Rohrabacher, July 28, 1994: Id.: Q. What did they say when you asked to see the pictures? A. Well, it will jeopardize our investigation, I can not show it to you at this time... that was the common answer I got from them every time... four, five times I directly and inquired, let me see the picture...

⁴⁶⁸ OIC, p. 77: First, when questioned by the OIC, C5 agreed with a statement attributed to him in an interview that "there was extreme dense and heavy foliage in the area and in close proximity to the body, and the possibility does exist that there was a gun on rear of hand [sic] that he might not have seen." ^{fn225}

Guns at the park

OIC, p. 25, fn. 48:

...According to Officer Fornshill, as Hall was examining the body, Hall said words to the effect that "we've got a gun here" and pointed in the general direction of the decedent's right hand. Fornshill 302, 4/29/94, at 3; Senate Deposition, 7/12/94, at 21; OIC, 1/11/95, at 93, 114. Fornshill did not see the gun, however. 302, 4/29/94, at 3; OIC, 1/11/95, at 79. He said that he could not see the gun either because of his position or the vegetation around the hand. 302, 4/29/94, at 3; Senate Deposition, 7/12/94, at 21; OIC, 1/11/95, at 114. As to why he did not move into position to confirm the existence of the gun, Fornshill said, "I'm not the investigator. I let the investigator do that. I'm maintaining the scene. If there's a gun at the scene, I'm making sure nobody touches the gun, I'm making sure nobody disturbs the gun... If the EMT [emergency medical technician] tells me there's a gun there then I'll go with that." OIC, 1/11/95, at 115.

Fornshill's story, primarily revealed in his Senate deposition, was that he abandoned his duty guarding the CIA entrance⁴⁶⁹ to respond to the dead body call. He and two "rescue workers went into the park to locate the body..." He "instructed the paramedics to go one direction" and "check[ed] this [opposite] way..."⁴⁷⁰

After he called the two paramedics, Gonzalez and Hall, over to the body, Fornshill said he "could see the feet and

⁴⁶⁹ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: "I was at the entrance, the parkway to the CIA."

⁴⁷⁰ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Originally, when the broadcast went over the air, it made reference to a second cannon in the park area. I wasn't familiar with the location of the second cannon so myself and the rescue workers went into the park to locate the body... I instructed the paramedics to go one direction, had them check that direction. I said I would check this way...

Guns at the park

the face but not the hands" because one of the paramedics, "bent over, obstructing [his] view..."⁴⁷¹

Fornshill testified that he radioed that the death was an "apparent suicide,"⁴⁷² without having seen the weapon from "within five feet away,"⁴⁷³ "[b]ased on the determination the person was dead... [and his] assumption from the paramedic... that the gun was found in his hand."⁴⁷⁴

There is no explanation how Fornshill could have remained at the body site for over ten minutes, sometimes alone with an unobstructed view, without having seen the gun. He never made a report of his involvement.⁴⁷⁵ No investigator debriefed him or even spoke to him about what he saw.⁴⁷⁶ "Nothing unusual had occurred,"⁴⁷⁷ Fornshill

⁴⁷¹ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994.

⁴⁷² Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: [W]hen he showed the gun, or tried to show me the gun, saying there's a gun there, I advised communications that it appeared to be a suicide... Q. And you said that it appeared to be a suicide based on what? A. Based on the determination the person was dead. Again, my assumption from the paramedic and that the gun was found in his hand, which is what the paramedic told me.

⁴⁷³ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: "Q. How many feet were you from the body? A. Five perhaps... From my switching from the area from the left, the majority of my visual inspection was from the right hand side of the body..."

⁴⁷⁴ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994.

⁴⁷⁵ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: I went back to the station, I engaged in a conversation with Officer Hedakovic [sic] whose name I gave you earlier, and I asked if there was any need for me to document anything, just being the first one to respond to the body. And it was felt that there was really no need for me to document anything...

⁴⁷⁶ 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. Not one of these guys [detectives on the scene] ever talked to you about the crime scene? A. No, not that I know of... Q.

Guns at the park

testified, so he did not read the newspaper accounts of the death until January of the following year.

Firefighter Todd Hall **Paramedic George Gonzalez**

Paramedic Todd Hall testified in the summer of 1994 that he could not remember specifically what the gun looked like, but that he recalled seeing "just a gun."

- Q. But you couldn't tell what kind of gun it was?
A. No. I seen it was a gun. I just didn't try to determine what type it was.
* * *
- Q. When you say the hand that you saw at the scene, was it holding the gun, gripping the gun?
A. I couldn't tell. I didn't get that close. All I know is that I saw the gun.⁴⁷⁸

Notwithstanding that Hall, one of the first two persons to observe the gun, couldn't tell what kind of gun it was, the OIC claims that his "*description... [is] consistent with the gun retrieved from the scene.*"

OIC, p. 79:

There are discrepancies in the descriptions of the color and kind of gun seen in Mr. Foster's hand. However, the descriptions provided by the first two persons to observe the gun, as well as of numerous others, are consistent with the gun retrieved from the scene and depicted in the on-the-scene Polaroids.^{fn229}

Did you ever talk to any of the other officers or people out there about what happened? A. There was some conversation the next day... but there was no official debriefing in regards to me being interviewed by the detectives or the investigators...

⁴⁷⁷ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: "[N]othing unusual had occurred, to my knowledge... I think I looked at it [the beat officer's Report] sometime after the incident, perhaps a month or so after the incident..."

⁴⁷⁸ Exhibit 67, Deposition of Paramedic Todd Hall, July 20, 1994.

