

Photographs

The OIC's version is that Troopers Perry and Patterson were wrong¹⁷⁶ (former Arkansas State Police commander Davis' account is not mentioned), Ms. Dickey's account is accurate, and long distance White House telephone records which could prove it are "not available."¹⁷⁷

V. EVIDENCE THAT THE OIC CONCEALED THE DISAPPEARANCE OF PHOTOGRAPHS

Summary: Edwards took charge of the scene and took possession of Ferstl's approximately seven photographs taken of the body site. He absconded with them. The OIC conceals that Ferstl's Polaroids vanished by falsely claiming that (1) Ferstl's Polaroids are inventoried as being Edwards', and (2) Edwards took no photographs. The OIC conceals that Edwards did, in fact, take photographs by claiming that he did "not recall" whether he photographed Mr. Foster's body. Abt recalled that Edwards had taken photographs, as did Rolla and Braun.

The OIC conceals that the Polaroids that Rolla had taken had vanished by falsely reporting that Rolla was mistaken when he testified that he took at least two Polaroids of the back of Mr. Foster's head. Rolla testified that he was certain that he shot "backside" photographs, he inspected his Polaroids as they came out, he remembered what pictures he had taken, and that the "backside" photographs were in his office the night of the death, but he never saw them again. The OIC falsely reports that Rolla did not have a camera when the body was rolled.

¹⁷⁶ OIC, p. 94, fn. 292: Precise recollections of time, if not tied to a specific event that can be documented as having occurred at an exact time, can, of course, be imprecise or inaccurate. Here, the recollection is tied neither to a specific event nor to an exact time. The recollection instead is of a general three-hour period of time in which the call might have been received. The recollection is not reflected in a contemporaneous document.

¹⁷⁷ OIC, p. 93, fn. 288: White House Residence phone records indicate that a call was placed to the number of Dickey's father at 10:06 p.m. OIC Doc. No. DC-95-7; Dickey 302, 2/7/96, at 2. A call to the Arkansas Governor's Mansion is not reflected on these records. As indicated, the call may have been made from a phone in the White House not on the floors of the White House Residence: The Usher's Office employee who notified Dickey recalls Dickey making a call, but not in the Residence, soon after he notified her. 302, 5/21/96, at 2. Complete records for such calls are not available.

Photographs

The OIC concealed that the roll of 35-mm film produced usable photographs. It claims that the 35-mm film was "underexposed," but offers no explanation. The FBI Lab falsely claimed that the "underexposed" negatives produced "limited detail." Three witnesses said that these photographs were clear, including the photographer who had shot the roll of film.

On May 2, 1994, Park Police Captain Charles Hume provided the FBI with all of the Polaroid photographs of the body site and parking lot that officially exist. The FBI's *Receipt for Property Received* inventories these photographs.¹⁷⁸ Officially, only thirteen Polaroids of the body site were taken¹⁷⁹ (fourteen according to an FBI Laboratory Report¹⁸⁰), two of which have been released.

The *Receipt for Property Received* denotes that of these thirteen, five, marked on the back "from... Sgt. [Robert] Edwards 7/20/93 on scene,"¹⁸¹ are listed as depicting:

- 1 - Rear of Cannon
- 2 - Heavily foliated area
- 3 - VF's body - looking down from top of berm
- 4 - VF's body - focusing on the face
- 5 - VF's body - focusing on right shoulder/hand

The other eight are marked on the back with Park Police Investigator John Rolla's initials, "JCR 7/20/93."¹⁸² They are inventoried as depicting:

¹⁷⁸ Exhibit 94, FBI Receipt for Property Received, Inventory of Polaroid photographs, May 2, 1994.

¹⁷⁹ OIC, p. 73: "Thirteen of the Polaroids provided to Mr. Fiske's Office and the OIC are of the body scene, and five are of the parking lot scene."

¹⁸⁰ Exhibit 95, FBI Laboratory Report, May 9, 1994: "Q73-Q86 Copies of fourteen death scene photographs of Vincent Foster."

¹⁸¹ OIC, p. 73: "The backs of the other five say 'from C202 Sgt. Edwards 7-20-93 on scene.' ^{fn213}"

¹⁸² OIC, p. 73: "Of the 13 Polaroids of the body scene, eight are initialed by Investigator Rolla."

Photographs

- 1 - Right hand showing gun & thumb in guard
- 2 - Glasses on ground
- 3 - VF's body taken from below feet
- 4 - VF's body focusing on right side & arm
- 5 - VF's - focusing on top of head thru heavy foliage
- 6 - VF's body - focus on head and upper torso
- 7 - VF's face - looking directly down on face
- 8 - VF's face - taken from right side focusing on face

The photograph marked "JCR" on the back, inventoried as "Right hand showing gun & thumb in guard," is in the public domain, having been released to and broadcast by ABC News in January of 1994, and subsequently printed in Newsweek. Another of Rolla's photographs, inventoried as depicting "glasses on ground," was released in the summer of 1998 pursuant to a Freedom of Information Act lawsuit.

