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Direct Cross Redirect Recross

WITNESSES FOR
THE PLAINTIFF:

James Lynam	3	46		
Joseph Hornyak	113	138		
Robert Hernest	153	159	173	173
Ted Ehrenburg	176	186		

<u>EXHIBITS</u>			<u>Ident.</u>	<u>Evid.</u>
SM14 & 15 - consent forms				68
SM17 & 18 - polygraph forms				122

1 THE COURT: Please have a seat. You're still
2 under oath. You may begin.

3 DIRECT EXAMINATION OF MR. LYNAM BY MR. MELLO:

4 Q Good morning, sir.

5 A Morning.

6 Q I think for the benefit of all and as much as
7 we broke your testimony yesterday afternoon at
8 approximately four p.m., just about that point where you
9 were going to begin to relate a conversation that you and
10 Detective Alva of the prosecutors office had with Mr.
11 Scharf, what I'd like to do is, if we can, re-focus that
12 particular moment in time; all right?

13 A Yes, sir.

14 Q Now, let's -- let's re-focus and clearly set
15 first, at approximately what time did you meet with Mr.
16 Scharf? On the 22nd of September 1992.

17 A For the interview?

18 Q Yes.

19 A I started at 9:56 a.m.

20 Q And did you note that precise time in your
21 notes?

22 A Yes.

23 Q And with respect to your notes which you
24 previously identified were those notes being taken
25 contemporaneously with the interview of Mr. Scharf?

1 A Yes, they were.

2 Q Now -- and if you need your notes to refresh
3 your recollection of any particular detail or -- the
4 report that's been filed regarding this interview, please
5 feel free to do so. But, please tell the Court and
6 counsel that you intend to refer to either the report or
7 any other document; all right?

8 A Yes, sir.

9 Q All right. So, that interview begins at about
10 0956; correct?

11 A That's correct.

12 Q And so much is noted in your report -- I should
13 say your notes; correct?

14 A Yes.

15 Q And present at that time would be yourself,
16 Investigator Terrence Alva of the prosecutors office and
17 Mr. Scharf; correct?

18 A That's correct.

19 Q Now, do you know how Mr. Scharf or by what
20 means Mr. Scharf arrived for this interview?

21 A He arrived in his vehicle.

22 Q And I believe you testified earlier that that
23 vehicle was retrieved on the 21st day of September at
24 about 10:18 a.m. 1992?

25 A That's correct.

1 Q And I believe you testified also that he had
2 been retrieved by a relative in the early hours of the
3 21st of September 1992 and transported back to Morris
4 County by that relative?

5 A That's correct.

6 Q And I believe you identified her as Dolly?

7 A Yes.

8 Q Now, let's talk about first where -- what
9 location at the prosecutors office did the interview that
10 you had with Mr. Scharf on the 22nd of September 1992
11 take place?

12 A At 20 Linden Street in Hackensack.

13 Q Okay. And it would be fair to say that at that
14 time, that was to use the phrase, a satellite office of
15 the Bergen County Prosecutors Office?

16 A That's correct.

17 Q And the main office at that time would be here
18 in the Bergen County Court House?

19 A Yes.

20 Q Now, if you would can you give Judge Roma an
21 idea of the environment that you would conduct this
22 interview in? That is to say, can you tell us something
23 about the room?

24 A It's a regular type room. Table, chairs and that's
25 about it. A door.

1 Q Okay. Would it be fair to say that it was an
2 ordinary room in all respects?

3 A Yes.

4 Q Would it be fair to say that in no -- way was
5 Mr. Scharf restrained?

6 A Yes.

7 Q And of course he was not under arrest?

8 A No.

9 Q And not in custody at that time?

10 A No.

11 Q Now, with respect to the interview --

12 A Excuse me.

13 Q Sure. Do you need some water or something?

14 A I might. I have a slight cold. Not now though, I'm
15 good. Thanks.

16 Q So, up until this point and in a moment I'm
17 going to ask you to reflect with me on the information
18 that you had before this interview and -- and it's --
19 but, I'd also like to start by saying or, asking is it
20 true is it not that at this time Mr. Scharf had been at
21 PIP headquarters on the 20th of September and left and
22 left in the company of a relative on the 21st?

23 A That's correct.

24 Q He then returned on his own to Police
25 headquarters in -- Palisades Interstate Park PD on the

1 21st to retrieve his car?

2 A Yes.

3 Q Took his car and went home?

4 A Yes.

5 Q That event was after one, he volunteered to
6 take a polygraph test with Karnick; correct?

7 A Correct.

8 Q And you also revisited that subject with him
9 and asked him if he continued to desire to take such a
10 test?

11 A Yes.

12 Q And that was on the 21st?

13 A Yes.

14 Q And he left again?

15 A Yes, he did.

16 Q You scheduled the appointment for ten a.m. on
17 the 22nd?

18 A Yes.

19 Q He, on his own came to that appointment?

20 A That's correct.

21 Q And he arrived, I presume as you've indicated
22 by the time in a timely manner?

23 A Yes.

24 Q Now, at this time -- it is fair to say is it
25 not that the following is true as it pertains to your

1 information base; you were aware of the fact that the
2 last person to see Mrs. Scharf alive was Mr. Scharf and
3 that was so much contained in his statement to Police;
4 correct?

5 A That's correct.

6 Q You also know that in his statement to the
7 Police, Mr. Scharf essentially and I think it's fair to
8 say, essentially said that this tragic event was an
9 accident?

10 A Yes.

11 MR. BILINKAS: Judge, again I don't want to
12 keep objecting to leading questions. -- with regards to
13 setting a stage -- interview --

14 MR. MELLO: That's -- that's all I'm doing,
15 Judge. And also, I know Mr. Bilinkas wants to get into
16 the information base that he had so, I'm trying to focus
17 and summarize it so that we can move expeditiously. And
18 I'm trying to be fair by --

19 THE COURT: Well --

20 MR. MELLO: -- all the information.

21 THE COURT: There's no jury. And -- and to
22 some extent this helps us to streamline this motion but,
23 try to keep away from the leading questions, all right?

24 MR. MELLO: I'm just going to try to focus that
25 information base now so that -- I know Mr. Bilinkas will

1 examine on it and I want to be clear.

2 THE COURT: Okay.

3 MR. BILINKAS: Just -- and again, Judge just
4 one other thing and again, I want to try to expedite this
5 also, any questions with regard -- the witness says he's
6 in custody or so forth. I mean to me that's --

7 MR. MELLO: I agree with that.

8 MR. BILINKAS: I'm not -- I'm not objecting.

9 I want him --

10 MR. MELLO: I agree with that.

11 MR. BILINKAS: I just like that maybe -- I have
12 no problem with --

13 MR. MELLO: I agree with that. Absolutely.

14 That is a legal --. But, let me refine that question to
15 be clear.

16 Q In any way did you restrain Mr. Scharf's
17 liberty?

18 A No.

19 Q Going back to the information base and let's
20 get through this quickly. He has indicated it is an
21 accident and you have become aware that there is some
22 history of allegations of spousal abuse; correct?

23 A That's correct.

24 Q And that a divorce complaint had been filed by
25 his wife?

1 A Yes.

2 Q So, is it fair to say that as you go to this
3 interview those kinds of informative facts are becoming
4 part of the swirl in your mind as you're going to
5 interview this individual?

6 A Yes.

7 Q And it would be fair to say would it not that
8 those facts start to create suspicions?

9 A Yes.

10 Q Okay. But, in no -- do you restrain his
11 liberty or keep him there?

12 A That's correct.

13 Q In fact, he comes on his own?

14 A Yes.

15 Q Okay. Now, let's -- let's now go to -- let's
16 now go to the interview; all right? And what I'd like to
17 do is proceed through the content of the interview
18 between yourself, Investigator Alva and Mr. Scharf.
19 You've described the room and the time and I'd like to
20 ask you with respect to content, did you begin the
21 interview by ascertaining some background information?

22 A Yes.

23 Q And is that protocol if you will, a general way
24 of conducting interviews? To get some idea of the
25 individuals background and so forth?

1 A Yes.

2 Q Okay. Now, if you would, would you tell the
3 Court what background information you received from Mr.
4 Scharf?

5 A Mr. Scharf told us that he had been married for 14
6 years, that he was employed GEC Marconi in Totowa.

7 Q All right. Now --

8 A And that --

9 Q I'm sorry. Let me be clear about this. Before
10 the interview begins, you did not advise Mr. Scharf of
11 what are commonly referred to as Miranda warnings?

12 A No. We did not.

13 Q Now, let's focus first on his background
14 information as it pertains to employment. You say he
15 told you he had been employed for 15 years by a firm
16 known as Marconi?

17 A That's correct.

18 Q Did he tell you what kind of occupation he was
19 involved in, in that employ?

20 A Yes. He was in the capacity of an engineer.

21 Q All right. Did he tell you that he had any
22 other employment in a non-civilian capacity?

23 A Yes. He -- Mr. Scharf told us that he was a major
24 in the Army reserve.

25 Q Okay. Did he tell you with respect to that

1 employ as a major in the Army reserve, where he was
2 assigned? What post?

3 A He was the commanding officer of the security
4 mobilization unit.

5 Q And did he tell you the location of that
6 assignment; that post to --

7 A Yes, sir --

8 Q Which he was assigned?

9 A I believe it was Fort Dix.

10 Q Fort Dix of course is New Jersey?

11 A Yes.

12 Q All right. And was that essentially a training
13 unit?

14 A Yes.

15 Q As he told you?

16 A That's correct.

17 Q Now, he also told you that he was married for
18 what period of time?

19 A 14 years. 1978 to 1992.

20 Q And his wife of course was, Jody Ann Scharf?

21 A Yes.

22 Q And did he tell you whether or not he and Mrs.
23 Scharf had any children?

24 A Yes. They had a 10 year old son by the name of
25 Jonathan.

1 Q Now, we all know that Mrs. Scharf died on
2 September 20, 1992; correct?

3 A Yes.

4 Q Did you attempt to ascertain his activities in
5 close proximity to the 20th of September 1992?

6 A Yes.

7 Q And the 20th of September 1992 was a Sunday,
8 was it not?

9 A That's correct.

10 Q Did you ask him to reflect upon his activities
11 on the day prior, September 19th, 1992 a Saturday?

12 A Yes, we did.

13 Q Can you tell us what he told you about his
14 activities on Saturday September 19th, 1992?

15 A Well, Mr. Scharf told us that they would routinely
16 plan whatever activities they were going to do on
17 Saturday night and on this particular night they were
18 going to go to a comedy club in Fort Lee called Bananas.
19 Then, Mr. Scharf told us, I'm not sure either before or
20 after but, then they would go to the Plaza Diner in Fort
21 Lee and then to the look out.

22 Q Now, you indicated that he told you that they
23 would routinely plan what they would do on a Saturday
24 night; is that accurate?

25 A Yes.

1 Q Did he tell you when that kind of planning
2 would take place or in what means or manner?

3 A During the week, the days prior to that Saturday.

4 Q And the plan for this Saturday evening was to
5 go to a comedy club in Fort Lee and either before or
6 after have dinner at the Plaza Diner in Fort Lee?

7 A Yes.

8 Q And he also referred you say, to a look out?

9 A Yes.

10 Q Okay. Did he identify the look out by name?
11 By chance?

12 A I -- I don't recall. I mean, I'm -- I'm aware of
13 the name of the look out, where they went.

14 Q You're -- you're aware that they were at the
15 Rockefeller Look Out?

16 A Yes.

17 Q But, you don't specifically recall that he said
18 specifically Rockefeller Look Out?

19 A I don't recall specifically.

20 Q Did you in your notes record anything regarding
21 the look out and a plan to go there on Saturday?

22 A Yes, I did.

23 Q Okay. Can you please refer us to it?

24 A Okay. In my notes I had what I just previously
25 stated. I did not name the look out by name on Saturday,

1 just the look out.

2 Q Okay. And -- and to be clear so we all
3 understand, can you tell us how you noted look out? Did
4 you write the look out or did you use another manner?

5 A I wrote L/O -- well, that would be the look out.

6 Q Okay. Now, I -- I believe you testified that
7 the comedy club he referred to was in Fort Lee and was
8 Bananas; is that accurate?

9 A That's correct.

10 Q Now, did he indicate whether or not any
11 reservations were made at Bananas?

12 A No reservations were made.

13 Q Now, that was the plan for Saturday evening;
14 correct?

15 A Correct.

16 Q Can you tell us if he talked to you about what
17 he did on Saturday?

18 A Yes, he did.

19 Q Okay. Tell us what he told you about what he
20 did during the day on Saturday, September 19th, 1992?

21 A He -- he reported to his job, I guess around 8:30,
22 got home at four. His wife -- found his wife Jody in bed
23 with a migraine headache.

24 Q Okay. How did that affect the plan, if at all?

25 A Well, they didn't go. They didn't go to the comedy

1 club or anywhere else --

2 Q All right.

3 A Until later -- you know that evening.

4 Q All right. Can you tell us what if anything he
5 told you about later that evening, Saturday September
6 19th, 1992?

7 A Well, he stated -- he told us that -- Mr. Scharf
8 told us that his wife woke up at approximately 11:30 and
9 the two of them along with their 10 year old son went to
10 a sports bar in Hacketstown.

11 Q And I presume the purpose for that was to get
12 something to eat?

13 A Yes.

14 Q Okay. Now, did he tell you anything about his
15 wife's employment and if so, did you note in your notes?

16 A Yes.

17 Q Can you tell us what he told you about that
18 subject?

19 A I would have to refer to my handwritten notes for
20 that.

21 MR. MELLO: Sir, may the witness do so for
22 purposes --

23 THE COURT: You may do so.

24 MR. MELLO: Of answering the question?

25 A Yes. He told us that his wife has a temporary

1 assignment to the human cooling towers in Bridgewater.

2 Q Did you note what kind of work she did?

3 A Yes, I did.

4 Q What was that?

5 A Computer work.

6 Q And did you note the length of that employment?

7 According to Mr. Scharf.

8 A According to Mr. Scharf it was a temporary
9 assignment since -- beginning in the summer of 1992.

10 Q Now, following your discussion for moving on to
11 a discussion of the next day, did you during this course
12 of this interview have occasion to speak with Mr. Scharf
13 about his activities on Sunday, September 20, 1992?

14 A Yes.

15 Q Now, what I'd like you to first focus on is the
16 early part of the day. So, if he told you anything about
17 the early part of the day, tell us what he told you.

18 A He did. Mr. Scharf said he woke up at ten a.m. and
19 he did some panting in the yard and general work around
20 the house until two.

21 Q Did he tell you of any plans that he may have
22 had for Sunday, September 20, 1992 during the evening?

23 A Yes. His plans for Sunday were to go to a comedy
24 club in New York City known as Caroline's and then the
25 Plaza Diner, either before or after. I don't recall.

1 Q Did he tell you with respect to going to the
2 comedy club, Caroline's in New York City the show that he
3 expected to attend?

4 A Yes. He was expecting to go to the 8:30 show.

5 Q And he mentioned again the Plaza Diner?

6 A Yes.

7 Q But, that was either before or after, he didn't
8 say?

9 A I'm not sure --

10 Q Okay. Fair enough.

11 A Either before or after. I'm not sure.

12 Q Did he indicate whether or not he had a
13 reservation at Caroline's?

14 A He did not have a reservation.

15 Q Now -- by the way, did he mention any other
16 comedy club?

17 A Yes, he did. Excuse me.

18 Q What was that?

19 A He had made a call to Rascal's Comedy Club in West
20 Orange and he wanted to go there. He told us that he
21 didn't like the performer, the name of Dennis Wolfsberg
22 (phonetic). So, he didn't make a reservation.

23 Q Now, this is a Sunday night; correct?

24 A These were the plans for Sunday.

25 Q And that of course was during the school year?

1 A Yes.

2 Q And did he tell you if he made any arrangements
3 for the 10 year old son, Jonathan?

4 A Yes. They apparently made arrangements to bring
5 Jonathan to a mutual friends, their name was the
6 Jackson's; Chuck and Nancy, I believe, while they went
7 out.

8 Q Okay. And did he give an approximate time when
9 Jonathan would have been dropped off at the Jackson's?

10 A Yea. Approximately four -- four p.m., I believe.

11 Q Okay. Now, with respect to the plans for
12 Sunday evening, did he talk to you about him making any
13 preparations or doing anything with respect to Sunday
14 evening?

15 A Yes.

16 Q Okay. What did he talk about?

17 A He -- he told us that he went and purchased some
18 wine cooler, two wine coolers by the name of Bartles and
19 Jaymes and a bottle of Chardonnay, he packed them in a
20 cooler, along with a blanket, corkscrew, towels, cheese
21 --.

22 Q Okay. Now, he tell you he packed that cooler?

23 A Yes.

24 Q And he packed it with wine and cheese?

25 A With wine, cheese --

1 Q Okay. And some other items?

2 A Some other items. Yea.

3 Q Okay. That you refer to. There was a bottle
4 of Chardonnay. Yes?

5 A Yes. A bottle of Chardonnay.

6 Q But, he also told you that he planned to go to
7 the Plaza Diner sometime that evening?

8 A Yes.

9 Q Did he tell you approximately -- approximately
10 what time he left the house?

11 A Around five p.m.

12 Q Did you note that in your notes?

13 A Yes.

14 Q And as you're -- you're taking these notes
15 contemporaneous and -- during the course of this
16 interview?

17 A Yes.

18 Q And after leaving the house at around five or
19 thereabouts, did he tell you that he arrived at a
20 particular location?

21 A Yes. He told me -- he told us that he arrived at
22 the look out approximately seven p.m. and that the
23 conditions were dusk.

24 Q And did you note in your notes that he told you
25 that they arrived at the look out at about seven p.m. at

1 dusk?

2 A Yes.

3 Q By the way, with respect to the look out, did
4 he talk to you about whether or not he had ever been
5 there before?

6 A Yes, he did.

7 Q Did he tell you he'd been there before?

8 A Yes.

9 Q Did he tell you anything about he and Mrs.
10 Scharf being there before?

11 A Yes. He said they were there many times and he
12 referred to that place -- location as their spot.

13 Q All right. By the way, he told you that he
14 packed a couple of wine cooler and a bottle of
15 Chardonnay, right?

16 A Yes.

17 Q Did he talk to you about Mrs. Scharf drinking?

18 A Yes, he did. He --

19 Q What did he tell you about that?

20 A He told us that Mrs. Scharf was a heavy drinker.
21 That particular day she had a bottle of wine at 11:30
22 a.m. and -- she consumed some alcohol on the way to the
23 look out; more wine.

24 Q And with respect to that drinking and that
25 drinking problem that he told you, he tells you that they

1 go to the cliffs at Rockefeller Look Out, right?

2 A Yes.

3 Q And they arrive there at about seven and it's

4 dusk; correct?

5 A Yes.

6 Q Okay. By the way, did he tell you the last

7 time he'd been at the look out?

8 A Yes. Sometime in May of 1992.

9 Q Now, I think you -- I think you noted in your

10 notes that he told you she was a heavy drinker; is that

11 right?

12 A Yes.

13 Q And does it note that she had drank a glass of

14 wine at about 11:30 a.m.?

15 A Yes, it does.

16 Q And does your notes reflect that testimony that

17 she had wine on the way to the cliffs?

18 A That's correct.

19 Q Okay. Now, did he tell you whether he had any

20 alcohol that day? Sunday.

21 A Yes, he did.

22 Q What did he tell you?

23 A He told us -- Mr. Scharf told us that at the look

24 out, Jody drank some more wine and he had a little bit of

25 hers. Some of hers.

1 Q That all he had to drink? According to him?

2 A According to him. That's what he told us.

3 Q Okay. Now, did he tell you what they did
4 first? When they first arrived at the look out at dusk
5 at about seven p.m.; what were they doing? Did he tell
6 you that?

7 A Yes, he did. He -- they --

8 Q Okay. What'd he say?

9 A They parked and again, Jody had some wine, he had a
10 little bit of hers and they stayed there in the car for
11 about 15 minutes.

12 Q Okay. And did he tell you whether or not at
13 any point they left the car?

14 A Yes.

15 Q Can you tell us what he told you about that?

16 A He told us that he asked her if she wanted to go for
17 a walk. They first went to an observation point, which
18 was directly ahead of where there car was located, where
19 they saw another couple and that's it. We don't -- we
20 don't know what happened or became of that couple. And
21 then, they entered the trail at the north end of the look
22 out and walked towards the location where they went to
23 the fence -- there was a cable fence there and from -- at
24 that point, he went through the fence first, then he
25 helped his wife through and then they went out and sat on

1 a flat rock --

2 Q All right.

3 A A huge flat rock by the -- which constitutes the
4 cliffs edge.

5 Q Now, let me ask you this. Did in the course of
6 this interview you discuss with him the subject of
7 divorce that you had been made aware of?

8 A Yes.

9 Q And can you tell us what he told you about
10 that?

11 A He -- Mr. Scharf told us that he had been served
12 with papers. Two weeks -- approximately, two weeks
13 before by his wife alleging -- where she alleged that he
14 was unfaithful and abusive.

15 Q And what did he say about that? Anything
16 further?

17 A He said that he didn't get -- he never got
18 physically abusive with her -- with a one time exception
19 when he pulled her by the arm into their garage to point
20 out that she had discarded some magazines that he wanted
21 to save. And the other incident's according to him were
22 just verbal. Complained about the messy house and things
23 like that.

24 Q Did he tell you whether or not he was indeed
25 unfaithful?

1 A Yes, he did.

2 Q He said that he was?

3 A Yes. He said they had an open marriage.

4 Q Okay. And did he tell you what he meant by
5 that?

6 A Yes.

7 Q What did he tell you?

8 A Mr. Scharf told us he would put ads in the
9 classified for dates and his wife would see other men as
10 well. The only exception would be that they wouldn't
11 bring anybody home.

12 Q Okay. And in light of what you've told us, did
13 he tell you why they went to the cliffs?

14 A Yes.

15 Q What did he say is the reason he took her
16 there?

17 A He said that the purpose for that trip to -- to the
18 Rockefeller Look Out was that he wanted to reconcile. He
19 was going to try to reconcile with his wife.

20 Q All right. Let's go back to that point in time
21 where you say that they exited the car and then began to
22 walk down a path where they ultimately go through the
23 fence and get to the large flat rock; correct?

24 A That's correct.

25 Q I want to focus you on that -- that point where

1 they're walking through the woods to get to the ultimate
2 point. Did he tell you whether or not anything amorous
3 was happening as they walked to the cliff edge?

4 A Yes. He said they were kissing -- while they were
5 walking.

6 Q Okay.

7 A Stopped to kiss.

8 Q Now, let's go to that point where Mr. Scharf
9 and Mrs. Scharf have now gone through the fence and
10 arrived at the cliff edge, the large flat rock; all
11 right?

12 A Okay.

13 Q Can you tell us what he told you happened next?

14 A He tells us -- Mr. Scharf tells us that they got to
15 the point where they -- where he sat down and then his
16 wife sat between his legs on -- in the lap area and she
17 was facing south and they started -- they were kissing
18 and petting I believe was his word. Then he said that he
19 was sitting, he was uncomfortable, he was sitting on his
20 wallet so, he stood up and was fixing his pants. And
21 then tells his -- he tells us he tells his wife that he's
22 going to go back to the car and get some wine and a
23 blanket. And he tells us that she -- she said no, don't
24 go and she started to get up and went to her knees and
25 just fell forward over the cliff.

1 Q Did he tell you approximately how far away he
2 was from her when that happened?

3 A He was approximately -- he tells us he was
4 approximately two to three feet away from her.

5 Q Did he tell you whether it was dark or not by
6 this time?

7 A Yes. He told us it was dark.

8 Q Did you, in addition to the report that's been
9 filed, in your notes note that he told you that
10 conditions were dark at the time Mrs. Scharf fell to her
11 death?