Guns at the park

Besides Hall, Paramedic George Gonzalez is the other of the "*first two persons to observe the gun*" on whom the OIC relies in its claim that these two men described seeing a gun a "*consistent with the gun retrieved from the scene.*"

Gonzalez testified in the summer of 1994 that the position of the gun he saw at the park, before Sergeant Edwards had been alone with the body, was different than the position of the gun as it was photographed in Mr. Foster's hand at the park.

- Q. Apparently you recall the gun being in a different position than what was photographed?
A. That's correct.⁴⁷⁹

Gonzalez testified that he "looked at the gun at a glance,"⁴⁸⁰ that he "didn't know the size of the gun nor the type of gun,"⁴⁸¹ and that "as time goes on, I remember less and less."⁴⁸²

But, according to the OIC, Gonzalez is said to have remembered more as time went on. The unknown type of gun that he had seen at a glance was a "*black or dark revolver.*"

⁴⁷⁹ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994.

⁴⁸⁰ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: "Q. Did you study the gun for any other kind? A. No, I just looked at the gun at a glance as my visual approach assessment, standing on the right side of the body and looking at the head, and on down."

⁴⁸¹ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: "Q. Do you remember what type of gun it was? A. All I could say, like I said to you, it's a revolver. I don't know the size gun nor the type gun, or anything like that."

⁴⁸² Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1994: "I'll have to go with that statement [regarding observations of contents of car] because, as time goes on, I remember less and less."

Guns at the park

OIC, p. 79, fn. 229:

"See Gonzalez 302, 5/15/96, at 4; Gonzalez OIC, 1/10/95, at 43 (saw black or dark revolver in hand)..."

Officer Franz Ferstl

Park Police Officer Franz Ferstl arrived on the scene to relieve Officer Kevin Fornshill. Ferstl photographed the body site with a Polaroid camera. He filed an Incident Report, but that Report does not mention his seeing any gun.⁴⁸³ The FBI's Report of its interview with him in May of 1994 does report that he saw a gun, yet it does not provide any description of that gun.

"Ferstl advised that he did see a weapon in the victim's right hand."⁴⁸⁴

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

The FBI did not interview Paramedic Richard Arthur during the course of its first investigation, but has since interviewed him on four separate occasions. The FBI interviewed him twice during the Fiske probe, once on March 16, 1994, and again on April 29, reportedly to "clarify" his account. The OIC's FBI agents interviewed him again in January of 1995. But again, his account was not satisfactory to the FBI, so Starr's FBI agents interviewed him a fourth time in April of 1996, three years after the death.

Arthur's account of the neck wound (see above) was not the only controversial part of his testimony. His observations of the gun at the scene were also problematic. The FBI's final account of these observations bear little resemblance to the first such Report, particularly when

⁴⁸³ Exhibit 112, Park Police Report of Officer Franz Ferstl, July 20, 1993.

⁴⁸⁴ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994.

Guns at the park

compared to the interviewing agent's' handwritten notes of that first FBI interview.

This first interview had been conducted eight months after Arthur had inspected the body around 6:22 p.m. on July 20, 1993. Those handwritten notes, taken in April of 1994, reflect that he unequivocally remembered what he had seen.

"Barrel end tucked under right leg. 100% sure automatic weapon (was in Army look at gun magazines Knows the diff between automatic & revolver) Appeared like .45 automatic."⁴⁸⁵

The corresponding typed version of that interview does not reflect his "100%" certainty, reporting only that "[he] did not believe the gun was a revolver."⁴⁸⁶

The Report of Mr. Arthur's second FBI interview, conducted in April of 1994, states that the gun "appeared... he thought... to the best of his memory, he recalls..." was not a revolver.

"Arthur saw what appeared to be a gun that he thought was a 9 - millimeter pistol... to the best of his memory, he recalls the handle on the weapon being square in shape."⁴⁸⁷

According to the OIC's FBI agents, in January of 1995 (his third FBI interview), Paramedic Arthur opined that the gun was not a revolver because "*he did not recall seeing a cylinder.*"

⁴⁸⁵ Exhibit 109, Handwritten notes of FBI interview with Paramedic Richard Arthur, March 16, 1994.

⁴⁸⁶ Exhibit 82, Report of FBI interview with Paramedic Richard Arthur, April 29, 1994: "Foster had a gun located under his right hand... did not believe the gun was a revolver... stood on the right side near the head, approximately 2-3 feet away from Foster's right hand."

⁴⁸⁷ Exhibit 82, Report of FBI interview with Paramedic Richard Arthur, April 29, 1994.

Guns at the park

OIC, p. 79, fn. 228:

...Arthur states that the gun was black-brownish but not a revolver (based on the fact that he did not recall seeing a cylinder). OIC, 1/5/95, at 46-47. After viewing a photograph of the weapon in the decedent's hand, Arthur stated, according to the interview report, "My memory is, I saw a semi-automatic, however, I must have been mistaken." 302, 4/24/96, at 2...