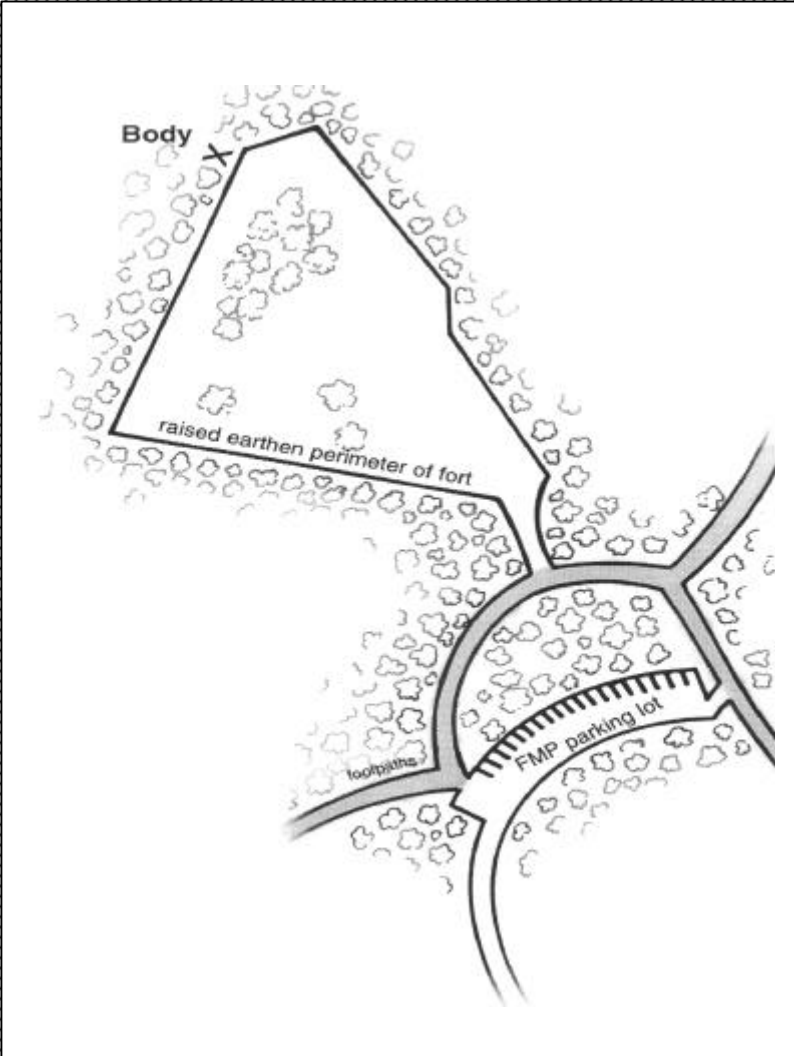
The inventory does not evidence any of "approximately seven"¹⁸³ Polaroids taken by Park Police Officer Franz Ferstl. The OIC sought to explain this anomaly in its two-paragraph *Photographs* section of its Report.

1. Sergeant Edwards absconded with Officer Ferstl's Polaroids

Officer Franz Ferstl, the beat man for the area, was dispatched from Glen Echo Park Police Station. Following in a separate car was Park Police Officer Julie Spetz. Ferstl arrived at the park around 6:17 p.m., whereupon Ferstl immediately went to the body site. Spetz arrived around 6:19 and searched other areas of the park for witnesses. When Ferstl arrived at the body site, already present were firefighters Hall and Gonzalez and Park Police Officer Kevin Fornshill. Firefighters had already determined that "there would be no effort to resuscitate."¹⁸⁴

¹⁸³ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994: "Ferstl advised that he also took several Polaroid photos of the crime scene... Ferstl stated that to the best of his recollection, he took approximately seven..."

¹⁸⁴ Exhibit 78, Report of FBI interview with Firefighter Lieutenant James Iacone, March 11, 1993: "Gonzalez provided directions to the body over the radio to Iacone. After Iacone's group arrived at the location of the body, the medics confirmed that there would be no effort to resuscitate the patient. As the officers on the medic unit, Gonzalez would have been responsible for pronouncing the patient deceased."

Body site	FORT MARCY PARK		6:25	See endnote 13.								
Officer Franz Ferstl	<p data-bbox="574 201 1240 331">Officer Ferstl continued photographing the body with the semi-automatic pistol in the hand. He saw a small amount of "not fresh" blood around the mouth. Arthur and his group left the body, returning to the lot.</p> 											
Paramedic Richard Arthur												
Firefighter Ralph Pisani												
Firefighter Lt. James Iacone												
Firefighter Jennifer Wacha												
Officer Kevin Fornshill	<p data-bbox="188 970 298 1003">↓</p> <p data-bbox="412 1020 428 1054">↑</p>											
Sergeant Robert Edwards												
<p data-bbox="204 1146 526 1297">During their short conversation, Edwards ordered Fornshill to leave the park and return to his his post guarding the CIA.</p>												
<p data-bbox="399 1514 1036 1596">Investigator Hodakievic, Lieutenant Gavin, and Gonzalez and Hall were still in the lot. Officer Spetz and the civilian couple returned to the parking lot.</p>	<table border="1"> <thead> <tr> <th data-bbox="1065 1440 1448 1497">Parking lot</th> </tr> </thead> <tbody> <tr> <td data-bbox="1065 1497 1448 1558">Lieutenant Patrick Gavin</td> </tr> <tr> <td data-bbox="1065 1558 1448 1619">Firefighter Todd Hall</td> </tr> <tr> <td data-bbox="1065 1619 1448 1680">Paramedic George Gonzales</td> </tr> <tr> <td data-bbox="1065 1680 1448 1740">Inv. Christine Hodakievic</td> </tr> <tr> <td data-bbox="1065 1740 1448 1801">Officer Julie Spetz</td> </tr> <tr> <td data-bbox="1065 1801 1448 1862">Male Civilian</td> </tr> <tr> <td data-bbox="1065 1862 1448 1894">Female Civilian</td> </tr> </tbody> </table>				Parking lot	Lieutenant Patrick Gavin	Firefighter Todd Hall	Paramedic George Gonzales	Inv. Christine Hodakievic	Officer Julie Spetz	Male Civilian	Female Civilian
Parking lot												
Lieutenant Patrick Gavin												
Firefighter Todd Hall												
Paramedic George Gonzales												
Inv. Christine Hodakievic												
Officer Julie Spetz												
Male Civilian												
Female Civilian												

Photographs

After observing the body, Ferstl returned to his cruiser to retrieve crime-scene tape and a Polaroid camera. On his return to the body site, Ferstl noticed that the "body appeared to be in the identical position it was when he first observed it."¹⁸⁵ Fire and Rescue workers, along with Officer Fornshill, then left the area of the body. Ferstl then photographed the body.