12 A Yes.

13 Q He told you that he got up to, in part he was
14 uncomfortable and he had to fasten his pants?

15 A Well, his -- fix his pants.

16 Q Okay.

17 A He was -- he told us he was sitting on his wallet,
18 which made him uncomfortable so he then got up to fix his
19 pants.

20 Q And did he tell you whether or not, do you
21 recall, that his pants were zipped or not?

22 A They were unzipped.

23 Q Now, earlier in your testimony you refer to
24 going to the location that's described by Mr. Scharf;
25 correct? You described that location earlier? -- went

1 to that location?

2 A The look out?

3 Q Yes.

4 A -- yes. The Rockefeller Look Out.

5 Q That was a badly worded question. Sorry. You
6 told us earlier in your testimony that on the 21st you
7 went to that location that Mr. Scharf described and you
8 took some photographs?

9 A Yes.

10 Q You photographed the car, which was -- the
11 Scharf car and you photographed some items on a rock
12 ledge below the point at which Mrs. Scharf fell; correct?

13 A That's correct.

14 Q And you were made aware that a pocketbook, a
15 woman's pocket book had been retrieved from that ledge
16 the evening before you came on duty?

17 A Yes.

18 Q Did you discuss anything about a pocketbook
19 with Mr. Scharf?

20 A The only part was he told us that -- he didn't know
21 if his wife was holding her pocketbook when she went over
22 or not.

23 Q And did you also note that in your notes?

24 A Yes.

25 Q Now, I want to direct your attention to that

1 point in time where Mrs. Scharf has now fallen from the
2 edge of the cliffs; all right?

3 A Okay.

4 Q Did he tell you what he did next? Or what
5 happened next?

6 A Yes. He -- she went over, he states -- he told us
7 that she did cry out and then he went to the edge and
8 called out to her but, he didn't get an answer. So, the
9 then ran to his car and got a flashlight, went back to
10 the edge, called out again and then he didn't -- did not
11 get a response and he couldn't see her.

12 Q Did he tell you -- did he tell you what if
13 anything he did after he returned to the cliff edge with
14 a flashlight and called out for Mrs. Scharf and received
15 no response?

16 A Yes. He told us that he then went back to the
17 parking lot, flagged down a motorist and reported this.

18 Q Okay. And what did he tell the motorist?

19 A That his -- that his wife had fallen -- over the
20 cliff, and to tell the Police, basically.

21 Q Now, we talked a bit about Mr. Scharf's
22 comments regarding his marriage. I'd like to ask you --
23 you've indicated that he admitted to you that he had been
24 unfaithful during the course of his marriage; correct?

25 A Yes. That was the allegation made by his wife.

1 Q And he admitted to that?

2 A Yes.

3 Q And I think he also told you -- described his
4 marriage as a "open marriage"?

5 A Yes.

6 Q Now, with respect to him seeing other women,
7 did he tell you approximately how many women he had had
8 relationships with during the course of his marriage?

9 A Yes. He -- the figures he told us was 50 to 60.

10 Q All right. Did he tell you about any
11 significant, recent -- I should -- let me say this, did
12 he tell you about any significant, outside the marriage
13 relationships that were proximate to, close to September
14 of 1992?

15 A Yes, he did. He had -- he said he was currently
16 involved with two women.

17 Q What were their names?

18 A I'll give you the last names. Schofield (phonetic)
19 and Scanlon (phonetic).

20 Q And what did he tell you about those women, if
21 anything?

22 A He said he had made contact with both the women to
23 break off the relationships as he was trying to reconcile
24 with his wife.

25 Q All right. And did he tell you the approximate

1 times that he last saw those women?

2 A Yes, he did. I would have to refer to -- I believe
3 it was a couple weeks before. But, I would have to refer
4 --

5 Q Do you want to refer to your documents to check
6 that detail?

7 A Yes, it's reflected in Investigator Alva's report.

8 Q Okay. When did he last see Schofield?

9 A September 92.

10 Q All right. But, does he refer to last seeing
11 Schofield on a particular day?

12 A September 8th. Let me just double check that.
13 September 18th, 1992.

14 Q Is that Scanlon or Schofield, September 18th?

15 A That would be -- that would be Kathy Scanlon.

16 Q Okay. And how about Schofield?

17 A Labor Day; contacted Schofield on Labor Day.

18 Q Okay. Now, by the way we've referred to this
19 before but, for purposes of completeness you referred to
20 a relative of Mr. Scharf being a Dolly?

21 A Yes.

22 Q And that would be Dolly Angelis (phonetic)?

23 A Yes.

24 Q And would that be an aunt of his?

25 A Yes.

1 Q Does he tell you that she's the person that
2 came to pick him up at Palisade Interstate Parkway Police
3 in the early morning of September 21st?

4 A Yes, he does.

5 Q And does he tell you where he spent that
6 evening after Aunt Dolly picked him up?

7 A Yes. Mr. Scharf told us he spent the evening in
8 Dumont, at his aunt's house on Qauckenbush Ave.

9 Q But, his son was at the Jackson's?

10 A Yes.

11 Q He stayed in Dumont?

12 A Yes.

13 Q Not at the Jackson's? He did not go to the
14 Jackson's that night?

15 A That's correct.

16 Q Did he tell you if he eventually does go to the
17 Jackson's to retrieve his son?

18 A Yes.

19 Q And when does he tell you he did that?

20 A He tells he -- after he picked up his car, he then
21 went to the Jackson's and picked up his son.

22 Q Now, again part of your information base as you
23 went to interview with Mr. Scharf involved the collection
24 of certain items from his car by Detective Karnick;
25 correct?

1 A That's correct.

2 Q And among them was a claw hammer that was found
3 in a bag inside another bag with the wine and cheese;
4 correct?

5 A That's correct.

6 Q Did you have occasion to discuss with Mr.
7 Scharf why he had a claw hammer in his car in that
8 location?

9 A Yes, we did.

10 Q And what if anything did he tell you?

11 A He told us that he had the hammer, he used it to fix
12 a draw in his kitchen and that he put the hammer in the
13 bag with the other items, with the intent of putting it
14 in the garage on the way out to the car and that he
15 simply forgot to do so.

16 Q And he said he simply it in the bag in which it
17 was found?

18 A Yes.

19 Q Did he mention to you -- you know that one of
20 the items found by Detective Karnick in the car was a
21 chain?

22 A Yes.

23 Q Gold -- gold cross chain?

24 A Yes. He said that was -- he intended to present
25 that to Jody as a gift during that time at the look out.

1 Q Okay. Now, that interview began -- you noted
2 in your notes 956 a.m.; correct?

3 A Yes.

4 Q Okay. After you and investigator Alva had this
5 conversation with Mr. Scharf, did you ask him for consent
6 to search any particular location for items?

7 A Yes. We asked for consent to search his car.

8 Q Now, when you asked for consent to search the
9 car were you aware that Detective Karnick had already
10 asked Mr. Scharf to consent to search the vehicle?

11 A Yes.

12 Q And are you aware that Mr. Scharf was
13 cooperative and in fact consented to same?

14 A Yes.

15 Q And you of course are aware that Detective
16 Karnick conducted a examination -- search of the car and
17 retrieved the items that you previously testified to?

18 A Yes.

19 Q You're also aware that Mr. Scharf then took
20 that car on the 21st?

21 A Yes.

22 Q I'm going to show you what's been marked SM15.
23 I'm going to ask you first if you recognize that
24 document?

25 A Yes, I do.

1 Q What do you recognize that document to be?

2 A It's a generic consent to search form which is used
3 by -- commonly used by law enforcement.

4 Q Okay. Did you explain that form to Mr. Scharf
5 as you presented it to him?

6 A Yes.

7 Q All right. Would you please read that form
8 into the record?

9 A All right. The form starts, I and his printed name,
10 Stephen Scharf, I hereby authorize Senior Investigator
11 Terrence Alva, who has identified himself as a law
12 enforcement officer and any other persons he may
13 designate to assist him to conduct a complete search of
14 the following vehicle, which is a 1991 Ford Taurus, color
15 white, New Jersey reg GMJ10 -- it's either D or an O,
16 including all compartments, containers, papers and
17 effects therein. I further authorize the same Officer's
18 to remove any and all papers, property and effects, which
19 they may consider pertinent to their criminal
20 investigation. I give this consent to search freely and
21 voluntarily without fear, threat, coercion or promises of
22 any kind and with full knowledge of my constitutional
23 right to refuse to give my consent to search, which I
24 hereby waive. I am also fully aware that if I wish to
25 exercise this right it would be respected. It goes on to

1 -- to read, this consent to search is given by me this
2 22nd day of September 1992 at 11:15 a.m. And it is
3 signed by Mr. Scharf and it lists his address, his phone
4 number, witnessed by myself and Investigator Alva, my
5 department, his department BCPO and the telephone number
6 of the PIP Police Department.

7 Q Okay. And that signature and the address
8 information of Mr. Scharf was put in there by Mr. Scharf?

9 A Yes.

10 Q And that was done in your presence?

11 A Yes, it was.

12 Q And was it witnessed in your presence?

13 A Yes.

14 Q Now, apart from the consent to search the
15 vehicle -- and -- and by the way, can you tell us if he
16 was completely cooperative in that regard? Had no
17 problems and so forth?

18 A Yes, he was.

19 Q Did you also ask him for consent to conduct a
20 search at his residence?

21 A Yes.

22 Q I'm going to show you what's been marked SM14.
23 Have you reviewed that document?

24 A Yes.

25 Q Can you tell us what that document is?

1 A Yes. It's an identical generic consent to search
2 form, with the exception of it -- it lists premise
3 instead of vehicle.

4 Q Okay. Would you read that into the record,
5 please?

6 A Yes. It starts, I and Stephen Scharf printed,
7 hereby authorize Senior Investigator Terrence Alva, who
8 has identified himself as a law enforcement officer and
9 any other persons he may designate to assist him to
10 conduct a complete search of the property and premises
11 located at 27 Knob Hill Road, Hacketstown, New Jersey
12 including all buildings, structures, vehicles, papers and
13 effects. I further authorize the same Officer's to
14 remove any and all papers, property and effects which
15 they may consider pertinent to their criminal
16 investigation. And it further reads, I give this consent
17 to search freely and voluntarily without free, threat,
18 coercion or promises of any kind and with full knowledge
19 of my constitutional right to refuse to give my consent
20 to search, which I hereby waive. I am also fully aware
21 that if I wish to exercise this right it would be
22 respected. It goes on to read this consent to search is
23 given by me this 22nd day of September 1992 at 11:15 a.m.
24 It is signed by Stephen Scharf listing his address as 27
25 Knob Hill Road, Hacketstown, New Jersey and his phone

1 number. And this form is signed by myself, the address
2 of the PIP Police and the phone number of the PIP Police.

3 Q Now, with respect to the signature of Mr.
4 Scharf and the information regarding his address, was
5 that placed on the form by Mr. Scharf?

6 A Yes.

7 Q And was that done in your presence?

8 A Yes.

9 Q And similarly when you signed as witness, was
10 that done in Mr. Scharf's presence?

11 A Yes.

12 Q Now, after you obtained the consent to search
13 the vehicle, was a search made of that white Ford Taurus?

14 A Yes.

15 Q Did you note that fact in your notes?

16 A Yes.

17 Q Can you tell us what time that search took
18 place?

19 A I'll refer again, if I may? I --

20 Q To your notes?

21 A Believe it was 12:30 but --

22 Q Just tell us -- if it's your notes.

23 A Twelve o'clock.

24 Q Okay. And does your -- do your notes reflect
25 and do you recall at that time what items if any were

1 retrieved?

2 A Yes, it does.

3 Q And what do your notes tell us?

4 A It tells us that we removed with stains and on the
5 top of the toes and one piece of paper with a stain on
6 it. Those items were retained by Investigator Alva.

7 Q All right. Now, at -- at this time after
8 conducting the -- the interview it would be fair to say
9 that your suspicions are raised?

10 A Yes.

11 Q Now, with respect to information base and in
12 that context, did you have occasion to contact the
13 brother of Jody Ann Scharf who lived in California?

14 A Yes, I did.

15 Q Okay. And did he provide you with certain
16 information?

17 A Yes, he did.

18 Q And with respect to this matter, what did he
19 tell you?

20 A I'm going to again --

21 Q And is it noted in your -- in your notes?

22 A It's -- or, my typewritten report. Probably, both.

23 MR. BILINKAS: -- Judge, I object --

24 A If I could refer?

25 MR. BILINKAS: To any investigation. This is

1 a Miranda hearing. -- talking about witness interviews
2 after the statement --.

3 THE COURT: Mr. Mello?

4 MR. MELLO: Yes. To respond, we know that this
5 is part of the information base that the Police will have
6 as they are conducting the interviews of Mr. Scharf and
7 there is another witness to follow Detective Lynam and
8 this is the information base that they had with respect
9 to the conduct of the interview. And I think it's --
10 it's relevant for that purpose and -- and merely that.

11 THE COURT: Your reply?

12 MR. BILINKAS: I -- I just would object to any
13 -- obviously it's hear say. I can't talk to the -- that
14 -- witness -- what was said. I don't believe that
15 anything that he is -- intending to elicit at this point
16 was discussed or questioned regarding my client in the
17 subsequent interview. -- talking --

18 MR. MELLO: -- I'm sorry.

19 MR. BILINKAS: About you know, friends of the
20 wife, talking about a neighbors -- and so forth. The
21 only other statement of it and the one that this Officer
22 -- testified to is a polygraph interview and I don't
23 believe they asked him about Mr. -- or, many of these
24 other people that I think the prosecutor is going --

25 MR. MELLO: I'm not going into those people.

1 I'm not going into any of those people, the neighbors or
2 any such thing. I'm only specifically asking one
3 question for one piece of information that I think is
4 relevant to the conduct of these interviews that take
5 place, and the actions of the Police. And as a matter of
6 fact, I believe yesterday Mr. Bilinkas was asking
7 questions, sounding in the very same type of information
8 and then, saying very forcefully to Detective Karnick,
9 wasn't he a suspect in your mind? Wasn't he a suspect?
10 And you will recall, Your Honor that my reply to that was
11 assuming that he was, that does not trigger Miranda. It
12 is triggered by custody. So, the very same kind of
13 information that Mr. Bilinkas sought to examine on and
14 introduce is what I'm asking this witness and it's only
15 one sentence.

16 MR. BILINKAS: Which witness are we talking
17 about?

18 MR. MELLO: This -- which witness did you
19 examine?

20 MR. BILINKAS: -- what -- which one --?

21 MR. MELLO: Mr. McCall, the brother of the
22 victim.

23 MR. BILINKAS: If he's limited to that --

24 MR. MELLO: That's it.

25 MR. BILINKAS: I -- I have no objection.

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MR. MELLO: Thank you.

DIRECT BY MR. MELLO:

Q Very briefly, did you have occasion at this time to speak with John McCall -- brother of the victim?

A Yes.

Q Did he discuss with you any particular fear of Jody Ann Scharf?

A Yes, he did.

Q What did he say?

A She was afraid to be alone with him. She was afraid to be with him. --.

Q Did she say -- did he tell you anything else about any other fear?

A Yea. I believe he said that -- without referring, he had a strong concern -- she had a strong concern for her safety.

Q Did she -- did he discuss with you heights?

A Yes. She --

Q Did you note it in your report?

A Yes.

Q Your notes? Would you please look at your notes? And if you would, tell us the time of this conversation?

A Okay. I -- I -- yes. He said she was afraid of heights.

1 MR. BILINKAS: -- again, his notes indicate
2 that this statement was made --. This Officer, I do not
3 believe actually talked to the brother.

4 MR. MELLO: Fair enough. Fair enough.

5 Q Was this conversation conducted by Investigator
6 Alva?

7 A Yes.

8 Q And was it in your presence? Was it in your
9 presence?

10 A Yes.

11 Q All right. Now, I don't know if you said this,
12 I'm sorry. Did you note the time of this conversation?

13 A I didn't. I don't -- it was during the interview.

14 Q Okay. Take a look at your notes on page two.

15 A Yes. I have a time noted as 12:45.

16 Q Now, of course you've already indicated that
17 Mr. Scharf has presented at the prosecutors office that
18 day for purposes of being interviewed and to take a
19 polygraph examination; correct?

20 A That's correct.

21 Q And that examination and any interview attached
22 to it was not conducted by yourself, was it?

23 A Could you repeat that?

24 Q Yes. The polygraph examination and any
25 interview within that examination was not conducted by

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you?

A That's correct.

Q Do you know who it was conducted by?

A Yes.

Q Who was that?

A Investigator Hornyak.

Q Now, following the polygraph examination, was
-- did Mr. Scharf leave Hackensack?

A Yes.

Q Let me -- let me back up. First of all, the
interview that you have described thus far was conducted
at 29 Linden Street in Hackensack, the satellite office
of the Bergen County Prosecutors Office; correct?

A That's correct.

Q Okay. Was the polygraph conducted in that
location or another location?

A No. It was conducted in -- within the confines of
this building. In the prosecutors office.

Q The main office of the prosecutors?

A Yes.

Q And following that examination Mr. Scharf was
permitted to leave?

A Yes.

Q And in fact, did leave?

A Yes.

1 Q And left for his residence?

2 A That's correct.

3 Q And would a search be conducted of his
4 residence that evening?

5 A Yes.

6 MR. MELLO: Thank you.

7 MR. BILINKAS: Judge, can we have a -- a
8 bathroom break?

9 THE COURT: Sorry?

10 MR. BILINKAS: Mens room break?

11 THE COURT: All right.

12 (BREAK IN HEARING)

13 CROSS EXAMINATION BY MR. BILINKAS:

14 Q What -- what's your current rank within the
15 department?

16 A I'm retired.

17 Q Okay. How would you like me to refer to you?

18 A In any way you please.

19 Q Detective?

20 A That'd be fine.

21 Q Detective -- Detective you worked on this
22 Scharf case back in 1992; correct?

23 A Yes.

24 Q When did you first get involved?

25 A The morning after Mrs. Scharf went over the cliff.

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Q And again, correct me if I'm wrong, I believe that you indicated that -- that once you got involved you reviewed all the reports and had discussions with different members of your department to get background information regarding what had transpired up to that point; correct?

A Not entirely. No. I -- when I reported to duty that morning I -- when I was inserted into the case by the Chief of Police I confer with Detective Karnick.

Q Okay.

A Initially.

Q And did Detective Karnick tell you basically what had transpired up to that point?

A Yes. I also had access to the Officer's reports as well.

Q So, is there any doubt in your mind at that point after -- reviewed these reports that you were being asked to et involved with a criminal investigation?

MR. MELLO: Objection to the classification, characterization of criminal.

THE COURT: Sustained.

Q After you reviewed these reports, did you have the same type of suspicion that counsel for the state had discussed with you regarding my client?

1 A Yes.

2 Q You basically thought he murdered his wife?

3 A No. I had a suspicion there might be something
4 more to it than just an accident after reviewing.

5 Q A homicide; correct?

6 A Possibly.

7 Q Now, with regards to your involvement, the
8 day after the incident you indicated that you went back
9 to the scene; correct?

10 A Yes.

11 Q Who did you go there with?

12 A I went there twice that particular day. I'm --
13 which time are you referring to?

14 Q Let's start with the first time.

15 A I don't recall. I -- first time, I went to -- for
16 the purpose of taking pictures and viewing the scene --
17 the location where it happened.

18 Q So, as you sit here now 18 years later you
19 can't recall who you actually went with the first time
20 you went to the scene; correct?

21 A That's correct.

22 Q Is -- is that information reflected in any of
23 your reports of notes that you've discussed with the
24 prosecutor?

25 A I don't believe it's in my -- I don't believe I

1 have it anywhere. The first time I went -- no.

2 Q Now, with regards to that first occasion --
3 strike that. You indicated that you took various
4 photographs; correct?

5 A Yes.

6 Q And you were basically trying to memorialize
7 the -- the scene of whatever happened; correct?

8 A Yes.

9 Q And when you got there you noticed various
10 pieces of evidence that had been missed by all the
11 people that were present the day before; correct?

12 A I -- I don't know if they're evidence but, there
13 were two items that apparently were missed. Yes.

14 Q When you say you don't know whether or not
15 they're evidence, they're -- they're items that were
16 left by Jody Scharf; correct?

17 A Yes.

18 Q And at that point they would be considered
19 evidence and put into an evidence bag; correct?

20 A Well, I wouldn't -- I would consider them property
21 belonging to her.

22 Q Did you -- did you have anyone take control
23 of those items after you first became aware that they
24 were there?

25 A I don't know who did. I don't think I directed

1 them to do it.

2 Q Well, who did you tell back at Police
3 headquarters that there were certain items that they
4 missed the day before out at the area where Mrs. Scharf
5 had fallen off the cliff?

6 A I probably told several people. One of them would
7 have been Sergeant Pagan, who was a qualified repeller.

8 Q And as you sit here today, do you know who
9 retrieved those items?

10 MR. MELLO: Or if they were retrieved?

11 A I don't know.

12 Q Now, when you were there and correct me I'm
13 wrong, you were there to photograph the area where Mrs.
14 Scharf had fallen; correct?

15 A Yes.

16 Q You hesitated. Is there any question that
17 that was one of the functions that you were --

18 A Well, I wasn't there specifically just to
19 photograph that spot. I took in the totalitarianism of
20 the whole area, including the parked car. Then, you
21 know the warning sign. Then, the location of where she
22 went off.

23 Q When you say the parked car, was Mr. Scharf's
24 car there when you arrived?

25 A Yes, it was.

1 Q And clearly his car had not been released to
2 him prior to your going to the scene; correct?

3 A Well, he hadn't picked it up. The car -- actual
4 release form was -- was done while I was in
5 headquarters.

6 Q And what time did you get to the look out on
7 that day?

8 A If I could refer to my --

9 Q Please.

10 A Document? That would be 930 hours.

11 Q And Mr. Scharf picked up his car at what
12 time?

13 A Again, I'll refer to the release form?

14 Q Please.

15 MR. MELLO: I don't think you have it up
16 there.

17 A I don't think I have it. No. That would be 10:18
18 a.m.

19 Q Now, before you left the station and before
20 you went out to the Rockefeller Look Out center you
21 knew correct me if I'm wrong, that Mr. Scharf's car was
22 still at the location; correct?

23 A Yes.

24 Q And did you have any discussion with any
25 members of your department about not releasing that car

1 until you had an opportunity to go out to the look out
2 site and observe it?

3 A I don't recall.

4 Q Is there any reference in the memo of that
5 release form with regards to when the car should be
6 turned over?

7 A I'll refer to it. It says, vehicle may be
8 released. Means -- there's no hold on it.

9 Q Okay. That's -- and that's your recollection
10 of the events of that evening; correct?

11 A I didn't -- I had nothing to do with that form.
12 Filling -- wording of it, filling it out. It's a
13 common form used by that department.

14 Q Now, when you went to the actual ledge, who
15 instructed you where the body had gone over the cliff?

16 A -- I knew from the reports I knew exactly where
17 she went off.

18 Q Okay. Did anybody take you to that location?

19 A No, I went -- I drove myself. I would drive
20 myself. I'm very familiar with it.

21 Q When you say you're very familiar with it,
22 you're familiar with that path, that well worn path
23 that leads to the flat rock in question; correct?

24 MR. MELLO: I'm just going to -- I know where
25 Mr. Bilinkas is going.

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MR. BILINKAS: Withdrawn.

MR. MELLO: Thank you.