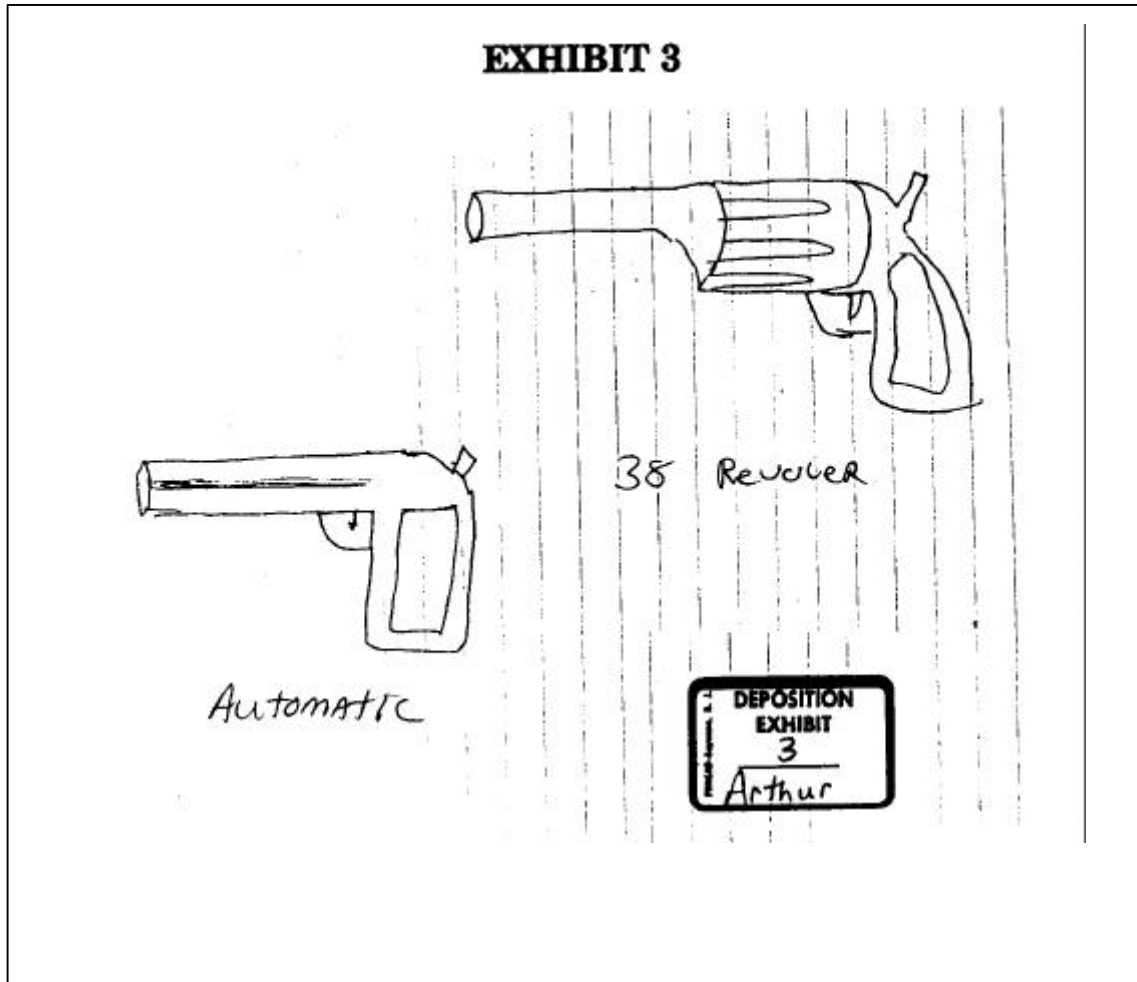
Arthur's deposition testimony before Senate investigators provides his account in its pristine form, without the opportunity for the FBI to filter or spin it. Arthur testified that he saw Foster's hand on "the clip portion" of the "automatic... not a revolver."⁴⁸⁸

He demonstrated that he knew the difference by drawing pictures.⁴⁸⁹

⁴⁸⁸ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

⁴⁸⁹ Exhibit 107, Deposition of Paramedic Richard Arthur, July 14, 1994.

Guns at the park



Paramedic Richard Arthur's drawing of the semi-automatic pistol that he saw in Mr. Foster's hand, and of a revolver to demonstrate that he knew the difference between the two types of guns.

Thus, according to the FBI's fourth interview with Arthur, he admitted that he "*must have been mistaken*" when he was "100% sure" years earlier that the gun which he saw from "2 to 3 feet away," and later drew a picture of, was not a revolver.

By referring to the semi-automatic and the revolver as "the" gun, the OIC does not confront the existence of the semi-automatic.

Body site	FORT MARCY PARK 6:23 See endnote 11.		
Officer Kevin Fornshill	<p>Paramedic Arthur and Firefighters Pisani, Wacha and Iacone joined Fornshill at the body. They saw blood on the right side of Mr. Foster's shirt. Arthur saw a small caliber bullet wound in right side of the neck, just under the jaw line. Being familiar with handguns, Arthur saw a large caliber semi-automatic pistol in Mr. Foster's hand, and concluded that it did not match the smaller caliber bullet hole in the neck. Officer Ferstl arrived.</p>		
Paramedic Richard Arthur			
Firefighter Ralph Pisani			
Firefighter Lt. James Iacone			
Firefighter Jennifer Wacha			
Officer Franz Ferstl			
Sergeant Robert Edwards			Parking lot
Inv. Christine Hodakievic	Firefighter Todd Hall	Paramedic George Gonzales	
<p>Spetz located the couple in the woods and asked them to return to the lot.</p>			
			South of the lot
Officer Julie Spetz	Female Civilian	Male Civilian	

Guns at the park

There is no record of Firefighters Ralph Pisani or Jennifer Wacha ever having opined on the type of gun they may have seen.

In claiming that the "*discrepancies are created by statements of FCFRD personnel Arthur and Iacone...*," and that "*Iacone stated that the gun was a silver-colored revolver-type weapon,*" the OIC cites a 1994 FBI Report, which is public, and a January, 1995 OIC interview, which is not.

OIC, p. 79, fn. 228:

*...Iacone stated that the gun was a silver-colored revolver-type weapon. 302, 4/27/94, at 3; OIC, 1/10/95, at 27.*⁴⁹⁰

Contrary to the OIC's claim, page 3 of the above-referenced April 1994, FBI interview report does not mention the gun. Page 2 notes that Iacone saw "what appeared to be a revolver... but did not look closely..."⁴⁹¹ (The OIC reports that Iacone saw a silver gun. As we shall see, the official death weapon was black.)