As Officer Fornshill was walking back to the parking lot, he met Park Police Sergeant Robert Edwards, who was walking toward the body site carrying a Polaroid camera.¹⁸⁶

It was clear to Fornshill and Ferstl that Edwards had taken charge of the scene.¹⁸⁷ Edwards did not compose any

¹⁸⁵ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994: ...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. Ferstl stated that to the best of his recollection, he took approximately seven photos; he cannot recall if he initialed or dated them, but he does not believe he did so. Ferstl advised that at some point, Sergeant Edwards arrived at the death scene.

¹⁸⁶ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Q. Did you talk with any of these guys later? A. I passed - you mean later on? Q. I mean later that day? Next week? A. I passed Sergeant Edwards on the hill. Q. The hill being? A. In Fort Marcy, there's a bit of an incline. I was going down, he was coming up. He was carrying a Polaroid camera to take some pictures of the crime scene. Q. Who was this? A. Sergeant Edwards. Q. Okay. Is he a technician? A. No. But some of the cars have Polaroids; some don't.

¹⁸⁷ Exhibit 79, Deposition of Park Police Officer Kevin Fornshill, July 12, 1994: Q. After you got the call did you go straight to Fort Marcy Park?... A. ...I requested permission from my sergeant to respond and assist. Q. That would be Sergeant Edwards? A. Yes. Q. What happened then? A. He authorized me to respond, and I went directly to Fort Marcy Park to assist Fairfax County Fire and Rescue.

Exhibit 96, Report of FBI interview with Park Police Officer Franz Ferstl, May 2, 1994: "...Sergeant Edwards instructed him to go back to the parking lot and see if they needed any assistance..."

Photographs

report. Neither the FBI or Park Police investigators interviewed him during the course of the first 17-day investigation, nor did the FBI interview him during the Fiske probe.

The FBI's May 2, 1994 report of its interview with Officer Ferstl reveals that he and Sergeant Edwards were up at the body site before Park Police Lieutenant Patrick Gavin and Investigators Rolla, Braun and Abt arrived at the Fort Marcy parking lot. During this time that only Edwards and Ferstl were at the site, Edwards took possession of the seven Polaroids that Ferstl had taken before Edwards' arrival. Edwards then ordered Ferstl to return to the parking lot to assist other investigators, as memorialized in the FBI's report of its interview with Ferstl.

[F]erstl was not sure who he gave the Polaroid photos to, stating that it was either Sergeant Edwards or one of the investigators. Ferstl advised that USPP Investigators Cheryl Braun and John Rolla also arrived on the scene, adding that at that point in time, Sergeant Edwards instructed him to go back to the parking lot and see if they needed any assistance there.¹⁸⁸

When Edwards ordered Ferstl back to the parking lot, he may have known that Park Police Investigators Braun and Rolla were arriving at the scene from monitoring his hand-held radio. When Ferstl left, Edwards was alone at the body site.

The OIC admits that Ferstl gave his Polaroids to Edwards. But if Sergeant Edwards told the OIC's FBI agents what he did with Officer Ferstl's photographs, it is indiscernible from the OIC's Report. (The first and only report of interview with Edwards was generated under the OIC's probe, and is still secret.) The OIC chose to relate

¹⁸⁸ Exhibit 96, Report of FBI interview of Park Police Officer Franz Ferstl, May 2, 1994.

Photographs

only what Ferstl reportedly understood, from sources unknown, of what Edwards did with the Polaroids.

OIC, p. 73:

Officer Ferstl said that he took Polaroids, and without initialing or marking them, gave them to Sergeant Edwards, who gave them to investigators.^{fn214}

When Park Police Lieutenant Patrick Gavin arrived at the park, Officers Hodakievic and Ferstl were in the parking lot. Hodakievic and Gavin later walked up to the body site together.¹⁸⁹ When Hodakievic arrived at the body site, Sergeant Edwards briefed her and showed her only one of the photographs in his possession.¹⁹⁰

Recall that Ferstl's photographs are not inventoried. The OIC's excuse is that they are inventoried, but bear the initials of Sergeant Edwards. Ferstl, explains the OIC, left the backs of the Polaroids he took blank, then gave them to Edwards.¹⁹¹ Sergeant Edwards, in turn, also without writing anything on the back of Ferstl's Polaroids, gave them to Park Police Investigator Renee Abt.¹⁹² Abt then

¹⁸⁹ Exhibit 98, Report of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994: To the best of his recollection, the following U.S. Park Police officers were present at the park when he arrived. Officer Kevin Fornshill, Sergeant Bob Edwards, Officer Franz Ferstl, Investigator Christine Hodakievic. He stated that Investigator Hodakievic met him at the parking lot and later directed him up to where the body had been discovered...