Q Will you agree with me to get that to location there's a foot path leading right to it; correct?

A There's a foot path, a legal foot path going north from that. That's -- that's a legal trail. The trail -- the path that was -- has been worn down you know, from people walking on it is -- is not a legal spot. It's not a legal path.

Q Okay. Irrespective of whether it's legal or illegal it is a well worn path used by many to get to that area; correct?

A Yes.

Q And correct me if I'm wrong, when you read the reports you didn't need anyone to take you there, you knew exactly where you were going when you left the station; correct?

A Correct.

Q And will you agree with me based on your experience within that department that numerous people go to that exact area?

A Yes.

Q Have you cited anyone or are you aware of anything -- any summonses that have been issued for

1 people going to that spot?

2 MR. MELLO: Well, now I think I'm going to
3 object Your Honor. Because, I think it's --

4 MR. BILINKAS: Withdrawn.

5 Q Now, you go to that area and you climb
6 through the three cabled wire fence; correct?

7 A Correct.

8 Q And it's really not difficult to do that;
9 correct?

10 A No, it's not difficult.

11 Q And when you climb through the fence, you
12 walk out onto this big flat rock; correct?

13 A Yes.

14 Q And will you agree with me that about in the
15 middle of that rock there's about an 18 foot drop off
16 to another flat rock sloping forward?

17 A No. That would be at the end of the rock --

18 MR. MELLO: And I'm going to object to -- to
19 this examination because quite frankly, I think this is
20 going to become deposition, not Miranda.

21 MR. BILINKAS: Judge, it has to do with his
22 observations and his investigation that he testified to
23 on direct when he went to that area and took
24 photographs.

25 MR. MELLO: I think the limited -- I don't

1 disagree that a limited inquiry into the actions by
2 Detective Lynam and the information base that he had
3 when he now interviews Mr. Scharf is relevant. I don't
4 quarrel with that at all. But, I think that there's a
5 point at which it really starts to become -- I think it
6 starts to become more deposition than an inquiry into
7 Miranda and I think we've established the point where
8 Ms. -- Mrs. Scharf fell. Mr. Bilinkas has established
9 the location, what it looks like and so forth and he's
10 managed to establish that there is a path way that is
11 well worn to that fence and the rock. I don't think we
12 need more than that at this point.

13 THE COURT: Why not have the witness testify
14 as to what he observed?

15 Q You walk through the fence --

16 THE COURT: --.

17 A Yes, sir.

18 Q You walk through the fence and you approach a
19 flat rock --

20 THE COURT: And -- could you back up for a
21 moment. This fence, do you crawl through it or do you
22 go over the fence? And how high is the fence?

23 A You could -- you could do it either way. It's --
24 I would say it's I don't know, maybe three feet high or
25 a little more. But, you could either lift the cable up

1 and walk through it or you could climb over it.

2 THE COURT: Okay. Please continue.

3 Q After you got through the fence, you walk
4 about maybe ten feet and there's a big flat rock;
5 correct?

6 A Yes.

7 Q And if you go a little bit further to the end
8 of the cliff there's about an 18 inch drop to another
9 flat portion of the rock; correct?

10 A Yes.

11 Q Now, when you went out there can I assume
12 that you had no idea of the exact spot on that rock
13 where Mrs. Scharf had fallen?

14 MR. MELLO: Objection. He's already
15 testified that he was informed by Police Officer's that
16 Mr. Scharf indicated that precise point. That's why
17 he's there to take the photographs at that point and
18 where he sees items from the pocketbook recovered at
19 that location on the ledge below, that precise point.

20 MR. BILINKAS: The exact testimony elicited
21 by the prosecutor Judge indicates that Mr. Scharf
22 pointed out the general direction of this big flat
23 rock. There was no testimony with regards to whether
24 she went off the left, the right --

25 THE COURT: I'll allow it. Over ruled.

1 Q When you first approached that area to
2 document the area for your investigation, isn't it a
3 fact that you had no idea of the exact location where
4 Mrs. Scharf had fallen off of that cliff?

5 MR. MELLO: Objection to the
6 characterization. He's at the at point. And why --

7 MR. BILINKAS: I'll rephrase it. Withdrawn.

8 Q Isn't it a fact that you had no idea of the
9 exact location from the flat rock that was pointed out
10 to you -- to member of your department by Mr. Scharf
11 that day?

12 MR. MELLO: Same -- same objection, Judge.
13 You know, let's -- let's just look at this from a plain
14 common sense point of view. Mr. Scharf reports to the
15 Police his wife just fell off a cliff. He wants
16 presumably, his wife to be found. He says to the
17 Police she went off here. The Police set up repel
18 lines exactly where he says she went off and that is
19 the rock that's been described thus far. And to
20 suggest that it's any other -- it must be that I'm in a
21 different world because that's the premise here. Mr.
22 Scharf says, my wife died as a result of an accidental
23 fall, presumably he would be telling the Police the
24 precise spot. Is this -- am I -- am I -- is this a
25 harbinger to in trial, we're going to suggest that it

1 was another spot? That'll be interesting if that's the
2 case. But, to say and try to classify this as it's not
3 the exact spot, well there's one precipice, there's one
4 seat that is formed naturally by stone where he says
5 she was sitting, it's exactly where they repelled down,
6 it's exactly over the ledge where they found her
7 pocketbook and it's exactly where he said she went off.
8 And that's my point about deposition practice. You
9 want to do this at trial, fine have at it. But, not
10 here Judge. We're here to say this, was he in custody
11 when he was spoken to by the Police? That's the only
12 subject that's before the Court right now. All this
13 other stuff okay, you want to do this at trial? That's
14 fine.

15 MR. BILINKAS: Judge --

16 THE COURT: Mr. Bilinkas?

17 MR. BILINKAS: The prosecutor asked this
18 witness with regards -- questions with regards to his
19 observations of what he observed when he went to the
20 flat rock and looked over it. All I'm trying to elicit
21 is whether or not he was aware of the exact spot on
22 that flat rock which is eight to ten feet wide where
23 Mrs. Scharf went over. There is no testimony thus far
24 to indicate that the Police knew whether she fell to
25 the left, to the right, in the middle, whether she was

1 sitting on the ledge on the top of the rock below that
2 18 foot ledge and again, I think it has to do -- my
3 questions have to do with the Officer's --

4 MR. MELLO: And that's fine.

5 MR. BILINKAS: -- observed and where his
6 attention was directed.

7 MR. MELLO: I -- I invite that examination.

8 But, that examination has another forum. And that
9 forum is trial and what Mr. Bilinkas cannot articulate
10 is how this kind of examination, whether she fell one
11 inch to the left or one inch to the right of the dead
12 center of that stone face is relevant to the issue of,
13 was Mr. Scharf in custody when he was spoken to by the
14 Police and were Miranda warnings required? That's the
15 inquiry here. And I understand what he's doing, I
16 appreciate it as an adversary and I understand he wants
17 to get as much as information as he possibly can from
18 this hearing. But, that is not relevant to this
19 inquiry. And for that matter we can spend all day on
20 this kind of minutia and just take his deposition
21 because that's what's going to happen.

22 MR. BILINKAS: And Judge, if you recall when
23 the prosecutor was getting to the background
24 information, what this Officer did this time or that
25 time, you know, I gave him a great deal of latitude.

1 I'm asking him one question with regards to what he
2 knew when he approached that ledge and -- and made
3 specific observations of certain items that he had
4 introduced into evidence, I think that's appropriate.
5

6 THE COURT: One question.

7 CROSS BY MR. BILINKAS:

8 Q When you walked out to the ledge and looked
9 down to where you saw the credit card and the make up
10 case, did you know exactly where Mrs. Scharf had fallen
11 from that upper ledge?

12 A Not exactly.

13 Q And when you looked over the ledge, you see a
14 credit card and you see a make up case; correct?

15 A Yes.

16 Q Items that obviously had come from her purse
17 the night before; correct?

18 A Yes.

19 Q Because you were made aware of the fact that
20 a purse was seen and retrieved on the night in
21 question; correct?

22 A That's correct.

23 Q So, whoever was searching that area the night
24 before left those items at the scene; correct?

25 MR. MELLO: What we know is that they were
there. That's what we know from his testimony.

1 Q And we can assume from what you know is that
2 those items were left from the night before; correct?

3 A Correct.

4 Q And you even put in your official Police
5 report that the rescuing -- Officer's apparently did
6 not see the items due to dark conditions at the scene;
7 correct?

8 A Correct.

9 Q Now, I assume when you saw those items you
10 wanted to document them and take photographs of them;
11 correct?

12 MR. MELLO: Now, we are long passed one
13 question, Judge.

14 THE COURT: We are. We -- this is a Miranda
15 hearing. Let's try to keep it as a Miranda hearing.
16 Can we move along?

17 MR. BILINKAS: Yes.

18 Q Did you document every item that you observed
19 when you took those photographs?

20 A I documented the make up kit and the credit card.

21 Q And based on your review of the site
22 concerning this investigation that you had suspicioned
23 could be a homicide those were the only items that you
24 saw were left behind; correct?

25 A Correct.

1 Q Now, after you return to the station you have
2 conversation with people from Washington Township;
3 correct?

4 A Yes.

5 Q And there's certain references that were made
6 to you about my client being involved with domestic
7 violence; correct?

8 A Yes.

9 Q Can I assume you that retrieved the Police
10 reports regarding those specific instances --

11 A I --

12 Q Before you questioned my client regarding
13 them?

14 A I did not.

15 Q Did anyone in your department or to your
16 knowledge in the prosecutors office obtain the specific
17 Police reports that Washington Township was referring
18 to before you questioned my client?

19 A Not to my knowledge.

20 Q Now, you didn't take any statement from my
21 client other than the one with Mr. Alva from the
22 prosecutors office; correct?

23 A That's correct.

24 Q And on that same day did you go back to the
25 scene?

1 A Yes.

2 Q And did you go back to the scene with the
3 medical examiner?

4 A Yes.

5 Q And that's Ms. Clayton (phonetic); correct?

6 A Yes. Doctor Clayton.

7 Q And to your knowledge was she there the night
8 before when the body was retrieved from the cliff area?

9 A I don't know if she was there.

10 Q Did she indicate to you why she was going
11 along with you to the area of the cliff?

12 MR. MELLO: Objection to relevancy to this
13 hearing, Judge.

14 THE COURT: Sustained.

15 Q Did she go in your car?

16 A No.

17 MR. MELLO: Same objection, Judge. The
18 entire line of inquiry with respect to the medical
19 examiner. That's properly all fair at trial and Doctor
20 Clayton's --

21 THE COURT: I don't see how this line of
22 inquiry has any relevance to a Miranda issue.

23 MR. BILINKAS: Again, the prosecutor went
24 over all of the activity. The phone calls, the -- the
25 trips to the scene on direct examination, Judge. And

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once he did that I think I have --

MR. MELLO: I -- I never referred to any trip
by this Officer with the medical examiner --

THE COURT: The medical examiner.

MR. MELLO: --

THE COURT: I don't recall any testimony --.

MR. BILINKAS: Well, what relevance did the
trip to take photographs have? The same conduct Judge
on the day in question. And again, it has do to with
Judge what he knew -- knew at the time he took the
statement from my client with Mr. Alva. Again --

MR. MELLO: He's --

MR. BILINKAS: That's the exact --

MR. MELLO: He's already said what he knows.

THE COURT: The witness already answered.

MR. BILINKAS: Well, and I believe I should I
have the opportunity to --

MR. MELLO: But, the inquiry as to -- it has
nothing to do with Doctor Clayton. Doctor Clayton's
not part of this examination for purposes of this
hearing.

THE COURT: Counsel, I would ask that you
move on.

CROSS BY MR. BILINKAS:

Q At some point in time after your two trips to

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the scene, you come back to Police headquarters;
correct?

A Yes.

Q And have your suspicions become stronger
after you made observations that day up to that point?

A From my last trip with the medical examiner and
back to headquarters -- at which time back at
headquarters are you referring to?

Q Well, you've indicated that when you first
got involved in the case you had strong suspicions --

MR. MELLO: Objection. Let's just say he
said suspicions. That foul play may have been
implicated. Let's be accurate.

THE COURT: I don't recall the word strong.
But --

Q You indicated you had suspicions that foul
play, a homicide may have been committed; correct?

A Correct.

Q That day you went out to the site on two
separate occasions; correct?

A Correct.

Q And you also talked to a variety of people
about this case; correct?

A That's correct.

Q And -- and based on those trips and the

1 conversations throughout the day, did your suspicions
2 increase?

3 A Yes.

4 Q Would -- would you characterize them as
5 strong suspicions?

6 A Yes.

7 Q You thought my client killed his wife, plain
8 and simple; correct?

9 A No.

10 MR. MELLO: He had --

11 A I thought a possibility may have existed but, I
12 did not form a conclusion because -- a lot more work to
13 do.

14 Q Well, and that work was a polygraph in one
15 aspect?

16 A In one aspect.

17 Q And did you suggest my client take a
18 polygraph?

19 A No.

20 Q You indicated that you never talked to my
21 client other than the time that you took the statement
22 with Alva; correct?

23 A No, that's not --

24 MR. MELLO: No. That's not what he said.

25 What he said was, he took no statement, did not

1 interview him other than that which he has described in
2 his testimony today, which was the interview with
3 Investigator Alva. That's what he said.

4 Q Can you tell us please what conversation you
5 had with my client on the day after the cliff fall?

6 A I asked he if he was willing -- still willing to
7 take a polygraph.

8 Q So, you brought up the polygraph; correct?
9 At that point.

10 A At that point.

11 Q Okay. And you -- you weren't there during
12 this discussion the day earlier; correct?

13 A That's correct.

14 Q So, on the day after the incident, after your
15 suspicions have become strong you ask my client if he's
16 willing to take a polygraph; correct?

17 A That's correct.

18 Q And you realize that when someone takes a
19 polygraph that they're going to do a pre-test interview
20 regarding the circumstances in question; correct?

21 A I'm aware that it's done but, I have no experience
22 with that.

23 Q Okay. But, as a detective working on a
24 possible homicide case, you did in fact know that he
25 would be questioned regarding the incident; correct?

1 A Yes.

2 Q Now, when did you get the consent form to
3 search his car?

4 A I got the consent form myself and Investigator
5 Alva at 29 Linden Street.

6 Q So, that -- that was two or three days after
7 your site visit; correct?

8 A No. I -- I'll refer to the consent form, if I
9 may?

10 Q Sure.

11 A If I can find it.

12 MR. MELLO: And while the detective is
13 reviewing that report, any objection to both consent
14 being moved in evidence?

15 MR. BILINKAS: No. Not for the purposes of
16 this hearing.

17 MR. MELLO: Thank you.

18 A More specifically the consent form was filled out
19 the next day, the 22nd of September.

20 Q Same day you went to the site of the fall?

21 A No. I went -- no, the day before I went to the
22 site.

23 Q Okay. So, were you present when his car was
24 released?

25 A At -- you mean --

1 Q At the station when he came and picked up his
2 car?

3 A I don't think I was there when he actually signed
4 the form. I recall him being in the station. I had --
5 I did not have anything to do with that.

6 Q Okay. When you say you saw him at the
7 station, did you see him before or after the time
8 that's reflected on the form indicating when he picked
9 up his car?

10 A Before.

11 Q And -- and so, after you saw him when you
12 knew he was about to pick up his car, you went to
13 Rockefeller Look Out center to see exactly where the
14 car was located and -- and -- and take in the entire
15 area for your investigation; correct?

16 A Correct.

17 Q Were you concerned that he would take or
18 remove the car before you got there?

19 A Well, no because I -- I was going there to take a
20 photo of the car. I wasn't concerned. I didn't -- he
21 would have had to drive pretty fast to get there before
22 me. I just --

23 Q Did anyone hold him up at the station to give
24 you an opportunity to photograph his car?

25 A Not to my knowledge.

1 Q Did he pick his car after you had left the
2 scene on the first occasion?

3 MR. MELLO: You know, I'm just going to -- at
4 this point, object to the -- to the line of inquiry.
5 The real question here is not was the car in custody?
6 The question is, was he in custody? So, let's assume
7 just for purposes of argument that the car was "in some
8 kind of Police security", "Police custody" and Mr.
9 Scharf is in Ohio, what does the custody of the car
10 have to do with anything relevant to this inquiry?
11 Whether or not the statements made by him are
12 admissible.

13 THE COURT: Mr. Bilinkas?

14 MR. BILINKAS: If the car was in the custody
15 of the Police Department, they wouldn't need a consent
16 form --

17 MR. MELLO: No, that's --

18 MR. BILINKAS: A second consent form.

19 MR. MELLO: You know, there is no rational
20 reason to make that conclusion, nor is it relevant. If
21 they asked for 10 consents, you know what's relevant
22 about that? And what I will argue to you is that he
23 consented to all of these things, and in fact I'm going
24 to tell you Judge when we try this case, you're going
25 to hear Mr. Bilinkas turn this all around and say my

1 client cooperated with the Police, my client could have
2 asked for a lawyer, he didn't. My client spoke to the
3 Police when he didn't have to, my client did this, he
4 cooperated, he cooperated, he cooperated. Look, they
5 asked him for consent to search his car, he gave it to
6 them. They asked him twice to search his car, they
7 gave it to him. They asked -- him consent to search
8 his house, they gave it to him. That's what we're
9 going to hear at trial. So, the real truth of what's
10 happening here is, he's not in custody and if his car
11 was "in custody" and he is in Ohio or Hacketstown,
12 that's really the focus of what we're about here. So,
13 this line of inquiry now, I think is far afield and
14 quite not relevant. And if Mr. Bilinkas can explain
15 how the custody of the car is relevant to whether or
16 not he was in custody, I'll abide that and argue.

17 THE COURT: Mr. Bilinkas?

18 MR. BILINKAS: I'll -- I'll attempt to
19 explain it to him. My position Judge is that Mr.
20 Scharf was in custody. And that the previous Officer's
21 who have testified to things like he could pick his
22 car, he can leave at any time, his car was available
23 for him at any moment, you know, if this Officer you
24 know, disputes that that would have an affect I hope,
25 on this Court's decision with regard to their

1 credibility. And again, we're talking about a hearing,
2 cross examination, you know and -- and just because a
3 Police Officer -- this Officer or a previous one says
4 something doesn't mean that I can't question what they
5 say, either through that witness or subsequent witness
6 that may be inconsistent with who has previously
7 testified. And that's why I think it's relevant.

8 THE COURT: All right. First, let me say
9 we'll have approximately 18 days of trial for you to
10 ask any number of questions. Let's try to shorten this
11 inquiry and move ahead as quickly as possible. Over
12 ruled.

13 CROSS BY MR. BILINKAS:

14 Q While you were at the look out on the first
15 occasion, Mr. Scharf's car was there; correct?

16 A Correct.

17 Q Isn't it a fact that it was there -- strike
18 that. It was there when you first got here; correct?

19 A Yes.

20 Q Do you recall whether it was there the second
21 time you got there with Ms. Clayton?

22 A I'll -- I'd like to say I don't totally recall.
23 It probably wasn't but, I don't recall definitively.

24 Q At some point in time, you have Mr. Scharf
25 sign two consent forms; correct?

1 A Yes.

2 Q And at that point you advise him that those
3 consents have to do with a criminal investigation;
4 correct?

5 MR. MELLO: Objection to the form.

6 THE COURT: I'm sorry? You have an
7 objection?

8 MR. MELLO: I'm sorry, Your Honor. I do
9 object to the form.

10 THE COURT: Sustained.

11 Q At the time you have him sign the consent
12 form is it not a fact that those consent forms
13 specifically indicate that the consent is related to a
14 criminal investigation?

15 A The form does. Yea. It's a generic form.

16 Q So, will you agree with me that if someone
17 read that form they would be apprised of the fact that
18 a criminal investigation is under way?

19 A Yes.

20 Q And when he signed those forms, specifically
21 the one to search his car where was the car at that
22 time?

23 A 29 Linden Street.

24 Q And where is that?

25 A That's in Hackensack.

1 Q And is that the area he drove to meet with
2 you and others on that day?

3 A Yes.

4 Q And -- and when did you decide that you
5 wanted to search his car?

6 A Well, I didn't make that decision. Investigator
7 Alva did.

8 Q Did he make it to your knowledge before or
9 after Mr. Scharf arrived?

10 A After.

11 Q You're sure of that?

12 A Reasonably.

13 Q Do you have that fact reflected in any report
14 or any note?

15 A No, I -- I don't -- at the time of the consent,
16 the time of the actual search and I believe he was
17 offered the form after the interview. As far as when
18 Investigator Alva decided he wanted to do that I don't
19 -- I don't have total recall for that.

20 Q Okay. Now, let me ask you a few questions
21 before you took the statement. Can I assume that
22 before you sat down and started questioning my client
23 that you and Prosecutor Detective Alva talked about
24 what areas you wanted to get into with my client;
25 correct?

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A I'm sure we did.

Q And the areas that you addressed I -- I assume were specifically discussed before hand; correct?

A Between me and the Investigator?

Q Between you and Alva; correct?

A Yea. I'd -- I'd say so. Correct.

Q You and Alva were working together during this interview; correct?

A Yes.

Q Now, at that time when you were investigating a possible homicide did you have a tape recording available to you to memorialize the exact words that my client told you and Alva?

A I didn't have a tape recorder. I don't know -- I don't -- there was no tape. I don't -- as far as to what's available at that office, I don't -- I'm not sure.

Q Based on your investigations up to that point, had you ever tape recorded an interview to memorialize the exact words spoken?

A No.

Q To your knowledge had Alva done that?

MR. MELLO: Objection. How would he know that?

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THE COURT: Sustained.

Q Did you ever video tape a statement?

A No.

Q Back then in 92 you'll agree with me that both of those typos of recordings were available if you decided to use them; correct?

A They probably were.

Q When you say probably were, is there any doubt in your mind Detective that tape recordings and video tapes were being used by law enforcement way back when?

A I'm pretty sure they were.

Q And for whatever reason you decide to take a oral statement; correct?

A Well, That decision was not mine.

Q It was the Bergen County Prosecutors Office; correct?

A Yes.

Q And you took notes and you've referred to them during this hearing; correct?

A That's correct.

Q Was Detective Alva from the prosecutors office also taking notes?

A Yes.

MR. BILINKAS: Judge, for the record, I'd

1 request the prosecutor provide those to me if they
2 exist.

3 MR. MELLO: They do not exist and all
4 information pertaining to this interview has been
5 provided that does exist.

6 Q You took this statement on what day?

7 A The 22nd.

8 Q And can you tell the Judge when the report
9 was authored?

10 A Investigator Alva's report?

11 Q Well, you never made a report, did you?

12 A No.

13 Q The only report that reportedly memorializes
14 your conversation with my client on December 22nd, was
15 is the date of that report?

16 A October 9th.

17 Q Now, from September 22nd to October 9th, 1992
18 your investigation was continuing; correct?

19 A Yes.

20 Q And you received a tremendous amount of
21 information with regards to this investigation before
22 the report was finalized; correct?

23 A That's correct.

24 Q And would you agree with me that that
25 information was extremely damaging to my client? From

1 your perspective.

2 A I'd say it -- it raised -- it raised -- raised us
3 up as far as --

4 Q From a strong suspicion to your convinced in
5 your mind that he has murdered his wife? In your mind
6 as a Police Officer, a detective --

7 MR. MELLO: At -- at what -- at what time?
8 We're now -- we're now long passed --

9 MR. BILINKAS: Before the statement was
10 finalized, October 9th.

11 MR. MELLO: That's a report. That's a report
12 of the statement. I understand that.

13 MR. BILINKAS: And I am asking him after he
14 just indicated that his suspicions, the level had
15 raised, I'm trying to quantify it because if I mis-
16 characterize it, I'm sure the prosecutor is going to
17 object. May I ask the question?