Sergeant Robert Edwards

There is no publicly available record of the gun Sergeant Robert Edwards saw. Although he was "in charge of

⁴⁹⁰ OIC, p. 79, fn. 228: These discrepancies are created by statements of FCFRD personnel Arthur and Iacone, which themselves are not consistent. Arthur states that the gun was black-brownish but not a revolver (based on the fact that he did not recall seeing a cylinder). OIC, 1/5/95, at 46-47. After viewing a photograph of the weapon in the decedent's hand, Arthur stated, according to the interview report, "My memory is, I saw a semi-automatic, however, I must have been mistaken." 302, 4/24/96, at 2. Iacone stated that the gun was a silver-colored revolver-type weapon. 302, 4/27/94, at 3; OIC, 1/10/95, at 27.

⁴⁹¹ Exhibit 78, Report of FBI Interview of James Iacone, March 11, 1994: "Iacone does not recall observing any blood. He saw what appeared to be a revolver in Foster's right hand, but he did not look closely enough to see an entrance or exit wound."

Guns at the park

the scene,"⁴⁹² he did not write a report. The Senate did not depose him and the FBI did not interview him until 1996, so Edwards' account of the gun he saw, if one exists, is still secret.

Lieutenant Patrick Gavin Investigator Christine Hodakievic

The senior Park Police at the scene, Lieutenant Patrick Gavin, also did not write a report. Gavin told the FBI he saw "the gun," but there is no record of his having described it.⁴⁹³

We believe that Park Police Officer Christine Hodakievic viewed the body before and after Edwards had been alone at the body site. Hodakievic wrote an Incident Report on July 20, 1993 that does not mention any gun⁴⁹⁴ (or wounds or blood). She, too, never saw the weapon, as is apparent from the FBI's May, 1994, report of its interview with her. The FBI reported that based on "Sergeant Edwards... [having] informed [her] that the decedent had a revolver in his right hand," she "briefed... officers [Braun and Rolla]... includ[ing] informing them that a weapon had been located in the decedent's right hand."

The FBI explained her having failed to see the weapon (that Gonzalez had seen after "a few seconds"⁴⁹⁵) after "five

⁴⁹² Exhibit 81, Report of FBI interview of Park Police Officer Christine Hodakievic, May 2, 1994: "Officer Hodakievic advised to the best of her recollection, upon arriving at the death scene, Sergeant Edwards (USPP) was basically in charge of the death scene and believes that Officer Franz Ferstl was also present."

⁴⁹³ Exhibit 98, Report of FBI interview Park Police Lieutenant Patrick Gavin, April 28, 1994.

⁴⁹⁴ Exhibit 76, Park Police Criminal Incident Report, by Christine Hodakievic, July 21, 1993.

⁴⁹⁵ Exhibit 110, Deposition of Paramedic George Gonzalez, July 20, 1993: "Q. And the gun issue. Did you see a gun right away? A. Yes. I mean right away, it took me a few seconds. When I looked down -- when we do our assessment, on my assessment I recognized a gun present."

Guns at the park

to ten minutes" at the body site by explaining that she said "it was difficult to actually see the weapon."

She does recall being initially briefed by Sergeant Edwards, which included being informed that the decedent had a revolver in his right hand, as well as being shown a Polaroid photograph of decedent's position at the death scene. She further maintained that after being briefed, she initiated a cursory look at the body from the top of the berm, moving from the left of the decedent's body to the right of the body. She related that in spite of being informed that decedent had a gun in his right hand, it was difficult to actually see the weapon...⁴⁹⁶

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

Investigator John Rolla, the thirteenth person to see the body, was the first to report that he "observed a dark colored revolver in Mr. Foster's right hand."⁴⁹⁷

Investigator Braun reported "seeing a revolver in the right hand."⁴⁹⁸

Park Police Identification Technician Peter Simonello noted in his Report, written on July 26, six days after the incident, that he had removed a black .38 revolver from Mr. Foster's hand.⁴⁹⁹ His Senate deposition is in accord.⁵⁰⁰

⁴⁹⁶ Exhibit 81, Report of FBI interview of Park Police Officer Christine Hodakievic, May, 2, 1994.

⁴⁹⁷ Exhibit 113, Park Police Incident Report, by Park Police Investigator John Rolla, July 21, 1993.

⁴⁹⁸ Exhibit 91, Report of FBI interview of Investigator Cheryl Braun, April 28, 1994: "Braun stated that she recalls seeing a revolver in the right hand, pointing out that she was looking for the gun as she had already been told that it was a suicide."

⁴⁹⁹ Exhibit 134, Park Police Report Supplement by Evidence Technician Peter Simonello, July 26, 1993.

Ownership of gun

Park Police Investigator Renee Abt's contemporaneous notes state that a "revolver & 2 rounds" were recovered at the park.⁵⁰¹

Officer Watson and the unnamed intern did not file reports and there are no reports of their interviews.

4. Ownership of gun and ammunition

a. Gun

The Report declares (p. 79) that "[v]irtually all theories that the manner of death was not suicide rest on the assumption that the gun did not belong to Mr. Foster." The OIC concludes (p. 84) that the "combination of testimonial, circumstantial, and forensic evidence supports the conclusion that the gun found in Mr. Foster's hand belonged to Mr. Foster."

In sum, the testimonial and circumstantial evidence upon which the OIC purportedly relies in dismissing "all theories" is that family members recall that Mr. Foster owned a silver .38 revolver,⁵⁰² that it was brought from Little Rock when he moved to Washington, and that this gun was missing from his home the day he died.⁵⁰³ Let us see.

⁵⁰⁰ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994.

⁵⁰¹ Exhibit 118, Handwritten notes of Park Police Investigator Renee Apt, July 20, 1993.