¹⁹⁰ Exhibit 81, Report of FBI interview with Park Police Investigator Christine Hodakievic, May 2, 1994: "[O]fficer Hodakievic... 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 decedents position at the death scene."

¹⁹¹ OIC, p. 73: "The backs of the other five say 'from C202 Sgt. Edwards 7-20-93 on scene.'^{fn213} Officer Ferstl said that he took Polaroids and, without initialing or marking them, gave them to Sergeant Edwards..."

¹⁹² OIC, p. 73: "...Sergeant Edwards... gave them to the investigators."^{fn214}

Photographs

wrote on the backside of Ferstl's Polaroids "*from... Sgt. Edwards 7/20/93 on scene.*"¹⁹³ Because Sergeant Edwards did not himself take any photographs, according the OIC, Ferstl's Polaroids are not missing.

The OIC reports its version of Edwards' account, that he "*does not recall taking any Polaroids himself*" (p. 73-74). If Edwards knew he did not photograph the body, he would have said so and the OIC surely would have quoted him. The OIC claims that Edwards does not "*recall*" whether he photographed Mr. Foster's body, and conceals the accounts of others who did recall Edwards having photographed the body.

The OIC addresses Park Police Investigator Renee Abt's recollection that Edwards, not Ferstl, had taken the Polaroids that Edwards gave to her. She too, the explanation continues, was mistaken.

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.

The Report chose to discount only Investigator Abt's observation that Sergeant Edwards took Polaroid photographs. Yet the OIC does not quote Abt, stating only that "*Investigator Abt recalled Sergeant Edwards taking Polaroids.*" It then rebuts Abt's reported account with Edwards; "*but Sergeant Edwards... does not recall taking any Polaroids himself.*" To give Edwards' account more credence, the OIC repeats it, once in the body of the Report and once in a footnote.¹⁹⁴

¹⁹³ OIC, p. 73, fn. 213: "The handwriting on these photographs is that of Investigator Abt."

¹⁹⁴ OIC, p. 73-74: "Sergeant Edwards does not recall taking Polaroids himself." OIC, p. 74, fn. 215: "...Sergeant Edwards... does not recall taking any Polaroids himself, OIC, 1/12/95, at 7, 199-203."

Photographs

The FBI's May 2, 1994, report of its interview with Abt reflects that she "specifically observed" Edwards taking Polaroid photographs.

Upon arriving at the death scene, she specifically observed Sergeant Edwards in the process of completing Polaroid photography of the body and to the best of her recollection believes that contemporaneous with Edwards finishing his Polaroid photography, Investigator John Rolla commenced taking a series Polaroid photographs. Upon Investigator Rolla completing his Polaroid photography, she believes that Officer Peter Simonello commenced taking 35mm photographs of the body and the surrounding environs.¹⁹⁵

The OIC chose to relate only what Abt said, one officer's word against another. The OIC thus conceals that Rolla also saw Edwards photographing the body, as Rolla testified on deposition.

Q. Did anyone else take photographs that you are aware of?

A. I think that Edwards, Sergeant Edwards took a couple of Polaroids, I told him to give them to me... I didn't know who this guy was, nobody [knew] who this guy was...¹⁹⁶

¹⁹⁵ Exhibit 99, Report of FBI interview of Park Police Investigator Renee Abt, May 2, 1994.

¹⁹⁶ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: Q. Did you use a Polaroid camera? Yes. I used Polaroid. He used a 35 millimeter and apparently, for what ever reason, bad film or whatever, it came out too light or too dark. Q. Those are his photographs? A. Right. Q. Did anyone else take photographs that you are aware of? A. I think that Edwards, Sergeant Edwards took a couple of Polaroids, and I told him to give them to me, not having a collection -- you know, I didn't know who this guy was, nobody who this guy was, but we are not going to have a collection of dead body photographs, and I don't think there was an attempt, but lots of times -- I just wanted to make sure I had everything, and there wasn't anything walking around out there. Q. Did you use the same camera that he used? A. No.

Body site	FORT MARCY PARK 6:46-6:48 <u>See</u> endnote 24.		
Sergeant Robert Edwards	<div data-bbox="573 275 1395 485" style="border: 1px solid black; padding: 5px;"> <p>When the investigators arrived at the body site, they observed Sergeant Edwards taking photographs. Braun was told that the death was a suicide. According to Rolla, although Gavin was the senior officer present, Braun and Hodakievic were in charge of the scene and did the "decision making." Rolla was in charge of the body scene. Rolla said it was his first "suicide" investigation.</p> </div> <div data-bbox="610 600 1399 1650" style="border: 1px solid black; padding: 10px; text-align: center;"> </div>		
Lieutenant Patrick Gavin			
Inv. Christine Hodakievic			
Investigator Cheryl Braun			
Investigator John Rolla			
Ev Tech Peter Simonello			
Investigator Rene Abt			
Intern with Officer Watson			
Officer William Watson			
	<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">Parking lot</td> </tr> <tr> <td>Officer Franz Ferstl</td> </tr> </table>	Parking lot	Officer Franz Ferstl
Parking lot			
Officer Franz Ferstl			

Photographs

And, according to the FBI's report of its April 27, 1994 interview with Rolla, the Polaroids of the body site consisted of a combination of the Polaroids that he and Edwards had both taken.

"[The] Polaroid photographs were a combination of the photographs he and Sergeant Edwards took at the scene..."¹⁹⁷

Park Police Investigator Cheryl Braun also testified that Sergeant Edwards had taken Polaroids, and that Edwards showed her his Polaroids before turning them over to Park Police Investigators.