18 THE COURT: You may.

19 MR. MELLO: But, my -- my -- my objection is
20 that the relevancy to --

21 THE COURT: I'm not quite sure when he came
22 to that realization. That's --

23 MR. BILINKAS: And that's what I'm trying to
24 figure out.

25 THE COURT: That's -- but, that's why the

1 questions a little confusing. Maybe, you could clarify
2 it.

3 MR. BILINKAS: Okay.

4 CROSS BY MR. BILINKAS:

5 Q You take the statement on September 22nd,
6 1992; correct?

7 A Yes.

8 Q The report, the final, the only document
9 memorializing that is made on October 9th, 1992;
10 correct?

11 A Yes.

12 Q From September 22nd, the day you took the
13 statement to October 9th, the day the report was
14 actually generated, isn't it a fact that you and Alva's
15 received additional information with regards to this
16 homicide investigation?

17 A Yes.

18 Q And you documented a lot of that in your
19 notes; correct?

20 A Yes.

21 MR. MELLO: I'll -- I'll object to the
22 characterization of a lot of that. It appears --

23 MR. BILINKAS: Withdrawn.

24 Q You documented numerous items regarding your
25 investigation?

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MR. MELLO: No, I'm going to object to numerous. There -- there's not numerous. There is not numerous items --

THE COURT: Ask another question.

MR. MELLO: There's one. And the only one that is not reflected --

MR. BILINKAS: Judge --

THE COURT: So, we can move this along, how about additional information; all right?

Q Did you receive additional information from the 22nd to October 9th?

A Yes.

Q And did you document some of that information?

A Yes.

Q Did you not document other information --

MR. MELLO: There's no relevancy to this hearing Judge as to this -- series of questions --

THE COURT: The question is confusing. Maybe you can ask another question and clarify.

Q Okay. You've indicated that you've documented some of the information that you and Alva's received between September 22nd and October 9th; correct?

A Correct.

1 Q Is there anything that you did not document?

2 A I don't --

3 MR. MELLO: What is the relevancy of that
4 question, Judge? There's no relevancy to if they
5 documented anything and the anything is one statement
6 by Jonathan Scharf that he was dragged along on
7 Saturday night to go out to dinner. That's the only
8 additional information, which I didn't inquire about
9 because it's not relevant to this Officer's testimony.
10 And certainly what was not documented is, shall I use
11 the term less relevant than a non-relevant examination?

12 MR. BILINKAS: Judge, we -- we have a
13 situation here where this witness has not generated a
14 report. The only report that was generated was by
15 Detective Alva's.

16 MR. MELLO: Okay. I'll tell you what. Judge
17 --

18 MR. BILINKAS: Judge, can I state my -- my
19 position --

20 MR. MELLO: I'm sorry. I --

21 MR. BILINKAS: Before he stands up and
22 interrupts me --

23 MR. MELLO: I apologize. I apologize. But,
24 I -- I was going to ask you, as far as I'm concerned I
25 think that what would be fair is, I'll move his report

1 and his notes into evidence and Your Honor will have
2 them for purposes of your decision in this matter. And
3 then you'll know it all.

4 MR. BILINKAS: Judge, I'm not going to
5 consent to the prosecutors statements at -- at this
6 point. I want to --

7 MR. MELLO: Well, then -- then --

8 MR. BILINKAS: Judge, can I respond, please?

9 MR. MELLO: I'm -- I'm -- I'm at this time
10 moving -- I'm at this time moving --

11 MR. BILINKAS: Can I say -- what -- after he
12 makes his statement, can I at least finish before he
13 interrupts me?

14 MR. MELLO: I apologize.

15 MR. BILINKAS: I've never done that to him.

16 MR. MELLO: I apologize.

17 MR. BILINKAS: And I don't expect him to do
18 it to me, Judge.

19 MR. MELLO: I apologize for interrupting.

20 THE COURT: All right. Please continue.

21 CROSS BY MR. BILINKAS:

22 Q From September 22nd to October 9th the
23 investigation was continuing; correct?

24 A That's correct.

25 Q And -- and you received additional

1 information; correct?

2 A Yes.

3 Q And as you sit here today, did you document
4 in either a report or in some notes somewhere what that
5 further information was?

6 A Yes. In a report dated 9/24/92.

7 Q And would you agree with me that all of that
8 information that was document -- documented in a report
9 of 9/24/92 was available to you and Alva's before the
10 final report of your interview with my client was made?

11 A It was obviously available to me, I documented it.
12 You mean was it also available to Investigator Alva?

13 Q Well, you indicated on direct and correct me
14 if I'm wrong that you and Alva's conversed on this
15 report; correct? That before it was -- you got to
16 answer. You and Alva's before this report that the
17 prosecutor has put you on to testify about, isn't it a
18 fact on direct you indicated that you and Alva's made
19 this report up together; correct?

20 A I didn't make his report up. No. We
21 collaborated. It's --

22 Q When you say collaborate, what specifically
23 are you referring to?

24 A The aspects of -- of the case.

25 Q Well, did -- Alva's look at your notes before

1 he did the report?

2 A I don't know. He certainly had access to them.

3 Q When you say you collaborated with him,
4 what's your specific recollection of what you and
5 Alva's did to finalize this official Police document?

6 A I was not sitting with him when he did -- when he
7 prepared -- when he typed up the report.

8 Q Did you --

9 A Or whoever typed it up.

10 Q Did you review the report before it was
11 submitted in final form?

12 A No.

13 Q Were you given the opportunity to look at it
14 and make changes?

15 A No.

16 Q Is there anything in this report, the one
17 you've testified to that is inaccurate?

18 A I would say, no.

19 Q Is all the information that you and Alva's
20 were provided on the day in question included in this
21 official report?

22 A What day in question? Which day in question?

23 Q September 22nd when you talked to my client.
24 Is everything that he said to you good and bad in that
25 report? To your knowledge.

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A Word for word?

Q Well, yes. Word for word.

A No.

Q Now, can you tell the Judge how this interview was conducted?

A In a room, myself, Investigator Alva and Mr. Scharf.

Q How were the questions asked? Who asked what?

A The -- the majority of it was done by Investigator Alva, while I was --

Q Do you recall the specific question or the specific questions that Alva's asked?

A Not all of them.

Q Well, tell the ones that you do.

A The ones I do are the ones in his report.

Q Well, which ones are you referring to? Scharf advised? How did that statement come about, if you recall 18 years later?

A The fact that Scharf advised? I didn't put those words together. That means Scharf advised us, he told us.

Q How did he advise you? What -- what generated that response?

A He was asked here he was employed you know, some

1 background information.

2 Q Do you recall those exact questions 18 years
3 later?

4 A I don't. No. I don't recall --

5 Q You have no idea what specific questions were
6 asked that generated these statements; correct?

7 MR. MELLO: That's not what he said, Judge.
8 He said --

9 MR. BILINKAS: I'm asking that question.

10 MR. MELLO: He doesn't remember it word for
11 word. There's a difference.

12 Q Do you recall the specific questions that
13 either you or Alva's asked that generated the response
14 that's contained in Detective Alva's report?

15 A No, I don't recall word for word. Again, I'll say
16 that. But, I recall generally because it's what he
17 told us.

18 Q For instance, on direct examination the
19 prosecutor brought out that Scharf indicated that he
20 left his home around five o'clock in the day in
21 question; correct?

22 A Correct.

23 Q Did he also indicate that he wasn't certain
24 about the time?

25 A That's correct. He did.

1 Q Is that reflected in your notes?

2 A I'm not -- I'd have to refer to them. I don't --

3 Q Please -- please do so.

4 A It's reflected in Investigator Alva's notes.

5 Q Well, you never saw Alva's report -- when it
6 was finalized; correct? Before it was submitted.

7 A I don't -- oh, before it was submitted? No, I
8 didn't see it before it was submitted. But, after it
9 was submitted I don't know. I don't remember. Now,
10 what was your question again, sir? I'm --

11 Q Do you have in your notes that with regards
12 to the statement contained in -- in Detective Alva's
13 official report, that when he said five o'clock and you
14 testified to that fact on direct, that he indicated he
15 wasn't really sure of the time.

16 A Okay. That's what I'm going to try to refer to,
17 to see if it's in here. You're talking about Sunday?

18 Q Correct. I'll withdraw the question and not
19 waste any more of the Court's time. Now, you testified
20 on direct that my client had indicated that when he
21 went to purchase the wine and other items that his wife
22 went somewhere; correct?

23 A Yes.

24 Q And -- and where specifically did he tell you
25 his wife went?

1 A Well, he -- Mr. Scharf told me that -- told us
2 that his wife dropped their son off at the Jackson
3 residence and then she went to a place called Ortley
4 Farm (phonetic) where she bought some apples and had
5 conversation there.

6 Q -- I assume from the 22nd to the 9th you and
7 Alva's tried to verify that fact?

8 A At that -- you know at a point in this
9 investigation, the lead was taken over by the
10 prosecutors office. So, I want privy or aware of every
11 single thing that Investigator Alva did.

12 Q All right. Well, did you review any of the
13 reports that Alva's had generated prior to this
14 official report being submitted on October 9th?

15 A No.

16 Q Were you ever made aware of the fact that a
17 statement was taken from a woman at Schooley's Mountain
18 who indicated that Mrs. Scharf did not go to Ortley's
19 Farm --

20 MR. MELLO: Objection.

21 Q And had stopped by and was drinking --

22 THE COURT: You have an Objection?

23 MR. MELLO: -- yes.

24 THE COURT: What is the objection?

25 MR. MELLO: The objection is this is not

1 relevant and this is extraneous information to this
2 inquiry. This is what he was told by the defendant,
3 whether or not it was true is not the subject of a
4 Miranda hearing. What is important is what was said.
5 That's what the Officer has testified the defendant
6 said. Whether it was checked is not relevant, and if
7 checked and it was true or not true is not relevant.
8 Not to Miranda. Maybe at trial.

9 MR. BILINKAS: The only reason why I ask this
10 Judge because in this official report -- and again, I
11 don't believe that the prosecutor is intending to call
12 Detective Alva's with regard to this Miranda. He's
13 basically had this Officer testify to the contents of
14 this report, and has made specific references to it
15 throughout his direct. In Detective Alva's report,
16 it's clear that prior to the finalization that he, and
17 I assume this Detective received additional information
18 and even -- with regards to what my client said
19 references to further interviews, either confirming or
20 denying the truth of what they believe my client told
21 him.

22 THE COURT: This is a report prepared by
23 Alva's.

24 MR. BILINKAS: That was -- corroborated or
25 collaborated --

1 THE COURT: It was a collaboration.

2 MR. BILINKAS: With this individual. The
3 only person that the prosecutor is putting on for the
4 purposes of this statement in this Miranda hearing.

5 MR. MELLO: And that's my prerogative and
6 let's be clear Your Honor, the testimony that has been
7 had is the testimony of this office -- Officer and his
8 recollections regarding the conversation that he had
9 with Mr. Scharf with Mr. Alva. Now, having said that
10 we know that he has notes to this effect and those
11 notes are part of the recording of that conversation.
12 And in fact the information is basically the same in
13 the quote, to use Mr. Bilinkas' term, "official Police
14 report". Well, the notes are an official Police
15 report, too. Because they reflect the notes of this
16 detective as he took them contemporaneous with the
17 statement made by Mr. Scharf. And in fact if it means
18 anything to anyone about what Mr. Scharf said about
19 Mrs. Scharf stopping at Oat's Farm to buy apples they
20 are memorialized in his notes. Now, I didn't inquire
21 as to that because it doesn't seem to be terribly
22 relevant for your inquiry. But, at this point I think
23 that's about as much as can be said. And as a matter
24 of fact -- keeps continuing a reference to additional
25 information being incorporated into this report and

1 apart from it not being relevant there's only as I see
2 it one reference to additional information that was a
3 conversation or interview with the son, Jonathan, and
4 -- and that's all. The rest of it has to do with the
5 conversation that we've heard testimony about. And --
6 and of course I have no objection to any -- any inquiry
7 there. But, not to extraneous matters that have
8 nothing to do with what is before the Court.

9 THE COURT: Could we focus these questions a
10 little more clearly? I -- I understand what you're
11 trying to do and I can appreciate your responsibility
12 --. We're moving into areas outside of Miranda and
13 we're spending more time than what we should with those
14 areas. So, I would ask that you focus your inquiry.

15 CROSS EXAMINATION BY MR. BILINKAS:

16 Q The one thing that you specifically make
17 reference in your notes is the fact that Mr. Scharf
18 indicated that he and his wife sat in the middle of a
19 large flat rock; correct?

20 A Correct.

21 Q And that Mrs. Scharf was sitting between his
22 legs; correct?

23 A Correct.

24 Q And correct me if I'm wrong during that
25 statement Mr. Scharf indicates that he and his wife

1 were involved in what he described as a open marriage;
2 correct?

3 A That's correct.

4 Q Is that the exact term used by Mr. Scharf?

5 A If it's in these notes, it is.

6 Q Are you saying you have no specific
7 recollection of the interview and that your entire
8 testimony is based on your review of the notes?

9 MR. MELLO: Objection Judge. That's not --.

10 THE COURT: Sustained.

11 Q Do you have a specific recollection of the
12 exact words spoken by Mr. Scharf on September 22nd?

13 MR. MELLO: Of that particular phrase?

14 MR. BILINKAS: The entire interview.

15 MR. MELLO: Judge, I think we can all agree
16 that no one could recite word for word --

17 THE COURT: I'm going to sustain the
18 objection. If you have something specific that you
19 want to point out, fine. But, if you're going to refer
20 to an entire report, I don't think that's probative, I
21 don't think it's relevant and I think it's confusing.
22 Sustained.

23 Q Do you have a specific recollection of Mr.
24 Scharf using the term open marriage?

25 A No.

1 Q The prosecutor on direct used the word
2 infidelity. Did Mr. Scharf ever use the word
3 infidelity?

4 A I don't recall.

5 Q Is the word infidelity contained anywhere in
6 your report that you collaborated with Mr. Alva's or in
7 your notes?

8 A That exact word? I -- can I refer?

9 Q Please.

10 A I know unfaithful is in there. I don't know about
11 infidelity. I'll -- I'll see.

12 Q To save some time, can you refer to this page
13 of your report?

14 MR. MELLO: I'm sorry. Can you tell me what
15 that is Mr. Bilinkas?

16 MR. BILINKAS: I'm trying to get it. My
17 pages aren't numbered --. What page for the record are
18 you referring to?

19 A This copy isn't numbered either.

20 Q Just to save time you agree with me that with
21 regards to your notes somewhere were contained in them
22 there's a statement that says, served with papers
23 couple of weeks ago by lawyer, alleged unfaithfulness?

24 MR. MELLO: -- alleged unfaithfulness,
25 subject said he was. Had open arrangement with wife --

1 outside dating. So, it appears that that language open
2 marriage, open arrangement appears in the notes and the
3 fact the he said he was unfaithful. Perhaps, the word
4 infidelity wasn't used --

5 MR. BILINKAS: Judge, is -- is he testifying?
6 I don't know what he's doing.

7 MR. MELLO: Well, that -- that's my -- my --
8 my only point. I'm sorry, Mr. Bilinkas. My only point
9 was to --

10 MR. BILINKAS: I want to ask specific
11 questions. I'm trying --

12 MR. MELLO: To read the complete --

13 MR. BILINKAS: To focus and -- and what the
14 prosecutor keeps --

15 MR. MELLO: Sentence.

16 MR. BILINKAS: Doing, Judge is testifying
17 with regards to what he believes it said. I asked very
18 specific questions. I'm trying to hone in --

19 THE COURT: What is your specific question?

20 Q Isn't it a fact that my client referred to
21 his relationship with his wife as an open marriage?

22 A In that context. Yes.

23 Q And any reference with regards to the term
24 unfaithfulness or infidelity was never specifically
25 spoken by him directly?

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MR. MELLO: Objection.

Q Even though someone may characterize it as that.

A The wife -- his wife alleged -- made those allegations.

Q Not my specific client; correct?

A Not those exact words. I don't think so.

Q The only words he used based on your recollection is this term open marriage; correct?

A Yes.

Q So, as of September 22nd both you and Alva's were informed in no uncertain terms that Mr. Scharf was dating other people; correct?

A Yes.

Q And Mrs. Scharf, at least according to him was dating other people; correct?

A Correct.

Q And will you agree with me that before this report was done on October 9th that you had talked to at least five witnesses that had made negative comments about my client?

A They made negative comments about the state of the marriage. I don't know if they specifically made negative comments about Mr. Scharf.

Q When you say the marriage, did any of them

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allege that she was fearful of him?

A Yes.

Q Okay. Do you agree that that's a negative comment concerning my client?

A Within the state of their relationship, I would say yes.

Q Now, when Mr. Scharf came to the prosecutors office on the 22nd he thought and correct me if I'm wrong that he was coming to take a polygraph exam; correct?

MR. MELLO: Well, I -- I'm going to object to what he thought.

THE COURT: Sustained.

MR. BILINKAS: I'll rephrase it.

Q You specifically asked him the day before to come to the prosecutors office to take a polygraph exam; correct?

A Not exactly. I asked if he was willing to come and he was and he did.

Q And your reference as to whether or not he was willing to come had to do with a polygraph exam; correct?

A Yes.

Q Not a official statement taken by the county prosecutors office; correct?

1 MR. MELLO: Object -- I'm going to object to
2 the form of the question.

3 THE COURT: Sustained. Ask another question.

4 Q Did he have any idea based on your
5 conversations with him that you and Alva's intended to
6 take a formal statement from him?

7 MR. MELLO: Objection to the characterization.

8 THE COURT: I'll allow --

9 MR. BILINKAS: Formal statement?

10 MR. MELLO: And -- and what he knew about
11 what Mr. Scharf knew.

12 MR. BILINKAS: Judge, if I may? Mr. --
13 Scharf was told to be there for a specific purpose.
14 You know, the only thing discussed the night before was
15 a polygraph exam.

16 THE COURT: Okay. If -- if you know what was
17 the reason that Mr. Scharf was supposed to be there?

18 A I could speak to the reason that he was coming to
19 take a polygraph examination.

20 Q That's the only reason that you know he came
21 there for; correct? That you know.

22 A Correct.

23 Q Correct?

24 A Correct.

25 Q And when he got there and -- and you talk

1 about this room with a door, you couldn't just wander
2 in and out of that prosecutors office; correct?

3
4 A Well, when you say wander in, I mean he was free
5 to leave . But --

6 Q Well, for instance --

7 A He wouldn't have -- access to the whole office.

8 Q For instance, could he get into the
9 prosecutors office, into this inner room that he was
10 questioned without you or Alva's escorting him? Yes or
11 no?

12 A No. He wouldn't know where it is.

13 Q Irrespective of where it was in the office,
14 could he have gotten -- just walked into that room
15 unless he was specifically escorted by you or Alva's?

16 A No.

17 Q -- security to even get into the prosecutors
18 office; correct?

19 A Yes.

20 Q So, it's a secured location?

21 A Correct.

22 Q And you took him into that secured location;
23 correct?

24 A Yes.

25 Q And he thought he was going in to take a
polygraph; correct?

1 A I'm sure he -- he --

2 MR. MELLO: Objection to what he thought.

3 Q You told him that the only reason why you
4 wanted him there was to take a polygraph; correct?

5 A I didn't speak those words. I didn't say the only
6 reason. He --

7 Q What words did you speak?

8 A I asked if he was willing to -- still willing to
9 take a polygraph examination. He said yes.

10 Q Any other words you spoke to him that you
11 recall?

12 A Telling him the time, date you know, and location.

13 Q Do you recall telling him at that time that
14 you and Alva's intended to take a formal statement?

15 MR. MELLO: Objection to the characterization
16 of formal statement.

17 MR. BILINKAS: An official --

18 THE COURT: All right. Hold on a second.
19 What do you recall telling him if anything?

20 A Well, can I ask at which time is -- is he
21 referring to?

22 Q Your conversation you had with him to set up
23 the meeting at the prosecutors office.

24 A Okay. No, I just -- I asked if he would take the
25 polygraph, and he said he would and then I provided him

1 with date, time and location.

2 Q And that's all you asked him; correct?

3 A Yes.

4 Q And he showed up at the exact time and the
5 exact day you know, that you requested; correct?

6 A Yes.

7 Q And at some point he announces himself
8 outside; correct?

9 A I believe -- no, I think we met him there.

10 Q You were waiting outside in the lobby for
11 him?

12 A It would be outside the building. Again, I don't
13 have specific recall as to where we were positioned
14 waiting for him.

15 Q Irrespective of where you were, he arrives,
16 you take him -- both you and Alva's into a secured
17 office of the prosecutors office; correct?

18 A No. That office wasn't secured. The door swung
19 freely open and shot and there was no -- we didn't lock
20 him in. No. The office -- total office itself is
21 secure, that's a secure location. But, this particular
22 room, you know it's just a regular room.

23 Q Okay. And when you took him into this
24 regular room, it was you and Alva's; correct?

25 A Yes.

1 Q And did you immediately have him meet with
2 polygraphist and take the exam that he had agreed to
3 do?

4 A No.

5 Q You took a statement from him; correct?

6 A We asked him questions.

7 MR. MELLO: They interviewed him.

8 Q You -- you interviewed him and asked specific
9 questions regarding this homicide investigation;
10 correct?

11 MR. MELLO: Objection to the form of the
12 question.

13 MR. BILINKAS: Judge, I don't think there's
14 any doubt that it's a homicide investigation. And the
15 prosecutor should -- know that.

16 THE COURT: It's an investigation. All
17 right. Rephrase the question.

18 Q Did you ask him specific questions concerning
19 this investigation?

20 A Yes.

21 Q And when did you and Alva's decide to conduct
22 this interview?

23 A I don't recall the exact time we decided to do
24 this. I don't recall. I'll tell you the time we
25 started it. That's --

1 Q Did you talk to Alva's the night before?

2 A I don't recall.

3 Q Do you recall talking to him prior to Scharf
4 arriving?

5 A Yes.

6 Q And isn't that when you and he had gone over
7 all the information that you both had at that point, as
8 you indicated on direct?

9 A All the -- the information I had I had gone over
10 it before that.

11 Q Did -- you indicated you talked to Alva's
12 prior to taking the interview.

13 A Yea. I said exactly what we said I -- I don't
14 recall. You know, I will tell you I'm sure it had to
15 do with the case.

16 Q And I assume at that point is when you
17 decided to take a statement from my client?

18 MR. MELLO: Same -- same objection, Your
19 Honor.

20 MR. BILINKAS: -- I don't understand what the
21 objection is to a statement, whether he calls it an
22 interview, question and answer --

23 MR. MELLO: That's fine.

24 MR. BILINKAS: They talked to him.

25 MR. MELLO: That's fine. They talked to him

1 and they conducted an interview and he was asked
2 questions and the responses have been testified to.
3 That's --

4 MR. BILINKAS: And -- and --

5 MR. MELLO: That's fine with me.

6 Q And you'll agree with me that before you
7 started asking him the questions, based on what you
8 told him, he was there for a different reason; correct?

9 A Yes.

10 Q And he was not apprised of the fact that you
11 and Alva's intended to question him concerning his
12 wife's death until he was brought into that room in the
13 prosecutors office?

14 A We might have told him when he was outside. We
15 might have told him as we were walking down the hall --

16 Q When you say you --

17 A But, at some point when he arrived you know, we
18 asked -- we asked if he would you know, speak to us.

19 Q When you say you might have told him --

20 A Yea, I don't have --

21 Q You have no specific recollection of when you
22 told him; correct?

23 A Correct.

24 Q So, at some point in time he's brought into
25 this room and you start asking about -- about his

1 wife's death; correct?