⁵⁰² Exhibit 98, Report of FBI interview with Lieutenant Patrick Gavin, April 28, 1994: "Mr. Burton first inquired about whether the U.S. Park Police had checked the registration on the gun that was used, asking if they knew whose gin it was..."

⁵⁰³ OIC, p. 80-81: Mrs. Lisa Foster similarly recalls that her husband took possession of several handguns from his parents' house near the time of his father's death.^{fn233} She recalled that, after they moved to Washington in 1993, some guns were kept in a bedroom closet.^{fn234} She recalled what she described as a silver-colored gun^{fn235} (she also referred to it as a "cowboy gun"^{fn236}), which had been packed in Little Rock and unpacked in Washington. She also recalled a .45 caliber semi-automatic pistol. She said she found one gun in its usual location on July 20, 1993,^{fn237} the .45 caliber semi-automatic pistol.^{fn238} She did not find the other gun on or after July 20, 1993.^{fn239}

Ownership of gun

The Report tells us that of Mr. Foster's three children, one saw "a handgun" in Washington,⁵⁰⁴ another observed "one or two handguns,"⁵⁰⁵ and the third saw "an old .38 caliber revolver" but "was unable to conclusively identify" it⁵⁰⁶ as being the same gun which was found in Mr. Foster's hand.

The OIC also tells us of a letter written by a family friend who, after showing a photograph of the gun to Mr. Foster's sister, Sharon, wrote that she said the gun "looked like"⁵⁰⁷ a gun given to Mr. Foster by his mother⁵⁰⁸

⁵⁰⁴ OIC, p. 84: "Mr. Foster's daughter stated she recalled someone unpacking a handgun at the house when they initially moved to Washington, although she never saw any other guns in their Washington, house."^{fn254}

⁵⁰⁵ OIC, p. 83-84: Mr. Foster's younger son stated that he saw one or two handguns in a shoebox along with a number of loose bullets while unpacking in Washington. The younger son stated that these items came from his grandfather's house. He described his grandfather's guns as a small, pearl handled gun, and one or two revolvers. He believes his father placed the guns in a closet in Washington.^{fn253}

⁵⁰⁶ OIC, p. 83: Mr. Foster's older son said he knew his father had an old .38 caliber revolver. He saw it being unpacked at their house in Washington when they moved there. Mr. Foster told his son that he had received this gun from his father (Vincent Foster, Sr.). The older son did not know where the gun was kept in Washington. The son was unable to conclusively identify the gun recovered on July 20, 1993, from Mr. Foster's hand as the one he had previously seen.^{fn252}

⁵⁰⁷ OIC, p. 82-83: Sharon Bowman, one of Mr. Foster's sisters, recalled that her father kept a black revolver in a drawer of his bedside table.^{fn246} She said that she had retrieved various handguns from her parents' house, placed them in a shoebox, and put them in her mother's closet (and Ms. Bowman said they later were given to Mr. Foster, Jr.).^{fn247} During the 1993 Park Police investigation, John Sloan, a family friend of the Fosters, wrote a letter to Captain Hume of the Park Police, stating that he had shown Sharon Bowman a photograph of the gun. According to the letter, Ms. Bowman stated that it "looked like a gun she had seen in her father's collection," and particularly pointed out the "'wavelike' detailing at the base of the grip."^{fn248} Ms. Bowman was later shown the revolver recovered from Fort Marcy Park. She indicated that it looked like one that her

Ownership of gun

(who also could not identify it⁵⁰⁹). Regarding the sister's statements, the OIC recounts that the letter related that it looked like a gun her father had owned.

OIC, p. 82:

"[I]t 'looked like a gun she had seen in her father's collection,' and particularly pointed out the 'wavelike' detailing at the base of the grip."

This quote is accurately excerpted, but dishonest without the inclusion of the two sentences of the letter appearing immediately after the one that it chose to quote.

"I asked if she remembered any other features. She did not."⁵¹⁰

The OIC omits any mention of the FBI's interview of Lee Bowman, Mr. Foster's nephew and the family member who was most familiar with the subject gun collection. Lee had become familiar with the gun collection from hunting with his grandfather. After the death of Mr. Foster, Sr., in 1991, Mrs. Alice Mae Foster gave the handguns to Mr.

father kept in the house in Hope, but she could not positively identify it.^{fn249}

⁵⁰⁸ OIC, p. 80: Mrs. Alice Mae Foster, Mr. Foster's mother, stated that Mr. Foster, Sr. died in 1991. He had kept a revolver in a drawer of his bedside table, in addition to other guns in the house.^{fn231} In 1991, when Mr. Foster, Sr. had been ill and bedridden for a period of time, Mrs. Alice Mae Foster had all the handguns in the house placed in a box and put into a closet. Subsequent to the death of Mr. Foster, Sr., in 1991, Mrs. Alice Mae Foster gave Mr. Foster, Jr., the box of handguns.^{fn232}

⁵⁰⁹ OIC, p. 80, fn. 232: "302, 5/2/95, at 1-2. Mrs. Alice Mae Foster and her long-time housekeeper viewed the gun recovered from Mr. Foster's hand, but they could not specifically identify it as one of the guns previously possessed by Mr. Foster, Sr. Id. at 2, 4."

⁵¹⁰ Exhibit 145, Letter from John Sloan to Park Police, undated: "Ms. Bowman said it [the photograph] looked like a gun she had seen in her father's collection. She particularly pointed out the 'wavelike' detailing at the base of the grip. I asked if she remembered any other features. She did not."

Ownership of gun

Foster. Lee's knowledge further attests that a black revolver was not among the guns in the collection. The FBI's Report of its June 28, 1994 interview with Lee waters down the significance of his account, but it is still there.