- Q. Who did you say briefed you when you arrived at Fort Marcy Park?
- A. Well, initially I went and spoke with Officer Spetz, and then when we got to where the body was Sergeant Edwards had taken a few Polaroids and he gave those to us and just, you know, basically told us briefly, you know, what we had. And then we - I mean we were right there, so we went and looked ourselves.¹⁹⁸

According to Park Police Investigator John Rolla's July 21, 1994 testimony, it is standard operating procedure for detectives (investigators) on a crime scene to take complete control of the scene.

- Q. Would you ordinarily work closely with a field commander in the course of your investigation?
- A. No... When the detectives come on the scene, the detectives are in charge of that crime scene. They are the ones responsible, sergeants, lieutenants, doesn't matter...¹⁹⁹

¹⁹⁷ Exhibit 100, Report of FBI interview of Park Police Investigator John Rolla, April 27, 1994.

¹⁹⁸ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994.

¹⁹⁹ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: Q. Would you ordinarily work closely with the field commander in the course of your investigation. A. No, in fact, probably a lot of police departments, you have good police officers and stuff, but when the detectives come on the scene, the detectives are

Photographs

Upon the arrival of the Park Police Investigators, Sergeant Edwards should have given all the Polaroids to the investigators then in charge of the body site. But Edwards did not turn over Officer Ferstl's Polaroids. Investigator Rolla testified that Sergeant Edwards had given him two Polaroids.

- Q. Did you say that you also saw some Polaroids that Sergeant Edwards might have taken at the scene?
- A. They had at least two Polaroid photographs.
- Q. They had photographs?
- A. Photographs, two Polaroid photographs that I requested, and I'm not sure which ones they are, they may be in the -- I may have just put them in the -- I think I told them to mark the -- to initial the photographs. I don't know if this is my fault, but I believe all the photographs were put in there and they don't show anything different. I looked at them, they don't show anything different than my photographs.
- Q. But you say you only remember two photographs from Sergeant Edwards?
- A. Yes.²⁰⁰

(Rolla's observation that other photographs "don't show anything different" than his did implies that there

in charge of that crime scene. They are the ones that are responsible, sergeants, lieutenants, doesn't matter. Unless we are specifically relieved of duty, we say what goes, you know, we are supposed to be in charge and tell people -- control access to the crime scene. You know, I have never had a problem with a field commander, working with him, when we need people, fielding people for interviews, but they try not to get involved because it's not their job. Q. So Lieutenant Gavin wasn't telling you to do anything at the scene? A. No. Q. Was he participating at all in your conversations or decision making? A. No. Q. So, it was Detective Abt and Detective Braun? A. Braun and Christine Hodakievic, who was an investigator at the time, has since left. She wanted to go back on patrol. She got off work, took a couple hours leave, lives out that way. On her way, she stopped to assist. Q. Because she heard something on the radio? A. Right. She was there before us.

²⁰⁰ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

Photographs

were duplicates -- no duplicates appear on the inventory.) The OIC reports, probably accurately, that Edwards gave investigators five Polaroid photographs that were unsigned. Because they were not initialed, their origin could not be determined. There is no record of Officer Ferstl ever having been asked to describe the state of the body when he first saw it, or to describe the photographs he had taken.

Edwards' removal of Ferstl from the body site before the arrival of other Park Police permitted Edwards to tamper with the body unhindered by the presence of witnesses. Because Edwards obtained Ferstl's Polaroids, which were the only crime scene photographs taken before Edwards' arrival, he was able to conceal the existence of the only documentation that could have exposed his having tampered with the crime scene. And, being a Sergeant who had taken charge of the scene, he would not have to answer to Ferstl, who was just an Officer, regarding what he had done with Ferstl's Polaroids.

With Ferstl absent from the crime scene, and after tampering with the body, Edwards photographed the body and replaced Ferstl's seven Polaroids with the series of Polaroids Edwards had taken with his own camera. Other Park Police investigators who subsequently arrived at the body site saw Edwards taking photographs.

In short, Edwards gave the Polaroids he took to Park Police Investigator John Rolla and absconded with the photographs that Ferstl had taken -- photographs that would have revealed that the body had been tampered with.

Officer Christine Hodakievic walked up to the body in the company of Park Police Lieutenant Patrick Gavin. While at the body site, Sergeant Edwards showed Hodakievic one of the Polaroids in his possession. When the FBI showed Hodakievic a photograph when interviewed her in May, 1994, she reported that blood appeared on the face and shirt that were not there when she saw the body.

In order to further clarify her observations at the death scene, a series of enlarged Polaroid photographs provided by the USPP were shown to her. Hodakievic, after viewing these Polaroid photographs, stated that in her opinion they were not identical to the Polaroid photograph that was initially shown to her by Sergeant Edwards. She reiterated the fact that the photograph

Photographs

Sergeant Edwards had showed to her was consistent with her observations, specifically that there was no blood on the face...²⁰¹

Hodakievic's reported observation of the absence of blood on the face likely refers to when she first viewed the body, before escorting Gavin to the body.²⁰² Gavin saw a trickle of blood running down the face.²⁰³

2. Rolla's two Polaroids of the back of the head vanished

Also publicly known is that Park Police Investigator John Rolla testified on deposition that at least two Polaroids that he remembered taking of the back of Mr. Foster's head had vanished. The OIC also sought to explain this anomaly in its two-paragraph *Photographs* section. The OIC posits, in a footnote, that Rolla was wrong. He was simply mistaken about having taken these photographs.

According to the OIC, on April 17, 1996, three years after the death, and two years after having given sworn testimony to the contrary, Rolla recanted.