2 A Well, we -- we asked him about his activity the
3 day before and the actual day of -- of his wife's death
4 and at some point it did lead up to actually what
5 happened at the location.

6 Q Now, at that point in time was it your
7 impression that Mr. Scharf could just walk out of that
8 interview room with you and Mr. Alva's right there?

9 A Yea. Yes, sir. He could have got up, he could
10 have stopped it, he could have done -- did anything he
11 wanted.

12 Q Did you tell him that? That you don't have
13 to answer these questions.

14 A I don't know. I don't recall. I don't ---

15 THE COURT: Mr. Bilinkas, look for a place to
16 break for lunch.

17 MR. BILINKAS: I think this is fine.

18 THE COURT: Now?

19 MR. BILINKAS: --.

20 THE COURT: Okay. We'll resume at 1:30.

21 (BREAK IN HEARING)

22 THE COURT: Please return to the stand.

23 CROSS EXAMINATION BY MR. BILINKAS:

24 Q I only have a few more questions for you.

25 With regard to the statement on October 22nd, my client

1 specifically told you and Alva's that his wife --

2 MR. MELLO: I'm sorry. I'm sorry. October
3 22nd?

4 Q September 22nd, I apologize. My client
5 specifically told you and Detective Alva's that his
6 wife had dropped their son off at a friends house;
7 correct?

8 A Yes, sir.

9 Q And -- and based on your notes you spoke to
10 that neighbor; correct?

11 A Yes.

12 Q Jackson; correct?

13 A I may not have. -- Lieutenant -- the Washington
14 Township Police Lieutenant had spoke -- had the
15 conversation with Mr. Jackson. I don't recall if I
16 actually spoke to him. I don't.

17 Q And on direct you made a specific statement
18 about talking with Jody Scharf's brother; correct?

19 A Yes.

20 Q Okay. And you make reference and you pointed
21 out the reference you put in your notes; correct?

22 A I have referenced my notes to conversation with
23 him.

24 Q Now, did you put that reference regarding
25 that conversation in any official Police report?

1 MR. MELLO: I'm going to object to the
2 characterization, Judge. It's -- it's in his notes
3 that are contemporaneous with the interview. I suppose
4 we can debate on the terminology. But, that's where it
5 is.

6 MR. BILINKAS: Again, Judge to me there's a
7 huge difference between notes and what's been submitted
8 as a official report --

9 THE COURT: Okay. So, we have notes and we
10 have a report.

11 MR. BILINKAS: Right.

12 THE COURT: Why don't you ask a specific
13 question?

14 Q You specifically put your conversation or a
15 conversation with Jody Ann Scharf's brother in your
16 notes; correct?

17 A Correct.

18 Q You never memorialized that conversation,
19 like you did numerous other conversations you -- you
20 had in a official written Police report; correct?

21 A Correct.

22 Q So, would you agree with me that but for me
23 having possession of these notes, there would be no way
24 for me to prove that you were aware of this
25 conversation; correct?

1 A Correct.

2 Q And when the prosecutor was asking you
3 questions and you responded that the brother said that
4 Jody Scharf was afraid of heights and would not go to
5 the cliffs, were you also told that the brother had
6 indicated that he hadn't even spoken to his sister in
7 over three years?

8 A Yes.

9 Q Now, in the statement that was prepared by
10 Detective Alva's, did you review that?

11 A Yes.

12 Q And does that -- contain every single bit of
13 important information that my client provided to you
14 and Alva's on that day?

15 A In that report -- I have some information in my
16 report that's not in Alva's report. I was not present
17 when he actually did it.

18 Q Okay. Well, when you say you have
19 information in your report, you know, you don't have a
20 report with regards to the specific interview on
21 September 22nd, 19 --

22 A I'll correct that. My notes.

23 Q You don't have a official report, just notes;
24 correct?

25 A Correct.

1 Q Now, do you recall any discussion with my
2 client on September 22nd, 1992 with regards to whether
3 or not my client had a life insurance policy on his
4 wife?

5 A Are you asking me if I had the conversation?

6 Q Were you present during any conversation in
7 that room on September 22nd, 1992 when anyone, either
8 you, Alva's or my client discussed having a life
9 insurance policy?

10 A I don't recall that.

11 Q And had something been said, would you have
12 put that in your notes?

13 A Maybe.

14 Q In a homicide investigation it is an
15 important factor that a spouse may have taken out a
16 large life insurance policy on his wife --

17 MR. MELLO: I'll object to the
18 characterization but, with that amendment simply at
19 this time, in that stage of the investigation -- ask
20 the question.

21 THE COURT: Ask another question.

22 Q If there was as a discussion that either you
23 or Alva's had with my client concerning a life
24 insurance policy that he had taken out on his wife,
25 would you consider that important enough fact to put in

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your report?

A I'd consider it.

Q And as you sit here today, do you have specific recollection of Alva's, yourself or my client talking about a \$200,000 life insurance policy?

A I have a recollection of -- of life insurance being brought up but, that's it. I don't remember for an amount. I don't remember at -- at the time Investigator Alva asked it. I don't recall that but, I -- I recall life insurance being brought up. I just don't -- I can't be specific.

Q As you sit here it's your testimony you have a specific recollection of -- of life insurance being discussed during that interview? Is that your testimony?

A I -- I can't be specific. I knew about a life insurance policy now, how and when it was brought up, I don't recall.

Q So, you don't know whether or not it was brought up during that interview or sometime thereafter?

MR. MELLO: Judge, I'm sorry. I thought the testimony was that he recalled the topic being brought up but, he doesn't recall the specifics of it during the interview.

1 THE COURT: I think the question has to do
2 with the time period as to when this occurred.

3 MR. BILINKAS: Correct.

4 Q Did that topic come up during the September
5 22nd, 1992 interview with my client that you had with
6 Alva's and him?

7 A I do not recall if it did.

8 Q Well, can you look at your notes and tell us
9 whether or not there's any reference to any discussion
10 concerning a life insurance policy?

11 A I'm not seeing it in my notes.

12 Q Do you see it in Detective Alva's official
13 interview report that was submitted?

14 A I don't see it in Alva's report as well.

15 Q When -- when you take a statement from
16 someone, is it your practice to include all the
17 information that's being provided to you by a
18 perspective defendant, whether or not it's either good
19 or bad?

20 A Yes. I would included it all. If I could.

21 Q What do you mean by, if I could?

22 A Well, certain things that may not be in here or
23 because I was writing it in real time as he was
24 speaking so, I -- I don't have word for word what he
25 said.

1 Q Do you have all the topics that were
2 discussed at least?

3 A Standing by my notes I'd say all the topics that I
4 wrote down. If there was another topic discussed and
5 -- I don't know.

6 Q And so are you saying there could be other
7 things that were discussed and you have no
8 recollection?

9 A No, I'm not. What I'm saying is, the topics that
10 were discussed are in my notes. If I missed something
11 that's -- that's different. I don't -- I don't -- you
12 know, I don't recall. Again --

13 Q Do you normally miss things when you're
14 interviewing people --

15 A I don't take it -- I don't take -- I don't do it
16 this way. I can't write as fast as -- as somebody can
17 speak. So, I try to get -- I quote when I can for
18 instance and I just try to get the whole picture in
19 what I'm doing.

20 Q So, when you say the whole picture you don't
21 know as you sit here today whether or not those notes
22 contain each and every topic that my client told you on
23 that day?

24 MR. MELLO: He said they included the topics,
25 it might not be word for word, Your Honor.

1 THE COURT: All right. --

2 MR. BILINKAS: He hasn't said that
3 definitively, Judge and that's what I'm trying to get
4 out of him.

5 THE COURT: As we're parsing through this
6 dialogue, it sounds like -- well, let's ask another
7 question and try to finalize this hearing.

8 MR. BILINKAS: I'm done, Judge --.

9 THE COURT: I'm sorry?

10 MR. BILINKAS: I'm done.

11 THE COURT: Oh. Any re-direct?

12 MR. MELLO: Nothing, Judge.

13 THE COURT: You may step down. Thank you.
14 Do you need to retrieve these papers?

15 MR. MELLO: Yes, Judge. Thank you.

16 THE COURT: And who is the next witness?

17 MR. MELLO: Next witness would be Captain
18 Joseph Hornyak.

19 THE COURT: Good afternoon. Face the court
20 clerk.

21 COURT CLERK: Raise your right hand.

22 J O S E P H H O R N Y A K, WITNESS, SWORN.

23 COURT CLERK: State your name for the record.

24 THE WITNESS: Joseph Hornyak, H-O-R-N-Y-A-K.

25 THE COURT: Please have a seat.

1 THE WITNESS: Thank you, sir.

2 THE COURT: You may begin.

3 MR. MELLO: Thank you very much, Your Honor.

4 DIRECT EXAMINATION BY MR. MELLO:

5 Q Good afternoon, sir.

6 A Good afternoon, sir.

7 Q If you would, may I begin your testimony by
8 asking you to recite your background in law
9 enforcement?

10 A Sure. I started with this office in -- this
11 office meaning the Bergen County Prosecutors Office in
12 May of 1988. I was hired as an investigator.
13 Currently, I hold the position of Captain of Detectives
14 with the prosecutors office.

15 Q And with respect to your assignment and rank
16 of Captain of Detectives within the prosecutors office,
17 would you please speak to your general duties as a
18 Captain in the prosecutors office?

19 A I oversee a number of squads, major crimes, sex
20 crimes, computer crimes, white collared crimes,
21 polygraph, property and evidence. My responsibilities
22 are the oversight and management, some case management
23 in those particular squads and also administrative
24 duties and some policy.

25 Q And with respect to your reference to the

1 overseeing of major crimes, would you please tell us
2 what comprises the major crimes unit?

3 A In 2003 major crimes was combined from three
4 individual units, fatal accident, arson and homicide.
5 They had been stand alone squads up until that time.
6 In 2003, they were combined and that comprises major
7 crimes. It's about approximately 15 detectives. They
8 work in the three disciplines and they are all
9 available for any one of those particular incidents'
10 such as a major homicide. We will draw personnel from
11 all three disciplines to work on an individual case, if
12 needed.

13 Q Now, I'm going to ask you to now go back in
14 time and I'm going to ask you to reflect upon and
15 discuss with us the date September 22, 1992; all right?

16 A Sure.

17 Q If you would, would you first what rank --
18 what position you had in the office of the Bergen
19 County Prosecutor on September 22, 1992?

20 A County Investigator.

21 Q And can you tell us how long you had been
22 employed as a county investigator with the Bergen
23 County Prosecutors Office as of September 22, 1992?

24 A A little more than four years.

25 Q Can you tell us at that time, in addition to

1 let's say run of the mill detective duties in terms of
2 the investigation of crime, did you hold any other
3 position, any other additional duty in addition to the
4 investigation of criminal events?

5 A Yes.

6 Q And what was that?

7 A 1992 I was assigned to the sex crimes unit. In
8 addition, I conducted polygraph examinations throughout
9 the county. For the county.

10 Q And if you would, would you just briefly set
11 out for us your background in the area of polygraph
12 examination?

13 A In 1985 I was trained at Reed College in Chicago,
14 Illinois. I graduated in January or December of 1985.
15 I then worked privately, in a private industry for
16 approximately three years until joining this office in
17 1988.

18 Q And if you would, can you discuss with us,
19 generally, the approximate number of polygraph
20 examinations that you had conducted either in your
21 first capacity or as a law enforcement officer, up to
22 September 22, 1992?

23 MR. BILINKAS: Judge, I'm going to object to
24 relevance. Again, the -- the fact that he took a
25 polygraph is not going to come before the jury. The

1 question is only whether or not the state -- voluntary
2 or a violation of my clients rights. So, again the
3 actual administration of the polygraph, I think is
4 irrelevant to these proceedings.

5 THE COURT: Mr. Mello?

6 MR. MELLO: Actually, Judge I agree in part
7 with Mr. Bilinkas and the part that I agree with is
8 that it certainly will play no role in the trial
9 proceeding. And all witnesses shall be instructed that
10 they are to make no reference to the polygraph test
11 taken by Mr. Scharf. However, for purposes of this
12 particular inquiry, where the issues become one, was a
13 statement made? Obviously. But, importantly was the
14 statement voluntary and was the statement made while in
15 custody? Now, here we have the administration of a
16 polygraph examination, you will note that the testimony
17 that you've heard thus far was that Mr. Scharf
18 volunteered to take a polygraph test in a conversation
19 with Mr. -- Detective Karnick. That he was asked by
20 Detective Lynam if he still would take such a test on
21 the day following. Mr. Scharf agreed. An appointment
22 was scheduled for the 22nd of September 1992 to have
23 that polygraph examination conducted. Enter, Captain
24 Hornyak then, Investigator Hornyak. What I believe is
25 relevant and I believe it's relevant to this specific

1 issue is the circumstance under which the statements
2 that Mr. Scharf made to Captain Hornyak must be fleshed
3 out in this testimony. And I think it is reasonable
4 and I will argue at the conclusion of these proceedings
5 that all of this behavior by Mr. Scharf, clearly
6 connotes voluntariness and clearly connotes he was not
7 in custody because as you have seen in the moving
8 papers Mr. Scharf failed the polygraph examination. He
9 was informed of that and he still was permitted to
10 leave on his own accord, and in fact went home.

11 So, I'm only introducing it for that limited
12 purpose to be able to demonstrate the voluntariness of
13 the statements that he made to Captain Hornyak. And
14 that despite the fact that he failed that examination
15 and the fact that he was advised as such, that he left
16 headquarters, was not in any wise put in custody, was
17 not in any wise arrested and in fact was not arrested
18 until December 17, 2008 and I think that's why it's --
19 it's relevant. And that's the only interest I have.
20 I'm not going to go into quite frankly, the -- the
21 questioning of the polygraph questions and all that
22 sort of thing.

23 THE COURT: Your reply?

24 MR. BILINKAS: Judge, the -- the problem is
25 every time I don't object and allow prosecutor this

1 leeway, when I get up and try to get into specific
2 areas you know, that he touched on he objects,
3 indicates they're not relevant, we'll -- we'll
4 stipulate that my client went home that day. You know,
5 we'll stipulate he was not arrested until you know, two
6 years ago. Again, we're talking about the
7 voluntariness at that specific point and to me any --
8 the only thing admissible, the only thing the
9 prosecutors attempting to introduce today is the pre-
10 interview statement, period. So, anything beyond that
11 I don't think is appropriate for this hearing.

12 THE COURT: However, the witnesses
13 observation as to the voluntariness or whatever
14 demeanor or behavior of the witness would be --

15 MR. BILINKAS: During that interview?

16 THE COURT: Would be helpful in assessing not
17 only, credibility but, the voluntariness.

18 MR. BILINKAS: And I have no objection to any
19 references to -- to demeanor. But, again if we're
20 talking about the actual test or --

21 THE COURT: I don't -- it wasn't my
22 understanding that the actual test was being discussed
23 but, rather aspects of that test would be utilized. Is
24 that correct?

25 MR. MELLO: You are correct. I'm simply

1 going to ask, was the test administered and -- and I'll
2 give the questions right now. Was the test
3 administered? What was the result of the test? Did
4 you inform Mr. Scharf of that fact?

5 THE COURT: With that understanding for those
6 limited purposes, I will allow it.

7 MR. MELLO: I -- thank you, Judge.

8 Q I -- I think my question was and this will be
9 my last question in terms of background. As of
10 September 22, 1992 approximately how many of these
11 kinds of examinations had you conducted?

12 A Anywhere from four to six thousand examinations.

13 MR. BILINKAS: And again, Judge I don't
14 understand the relevance of that. Again, if you want
15 me to cross examine him regarding his qualifications,
16 you know his background and things like that again, I
17 -- I see no relevance with regard to this hearing. I
18 --

19 MR. MELLO: Well, I -- I tried -- I'm sorry.
20 I didn't mean to interrupt. I -- tried to limit it to
21 a very specific focus and I think I did. I finished my
22 questions in that regard and I think every witness
23 should, and we all know this, give the finder of fact a
24 little bit of background so that you can make a
25 decision not in a vacuum, which is why we ask people

1 when they take the stand something about their
2 background and what they do and so forth. And I'm done
3 with the background information.

4 THE COURT: Okay. Let's -- let's move on.

5 Q And with the Court's suggestion, let's move
6 right to September 22, 1992 and let me ask you did you
7 have occasion to meet with an individual known as
8 Stephen Scharf?

9 A Yes, sir.

10 Q Do you see him in court today, sir?

11 A Yes, sir.

12 Q Would you point him out please, sir?

13 A Orange jumpsuit at defense.

14 MR. MELLO: Sir, would the record reflect the
15 witness --

16 THE COURT: The record will so identify the
17 defendant with the stipulation of defense counsel.

18 MR. MELLO: Thank you.

19 Q Now, if you would Captain would you begin to
20 narrate for us the circumstance under which you met
21 with Stephen Scharf on the 22nd day of September 1992?

22 A Sure. The previous day on Monday I received a
23 call from Jim Lynam who at the time was working with
24 PIP, the Palisades Interstate Parkway and he asked me
25 if I had time to do a polygraph examination on a

1 particular investigation that he was involved in. I
2 got general background on the case and we set it up for
3 -- Detective Lynam and I set the examination up for the
4 following day, Tuesday the 22nd, 1992.

5 Q Can you tell us where you encountered Mr.
6 Scharf --

7 A Sure.

8 Q On September 22nd, 1992?

9 A Tuesday morning, Stephen Scharf came to this
10 building, the court house at the time sex crimes squad
11 room was located in this building as well as the
12 polygraph suite. My first encounter with Mr. Scharf
13 was when he was already placed into the polygraph
14 suite. At that time, I met with him, I gave him two
15 forms. One -- was a polygraph consent form and also
16 the second form was a polygraph medical form, that asks
17 some brief questions on whether or not he's suitable
18 for -- to take a polygraph examination. The polygraph
19 release form I asked him to read it over when I left
20 the room, to print his name on the top line as well as
21 the date, to read it but not to sign anything until I
22 came back in -- into the room. Came back into the room
23 moments later, I had another identical copy of -- of
24 the release form. At that time, I read the -- the form
25 verbatim to him and then asked him to sign it if he was

1 still willing to take the polygraph and he was
2 consenting to take the polygraph, to sign the form and
3 to date it and -- and -- the time which I believe we
4 did. I then went over the medical form real briefly
5 with him and then we got into the issue --
6 investigation of why he was asked to take a polygraph.

7 Q And the issue of course under investigation
8 was the death of his wife?

9 A Yes, sir.

10 Q I'm going to show you two exhibits. SM17 and
11 18. Any objection?

12 MR. BILINKAS: No.

13 MR. MELLO: Thank you.

14 Q I actually have three exhibits, one of them
15 is SM19. I'm going to ask you to just examine that
16 exhibit and tell us if you could identify it?

17 A Yes. This is my report of Stephen's polygraph
18 examination.

19 Q All right. And I'm going to show you SM17
20 and 18. Judge, these by agreement will be marked into
21 evidence. 17 and 18, not the report. If you would,
22 would you take a look at 17 and 18.

23 A Yes, sir. I recognize these forms.

24 Q Okay. Would you please tell us what each
25 document is.

1 A Okay. As I testified to earlier. This is the
2 polygraph consent form that I asked Stephen to read
3 over while I was out of the room and then, which I read
4 to him when I came back into the room just prior to the
5 start of the polygraph examination.

6 Q All right. And would you read into the
7 record that which you read to Mrs. Scharf.

8 A Okay. Just, so I may clarify these -- these forms
9 are identical. I just -- I -- I -- the way the policy
10 was that we have two forms, identical forms and we --
11 and we did them both. Don't ask me but, that's the way
12 we did it.

13 Q Okay.

14 A So, you -- you'd like me to read this?

15 Q Fair enough.

16 A Okay.

17 Q You can read one of them, they're both
18 identical.

19 A Okay. Okay. Place, Bergen County Prosecutors
20 Office, the dates -- this particular one was filled in
21 by Stephen, 22 September 1992. I, Stephen Scharf
22 voluntarily agree to take a polygraph examination to be
23 given by Joseph Hornyak of the Bergen County
24 Prosecutors Office.

25 Next paragraph, I've been advised that the

1 polygraph examination consists of a pre-test interview,
2 polygraph test and a post test interview. Next
3 paragraph, I have been advised that I have the right to
4 refuse to submit to the polygraph examination, that I
5 have a right to remain silent and refuse to answer any
6 questions and that anything I say during the course of
7 the polygraph examination can and will be used against
8 me in a court of law, that I have a right to consult an
9 attorney before submitting to the examination and that
10 if I cannot afford to hire an attorney one will be
11 appointed to represent me before any questioning or the
12 examination. That during the examination I have a
13 right to stop answering questions, request an attorney
14 or to leave or terminate the examination at any time.
15 I hereby waive these rights, no promises or threats
16 have been made to me, no pressure, coercion of any kind
17 has been used against me to force me to submit to the
18 polygraph examination.

19 Next paragraph, I authorize Bergen County
20 Prosecutors Office to disclose both orally and in
21 writing the results of this examination. Next
22 paragraph, I have read the above consent to taking a
23 polygraph examination and has been read to me -- has
24 been read aloud to me. There's a spot for a signature,
25 which Stephen put his signature, the time, 11:46 a.m.

1 and the witness would be witnessed by me.

2 Q And did he in fact sign that?

3 A Yes, sir. Both forms.

4 Q Signed in your presence of course?

5 A Yes, sir. Both forms.

6 Q And the time on the form is what?

7 A One is 11:46, the other is 11:49.

8 Q All right. Just -- just for accuracy

9 purposes for the record, can you tell us which SM

10 number is 11:46 and which SM number is 11:49?

11 A 17, SM17 is 11:46. SM18 is 11:49. I believe

12 there was a little discrepancy between mine and

13 Stephen's watch at that time.

14 Q Okay. Fair enough. Now -- now that you've

15 completed that which you've testified to, can you tell

16 us how the procedure now evolves?

17 A Yes, sir. I explained to Stephen how the

18 examination will be conducted and try to go through

19 step by step with him as to what would happen. We go

20 over some background information, go over the facts of

21 the case, I start asking some questions that would

22 develop my question -- questions that I would be asking

23 him on the test. Once I'm done with -- once I was

24 finished with that, reviewed the questions with him, so

25 that he knew exactly what I was going to ask him on the

1 test and I knew exactly how he would answer them. And
2 that the whole polygraph examination would consist of a
3 number of different individual tests where I'd be
4 asking the questions over maybe, anywhere from three to
5 five times. Maybe, three to six times depending on
6 what happened during the examination.

7 Q All right. Now, apart from the examination,
8 let's first focus on how you ascertain the first piece
9 of information from Mr. Scharf. What do you ask him?
10 What does he say?

11 A Background information. Name, date of birth,
12 social security number, address, where he's employed,
13 living -- current living situation, general background
14 information that you would start --

15 Q Okay.

16 A That you begin an interview by asking.

17 Q And -- and he cooperated fully in providing
18 you all of the information that --

19 A Yes, sir.

20 Q You requested?

21 A Yes, sir.

22 Q And at any time did he have any hesitancy in
23 providing any of the information?

24 A No.

25 Q Okay. Now, at this time you probably have

1 been clear on this point and I apologize if you've
2 already said this but, at this time when you are
3 speaking with Mr. Scharf, it is just you and Mr.
4 Scharf?

5 A Yes, sir.

6 Q And if you would, could you tell us what is
7 the next part of the interview process, after you
8 ascertain some general background information from Mr.
9 Scharf?