Bowman recalled seeing that his grandfather possessed about three pistols/revolvers; about four shotguns; and two or three rifles... [He said] the gun does not ring a bell particularly. Bowman said the '.38 caliber nature of the weapon was familiar, but that he didn't remember the black handle and the dark color of the metal.⁵¹¹

According to Lee, there was a .38 caliber revolver in the collection, but it was silver, not black.⁵¹²

According to the OIC's version of a May, 1994 report of an FBI interview with Mrs. Foster, an FBI agent showed Mr. Foster "*the actual gun*" found in Mr. Foster's hand, whereupon she said it may have been the same gun she had seen in her Washington home.

OIC, p. 81:

On May 9, 1994, she was shown the actual gun that was recovered and said, according to the interview report, that the gun "may be a gun which she formerly saw in her residence in Little Rock, Arkansas" and that "she may have seen the handgun . . . at her residence in Washington."^{fn241}

⁵¹¹ Exhibit 146, Report of FBI interview with Lee Bowman, June 28, 1994.

⁵¹² Compare A. Devroy, *Clinton Finds No Explanation to Aide's Death*, Wash. Post, July 23, 1993: "The [Park Police] chief said Foster owned a gun described being like the one found." S. Labaton, *Justice Dept. to Stay on Case of Aide's Death*, N.Y. Times, July 22, 1993: "In clarifying an account they had provided Wednesday, Federal officials said today that only one 38-caliber Army Colt revolver had been recovered in the case, not two." M. Carlson, *Where Hope Ends*, Time Magazine, August 2, 1993: "Last Tuesday afternoon, six months to the day since his boyhood friend had taken the oath of office... put his father's antique .38-cal. Colt revolver in his mouth and ended his life..."

Ownership of gun

The FBI (and the Fiske Report) had recounted the same version of events after its FBI agents interviewed Mrs. Foster in the Spring of 1994.

Lisa Foster then examined a revolver which had been brought to the interview by the interviewing agents. Foster examined the revolver, which had also been found at Fort Marcy Park on July 20, 1993, and stated that she believed it may be a gun which she formerly saw in her residence in Little Rock... Lisa Foster recalls... she found a handgun inside a travel trunk which had been packed by Foster prior to his departure for Washington. Specifically, as Lisa Foster was packing in Little Rock, she came across a silver colored gun, which she then packed in with her other property... Lisa Foster believes that the gun found at Fort Marcy Park may be the silver gun which she brought up with her other belongings when she permanently moved to Washington.⁵¹³

But there is a flaw in this long-standing official conclusion that the silver gun brought from Little Rock, reportedly missing (OIC, p. 82) from the Foster residence on the evening of the death, was the one found at the scene: The official death weapon is entirely black,⁵¹⁴ not silver.

The only plausible explanation of why the FBI showed Mrs. Foster a "silver colored" handgun is as follows. The interviewing FBI agents knew from the Park Police case file turned over to them that when shown a photograph of the black official death gun, she could not identify it because the only .38 revolver she knew of was silver. The Park Police handwritten interview notes of an interview with Mrs. Foster, taken nine days after Mr. Foster's death, reflects that when she was shown a photograph of the gun,

⁵¹³ Exhibit 16, Report of FBI interview with Mrs. Foster, May 9, 1994.

⁵¹⁴ Exhibit 147, Photograph of black revolver. Exhibit 148, ABC News photograph of black weapon in hand. Exhibit 134, Park Police Report Supplement by Evidence Technician Peter Simonello, July 26, 1993: "[T]he victim had on his right hand a black revolver."

Ownership of gun

Mrs. Foster could not identify it because the only Foster family gun with which she was familiar was silver.

"Not the gun she thought it must be, silver, six gun, large barrel."⁵¹⁵

The OIC skims over the obvious discrepancy of the color of the gun by recounting that when shown the gun in November of 1995, Mrs. Foster stated "*it was the gun she unpacked in Washington,*" but that "*she seemed to remember the... gun looking lighter in color.*"

OIC, p. 81-82:

She stated to the OIC in November of 1995, when viewing the gun recovered from Mr. Foster's hand, that it was the gun she unpacked in Washington but had not subsequently found,^{fn242} although she said she seemed to remember the front of the gun looking lighter in color when she saw it during the move to Washington.^{fn243}

The revolver found in Mr. Foster's hand was black. By all accounts, the revolver Mr. Foster owned was silver. The OIC attempts to confuse the issue by reporting that Mrs. Foster "*seemed to remember the front of the gun looking lighter in color.*"

The FBI's suicide conclusion would have been undercut by the knowledge that the weapon found in Mr. Foster's hand was unknown to the family. So the Report hides the color of the weapon found in Mr. Foster's hand (as Fiske had) and baldly asserts (p. 84) that the gun "*which was missing when she looked in the closet after Mr. Foster's death... was the one found at the scene.*" The OIC's claim that the death weapon was missing from the home is new.

⁵¹⁵ Exhibit 149, Handwritten notes of Park Police interview with Mrs. Foster, July 29, 1993. Exhibit 144, Park Police Report by Park Police Detective Peter Markland, July 29, 1993: "She was presented with a photograph of the weapon found with Mr. Foster's body but was unable to identify it." Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: "No. The only real question I got to ask was about the gun, did Vincent own a gun. She asked me what does it look like, you know. To me, right away I am thinking oh, he does, well, it's a black-colored revolver, .38 revolver. She cut me off..."

Ownership of gun

OIC, p. 82:

Webster Hubbell stated that, on the night of Mr. Foster's death, Lisa Foster went upstairs in the Foster house with him. While there, she looked into the top of a closet, pulled out a "squared-off" gun, and said, according to Hubbell, that one of the guns was missing.^{fn244} To Hubbell's knowledge, the "other gun" was never found at the Foster house.^{fn245}

OIC, p. 84:

"Mrs. Lisa Foster said that she recalls two guns in a bedroom closet in Washington, one of which was missing when she looked in the closet after Mr. Foster's death..."