²⁰¹ Exhibit 81, Report of FBI interview with Park Police Investigator Christine Hodakievic, May 2, 1994.

²⁰² Exhibit 102, Handwritten notes of FBI interview of Lieutenant Patrick Gavin, April 28, 1994: "Inv. Christine Hodakievic met him in Pk [parking] Lot, took up to scene, she'd been there."

²⁰³ Exhibit 98, Report of FBI interview of Park Police Lieutenant Patrick Gavin, April 28, 1994: Lt. 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.

Photographs

OIC, p. 72, fn. 214:

"...Investigator Rolla initially suggested in a Senate deposition that he had taken photographs of the back of Mr. Foster's body... [H]e intended to take such Polaroids but he believes Investigator Braun took the Polaroid camera back to the parking lot... 302, 4/17/96, at 4..."

The OIC does not quote Rolla's deposition. Rather, the OIC characterizes Rolla's testimony as having "suggested" that he had taken backside photographs. This is decidedly different from Rolla's sworn account given two years earlier.

Q. When you turned the body over with Dr. Haut, did you or anyone else take photographs of the area under the body?

A. You know, we rolled the body and I took Polaroids of the body rolled... I know I took Polaroids of that. I am not sure exactly how many I took, but I don't recall seeing those again. I mean, I had them in the office that night, I did reports, and I don't know what happened.

Q. Do you remember how many Polaroids you would have taken?

A. Unless there was something significant.

Q. I'm sorry.

A. Unless there was something significant. Again the shirt... back of his the shirt and back of his head...²⁰⁴

* * *

Q. Do you recall taking a specific picture of the pooled blood that had been under his head?

A. I don't recall that, I recall taking a picture of his head and around it, and I recall looking at that Polaroid...²⁰⁵

* * *

Q. Did you have more than one packet of Polaroid film with you that day?

²⁰⁴ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²⁰⁵ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

Photographs

- A. I think I had more than one packet... I may have reloaded because I know I took some on the backside. I don't have those photos. I put them in a jacket, God knows how many people looked through those, and I don't know what happened.
- Q. It's those pictures that you don't remember being in the jacket or the files afterwards?
- A. I don't remember seeing backside photos and I know I would have taken...
- * * *
- Q. Is it those pictures that you don't remember being in the jacket or in the file afterwards?
- A. [I] had at least one from a way [sic] from him, after rolling him, and probably at least two more, or at least one more. I would say there has to be two, because I would have taken -- since a lot of times investigators won't take too many Polaroids, they will leave it to me, and I wanted to have photographs... I may have taken a close-up of the back of the head...²⁰⁶
- * * *
- Q. When did you first notice they [Polaroids] weren't around?
- A. I don't recall until being interviewed by the FBI about it. I know I took pictures.²⁰⁷

Rolla testified that he viewed all of his Polaroids as they developed and had a clear memory of what pictures he had taken.

- Q. Polaroids come out right as you are taking the pictures, right?
- A. Yes, right.
- Q. Do you remember as you were taking the pictures looking at the pictures right then?
- A. Right.
- Q. What was the quality of the pictures?
- A. I think the Polaroids were fine.²⁰⁸

²⁰⁶ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²⁰⁷ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²⁰⁸ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

Photographs

* * *

- Q. Do you remember being shown photographs when you were interviewed by the FBI?
- A. Yes.
- Q. What kind of photographs were they?
- A. They were my Polaroid photographs.
- Q. Were they yours?
- A. Yes.
- Q. How could you tell they were yours?
- A. I remember taking them. I remember what pictures I took...²⁰⁹

The OIC tells us that Rolla gave his camera to Investigator Braun and that Braun took the camera to the parking lot to photograph the car. Implicit in the OIC's claim that Rolla "*believes [that]... Braun took the camera*" is that the two investigators shared the one camera. This is false.

OIC, p. 73, fn. 214:

*"...Investigator Rolla initially suggested in a Senate deposition that he had taken photographs of the back of Mr. Foster's body. 7/21/94, at 89-90. After reviewing the Polaroids, Investigator Rolla stated that he intended to take such Polaroids, but believes Investigator Braun took the camera back to the parking lot..."*²¹⁰

Braun testified that before she left the body site to go to the parking lot to photograph the car, she instructed

²⁰⁹ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994.

²¹⁰ OIC, p. 73, fn. 214: OIC, 1/11/95, at 85, 87. Investigator Rolla initially suggested in a Senate deposition that he had taken photographs of the back of Mr. Foster's body. 7/21/94, at 89-90. After reviewing the Polaroids, Investigator Rolla stated that he intended to take such Polaroids, but he believes Investigator Braun took the Polaroid camera back to the parking lot before Dr. Haut arrived and the body was turned. 302, 4/17/96, at 4. The records are consistent with Investigator Rolla's statement, as the time "1930" is indicated on the back the Polaroids taken by Investigator Braun at the parking lot scene, and Dr. Haut appears not to have arrived at the park until approximately 7:40 p.m.

Photographs

Rolla how to photograph the body, and left him to conduct the body site photography while she photographed the car. So each had a camera and Braun did not take Rolla's camera, contrary to the OIC's claim.