10 A I asked him to tell me everything he did from the
11 time that he woke up on Sunday September 20th, 1992
12 until the event, until the time that his wife fell from
13 the cliffs. Asked me to tell me everything verbatim
14 and -- and I wrote it down and wrote that down on a
15 separate piece of legal paper.

16 Q All right. I'm going to have this -- this is
17 marked S20. This is --. Now, when you -- when you
18 take this initial information that anyone is giving you
19 in a polygraph setting, you're taking whatever they say
20 to you --

21 A Yea. I told him -- take down everything verbatim.

22 Q Good or bad?

23 A Good or bad.

24 Q And if you would, could you tell us what Mr.
25 Scharf said at that particular point?

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A -- you want me to read it?

Q Yes. And you're taking this down as he's saying it?

A Yes, sir. Yes, sir. Again, this is -- the instructions are, tell me everything you did from the time you woke up until the event. I had a catch with my son -- I had a catch with my son, Jody and I planted some mums. I kind of straightened up my garage, my bedroom, showered and shaved, fixed a drawer in the kitchen, just packed stuff up and got ready to go up and waited while Jody took Jonathan to his friends house and then I read some professional literature, a reliability handbook and watched some football. And then we drove -- she came home and we left and then we arrived at the park and then that's -- then the accident. That's it you know, without going into detail like, going to the bathroom and putting on -- trying to find CNN.

Q Okay. Now --

MR. BILINKAS: For the record, that's in my clients hand or his --

MR. MELLO: No.

THE WITNESS: No, that --

MR. MELLO: I'm sorry. That -- that was --

THE WITNESS: It's -- it's my hand.

1 Q It was written by you as he spoke --

2 A Yes, sir.

3 Q The words?

4 A Yes, sir.

5 MR. BILINKAS: Again, for the record are
6 there any notes with regards to the statements
7 contained in the report?

8 MR. MELLO: No, other notes. No. There are
9 the polygraph charts and -- which you have but, we're
10 not going into those.

11 MR. BILINKAS: Right. I have the -- I have
12 the charts.

13 MR. MELLO: Okay.

14 Q Okay. Now, I think we're at that point where
15 you've taken this information where you've asked him to
16 relate everything that happened that day; what happens
17 now?

18 A I continue with my pre-test interview where I -- I
19 ask some more questions regarding why he's been asked
20 to take the test, how does he feel about taking the
21 test? When did he find out he'd be taking the test?
22 General questions such as that. Has he told anyone
23 he'd be taking the test? How he thought he would do on
24 the test? There's a series of questions that I ask
25 every individual who -- who gets -- who submits to a

1 polygraph examination. In the course of their pre-test
2 interview I do my question formulation, not necessarily
3 in front of Stephen and he may not know that I was
4 doing it at the time but, figure out what I'm going to
5 ask him on the test itself. Relevant questions,
6 control questions, irrelevant questions, and then at
7 the conclusion of that is when we begin the examination
8 process.

9 Q Okay. Now, with respect to what we come to
10 refer to as a pre-test interview. You conducted such
11 an interview with Mr. Scharf?

12 A Yes, sir.

13 Q And can you relate to us the conversation
14 that you had with Mr. Scharf during the pre-test
15 interview?

16 A Yea. Sure. Besides what was said here, I then
17 asked some specific questions and -- and basically get
18 into a narrative about the actual even itself. Stephen
19 told me that they had made arrangements -- he and Jody
20 had made arrangement to go to the cliffs, have dinner
21 in New York on Saturday evening, I guess the 19th, it
22 would be the 19th and that didn't materialize because
23 Jody, after coming home from work Jody had a headache
24 or was sleeping at the time, I forge exactly what he
25 said. And that they then made plans the following day

1 to go. That's sort of reflected in -- in this
2 statement that he provided.

3 Regarding the -- September 20th, I believe he
4 said he left around six o'clock or so, six p.m. with
5 Jody after dropping off Jonathan, they drove to the
6 cliffs, they were going to go to -- they were going to
7 go to dinner at some point, again in New York. They
8 arrived at the park in the parking lot. On the way to
9 the park they had a discussion regarding the pending
10 divorce, once they got to the park they began to make
11 out or kiss in -- in the car. At some point they got
12 out of the vehicle, began walking, eventually made
13 their way to the rocks. Again, engaged in some
14 petting, kissing, hugging. At some point during this,
15 Stephen said that he was uncomfortable and needed to --
16 wanted to get up and wanted to go to the car to get a
17 blanket and a bottle of wine. He got up, Jody
18 protested, as she attempted to get up -- got in a --
19 into a squatting position and then fell forward off the
20 cliff.

21 Q Did he tell you what the lighting conditions
22 were at the time that she fell from the cliff?

23 A Yes. By this time it was dark.

24 Q Did you ask him or discuss with him at this
25 particular point in time, which is pre-test his

1 relationship at the time with his wife Jody?

2 A It was pending divorce. He had indicated that
3 they had been talking about that during the car ride
4 from Hacketstown to -- to Englewood Cliffs.

5 Q Did he indicate to you whether or not he
6 and/or she had seen persons outside of the marriage?
7 That is to say, romantic involvements if you --?

8 A Yes.

9 Q Okay. What did he say about that?

10 A I'm not sure exactly how it came up. At one
11 point, he told me, we had -- I guess I had asked him
12 about other people that he had seen, had been seeing
13 and he -- and he mentioned two, Terry Schofield and
14 also Kathy Scanlon, I believe. And that he was
15 attempting to break off those relationships because he
16 wanted to reconcile with his wife and that was the
17 purpose of this trip.

18 Q Did he refer in any way to his thoughts that
19 his wife may have been seeing another man?

20 MR. BILINKAS: Objection. Leading.

21 THE COURT: Sustained.

22 MR. MELLO: All right. Withdrawn.

23 Q Did he indicate to you when he last saw the
24 two women that you referred to?

25 A Schofield I believe Labor Day. Scanlon I think

1 was that weekend, perhaps the Friday before the 18th or
2 something like that. It was -- it was more recent than
3 Schofield I believe.

4 Q Might that be noted in your report?

5 A Sure. I think so. Would you like me to look?

6 Q If you might.

7 A Kathy Scanlon, September 18th. Schofield, Labor
8 Day weekend.

9 Q Now, have you concluded your recitation of
10 the discussion that you had with Mr. Scharf pre-test?

11 A Yes, sir.

12 Q You then conducted the formal polygraph test
13 --?

14 A Yes, sir.

15 Q And the result of that was what?

16 MR. BILINKAS: Objection. Relevance.

17 MR. MELLO: Same argument Judge that we made
18 earlier.

19 THE COURT: As to the issue of voluntariness?

20 MR. MELLO: Yes, sir.

21 MR. BILINKAS: I don't understand --

22 MR. MELLO: I thought I was permitted to ask
23 the questions, was the test administered and what was
24 the result? And that's all I'm asking. I thought that
25 was the ruling earlier.

1 THE COURT: --

2 MR. BILINKAS: The results? What relevance
3 of that --

4 MR. MELLO: That they're, I believe very
5 relevant and I thought that we had this discussion --

6 THE COURT: The test result?

7 MR. MELLO: Test result --

8 THE COURT: I -- I thought it was the
9 demeanor, observations regarding --

10 MR. MELLO: Yes. But, I also --

11 THE COURT: The defendant?

12 MR. MELLO: Said that I would ask him, did he
13 administer the test and what was the result? And the
14 fact that makes it relevant I believe in terms of the
15 voluntariness of the statements that he is giving and
16 whether or not he was in custody is this, we know that
17 --

18 THE COURT: You could ask those questions
19 without the results of the test.

20 MR. MELLO: And I --

21 MR. BILINKAS: -- and again, just so the
22 record is clear, we've had this gentlemen's test and
23 charts reviewed by a -- a -- probably one of the best
24 polygraphist's in the country --

25 MR. MELLO: I don't have any of that. And --

1 and --

2 MR. BILINKAS: Well, because the polygraph is
3 not going to be introduced and I --

4 MR. MELLO: And it's not going to be
5 introduced in evidence.

6 MR. BILINKAS: And I've indicated to -- to
7 them, when I asked for these specific documents that
8 our polygraphist says that the tests were totally
9 unreliable. And I know we're not going to introduce
10 this into evidence at trial, Judge. So, anything with
11 regards to my client passing or failing to -- to me is
12 going to create an unbelievably improper suggestion to
13 the Court and may have an impact you know,
14 subconsciously with regards to your decision. Again,
15 the results to me are irrelevant. If -- if he wants to
16 get into results then I want to challenge the way that
17 test was administered. I want to bring in a polygraph
18 expert and attack what he did here. And I submit Judge
19 they were done and -- and the results were told to my
20 client a specific way for the purpose of trying to get
21 him to confess. Pure and simple. So, there's a lot
22 more than meets the eye here, Judge. And again, if
23 we're not going to get into that, which I suggest we
24 shouldn't then you know, every time I don't object,
25 Judge and then I want to get in -- if he says I gave

1 him test, he failed it well, I want to cross him with
2 regards to his test. The charts, the manner of which
3 he did this test and again, I don't think it's relevant
4 to this -- to this proceedings and I thought you
5 originally said that he couldn't -- say what the
6 results were.

7 THE COURT: I thought we were going to --

8 MR. MELLO: I -- I saw it --

9 THE COURT: Be specific with the issue of
10 voluntariness, demeanor --

11 MR. MELLO: Yes. Yes.

12 THE COURT: How the defendant was observed.
13 You know --

14 MR. MELLO: Yes.

15 THE COURT: Different conditions.

16 MR. MELLO: And I thought you had indicated
17 --

18 THE COURT: I didn't think you were going to
19 ask the results of the test.

20 MR. MELLO: I thought you had indicated I
21 could ask that strictly for the purpose of establishing
22 voluntariness and whether he was in custody.

23 THE COURT: Well, you could ask just about
24 any question but that question.

25 MR. MELLO: All right.

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Q Now, can you tell us with respect to the examination, did you conduct a post test interview with Mr. Scharf?

A Yes, sir.

Q And did you advise him of your findings?

A Yes, sir.

Q And did you discuss with him the events that he began to discuss with you?

A Yes, sir.

Q And essentially did he stay with the version of events that he told you?

A Yes, sir.

Q At any time, was he free to leave from the beginning to the end of the conversation?

A Yes, sir.

Q And did he in fact leave?

A Yes, he eventually left. Yes.

Q And he in fact left on his own?

A Yes, sir.

MR. MELLO: Nothing further.

THE COURT: Cross?

CROSS EXAMINATION BY MR. BILINKAS:

Q Detective, at the time you interviewed my client on this day, the 22nd you'd only been an investigator for four years; correct?

1 A Yes, sir.

2 Q Now, did you make any mistakes with regards
3 to the conducting of the interview with my client?

4 MR. MELLO: I'm sorry. I'll -- I'm going to
5 object to that question. Did you --

6 THE COURT: Could you repeat the question?

7 Q Did you make any mistakes that day when you
8 conducted the interview with my client?

9 MR. MELLO: I'm -- I'm going to object to the
10 form of the question. I don't know what that --

11 THE COURT: Sustained.

12 MR. MELLO: Means, did you make any mistakes?

13 Q The report that you generated, did you put
14 the wrong date on the report?

15 A Yea. There's a typo on there.

16 Q When you say a typo, your report indicates
17 that you interviewed my client on the 23rd; correct?

18 A Yes, sir.

19 Q Did you review your report before you
20 submitted it?

21 A Yea. But, I must have missed the --. I know
22 exactly what you're talking about. It says the 23rd
23 and it says 1991, I believe. When actually, it was the
24 22nd, 1992.

25 Q Okay. Now, when you say it's exactly the

1 22nd the consent forms that you a had my client sign,
2 did you completely fill those out?

3 A The top portion, yes.

4 Q Well, is there a bottom portion?

5 A There is.

6 Q And are you supposed to fill out the bottom
7 portion?

8 A Not -- not necessarily.

9 Q What do you mean, not necessarily?

10 A Well, there is a bottom portion that you're
11 referring to and that is after the test and it
12 indicates you know, having -- if you want -- if you'd
13 like me to read it, I'll read it. Would you like me to
14 read it?

15 Q Please. Please.

16 A Okay. Having voluntarily submitted myself to a
17 polygraph examination, I re-affirm my agreement --
18 expressed above. During this examination I was well
19 treated, I also certified there were no threats, no
20 harm to me, no promises have been made to me before,
21 during the time that I have been with any law
22 enforcement agency or Officer either in connection with
23 the examination or the signing of this form.

24 Q Okay. Now, you said it was a policy you
25 know, use these forms before you conducted a polygraph;

1 correct?

2 A Yes, sir.

3 Q And -- and was it the policy of the office
4 only to execute the top portion and not the bottom
5 portion?

6 A Well, I don't know if it was a policy. But, this
7 is -- this is the practice that -- that I had, carried
8 myself throughout the years in examination. Yea. Yea.

9 Q I don't understand what your answer was.

10 A So, I --

11 Q Do you normally have a person fill out the --
12 the section that says that he voluntarily submitted,
13 that he was treated well, and that no threats or harm
14 to me or any promises were made? Do you normally have
15 someone fill that out after you do it?

16 A No. No. As a matter of fact it's -- it's no
17 longer on the release. It's something that had been
18 added to this releases long prior to me coming to the
19 office and generally not something that -- that I used
20 or had an individual sign at the completion of an
21 examination.

22 Q Do you have any idea why it was on the form?

23 A No.

24 Q And you're the only guy using this form in
25 your office; correct?

- 1 A No. There's -- there's other -- there were other
2 --
- 3 Q Other polygraphist's?
- 4 A At the time there was -- yea.
- 5 Q And did they have the person who was
6 administering the polygraph fill out that form?
- 7 A I don't believe so, sir.
- 8 Q Now, you indicated that you took notes of
9 your pre-test interview; correct?
- 10 A Sure.
- 11 Q And those are the notes that you read?
- 12 A Are you referring to this here?
- 13 Q Yes.
- 14 A Yea. This is, like I said this is the verbatim
15 statement that I asked Stephen to recite to me prior to
16 the beginning of the polygraph examination.
- 17 Q Okay. And when he gave you the statements
18 with regards to the rest of what you claim he told you,
19 did you take notes?
- 20 A Yes.
- 21 Q And could you tell us why you only have one
22 set of notes and the stuff that contains everything
23 that you testified to with regards to the actual fall,
24 you don't have those notes?
- 25 A Well, yea sure I had taken my notes. These are

1 his words verbatim. The notes that I took are
2 scribbled down during the pre-test interview. The
3 notes incorporated into my report, once my report is
4 done get rid of the notes.

5 Q You destroyed the notes?

6 A Well, destroyed them, threw them away, whatever
7 you prefer. If you want to say destroyed. Yes.
8 That's basically you know, how we conducted our
9 interviews back then. Yes.

10 Q Is the statement contained in your -- and I'm
11 going to call that an official Police report.

12 A Yes, sir.

13 Q Is that a verbatim statement of my client?

14 A No, it's not word for word. No. No.

15 Q The report is dated three days after you gave
16 the test; correct?

17 A Yes, sir.

18 Q And could you tell us why you saved one set
19 of notes and not another?

20 A Counselor, you take notes, you generate a report,
21 do the report, check over your notes, it gets typed in,
22 once you get it back you check it for veracity and then
23 get rid of the notes.

24 Q Okay. So, why didn't you get rid of the
25 other notes?

1 A Well, as I said this is something that was
2 verbatim. I -- you know, it was placed into the
3 polygraph file and you know, generally it's -- it's
4 kept. I like to keep that.

5 Q So, are you saying that the statement
6 contained in your official report is not a verbatim
7 statement?

8 A No, not necessarily. It's a -- you know, it's --

9 Q When you say not necessarily, is it or is --

10 A Well, I mean there's -- there's a --

11 MR. MELLO: Judge, I'm sorry. May -- may the
12 witness finish his answer.

13 THE COURT: Hold on a minute. Is there an
14 objection?

15 MR. MELLO: Yes, sir.

16 THE COURT: Your objection?

17 MR. MELLO: I'd like him to be able to finish
18 his answer.

19 THE COURT: Counsel?

20 MR. BILINKAS: I believe he interrupted --.
21 I'll re-ask the question.

22 THE COURT: Please.

23 Q You make certain references that are
24 highlighted by quotation marks in this report; correct?

25 A Yes.

1 Q And can we assume that with regards to at
2 least those words those are the exact words that my
3 client said at some point; correct?

4 A Yes.

5 Q Everything else is not the exact words;
6 correct?

7 A I would -- I would say it's probably fairly close.
8 I mean, make out -- make out, I think I have that twice
9 in quotes. That --

10 Q Okay. You're -- you're --

11 A Is something that Stephen used. Tripped forward,
12 that's what he said as far as her falling. The
13 relationship improved but distant.

14 Q Okay. You're referring to the words in
15 quotation marks; correct?

16 A Yea. Yea.

17 Q Okay. And in this three page statement
18 there's two or three phrases that are put in quotation
19 marks; correct?

20 A Yes, sir.

21 Q And -- and will you agree with me that
22 everything else is not the exact specific words that my
23 client said to you?

24 A It -- it could be. I mean, those are the ones
25 that I put in quotes and you know, about attending

1 school and you know the -- the relationship and how you
2 know, we were making out on the -- on the rock and --

3 Q When you say it could be --

4 A The girls, the names -- those are the names, I
5 mean that he gave me. So, I wrote those down, so those
6 aren't in quotes but, I wrote those down. So.

7 Q When you say it could be will you also agree
8 that it could not be the exact words that were told to
9 you?

10 MR. MELLO: Does that mean word for word for
11 word?

12 MR. BILINKAS: Yes. Yes.

13 MR. MELLO: Okay. Okay.

14 MR. BILINKAS: And yes.

15 MR. MELLO: I think -- I think we all realize
16 that the report may not be word for word for word for
17 word. And there probably will never be a report that
18 can make that claim. The question is, does it contain
19 the conversation, an accurate reportage of the
20 conversation?

21 MR. BILINKAS: Is -- is this an objection,
22 Judge.

23 MR. MELLO: Yes, it was an objection.

24 THE COURT: It was an objection.

25 MR. MELLO: It was an objection to the form

1 of the question.

2 Q Is the handwritten statement in your hand
3 that you testified to the exact word per word per word
4 per word given by my client?

5 A It is.

6 Q And is there any reason why you didn't use
7 this same type of accountability for the rest of your
8 statement?

9 A Yes.

10 Q No jury here. Why? Why?

11 A As I said before, I asked him to tell me
12 everything he did from the time he got up until the
13 event and that's -- that's what he told me. I needed
14 to ask a little more questions, as -- as to what had
15 happened that evening because they're not here.

16 Q And when you asked him --

17 A About the relationship.

18 Q You couldn't jot down what he said --

19 A Listen, counselor I'm sure I did. You know, I'm
20 sure I did at some point. I wrote them down, whether
21 or not they're you know, they're word for word for
22 word, they're not.

23 Q Well, can you tell me why only --

24 A It's -- it's a reflection of the report. The
25 report is a reflection of my interview with him, a pre-

1 test interview. The issue is you know, the issue that
2 I'm testing him for is very general. You know -- you
3 know, did you purposely cause your wife to fall from
4 the cliffs? I mean, that's really the purpose of the
5 test. There's not a whole lot of you know, question
6 and answer that I need to conduct a polygraph
7 examination, per say.

8 Q Will you agree with me that prior to you
9 administering the test that he denied vehemently having
10 anything to do with the cause of his wife? The death
11 of his wife.

12 A Vehemently? No. I mean, he denied it. If that's
13 what you want. I'd say he denied it. I asked him
14 specifically, flat out. Absolutely.

15 Q And even after the test in that post
16 interview he denied having anything to do with the
17 death of his wife; correct?

18 A Yes, he did. Yes.

19 Q Now, the polygraph was set up for ten o'clock
20 that morning; correct?

21 A I think so.

22 Q And what time did you get a hold of Mr.
23 Scharf so to speak?

24 A Did I get a hold of him? What time did I first
25 meet him and introduce myself --

1 Q Right. Right.

2 A To him? It was -- according to the release form
3 it was about a quarter to twelve or so.

4 Q Okay. Do you have any idea where he was for
5 that hour and 45 minutes?

6 A I think he was at Linden Street.

7 Q Giving a statement to Alva's; correct?

8 A I'm not sure what he was doing at that time

9 MR. MELLO: Objection.

10 MR. BILINKAS: Well --

11 THE COURT: Your objection?

12 MR. MELLO: He was not present.

13 THE COURT: Sustained.

14 Q Were you advised by Alva's that prior to you
15 administering a polygraph that -- that he had given a
16 statement to Alva's?

17 A Was he interviewed?

18 Q Yes.

19 A Or did he give a -- provide a statement? I knew
20 he was interviewed. Yes. Alva's and Lynam both told
21 me that they had interviewed him. Yes.

22 Q Okay. And they also told you all the facts
23 concerning the case; correct?

24 A I don't know about all the facts. They told me
25 enough that again, that I was able to administer a

1 polygraph examination.

2 Q So, you talked to Alva's and who else before
3 you administered the test?

4 A Oh, I think Lynam

5 Q And did they express their opinion to you
6 with regards to my clients -- guilt or innocence?

7 A I don't think so.

8 Q Never even mentioned what they thought was
9 going on here?

10 A I don't think so.

11 Q Now, with regards to your report where you
12 indicated that my client said he was attempting to
13 break up to these -- break up with these girls, do you
14 have a specific recollection of him using those words?

15 A No, sir.

16 Q And will you agree with me that as you sit
17 here today you really have no specific recollection of
18 the exact words that he said on the day?

19 A No, he very well -- no, I'm not going to agree
20 with you. He very well could have said, he was
21 attempting to break off the relationship with Kathy, as
22 well. He very well could have said that.

23 Q And he very well could not have said those
24 words; correct?

25 A Well, but then again he might have said it. He

1 might have -- he might have said that you know, she
2 broke up with him. -- I don't think so. But, I don't
3 know what it was but, he made an attempt to indicate
4 that those relationships were over. Whatever his exact
5 terminology was, I don't know.

6 Q Okay. Now, you indicated that after your
7 test was done, he went home.

8 A Yes, sir. Well, he left. I think I -- I think I
9 testified that he -- that he left.

10 Q You -- you don't know how he left or where he
11 went to, do you?

12 A Well, at the time I don't think I did. No. It
13 wasn't --

14 Q Do you know now?

15 A Yea, I do. I do.

16 Q Okay. He -- he went back to his house;
17 correct?

18 A Yes.

19 Q And isn't it a fact that members of your
20 department drove his car with him in it to his house?

21 A I can't answer that, sir. I have no idea.

22 Q How did he get to his house?

23 A I don't know.

24 Q You just said you found out how he got to his
25 house.

1 A Well, I know that he went to his house and I know
2 that -- I know that law enforcement -- were there. I
3 know that -- they conducted a search. -- not
4 necessarily know who did it and you know, did they
5 drive his car or something? I -- I have no idea. That
6 -- that I don't know.

7 Q Would -- would it be unusual for an Officer
8 to drive a civilians car with him in it to his house to
9 conduct a search?