But, again, the FBI reported a year after Mr. Foster's death that there was one gun, not two, and that it was in "its usual location" after the death.

"Lisa Foster was aware of the location of one gun inside her residence in Washington and she found that gun still in its usual location on the night of July 20, 1993."⁵¹⁶



⁵¹⁶ Exhibit 16, Report of FBI interview with Mrs. Foster, May 9, 1994.

Ownership of gun

US PARK POLICE REPORT. GUN FOUND IN MR. FOSTER'S HAND WAS BLACK.

UNITED STATES PARK POLICE MOBILE CRIME LAB REPORT SUPPLEMENT	
OFFENSE/INCIDENT: Death Investigation	CASE NO: 30503-61
INCIDENT LOCATION: Ft. Marcy	DATE: 7-20-93
were at his sides and the victim had his right hand on a black revolver. The right thumb	
ID TECHNICIAN: [Signature] DATE: 7-26-93	SUPERVISOR: [Signature] DATE: 7/28/93

PHOTOGRAPHS OF BLACK GUN FOUND IN MR. FOSTER'S HAND AT FORT MARCY PARK.

	
---	--

US PARK POLICE HANDWRITTEN INTERVIEW NOTES. MRS. FOSTER UNABLE TO IDENTIFY BLACK GUN.

<i>Not the gun she thought it must be. Silver, six gun, large barrel.</i>	Not the gun she thought it must be. Silver, six- gun, large barrel.
	EXHIBIT 3

FBI INTERVIEW REPORT. FBI SHOWED MRS. FOSTER "SILVER" GUN "FOUND" AT FMP. SHE IDENTIFIED IT.

Continuation of FD-302 of ELIZABETH BRADEN FOSTER, On 5/9/94, Page 14
LISA FOSTER then examined a revolver which had been brought to the interview by the interviewing agents. FOSTER examined the revolver, which had also been found at Fort Marcy Park on July 20, 1993, and stated that she believed it may be a gun which she formerly saw in her residence in Little Rock, Arkansas.
may be the silver gun which she brought up with her other belongings when she permanently moved to Washington. LISA FOSTER

Exhibit 3 of Appendix to the OIC's Report on the Death of Vincent Foster, Jr., submitted September 23, 1997, released to the public on October 10, 1997

Ownership of gun

b. Ammunition

The .38 caliber ammunition found in Mr. Foster's Arkansas home did not match that found in the official death weapon. From this fact, instead of drawing the inference that the ammunition recovered from the weapon did not belong to Mr. Foster, the OIC infers "[t]hat is further evidence suggesting that Mr. Foster, Sr., possessed a .38 caliber gun."⁵¹⁷

The Report's other reference implying that Mr. Foster may have owned ammunition similar to that found in the official gun is that "Mr. Foster's younger son stated that he saw... a number of loose bullets while unpacking in Washington." (p. 83). Had the number of these bullets been two (the same number found in the park), or had any matching ammunition ever been recovered, the Report surely would have said so.

In 1975, Remington discontinued the manufacture of the ammunition found at the park. From this fact, the OIC draws the inference that the gun was located in the home of Mr. Foster's parents when Remington still made the ammunition.

OIC, p. 38:

Dr. Lee noted that the ammunition found in this weapon was type "RP .38 SPL HV," manufactured by Remington Peters. Dr. Lee stated that information from the manufacturer indicated that this ammunition was discontinued in 1975, and that the cartridge therefore would have been manufactured prior to that time.^{fn93}

⁵¹⁷ OIC, p. 80, fn. 231: In August 1994, Sharon Bowman (the sister of Vincent Foster, Jr.) found five .38 caliber cartridges at the family home in Hope. 302, 12/1/94, at 1-2. That is further evidence suggesting that Mr. Foster, Sr., possessed a .38 caliber gun or guns. FBI Laboratory examination revealed that four of the cartridges were of the same manufacture (Remington) as in the revolver found in Mr. Foster's hand; they were manufactured at a different time than the cartridge and casing recovered from Mr. Foster's gun. FBI Lab Report, 2/21/95, at 2.

Ownership of gun

OIC, p. 38, fn. 93:

Lee Report at 488-89. That finding is consistent with the fact that, as is explained below, the gun at one time likely was located in the home of Mr. Foster's parents in Hope, Arkansas.

But Remington has never used the ball smokeless powder in the ammunition found at the park. If the official ammunition found had been used to fire the fatal shot, the cartridge would have to have been a "reload." The ammunition could have been reloaded at any time. These facts undermine the OIC's conclusion that "*the gun at one time likely was located in the home of Mr. Foster's parents in Hope, Arkansas.*"

c. Oven mitt

OIC, p. 54:

"Apart from a variety of other compelling circumstantial and testimonial evidence (discussed below) that the gun belonged to Mr. Foster, the evidence regarding the pants pocket and oven mitt also tends to link Mr. Foster to the gun."

The OIC claims (p. 52-55) that Dr. Henry Lee found new trace evidence in an oven mitt⁵¹⁸ found in Mr. Foster's car, consistent with the conclusion that Mr. Foster transported the official death weapon to the park in the mitt. The OIC posits that this finding, along with another new finding of the same type of trace evidence in Mr. Foster's pants pocket,⁵¹⁹ supports its hypothesis. According to the OIC,

⁵¹⁸ OIC, p. 53: As noted, Dr. Lee also examined the oven mitt recovered from Mr. Foster's car. He reported: "Dark particle residues were located inside the oven mitt. Instrumental analysis revealed the presence of the elements lead and antimony in these particles; this finding could indicate that an item which had gunshot residue on it, such as the revolver . . . came in contact with the interior of [the oven mitt]"^{fn150} Dr. Lee further stated that "[s]unflower-type seed husks were located on the inner surfaces of this oven mitt..."