Q. Okay. What were you doing while they were taking the photographs?

A. I was basically directing Investigator Rolla what to do because he was new in the office. I wanted him to get the experience of handling a crime scene. So I was directing him what to do, and then I gave him some instructions. And to help save time, I went down to the car to start going through the car to look for identification and a suicide note.²¹¹

* * *

Q. Did you interview anyone else out at the scene that night?

A. At the scene? No. Just the couple when we initially got there, and then from there we went up to the body and I, you know, got Investigator Rolla started on the photos and what needed to be done on that particular scene...²¹²

* * *

Q. Was the car photographed before or after you went through it?

A. It was photographed, I would take [a] picture of an area and then go through that area, and then -- so it was photographed prior.²¹³

The OIC notes that Braun marked the Polaroids she took of the car as having been taken at 7:30, and the OIC states that "*Dr. Haut appears not to have arrived at the park until approximately 7:40 p.m.*" These facts, according to the OIC, corroborate Rolla's new account because "*Braun took the Polaroid camera back to the parking lot before Dr. Haut arrived and the body was turned.*"

²¹¹ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994.

²¹² Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994.

²¹³ Exhibit 101, Deposition of Park Police Investigator Cheryl Braun, July 23, 1994.

Photographs

OIC, p. 73, fn. 214:

...Rolla stated that he intended to take such Polaroids, but he believes Investigator Braun took the Polaroid camera back to the parking lot before Dr. Haut arrived and the body was turned." 302, 4/17/96, at 4. The records are consistent with Investigator Rolla's statement, as the time "1930" is indicated on the back the Polaroids taken by Investigator Braun at the parking lot scene, and Dr. Haut appears not to have arrived at the park until approximately 7:40 p.m.

The OIC's claim that "[t]he records are consistent" is false. The records do not corroborate the OIC's version of Rolla's revised account. In the *Report of Investigation by Medical Examiner*, Dr. Haut reported that he viewed the body at "7:15 p.m.,"²¹⁴ 25 minutes before the "approximately 7:40 p.m." time the OIC claims he pulled into the Fort Marcy lot. (Dr. Haut's *Report of Investigation by Medical Examiner* was discovered at the National Archives on July 19, 1997, four days after the OIC filed its Report.)

Park Police Identification Technician Peter Simonello and investigator Rolla photographed the body site in tandem, Simonello using his 35-millimeter camera and Rolla using his Polaroid camera. According to Simonello's testimony, Rolla took what Simonello referred to as "backup [Polaroid] photographs" of his 35-mm photographs.

- Q. Do you remember about how many photographs you took?
- A. I believe I took the whole roll, which would be 24 photographs.
- Q. Do you know if anyone else was taking photographs out there?
- A. John Rolla was taking Polaroids.
- Q. Did he take any photographs of the body?
- A. He took Polaroids of the body, yes. I would take a photograph with the 35 and he would take what we call a backup photograph with a Polaroid...²¹⁵

²¹⁴ Exhibit 103, Report of Investigation by Medical Examiner, July 20, 1993.

²¹⁵ Exhibit 104, Deposition of Park Police Evidence Technician Peter Simonello, July 14, 1994.

Photographs

3. OIC concealed that the roll of 35-mm film produced usable photographs

Park Police Identification Technician Peter Simonello shot an entire roll of 35-millimeter photographs at Fort Marcy Park. Later that night, back at the Park Police Anacostia Station, Simonello left the film in an envelope. The film was reportedly picked up to be processed at another location. Officially, we are simply told that the entire roll was "underexposed." The OIC fails to explain how or why this happened.

The OIC failed to interview those with access to the film and does not tell its readers whether the problem was the film, the camera, or error by the photographer or the developer. The Report's entire discussion of the roll of 35-millimeter film is as follows.

OIC, p. 72-73:

Park Police Identification Technician Simonello took 35-millimeter photographs of Mr. Foster's body and of the scene.^{fn211} Park Police investigators also took a number of Polaroids of Mr. Foster's body and of the scene. Polaroids taken at a crime or death scene develop immediately, and thus are useful in the event that problems occur in developing other film (as occurred here^{fn212}).

OIC, p. 73, fn. 212:

"The 35-millimeter photographs were underexposed; thus, the Polaroids were of greater investigative utility."

The Report relies heavily on photographic evidence while downplaying the importance of the 35-millimeter photographs. The OIC's vague and perfunctory reference that the "35-millimeter photographs were underexposed" hides that these photographs, even if in fact underexposed, were enhanced. When the FBI interviewed Peter Simonello, the photographer who shot the roll of 35-millimeter film, the interviewing agents showed him some of these 35-millimeter photographs, printed to a size of 8" x 10." The photograph "looked good," according to Simonello.

Photographs

Simonello was assigned to the Park Police Anacostia Operations Facility.²¹⁶ He testified during his July 14, 1994 deposition that, although he was not sure, he believed that Park Police Evidence Technician Larry Romans took the undeveloped film to another facility for processing.

Q. Ordinarily, what happens? You leave the scene. You have film with you. What's the sequence of events to get it developed?

A. We have a film envelope that we use and I place it in there, fill out the envelope and give it to... Larry Romans, and I believe he has a -- we have darkroom at the Brentwood facility... I believe he's the one that developed this roll.²¹⁷

Because there is no record of Romans ever having been interviewed, we do not know whether the film was in fact

²¹⁶ Exhibit 105, Report of FBI interview of Park Police Identification Technician Peter Simonello, May 5, 1994: "Mr. Peter J. Simonello, Identification Technician, United States Park Police (USPP), Anacostia Operations Facility, Washington, D.C. (telephone number 690-5192) was interviewed..."