10 A It's nothing I've done.

11 Q Would it be improper --

12 MR. MELLO: I'm going to object.

13 Q For someone to do that?

14 MR. MELLO: I'm going to object to outside
15 the scope of his testimony and not relevant to the
16 issue.

17 THE COURT: Do you know how he was able to
18 get home?

19 A No.

20 MR. BILINKAS: Nothing further, Judge.

21 MR. MELLO: No, re-direct Judge.

22 THE COURT: Any further questions? Thank
23 you, Captain. You may step down. Your next witness?

24 MR. MELLO: Yes. Judge, can we just have a
25 moment --?

1 THE COURT: Okay.

2 (BREAK IN HEARING)

3 THE COURT: Please step up here.

4 UNIDENTIFIED MALE: Judge, how you doing?

5 THE COURT: Good afternoon. Face the court
6 clerk.

7 R O B E R T H E R N E S T, WITNESS, SWORN.

8 COURT CLERK: Please state your name, spell
9 your last name.

10 THE WITNESS: Robert Hernest, H-E-R-N-E-S-T.

11 COURT CLERK: Thank you.

12 THE COURT: Please have a seat. You may be
13 seated.

14 MS. MCARDOE: Your Honor, may I approach? --
15 it's not -- not in regard to the -- anything that's
16 going to happen up here. --.

17 THE COURT: All right. Are we ready to
18 proceed?

19 MR. MELLO: Yes, sir.

20 DIRECT EXAMINATION BY MR. MELLO:

21 Q Good afternoon, sir.

22 A Mr. Mello.

23 Q If you would, would you detail for us your
24 law enforcement background?

25 A I worked for the Bergen County Prosecutors Office

1 as an investigator from 1977 until 1999. I functioned
2 in most of the squads that the office had to offer, one
3 of them being the homicide squad. I've done numerous
4 -- I mean, I -- I can't recall, many, many criminal
5 investigations. Both as assisting in the investigation
6 and running the -- the investigation myself. And
7 that's basically a synopsis of what I've done.

8 Q All right. Can you now tell us if you recall
9 September 22nd, 1992?

10 A Yes, I do.

11 Q Can you tell us if you were employed as a
12 detective with the Bergen County Prosecutors Office on
13 that date?

14 A Yes, sir I was.

15 Q Can you tell us if you received a particular
16 assignment on that specific date?

17 A Yes, I did.

18 Q Can you tell us what the nature of that
19 assignment was, sir?

20 A Lieutenant Schioli (phonetic) who was the
21 lieutenant of the homicide squad at that time assigned
22 me to assist Investigator Terry Alva on a investigation
23 that he was conducting.

24 Q And would -- would that be an investigation
25 into the death of one Jody Ann Scharf?

1 A That is correct.

2 Q And with respect to your assist in that
3 investigation, would that be an assist in the execution
4 of a search warrant?

5 A It was a consent to search --

6 Q I'm sorry. A consent to search.

7 A It was a consent to search, sir. Yes.

8 Q Thank you. And that would be at the
9 residence of Stephen Scharf?

10 A That was correct.

11 Q And would that be 27 Knob Hill Road in
12 Hacketstown, Washington Township, New Jersey?

13 A Yes, that is.

14 Q Now, with respect to that search of those
15 premises and your role in it, we're not going to
16 discuss the search itself but, we are going to discuss
17 an encounter with Mr. Scharf; all right?

18 A Okay.

19 Q Can you tell us first if you see Mr. Scharf
20 in court today?

21 A The individual who's sitting at the table with --
22 I -- I don't recognize.

23 Q Did you meet with an individual who
24 identified himself as Mr. Scharf on the 22nd?

25 A Yes, I did.

1 Q Now, when you were tasked to assist in the
2 execution of this search, were you with any other
3 Police Officers?

4 A Yes, I was. I was with Investigator Alva and
5 Detective Lynam from the Palisades Interstate Park
6 Police and there was also a -- I believe there was a
7 Lieutenant from the local Police Department who was
8 also present at the time.

9 Q All right. But, you did not go to the
10 residence with that Lieutenant?

11 A No, we didn't. He --

12 Q And is it fair to say that in terms of such
13 an assignment, the execution of a search in a
14 particular jurisdiction, is it common practice and was
15 it common practice to notify that jurisdiction that you
16 would be coming to that jurisdiction for that specific
17 purpose?

18 A Yes, that was what we did.

19 Q And is it also common practice and was it
20 common practice to have a member or members of the
21 local Police Department at that location for purposes
22 of assuring the subject of the search of its
23 legitimacy?

24 A Yes.

25 Q And that's just routine protocol?

1 A That's correct, sir.

2 Q Now, who did you go with when you went to 27
3 Knob Hill Road?

4 A I was with -- in the company of Investigator Alva
5 and Detective Lynam.

6 Q Okay. And you were in one car together?

7 A Yes. The three of us were in the same car.

8 Q Okay. Does there come a point in time when
9 you meet Mr. Scharf at 27 Knob Hill Road?

10 A Yes.

11 Q Okay. Can you tell us briefly how this
12 encounter now starts?

13 A I recall within the evening hours we came to a
14 single family house and Investigator Alva being the
15 lead detective basically was the one who did most of
16 the talking -- knock on the door and we gained entry
17 into the house.

18 Q All right. And who gave you access to the
19 house?

20 A Mr. Scharf did.

21 Q All right. Now, you were aware that Mr.
22 Scharf had executed a consent to search the house?

23 A Yes, I was aware of that.

24 Q Now, what I'd like to focus on is at this
25 point in time your encounter in the house with Mr.

1 Scharf; all right?

2 A Yes.

3 Q And I'd like to ask you if you recall any
4 particular conversation with Mr. Scharf? Just tell me
5 if you do recall a conversation at this point.

6 A I recall some -- some conversation with Mr.
7 Scharf.

8 Q Okay. Can you tell us how this conversation
9 arose and the content of that conversation?

10 A I recall Mr. Scharf and I discussed --
11 intermittently because I was doing other things in the
12 mean time but, on different occasions we'd come into
13 contact and speak with each other that I knew he was in
14 the Army and I told him that I was in -- in the
15 military service. We had -- we had little conversation
16 about that. And then he also made a point to point out
17 the -- this drawer in the -- in the kitchen that he
18 brought my attention to.

19 Q And what if anything did he say about that
20 kitchen drawer?

21 A He -- at that time he told me that this was the
22 drawer that was broken or words to the effect that I
23 fixed or had trouble with or there was something --
24 there was something with this drawer that he was -- he
25 was drawing my attention to.

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Q Did he tell you how he fixed it or by what means or what he utilized to fix it?

A I -- I don't recall that, sir. I don't.

Q And did you take occasion to examine the drawer?

A Yes, I did.

Q And --

A And I -- you know, I -- if I recall, I remember it being open, Mr. Scharf made it a point to show me the drawer, I walked over to it, I observed it and I didn't -- I didn't really pay much mind to it at that time because at the time it really didn't mean anything to me. I didn't know what -- if there was any significance to it. I guess it was -- to me it was just general conversation on Mr. Scharf's part about a drawer, which made no sense to me.

Q Okay.

A So, I went over, I looked at it and I didn't observe anything that was deficient with it.

Q Okay. Thank you.

THE COURT: Do you have another question?

MR. MELLO: No, sir.

THE COURT: Cross?

CROSS EXAMINATION BY MR. BILINKAS:

Q Detective, were -- were you a Navy Seal?

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A No, sir.

Q On the date that you went to my clients house do you have a specific recollection 18 years later as to how you actually got there? Do you actually remember driving with Alva's and Lynam?

A Yes, I do.

Q And where were you picked up?

A That counselor, I can't recall. I can speculate where I think I was. But, I would assume I was picked up at the -- the satellite office of the Bergen County Prosecutors Office homicide squad.

Q And -- and that's where you were working at that time?

A Yes.

Q And Alva's was in the homicide section also?

A Yes. We shared the same office space.

Q Now, you were advised that my client had signed a consent form; correct?

A Yes.

Q And was my client at the satellite office when you left?

A No.

Q Now, will you agree with me that when my client signed a consent form he knew that your office would be coming to his house and searching it; correct?

1 MR. MELLO: I'm sorry Judge. This is not the
2 witness to testify to this. He did not participate in
3 the execution of the consent and he does not know what
4 is in Mr. Scharf's mind. So, I think that question is
5 inappropriate.

6 MR. BILINKAS: Again, Judge. Counsel and I
7 didn't object asked numerous questions with regards to
8 procedures and what's common at the time and this is
9 just a brief background question to get --

10 THE COURT: Right. Are you able to answer
11 the question?

12 A Could you repeat the question, sir?

13 THE COURT: Please?

14 Q You were told that my client signed a consent
15 form; correct?

16 A Yes.

17 Q So, clearly he was aware of the fact that you
18 -- your office was going to search his residence;
19 correct?

20 A Yes.

21 Q Basically, because he agreed to it; correct?

22 A That's correct.

23 Q And is it your testimony that he was there
24 alone in his house when you Alva's and Lynam arrived?

25 A That's -- to my recollection that is correct.

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Q And -- and is that normal procedures when you're asking to search a residence with regards to a homicide investigation to allow the person to go back to his house alone and have time to do whatever inside his house? Was that the normal procedure of your office back then?

A The -- at that time sir, this was an accidental death. It wasn't considered a homicide. As far as I recall.

Q Did Alva's tell you that at that time? That that was his opinion?

A I -- I can't answer. I don't remember. You know --

Q Do you recall any conversations with Alva's and Lynam's all the way from your satellite office to Scharf's house?

A Well, basically I was briefed as to the elements of what had happened in -- in the investigation up until that point.

Q And so at that point you were briefed as to what the facts were known; correct?

A That's correct.

Q And as you sit here today, is it your testimony that both Lynam and Alva's had communicated in some fashion to you that as far as they were

1 concerned this was an accident?

2 MR. MELLO: He didn't say that, Your Honor.

3 A I didn't --

4 MR. MELLO: He said -- he said that as far as
5 he knew.

6 MR. BILINKAS: And then I'm asking him with
7 regards to his conversation which he indicated that he
8 had with them and they gave him the information they
9 had up to that point.

10 Q Were you going to search someone's house for
11 -- what you believed was an accident?

12 A We were in the preliminary stage of an
13 investigation, sir. So, how it was labeled or
14 officially categorized I -- I don't know. At that time
15 when we were going there this was not considered a
16 homicide, it was considered an accidental
17 investigation; at that junction -- I went.

18 Q And that was yours, Alva's and Lynam's
19 position? If you know.

20 A That was -- I don't know who's -- position it was.
21 That's the impression that I -- I got. I --

22 Q And --

23 A Because I was not -- I was not familiar with the
24 ongoing preliminary investigation up until that point.
25 I was there as an assist so, I was given preliminary

1 information as to what was going on, so, I knew what to
2 expect.

3 Q Okay. And after you got that information,
4 you were assisting in the search of the house; correct?

5 A Correct.

6 Q You were looking for specific items I assume;
7 correct?

8 A That's correct.

9 Q And can you tell me what you were looking
10 for?

11 A We were looking for --

12 MR. MELLO: Judge, I'm going to object to --
13 to the search issue. I thought we limited it to the
14 encounter with Mr. Scharf or I would have inquired as
15 to this. The -- the only question here is really, what
16 did Mr. Scharf say? I have no objection to any
17 questions about the conversation with Mr. Scharf, but I
18 don't see how the scope of the search at this point is
19 relevant to Miranda. We know that there was a consent
20 executed. We know they were there to do the search and
21 what is relevant to this witnesses testimony at this
22 time is the statement that he's testified to made by
23 Mr. Scharf about the kitchen drawer. So, I think
24 that's where we should limit the testimony.

25 MR. BILINKAS: And again, Judge this is cross

1 examination. This witness has already indicate that
2 his recollection is not, I would characterize as
3 specific. I believe I should be able to ask him
4 questions regarding what he did 18 years ago so you can
5 make a determination as to what he testified to and
6 whether or not that's reliable. And again, any witness
7 I think I'm allowed to cross them --

8 THE COURT: In the bounds of testing
9 credibility and giving counsel wide latitude during
10 cross examination. I will allow it.

11 MR. BILINKAS: Thank you, Judge.

12 Q What were you looking for?

13 A We were looking for the articles of clothing that
14 Mr. Scharf had worn that night plus, Investigator Alva
15 wanted to get the tape from the answering machine at
16 the house. That's what we went to get.

17 Q And did you look at anything else?

18 A I cannot recall that. So, I just remember the
19 articles of clothing and Investigator Alva getting the
20 -- the tape from the answering machine.

21 Q And --

22 A We -- we didn't -- we didn't do a complete search
23 of the house if that's what you mean.

24 Q Can you tell me how long you, Alva's and
25 Lynam were in my clients residence getting the clothing

1 and the answering machine?

2 A I can't recall the time, sir.

3 Q Did it take more than five or ten minutes to
4 get those two specific articles?

5 A I believe that we were there more than five or ten
6 minutes, yes.

7 Q How many minutes were you there?

8 A I couldn't -- I can't give you a time frame, sir.
9 I would -- I don't -- I don't have a recollection of
10 how long we were there.

11 Q But, as you sit here today there were only
12 two specific items that you, Alva's, Lynam were
13 concerned with; correct? The tape machine and --

14 A And the clothing.

15 Q The clothing?

16 A Yes.

17 Q And when my client was there, did he
18 cooperate with the Officer's?

19 A Yes.

20 Q Do you have any idea how long it took them to
21 get the clothing?

22 A My recollection of time, sir I don't remember. I
23 -- I don't -- if we were there half an hour, hour, two
24 hours, I -- I don't remember how long we were there.

25 Q Would you agree with me that if it was two

1 hours that you did a lot more than get the clothing and
2 the tape to the answering machine?

3 A Well, I don't remember the conversations that the
4 other detectives may have had with your client. I
5 don't remember, sir. So -- my time frame is not -- I
6 have no idea.

7 Q How many Police Officer's were in my clients
8 house to get those two items?

9 MR. MELLO: Objection. What is the relevance
10 to that?

11 MR. BILINKAS: It shows coercion. There were
12 --

13 MR. MELLO: How does it show --

14 MR. BILINKAS: Officers --

15 MR. MELLO: Coercion? He consented to it.

16 MR. BILINKAS: If I can respond counsel? It
17 shows coercion Judge. There were Officer's from
18 Washington Township, the Bergen County Prosecutors
19 Office, the Palisades Police Department, all for two
20 supposedly items concerning a possible accident
21 investigation. It's absurd Judge to even suggest that.
22 The more Officer's the more coercion, period.

23 MR. MELLO: I'm sorry --

24 MR. BILINKAS: That's why it's relevant.

25 MR. MELLO: I'm sorry. Where is the coercion

1 in a circumstance and you can raise your voice as loud
2 as you like, but that doesn't make it so. The fact
3 that this search was conducted by way of consent. This
4 person consented to the search of this house. Whether
5 there was one or five Police Officer's doesn't make it
6 custody. He is in his own residence, he has consented
7 to the search and Police Officer's leave and Mr. Scharf
8 doesn't leave with them. He is at home.

9 THE COURT: Counsel, I don't see the
10 relevance of this question.

11 MR. BILINKAS: The -- the relevance is Judge,
12 we're not contesting the search. We are contesting the
13 statements that the prosecutor is attempting to
14 introduce --

15 THE COURT: -- the statements obtained at the
16 house?

17 MR. BILINKAS: At the house with all these
18 Officer's there. You know, where they were only
19 supposed to be there for a few minutes to get these
20 items to conclude their accident investigation. They
21 were there for hours Judge. Hours. And during that
22 time my client was questioned and again, I believe
23 that's relevant with regards to whether or not he's in
24 custody --

25 THE COURT: I'll allow it. Over ruled.

1

Q How many Officer's did you physically see at
2 my clients house during this search for these two
3 articles that you mentioned?

4

5

A In the house, there was the three of us that came
6 together plus the local Police -- Police Lieutenant, I
7 believe. So, there was four of us.

8

Q Only four?

9

A Yes, counselor. I saw four -- that I recall,
10 there were four of us.

11

Q You don't recall seeing two? Gundersdorff

12

(phonetic) and Ehrenberg or Eisenburg (phonetic) from
13 Washington --

14

A No.

15

Q In the house?

16

A No.

17

Q Were there any cars outside?

18

A I -- I don't recall. You know, it -- that wasn't
19 important to me at the time and I wouldn't recall that
20 --. I don't know.

21

Q Okay. With regards to your conversation you

22

had with my client concerning the drawer, you don't
23 recall really what was said, do you?

24

MR. MELLO: Objection. I'm going to object

25

to the way that is shaded. He said he recalled it
specifically.

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MR. BILINKAS: Not specifically --

MR. MELLO: Specifically.

MR. BILINKAS: He didn't say he recalled a specific conversation Judge. He recalled something about a drawer. He wasn't --

THE COURT: --.

MR. BILINKAS: Focused on it. And again, this is cross examination, Judge.

THE COURT: My recollection is the witness referred to the drawer but -- but, lacked any specifics about the drawer. I'll allow it. Over ruled.

Q Isn't it a fact that on direct examination you recall a conversation about a drawer; correct? That you had a conversation about a drawer; correct?

A I had a conversation about a drawer.

Q With Mr. Scharf?

A Yes.

Q And my point that I'm trying to make is -- did you say on direct that you don't recall the specific -- the specifics of that exact conversation; correct?

A No, that's not what I said.

Q What did you say? I don't -- I couldn't -- I didn't understand why Mr. Scharf brought the attention of the drawer to me at that time. At that time when I

1 was in that house and he was showing me or having
2 conversations about the drawer, it didn't really mean
3 anything to me.

4 Q So, you don't recall what he said about the
5 drawer; correct?

6 MR. MELLO: That's not what he said. He just
7 said that's not what he said. What he said was that he
8 did not understand why Mr. Scharf was having this
9 conversation.

10 Q What specifically did Mr. Scharf say about
11 the drawer?

12 A I -- I recall Mr. Scharf saying this is the drawer
13 that either was broken or, I fixed or something --
14 words to that effect. That's what I remember.

15 Q Nothing else?

16 A That I can recall, sir. No. It's -- no.

17 Q Okay. And at that point in time, did you
18 convey that information to either Alva's, Lynam or
19 anyone else in the house?

20 A No. Because Investigator Alva also, if I remember
21 correctly either had the same conversation or was with
22 me at -- at the time when that was said. If I recall.
23 We both -- we both knew that the drawer was -- there
24 was something with the drawer. Which, at the time I
25 didn't know. I didn't know what Investigator Alva knew

1 about the drawer. But, at that point and that time at
2 this point, I didn't know anything about the drawer.
3 It was just, here's a drawer that I fixed and -- okay.
4 You know, I went over, I looked at it and that was --
5 that was the end of it. It wasn't -- it wasn't
6 significant to me for what we were doing at the time.

7 Q -- specific question is, Alva's knew the same
8 or had the same information; correct?

9 A I don't know.

10 Q Well, didn't you just say he was there with
11 you?

12 A Right --

13 Q He heard the conversation that you had with
14 Scharf?

15 A No. I don't -- I don't think -- I think
16 Investigator Alva was off the -- I was by -- if I
17 remember correctly I was sitting at a table with Mr.
18 Scharf and this was where we had the conversation or
19 Mr. Scharf was standing by the drawer and I was sitting
20 at the table. I think it was just Mr. Scharf and me at
21 -- at -- I think.

22 Q So, why did you just say a few questions ago
23 that Detective Alva heard the same conversation?

24 A Because in the course of the investigation and
25 after we -- we started discussing it, he told me that

1 basically you know, he had -- he had the same thing
2 from Mr. Scharf or, he knew -- he knew about the drawer
3 that -- it was broken or, something to -- it was broken
4 and he fixed it.

5 Q When did you have that conversation?

6 A I -- I have no idea.

7 Q So, as you sit here today you have no idea
8 whether or not Alva's knew anything about the drawer on
9 that night? -- based on your conversation with him
10 you did, which is it?

11 A After we left the house is probably when the --
12 the issue of the drawer was discussed.

13 Q That same day?

14 A I don't -- the same night, the next day. I don't
15 remember, sir.

16 Q And my specific question at this point is,
17 did you tell Alva's about your conversation whatever it
18 was, with Scharf?

19 A I don't remember.

20 MR. BILINKAS: Nothing further, Judge.

21 RE-DIRECT BY MR. MELLO:

22 Q Does that drawer incident still stick out in
23 your mind?

24 A Yes, sir. It does.

25 MR. MELLO: Thank you. Nothing further.

1 RE-CROSS EXAMINATION BY MR. BILINKAS:

2 Q Can you tell me when it -- it had nothing to
3 do with anything you were concerned about, why it still
4 sticks in your mind 18 years after the fact?

5 A In my law enforcement career sir, there were two
6 cases that intrigued me. This is one of them.

7 Q And what does the drawer have to do with this
8 intrigue?

9 A It didn't make any sense why Mr. Scharf was
10 focusing on this drawer at that time. For the
11 information that I had it -- it didn't make any sense
12 to me. It -- it didn't make any sense why he was
13 focused on this drawer.

14 Q And then at a later time, when you became
15 intrigued with this case it became significant?

16 A When I became -- it's no -- in -- my intrigue with
17 this case is after the fact, sir. Because, this wasn't
18 my -- my -- I didn't work this entire case.

19 Q When did this intrigue --

20 A My interest -- my interest in the case about the
21 drawer became significant when we sat down and we
22 discussed the case.

23 Q When was that?

24 A Sometime after executing the consent to search.

25 Q Did you ever make any notes or memorialize

1 this interaction with Stephen Scharf at any point in
2 time in your career?

3 A I don't know.

4 Q As you sit here today, do you know whether or
5 not there are notes or -- or report in existence?

6 A I -- I don't know.

7 Q When you say you don't know. Either you have
8 a recollection or you don't have a recollection;
9 correct?

10 A I haven't read the -- the report -- of this case,
11 the entire case, sir. So, I -- I don't know what's in
12 the -- in the case file.

13 Q What --

14 A So, I can't -- I can't say for sure if there's a
15 -- if there's a reference to this incident by another
16 investigator or detective or not. I don't know.

17 Q I'm not talking about anyone else. I'm
18 referring to you. Did you generate any notes or
19 reports? You yourself, after you were apprised that
20 that conversation may have some significance in this
21 homicide investigation?

22 A I can't answer the question the way you phrase
23 that question, sir. Because the thing is I didn't know
24 the drawer had any significance at that time we had the
25 conversation. So, I can say that I don't know if I

1 wrote anything down in reference to this drawer
2 incident and the conversation with Mr. Scharf.

3 MR. BILINKAS: Nothing further, Judge.

4 MR. MELLO: Nothing further.

5 THE COURT: --?

6 MR. MELLO: No, sir.

7 THE COURT: Thank you, Detective. You may
8 step down. Any other witnesses?

9 MR. MELLO: Yes, sir.

10 THE COURT: Good afternoon. Please step up
11 here. Face the court clerk.

12 COURT CLERK: Raise your right hand.

13 T E D M A R K E H R E N B U R G, WITNESS, SWORN.

14 COURT CLERK: State your name for the record.

15 THE WITNESS: Ted Mark Ehrenburg, E-H-R-E-N-
16 B-U-R-G.

17 THE COURT: Please have a seat.

18 DIRECT EXAMINATION BY MR. MELLO:

19 Q Good afternoon, Mr. Ehrenburg.

20 A Good afternoon.

21 Q Would you please state for us your background
22 in law enforcement?

23 A I am a retired Chief of Police that served as a
24 Police Officer for 28 years and I was Chief of Police
25 for eleven.

1 Q And what department would that be, sir?

2 A Washington Township Police Department, Morris
3 County New Jersey.

4 Q Sir, I'm going to direct your attention to
5 September of 1992; all right?

6 A Yes, sir.

7 Q And if you would, would you tell us on
8 September 21, 1992 were you employed by the Washington
9 Township Police Department?