⁵¹⁹ OIC, p. 53-54: Dr. Lee reported that "[m]acrosopic and microscopic examination of the inside of the front pants pockets revealed the presence of fibers and other

Ownership of gun

Mr. Foster carried the gun from his home to the park in the mitt, then to where his body was found in his pants pocket.

The record also contradicts the OIC's conclusion that this evidence "*tends to link Mr. Foster to the gun*" because there was, by all previous accounts, no oven mitt in the car at the park.

Park Police Investigator Rolla testified that he found "[n]othing out of the ordinary" in the glove compartment of the car at the park. He "found normal stuff in the car, sunglasses, photos, registration..."⁵²⁰ Park Police Investigator Braun testified that when viewing "the glove compartment [she found] nothing out of the ordinary."⁵²¹

materials, including a portion of a sunflower seed husk in the front left pocket. Instrumental analysis of particles removed from the pocket surface revealed the presence of lead. These materials were also found inside the oven mitt located in the glove compartment of Mr. Foster's vehicle... The presence of these trace materials could indicate that they share a common origin. These materials in the pants pocket clearly resulted from the transfer by an intermediate object, such as the Colt weapon."^{fn149} ***These sunflower seed husks found in Mr. Foster's front, left pants pocket."^{fn151} Dr. Lee stated that "[t]his finding suggests that the sunflower seed husk found inside the pants pocket could have been transferred from the oven mitt through an intermediate object, such as the revolver."^{fn152}

⁵²⁰ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: Q. What about on [sic] the glove compartment? A. Nothing out of the ordinary. I think the vehicle registration was in the glove compartment. I took that for the time being. *** Q. What about [what you found] in the glove compartment? A. Nothing out of the ordinary... I looked through the whole car. I looked at everything... Trust me, I looked. I looked under the seats, I looked in the trunk. I looked at every piece of paper I could find. *** Q. What did you do, what would you describe what your search of the car was... [sic]? A. I went through the car looking - again looking for anything that could lead me to believe that it was other than a suicide or it was a suicide, anything that could help confirm one way or the other...

⁵²¹ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994: Q. What do [sic] you find in the car? A. I went through the car. I found normal stuff in the car, sunglasses, photos, registration... *** Q. What

Ownership of gun

But again, according to the OIC's (still secret) reports of reinterviews conducted years later, both of these Investigators suddenly remembered the presence of an oven mitt on July 20, 1993.

OIC, p. 52, fn. 148:

"Investigators Rolla and Braun also recalled the oven mitt in the glove compartment of the car on July 20. Braun OIC, 2/9/95, at 95-96; Rolla 302, 4/17/96, at 6."

According to the detailed description by Park Police of all items found in the car at the park (including, for example, the dates on coins, a "large Fender" guitar pick, and the brand names on the empty cigarette packs), the oven mitt was not in the car at the park.⁵²² One page of this list specifically itemizes the contents of the glove compartment -- no oven mitt. (The available photographs show an oven mitt in the glove compartment of Mr. Foster's car at the impound lot -- not at Fort Marcy Park.)

The OIC claims that associate White House counsel William Kennedy kept this oven mitt for six or more months before giving it to Mr. Fiske's FBI agents.

OIC, p. 52:

William Kennedy, Associate White House Counsel, eventually took possession of Mr. Foster's car on behalf of the Foster family after the Park Police released it on July 28, 1993. Mr. Kennedy maintained contents of the car that had not been taken into evidence by the Park Police, and he produced those contents to investigators from Mr. Fiske's Office.^{fn147}

else did you see in the car? A. As I was saying earlier, the jacket with the wallet and credentials. There was [sic] pictures in the glovebox, and sunglasses, a couple of cigarette boxes...

⁵²² Exhibit 143, Park Police Evidence/Property Control Receipt, July 20, 1993.

Ownership of gun

Aside from being a break in the chain-of-custody, the record contradicts this claim. The FBI's report of its May, 1994, interview with William Kennedy recounts that Mr. Kennedy did not pick up the car from the Police for at least six weeks (well after "July 28"), after which time Chief of White House Personnel Security Craig Livingstone "got the car and parked it on the West Executive Avenue for about two weeks. Thereafter, it was moved for a two-month period of time to the New Executive Office Building basement..."⁵²³ When the car was disposed of, Mr. "Kennedy retrieved... [mostly] junk such as M&Ms, plastic cups... [and] threw most of these items away but still has some items in his possession."

Kennedy had not given any of the items he "*maintained*" to the FBI as of the time it interviewed him in May of 1994,⁵²⁴ nor is there any publicly available record of his ever having produced any items to FBI "*investigators from Mr. Fiske's Office.*"

⁵²³ Exhibit 7, Report of FBI interview with William Kennedy, May 6, 1994: [H]e [Kennedy] retrieved Foster's car from the U.S. Park Police approximately one and one-half to two months after Foster's death. Livingstone got the car and it was parked on the West Executive Avenue by the White House for about two weeks. Thereafter, it was moved for a two-month period of time to the New Executive Office Building basement, while a dialogue continued with Lisa Foster regarding the final disposition of the car. It was agreed that the car would be sold to Mrs. Foster's brother.

⁵²⁴ Exhibit 7, Report of FBI interview with William Kennedy, May 6, 1994: When the brother and his wife came to Washington to pick up the car, Kennedy retrieved miscellaneous items from the vehicle. He described the car as being 'trashed' with family junk such as M&Ms, plastic cups, class notes, CD player, shoes, Ray Ban sunglasses, books, etc. Kennedy said he threw most of these items away but still has some items in his possession.