²¹⁷ Exhibit 104, Deposition of Park Police Identification Technician Peter Simonello, July 14, 1994: Q. You said earlier you thought the camera might have been malfunctioning? A. After I got the results back, I figured the camera was malfunctioning. Q. Was the camera ever sent off site to be looked at or to see if there was anything wrong with it? A. I don't believe so, no. I don't know how long it was after I took the shots that they were developed. And of course, I didn't realize until they were developed that the camera malfunctioned that day. I may have malfunctioned. I don't know. Q. Ordinarily, what happens? You leave the scene. You have film with you. What's the sequence of events to get it developed? A. We have a film envelope that we use and I place it in there, fill out the envelope and give it to Technician Romans, Larry Romans, and I believe he has a -- we have darkroom at the Brentwood facility that he uses and he develops film there, and I believe he's the one that developed this roll. Q. And generally, how soon after you provided the film are the prints developed? A. If it's a rough job, he can do it immediately, the next day when he comes in, the next shift he's working. On average, if it's not a rush job, it would be a week, maybe more, depending on how backed up he is.

Photographs

delivered to, and processed by, the Brentwood Park Police facility.

Simonello testified that the Anacostia station had its own darkroom. And he testified that, because of the "importance of the case," he "wanted to keep" track of the evidence.

Q. Where would you lay the clothes out?

A. These clothing were laid out in the floor of the photo darkroom in the rear of the processing lab.

Q. So the photo darkroom, is that typically where the clothing would be put to dry?

A. That's where we typically put it.²¹⁸

* * *

Q. How would a choice be made between your evidence locker -- this is Anacostia --

A. Yes.

Q. - and Brentwood?

A. Again, that's up to the individual. In this case, I knew of the importance of the case, and I wanted to keep it where I knew exactly what was going on with it, so I kept it in our facility...

* * *

Q. Is that the usual time to leave clothes to dry?

A. It varies... However, they probably left them there, awaiting my return, because I was the technician handling the original.²¹⁹

Because the Park Police Anacostia station, to which Simonello was assigned, had a darkroom, the film did not need to leave that location to be processed. Its removal precluded Simonello from seeing the negatives or prints. The last time Simonello saw the roll of film was on the evening he shot it, when he placed it in an envelope.

Simonello testified that he was surprised to receive a note simply informing him that the negatives were underdeveloped, without "whatever prints were made," which,

²¹⁸ Exhibit 104, Deposition of Park Police Identification Technician Peter J. Simonello, July 14, 1994.

²¹⁹ Exhibit 104, Deposition of Park Police Identification Technician Peter Simonello, July 14, 1994.

Photographs

he said, would have been "usual [because he was] the technician in the case."

Q. How long did it take [to develop the film] in this case?

A. I believe they were probably done by the time I got back Sunday. I had a note that they were underdeveloped... I can't remember if he left the negatives on my desk or not, but he had left a note...

* * *

Q. But you think that prints were made from the negatives originally?

A. From our department, I don't think they were. I never saw them. It's usual that I, as the technician in the case, would receive copies of whatever prints were made and I didn't receive any.²²⁰

In 1994, Simonello assembled evidence to turn over to the Fiske probe's FBI agents, but he could not remember whether this evidence included the negatives of the roll of film he shot.²²¹

In its May 25, 1994 report, the FBI Lab uses the term, "limited detail" to describe the results of its enhancement efforts.

The 35mm color negatives (Q32) were examined to locate frames for photographic enhancement. The selected frames (5, 6, 7, 8, 9, 10, 17, 18) were printed using Kodak Ultra print paper to produce maximum image detail. Due to the negatives having been underexposed

²²⁰ Exhibit 104, Deposition of Park Police Identification Technician Peter Simonello, July 14, 1994.

²²¹ Exhibit 104, Deposition of Park Police Identification Technician Peter Simonello, July 14, 1994: Q. When you were putting together the package to go to the FBI, do you recall putting in a package of prints? A. We didn't make any -- you mean negatives? Q. No. Do you remember putting the -- sending the negatives to the FBI? A. I know they requested them. Again, there's so much material I handed over, I can't specifically remember handing over the negatives.

Photographs

during the photographic process, limited detail could be extracted from each of the selected frames.²²²

Absent from this FBI Lab report is what detail may have been extracted from the other sixteen frames (1-4, 11-16 & 19-24). There is no reference to these frames anywhere else in the public record.

Simonello testified on deposition that the FBI Lab enhanced the 35-millimeter photographs so they did not appear underexposed. According to Simonello, these photographs "looked good."

- Q. Have you subsequently become aware of any information [from the FBI] that would contradict anything in your report?
- A. The only thing I read in there that I was wondering about is they said my 35 millimeter roll of film was overexposed [sic] and they weren't able to get any prints from it. But I recall that I was in the office there when they took a statement from me that day. I guess that was that date in May, and they showed me some 8-by-10 color photographs, and they indicated they were able to, in fact, enhance the photographs which I took, and I saw several of those 8-by-10s and I commented on what a good job they did because they looked good to me. They didn't look underexposed. They were able to enhance them and in the report they indicate they were not able to get anything from them.²²³

The second time the FBI interviewed Patrick Knowlton, May 11, 1994, FBI Agent Larry Monroe showed Patrick one of the 35-millimeter photographs that Simonello had taken. The photograph was of two cars in the parking lot of Fort Marcy Park. While trying to convince Patrick that the photographed car was the one Patrick had seen at the park, Monroe stated that the photograph's having been underexposed, along with the shade from the trees hitting it, made it appear darker than it really was. Monroe's

²²² Exhibit 95, FBI Laboratory Report, May 9, 1994.

²²³ Exhibit 104, Deposition of Park Police Identification Technician Peter Simonello, July 14, 1994.

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.