10 A Yes, I was.

11 Q And in what capacity?

12 A I was a lieutenant.

13 Q And how long had you served with that
14 department as of 1992?

15 A Eight years.

16 Q All right. Now, I'm going to direct your
17 attention specifically --

18 A I'm sorry. I have to make a correction. I
19 started August 1st, 1986. So, eight years would not be
20 correct.

21 Q That would be --

22 MR. BILINKAS: --.

23 Q So, you were a Police Officer --

24 A I'm sorry. I started -- I'm really doing well. I
25 started August 1st of 1978.

1 Q So, you were a Police Officer some 14 years
2 in 1992?

3 A Correct.

4 Q And at that time you were a lieutenant?

5 A Yes, sir.

6 Q Now, I'm going to direct your attention to
7 September 22nd, 1992 and ask if you had occasion to be
8 at a residence, 27 Knob Hill Road in Washington
9 Township, New Jersey?

10 A I was.

11 Q Can you tell us how you came to be at that
12 residence on the 22nd of September, 1992?

13 A I was contacted by the Washington Township Police
14 Department that Bergen County was coming to 27 Knob
15 Hill Road to execute a search warrant.

16 Q And did you in fact respond to that location?

17 A I did.

18 Q Okay. Tell us how it was that you responded
19 to that location?

20 A I went to Washington Township Police headquarters,
21 picked up a Police vehicle and responded to that
22 address.

23 Q Can you tell us if you went to that address
24 alone or were you accompanied by any other Officer?

25 A I was accompanied by Sergeant William Gundersdorff

1 (phonetic).

2 Q Now, can you tell us what you first observed
3 when you arrived at 27 Knob Hill Road?

4 A We actually waited until the arrival of the Bergen
5 County Prosecutors Office to respond, met in the
6 driveway of the residence and had a brief discussion
7 with basically, what they were going to proceed to do
8 and as the Washington Township, we were the assisting
9 other, which is basically a term that we're there to
10 stand by and assist Bergen County.

11 Q Okay. And does there come a point in time
12 when you are able to gain entry to the residence?

13 A Yes.

14 Q And how was that accomplished?

15 A The property owner was with them, we entered into
16 the garage door and into the kitchen of the residence.

17 Q And can you tell us what happened next?

18 A Bergen County proceeded to start the process of
19 their search warrant and we basically, assisted by
20 standing by -- I was basically in the kitchen area
21 where I sat with Mr. Scharf while they conducted the
22 search.

23 Q All right. Now, is that Stephen Scharf?

24 A Yes.

25 Q Okay. Do you see Mr. Scharf?

1 A I do.

2 Q -- point him out to us.

3 A He's the gentlemen in the orange jumpsuit.

4 THE COURT: The record will reflect the
5 identity of the defendant, Mr. Scharf.

6 Q Can you tell us what occurred while you were
7 at that residence, while you were in the company of Mr.
8 Scharf?

9 A We basically had a general conversation. I was
10 not in uniform and I basically just sat with him while
11 they were performing the -- the search warrant.

12 Q Okay. Now, do you know if that was a warrant
13 or do you know if it was a consent or you just don't
14 know?

15 A I don't know.

16 Q Okay. But, at any rate you were sitting with
17 Mr. Scharf and you were speaking with him; correct?

18 A Yes, sir.

19 Q Okay. What I'd like you to do is I'd like
20 you tell the Court how the conversation with Mr. Scharf
21 evolves at that time in his residence?

22 A Obviously there was -- were some upsetting times
23 for him, he was there while the Police were going
24 through his residence and I basically just sat with him
25 and had a conversation basically -- you know, he had a

1 son Jonathan at the time that was a young boy and just
2 kind of basically had some idle chat while they were
3 following the process.

4 Q Okay. And tell us about that chat.

5 A As far as the length, the --

6 Q Well, what I'd like you to do is relate the
7 chat that you had with Mr. Scharf to the Court.

8 A As --

9 Q The substance of the conversation.

10 A Okay. The substance of the conversation was that
11 they were there proceeding, doing the warrant, I
12 explained to Mr. Scharf that the Bergen County
13 Prosecutors Office had a job to do and they were
14 performing that service and that this was basically,
15 procedurally what happens. We don't know him
16 personally, shouldn't take it personally that the
17 Police Department's investigating -- but, as all Police
18 Officer's we have a duty and responsibility to
19 investigate.

20 Q Okay. And did that seem to have a calming
21 influence on him?

22 A I think that we struck a chord.

23 Q Now, tell us how the conversation evolves.

24 A Obviously, we went through some of the issues and
25 concerns that he had as far as you know, these

1 conditions, obviously, the loss of his wife, the
2 emotion and the issues that -- that face obviously,
3 some of the challenges and how he's going to have to
4 actually deal with these issues.

5 Q Please continue.

6 A As the process went through the Prosecutors Office
7 was going through their search, we basically stayed to
8 the kitchen area and to this den that was kind of
9 opened. My remembrance is that we either seated at a
10 table, that he was also seated at a table when we had
11 this conversation.

12 Q All right. Was anyone else present when you
13 refer to we?

14 A Yes. Captain --

15 Q And who would that be?

16 A Captain Gundersdorff was also in the immediate
17 area at one point he may have walked into another room
18 but, he was right there in the kitchen/den area.

19 Q Now, at this time how does the conversation
20 then proceed?

21 A As far as --

22 Q As far as what was said?

23 A The actual statements?

24 Q I want you to tell us -- yes, the
25 conversation as you recall it between you and Mr.

1 Scharf from the point that you left off.

2 A Okay. During the conversation there were some you
3 could -- you could -- I could get a sense that he was
4 troubled. And -- and I explained that in my personal
5 opinion that in this world we all have things or issues
6 that are in our concern that trouble us as people. And
7 me personally and I'm only speaking of myself
8 individually, I want my life and my presence to be as
9 clean and as squared away as I possibly can because, I
10 think in this sense you either pay for your sins in
11 this world or the next. And I was prepared to make
12 sure that I had basically my life and my process as
13 squared away as possible and I would want to atone or
14 certainly have things squared away. So, my believer of
15 faith is that when we go into the next world I want to
16 make sure I get to the other side of those gates.

17 Q And you expressed that sentiment --

18 A Absolutely.

19 Q And belief system to him?

20 A Right.

21 Q Okay. Now, what happens?

22 A The conversation now seems to -- to turn towards
23 Mr. Scharf who brings up a conversation after we've
24 sat there for almost an hour and says you don't
25 believe that this was an accident. I said I believe

1 that there was an accident and that's when he made the
2 statement that it was not.

3 Q And can you describe when said to you it was
4 not an accident his demeanor or how he appeared to you?

5 A I would ask to pull out or I be given a copy of my
6 report and refresh this to the exact term.

7 MR. BILINKAS: Judge, I believe he's asking
8 about the demeanor not the --

9 THE COURT: Maybe, the report would assist
10 him. I don't know.

11 Q For the record, your report SM23.

12 A Okay.

13 Q Just take a moment to review that and --.

14 A Okay.

15 Q Have you reviewed your report?

16 A Yes, sir.

17 Q All right. And with respect to the last
18 question I asked, can you describe his demeanor or any
19 action that you observed?

20 A -- my description is that he appeared to be
21 sorrowful and concerned, and when the statement was
22 made, he says you don't believe me. I said, I believe
23 that there was an accident and then we got to the point
24 of the conversation where it was an accident and -- and
25 he stated no. I -- I think Mr. Scharf was troubled. I

1 think that these were troubling times for him. I was
2 of the opinion at that moment that we were concerned on
3 -- on going forward how this was going to turn out for
4 him.

5 Q Okay. And when he said these words and you
6 -- wrote your report, did you quote the words that he
7 said?

8 A I did.

9 Q Okay. Can you tell us the quotations that
10 are in your report?

11 A Yes, sir. Mr. Scharf felt comfortable with me
12 because of the friendly attitude. This Officer spoke
13 to Mr. Scharf for approximately one hour. Mr. Scharf
14 at one point stated, you don't believe me. I responded
15 saying, I believe an accident happened. Mr. Scharf
16 said it was an accident and then said, no. Put his
17 head down and immediately changed the conversation and
18 -- the conversation led to the point that he said he'd
19 like to speak to a priest.

20 Q Now, do you remember anything else happening
21 when he changed the conversation?

22 A The --

23 Q Did you make any other observations?

24 A Almost timely, the Officer's from the Bergen
25 County Prosecutors Office and then there was a -- a

1 complete change in his demeanor and basically, the
2 conversation just almost abruptly ended at that point.

3 Q Now, did you have any other conversation with
4 him after this? That you related.

5 A Other than his conversation that he wished to
6 speak to a priest, not really.

7 Q Now, does there come a point in time when the
8 searching of the house is complete?

9 A Yes, sir.

10 Q Do all Police Officer's leave?

11 A Yes, they do.

12 Q Do all Police Officer's and leave Mr. Scharf
13 at home at his residence?

14 A Yes, they do.

15 MR. MELLO: Thank you. Nothing further.

16 THE COURT: Cross examination?

17 CROSS EXAMINATION BY MR. BILINKAS:

18 Q Good afternoon, Chief.

19 A Hello, Mr. Bilinkas. How are you?

20 Q I'll tell you in a little bit.

21 A Okay.

22 Q Prior to your going to Mr. Scharf's house on
23 this evening, the 22nd you had various contacts with
24 the Palisades Parkway Police Department; correct?

25 A Yes.

1 Q Specifically, you talked to a Detective
2 Karnick; correct?

3 A I did speak to him. Yes.

4 Q And isn't it a fact that you also spoke to
5 members of the Prosecutors office at some point in
6 time?

7 A Not on the initial. But, yes subsequently I did.

8 Q And at some point in time prior to the search
9 you provided information to the Palisades Police
10 Department; correct?

11 A I did.

12 Q For instance, you sent over various
13 investigative reports concerning possible domestic
14 abuse; correct?

15 A I did.

16 Q And you indicated to them that there was a
17 pending divorce; correct?

18 A We had knowledge that there was possibly a pending
19 divorce or the process of a divorce was being
20 initiated. Yes.

21 Q Now, so there's no misunderstanding you and
22 your department were part of this investigation;
23 correct?

24 A No, sir.

25 Q Can you tell me why in your Police report you

1 put continue cooperative investigation?

2 A Okay. Let me -- maybe, we're at a different point
3 of this. When I say that we're involved in an
4 investigation, the role of the Washington Township
5 Police Department was to assist the Palisades Parkway
6 and obviously the Bergen County Prosecutors Office in
7 their investigation. We are not actively investigating
8 this crime or involved in that process. -- we are a
9 resource providing information to another agency
10 because they're not in the geographical boundaries of
11 where Mr. Scharf and his family live.

12 Q All I'm trying to say and correct me if I'm
13 wrong is that you were helping them with their
14 investigation?

15 A Yes, sir.

16 Q For instance, you -- you relayed contents of
17 -- of an interview with a Mr. Jackson to Detective Lamb
18 (phonetic) of Palisades Police Department; correct?

19 A I did.

20 Q And you provided them with copies of
21 documents concerning domestic violence reports;
22 correct?

23 A We did.

24 Q And basically, you were assisting them in any
25 way they asked you to; correct?

1 A Yes.

2 Q Now, in addition to Jackson you also turned
3 over certain names of possible witnesses that would
4 have information concerning this investigation;
5 correct?

6 A We provided names and information that could help
7 them or assist in this investigation. Yes.

8 Q Now, on the day of the search the prosecutors
9 office got to Mr. Scharf's residence at approximately
10 8:35 p.m.; correct?

11 A Yes, sir.

12 Q And you indicated that you were the first one
13 -- not so much you, but your department was the first
14 one to arrive at Mr. Scharf's residence; correct?

15 A Yes.

16 Q And you were waiting for the Bergen County
17 Prosecutors Office and Mr. Scharf to arrive; correct?

18 A Yes.

19 Q Okay. Mr. Scharf was not there obviously
20 when you first arrived; correct?

21 A Correct.

22 Q He came with the Bergen County Prosecutors
23 Office; correct?

24 A I don't recall if he came with them but, he was
25 present with them when they arrived.

1 Q So, when they arrived and correct me if I'm
2 wrong, you saw Mr. Scharf walking alongside
3 representatives of the prosecutors office?

4 A Mr. Scharf was with representatives of the Bergen
5 County, yes.

6 Q And as he walked in your direction you all
7 entered Mr. Scharf's residence?

8 A We did enter his residence. Yes.

9 Q And you understand or you had an
10 understanding that they were about to search his
11 residence; correct?

12 A Right.

13 Q And would you agree with me from a Police
14 standpoint it would be kind of crazy to let the person
15 who's home you want to search it go in there alone and
16 -- before you search it?

17 MR. MELLO: I'm going to object to the
18 question. In light of the facts that have been
19 established that Mr. Scharf had already been home for
20 two days.

21 THE COURT: Ask another question.

22 Q Did Mr. Scharf go into his residence and was
23 he left alone prior to you or other law enforcement
24 Officers entering his house?

25 A Was he left alone?

1 Q Was he left alone without any law enforcement
2 person in his house -- was he led -- did someone let
3 him go into his house before anyone from law
4 enforcement entered?

5 A We didn't physically enter his house by you know,
6 knocking down the door or anything. He opened the
7 door, let us in, we walked in with him.

8 Q Okay. My point is, he didn't go in ahead of
9 time. He went in with you and the other members from
10 the prosecutors office?

11 A Yes, sir.

12 Q And when he got into his house, did you let
13 him roam around his house and do whatever he wanted to
14 do?

15 A He was physically walking around with the Bergen
16 County Prosecutors Office and I think it frustrated him
17 at the time but, yea he was free willed. He wasn't --
18 wasn't shackled, he wasn't arrested, he wasn't you
19 know.

20 Q Okay. And when you say he was walking
21 around, where -- what -- what were they looking for?

22 A I -- to this date, I don't know what they were
23 actually looking for.

24 Q And -- and how long were they in his house on
25 that evening? Hours?

1 A I'm -- I'd say between an hour and under two.
2 But, I don't know the exact time line. It wasn't hour
3 hours.

4 Q Okay. Now, isn't it a fact in your report
5 you indicated that your discussion with him lasted
6 approximately an hour?

7 A I was with him approximately an hour.

8 Q So, at some point in time when he was roaming
9 around his house that was for a -- an additional period
10 of time; correct?

11 A No. My report indicates that we were with Mr.
12 Scharf for approximately an hour. The -- it wasn't an
13 additional hour after the Bergen County Prosecutors
14 Office, that was my involvement with him.

15 Q Okay. And so as you sit here today, you
16 don't recall exactly how long you were there for;
17 correct?

18 A I -- I don't have those and unfortunately I don't
19 have the original time record that would have backed
20 that up. But, no I -- I don't think it was a
21 protracted period of time.

22 Q Okay. And did you see where the prosecutors
23 detective's were searching in his house?

24 A I -- as I stated before I isolated myself to
25 pretty much the kitchen/den area. I know that on the

1 initial they went into the kitchen, they were there and
2 then moved on into the residence and I stayed right at
3 that position.

4 Q Were they looking for items in the kitchen?

5 A I can only assume they were but, I -- to this
6 date, I don't know what was identified, the reason why
7 they were looking.

8 Q Okay. Well, Irrespective of what they were
9 looking for, would you agree with me that they
10 basically searched the entire house?

11 A I don't know that to be truthful because like I
12 said, I stayed in the kitchen and in the what I would
13 refer to as the den that opened into the kitchen and I
14 never went any -- farther than that location in that
15 residence. So, what people did upstairs or -- I have
16 no -- I have no knowledge or -- or conversation about.

17 Q Did Mr. Scharf leave your sight at any point?

18 A I was with Mr. Scharf virtually the entire time.
19 Yes.

20 Q Okay. And when you say he was roaming around
21 the -- the house, how could he do that if you were with
22 him the --

23 A Well, when he walked away from me, I didn't chase
24 him down the hallway because obviously as you stated
25 there were Bergen County investigators with him but, my

1 primary position was to stay right in the kitchen area.
2 But, at some point in time -- he came back into that
3 area and we basically sat for the -- for the balance of
4 the time that we were there.

5 Q Okay. Is it -- is it normal Police
6 procedures to allow owners of the residence to roam the
7 house while they're searching it?

8 A If it's a search warrant they're not under arrest
9 and we don't have control over them. They could stand
10 outside, they could stand in the room. Unless, they're
11 interfering with the -- the search, which would be then
12 deemed interfering, I don't think they're constrained
13 from that.

14 Q Okay. Now, you indicated during this hour
15 conversation with my client, you were talking about
16 religion; correct?

17 A We got to that point. Yes.

18 Q And you were talking about you know, God and
19 the after life; correct?

20 A I was.

21 Q And you were talking about paying for your
22 sins or indiscretions; correct?

23 A Yes.

24 Q Okay. And Mr. Scharf gave you any indication
25 of what those indiscretions may have been; correct?

1
2 MR. MELLO: I think I'm going to ask that a
3 more specific question be asked because he certainly
4 indicated that it was not an accident so that's
5 certainly an indiscretion.

6 THE COURT: Ask another question.

7 Q During this hour long conversation, at some
8 point and again you were talking about God and
9 religion; correct?

10 A Yes.

11 Q And -- and when you were talking about the
12 after life and paying for certain sins, can I assume
13 that you were talking about all sins?

14 A Yes.

15 Q You weren't referring specifically to my
16 client killing his wife, were you?

17 A No, sir.

18 Q And you had indicated yourself that you
19 wanted to get your affairs in order; correct?

20 A Right.

21 Q As just about everyone does; correct?

22 A Yes.

23 Q No one's perfect; correct?

24 A Not that I'm aware.

25 Q And that was the, at least part of the gist
of your conversation with my client; correct?

1 A We had a conversation because you could tell from
2 the conversation that we had that Mr. Scharf was
3 troubled.

4 Q He was upset; correct?

5 A Absolutely.

6 Q And there's -- there's no doubt in your mind
7 that he was upset about you know, his wife passing;
8 correct?

9 MR. MELLO: Objection. How would he know
10 exactly what he was upset about? He said he was upset.

11 Q Did you talk about his wife --

12 THE COURT: Sustained. Ask another question.

13 Q Did you talk about his wife passing?

14 A The -- basically, the conversation was more about
15 Jonathan not having a mother and the concerns and the
16 responsibilities that would become on a single parent
17 and all those additional things that were going to
18 happen. I -- we did not start or even commence on the
19 -- the death of his wife. It started with, having
20 Jonathan, young boy now without a mother, the
21 additional responsibilities of a father taking on some
22 of that role as -- dual role as a parent.

23 Q And did he express concern about his son and
24 what effect this would have on him?

25 A He was concerned.

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Q And at some point in time you said -- or, he said you don't believe it was an accident; correct?

A That's what he said to me.

Q And then you said, correct me if I'm wrong, I believe an accident happened; correct?

A Yes, sir.

Q Did you honestly believe at that point an accident had happened?

A Well, the only thing that I was sure of at that point was that Mr. Scharf made the statement that I didn't believe him. I never -- I never -- I never asked him if -- if -- if this happened. He brought it up. So, he makes this statement, you don't believe that this happened -- this was an accident, and I said, I believe that an accident occurred. And that's when he made the statement.

Q And did you believe that an accident occurred when you made that statement to him?

A I didn't know at that time until he uttered those words. I knew that something happened. But, in my opinion he -- he was the one that challenged me to -- to convince me that it didn't happen and then he made that statement.

Q And he -- he was trying to indicate to you that it was an accident; correct? At least, initially.

1 MR. MELLO: I'm going to object to that.
2 That's -- that's within the mind of Mr. Scharf. He can
3 relate the words that he said, not what was in the mind
4 of Mr. Scharf.

5 MR. BILINKAS: What was his impression?

6 MR. MELLO: Or his impression.

7 THE COURT: -- words. What were the words --
8 ?

9 MR. MELLO: Words are what he can testify to.

10 THE COURT: Ask another question.

11 Q What prompted Mr. Scharf to say you don't
12 believe me. Were you talking about how his wife died?

13 A I don't know whether Mr. Scharf saw it in my body
14 language, he read it in my eyes but, at -- at one
15 moment there was an absolute lock between the two of us
16 in this conversation. As I stated before, he felt
17 comfortable with me as a person. Obviously, whether
18 the -- this situation occurred, he was troubled. But,
19 I -- all of a sudden he -- he made this statement, I
20 mean I didn't even ask a question. He made the
21 statement, and I'll read it exactly so there's no doubt
22 how we got to this point, you don't believe me. I
23 said, as I was responding, I believe an accident
24 happened. And that's when he made the statement, it
25 was an accident. No.

1 Q Isn't it a fact that you were the one that
2 said it was an accident and not my client?

3 A No. That's not what my Police report indicates
4 and that's --

5 Q It -- it doesn't and again, correct me if I'm
6 wrong, you have your report right there.

7 A I do.

8 Q Isn't it a fact that at one point my client
9 said, you don't believe me?

10 A Right.

11 Q And that you responded I believe an accident
12 -- happened. And then this Officer, meaning you --

13 A Right.

14 Q You --

15 A It was an accident and --

16 Q Stated it was an accident and then the only
17 thing that my client said at that point was no as he
18 had his head down.

19 A Right.

20 Q He said the word no in response --

21 A He -- he said the word, no.

22 Q And then, he says he wants to talk to a
23 priest?

24 A He did.

25 Q And -- and did you find anything unusual

1 about a man who's wife had expired wanting to talk to a
2 priest?

3 A Under normal circumstances you're absolutely
4 correct, I would not find that -- but, there is concern
5 that now suspicion that something occurred because the
6 Bergen County Prosecutors Office had responded to do a
7 search warrant. Like I said, we're here to assist.
8 I'm not here to investigate this case. But, when --
9 when someone makes this statement, it was an accident
10 and they say no, we're --

11 Q And did -- did you question him further as to
12 what he was -- what he meant by that?

13 A No.

14 Q As a -- as a experienced law enforcement
15 Officer knowing that you know, the Bergen County
16 Prosecutors Office is investigating this case, you
17 didn't feel it was appropriate to try to get him to
18 clarify what he was talking to -- about?

19 A The issue of this case in my opinion is that we
20 were asked to assist them. I'm not involved in the
21 investigation per say, I don't know all the facts of
22 the case, I don't know what happened prior to Mr.
23 Scharf and the Bergen County Prosecutors Office coming.
24 The term, assist other basically means the Police
25 Department's going -- I don't want to make any more

1 comments or statements or anything. All he said was
2 I'd like to speak to a priest. I left that scene, went
3 to Washington Township and tried to contact the Bergen
4 County Prosecutors Office with this information. The
5 problem is, 19 years ago there were cell phones, you
6 couldn't talk directly to the Officer in the car, you
7 had to go through communications, so all these issues
8 come into play.

9 Q Is there any reason why you didn't notify the
10 members of the Bergen County Prosecutors Office before
11 they left? After Mr. Scharf made these statements?

12 A I explained that there was a conversation and this
13 came out and at that time they were securing the scene
14 and they said that it was their investigation. I
15 didn't -- I didn't go any farther than that. I got no
16 indication at the time that Bergen County was
17 interested in prolonging that. I don't -- but, see I
18 don't know what they interviewed, what happened prior
19 to it, they showed up at the scene, we were there, at
20 that moment, at that time, they proceeded, they took
21 whatever they had, I don't even know what the inventory
22 shows. I know nothing about any of that and they left.

23 (CONTINUATION OF DAY'S

24 PROCEEDINGS IN VOLUME II)

25

1 I, Kerry Lang, the assigned transcriber, do hereby
 2 certify the foregoing transcript of proceedings on CD
 3 No. 1, from index number 9:17:41 to 10:25:12,
 4 10:48:04 to 12:07:50, 1:37:21 to 2:44:36 and 2:46:29 to
 5 3:56:00 is prepared in full compliance with the current
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 7 true and accurate non-compressed transcript of the
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9

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