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SUPERIOR COURT OF NEW JERSEY  
BERGEN COUNTY  
LAW DIVISION, CRIMINAL PART  
INDICTMENT NO.: 09-08-1485  
A.D. # \_\_\_\_\_

STATE OF NEW JERSEY, )  
 )  
 vs. ) TRANSCRIPT  
 ) OF  
 STEPHEN F. SCHARF, ) TRIAL  
 )  
 Defendant. )

Place: Bergen County Justice Center  
10 Main Street  
Hackensack, NJ 07601

Date: April 26, 2011

BEFORE:

HONORABLE PATRICK J. ROMA, J.S.C. and JURY

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, ESQ. (Assistant Deputy Public  
Defender)  
Office of the Public Defender, Appellate Section

APPEARANCES:

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Attorney for the State

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Audio Recorded  
Recording Opr: Diane Gundlah

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1 (The jury entered the courtroom.)

2 THE COURT: Welcome back ladies and gentlemen  
3 of the jury. Please be seated. Madame Clerk, roll  
4 call.

5 (Jury roll call)

6 THE COURT: Mr. Mello, call your next  
7 witness.

8 MR. MELLO: Thank you, sir. Mr. Ben Michel,  
9 please.

10 THE COURT: Please step up, face the court  
11 clerk.

12 THE CLERK: Raise your right hand.

13 B E N J A M I N P. M I C H E L, STATE'S WITNESS,  
14 SWORN

15 THE CLERK: State your name for the record.

16 THE WITNESS: My name is Benjamin P. Michel,  
17 M-i-c-h-e-l.

18 THE COURT: Please have a seat.

19 THE WITNESS: Thank you, Your Honor.

20 MR. MELLO: Ready, sir?

21 THE COURT: You may begin.

22 MR. MELLO: Thank you.

23 DIRECT EXAMINATION BY MR. MELLO:

24 Q Good morning, Mr. Michel.

25 A Morning.

1 Q If you would, would you please state your  
2 present employment?

3 A I am a -- a mostly retired senior partner of  
4 Riker, Danzig, Scherer, Hyland, and Perretti. I'm  
5 still listed with the firm as being of counsel to the  
6 firm.

7 Q And can you tell us where the firm is  
8 located?

9 A The firm has offices in Morristown, Trenton, New  
10 York, and London.

11 Q And what particular office do you spend most  
12 of your time?

13 A My office was primarily in Morristown.

14 Q And what is the size of the firm that you --?

15 A It's about -- it varies at a range of 150 lawyers,  
16 160, 140.

17 Q If you would, would you share with us -- give  
18 the jury a -- a sense of your background in the law,  
19 please?

20 A I was -- I took the bar in 1964. I was not sworn  
21 in until 1966 because I was away in the Army. I joined  
22 the firm immediately after leaving the Army, 1967. I  
23 became a full partner in 1973. And like I say, I'm  
24 currently of counsel. My work was primarily in the  
25 field of civil litigation. I was head of the family

1 law section.

2 Q Okay. I'm going to direct your attention at  
3 this time, Mr. Michel, to 1991 or thereabout. All  
4 right?

5 A Yes, sir.

6 Q And I'm going to ask you if you can, can you  
7 tell us your position in the firm in or about 1991?

8 A In 1991, I was a partner. Whether or not I was a  
9 member of the executive committee at that time, I was  
10 either a member or about to become a member, which  
11 essentially equates to senior partner status.

12 Q And can you tell us what particular part of  
13 the law that you practiced in at that time?

14 A I was head of the family law department, as I  
15 said. My practice was in all areas of civil  
16 litigation. I've tried cases in practically every  
17 field of civil litigation. But at that time primarily  
18 I was developing the family law department with a  
19 younger partner.

20 Q Again, focusing your attention on the year  
21 1991, did you have occasion in your professional  
22 capacity to meet one Jody Ann Scharf?

23 A Yes, I did.

24 Q Can you tell us approximately when you met  
25 her?

1 A I met Jody in late March of 1991. I had a  
2 conference with her at that time in my office.

3 Q Can you tell us without specific reference to  
4 the conversation, that is to say we will ask that you  
5 not discuss the particular details of the conversation,  
6 but you may tell us the general nature of the  
7 conversation, what was the purpose of the consultation?

8 A Jody came to me to discuss her desire to obtain a  
9 divorce from her husband and wanted to know what were  
10 the circumstances under which she would obtain such a  
11 divorce and what would be the likely outcome, the  
12 procedure and the like, so that she could understand  
13 what she was in for if she had filed for divorce.

14 Q With respect to that particular consult, did  
15 you take, and again not giving us the specific details,  
16 but can you tell us generally if you took certain  
17 background information from her?

18 A Yes. I took background information from her with  
19 respect to the relationship with her husband and also  
20 with respect to the family's financial situation.

21 Q Were you made aware at this initial consult  
22 that she had a child approximately --

23 A Yes, Jonathan.

24 Q -- nine or ten years old?

25 A Who I think was then about seven, seven and a

1 half, something like that, years of age.

2 Q Following this initial consultation with  
3 Mrs. Scharf, do you then conduct a procedural check  
4 within your law offices?

5 A Yes. We do what is called a conflict search,  
6 which is to send her name, her husband's name, other  
7 family names, businesses with which she might be  
8 associated through a records check of the firm to  
9 determine whether or not the firm has ever represented  
10 anybody who would be impacted by her case.

11 It's called a conflict search. Which we did.  
12 Which came back negative. There would be no conflicts  
13 in representing her.

14 Q And can you tell us approximately when the  
15 conflicts check was made with respect to this  
16 particular employ?

17 A It was made in the very beginning of April, within  
18 a matter of a week or days from the time that I first  
19 met with her.

20 Q Following the conflicts check which proved to  
21 be negative, not a problem, did you thereafter open a  
22 file with respect to representation of Mrs. Scharf?

23 A Yes.

24 OFFICER: Ma'am.

25 MR. MELLO: May I continue, sir?

1 THE COURT: You may.

2 MR. MELLO: Okay.

3 BY MR. MELLO:

4 Q With respect to the opening of that file, did  
5 your firm receive a retainer from Mrs. Scharf?

6 A Yes. Under the rules of court in the State of New  
7 Jersey, when you represent a client in a matrimonial  
8 matter, you are required to furnish your client what's  
9 called a retainer letter that spells out the services  
10 that you'll perform, the cost of those services as best  
11 you can estimate them.

12 We have such a letter which we send to clients.  
13 We sent that letter to Jody. And the letter was  
14 returned signed by her, again, in April. I'm not sure  
15 of the date on which we actually got the retainer  
16 letter back.

17 Q Now thereafter, did the firm begin to work  
18 toward processing this divorce action?

19 A Yes. There are two things necessary to actually  
20 begin the divorce proceeding. One is to obtain from  
21 the client the -- and in this case in particular, from  
22 Jody, the information that would go into the client  
23 that would establish the cause of action for divorce.

24 The second thing is to prepare a court approved  
25 form of financial statement called -- I think at that

1 time a case information statement. The name has  
2 changed, but I think that's what was in effect at the  
3 time.

4 We sent both the -- well, we sent the case  
5 information statement to Jody to complete. And we  
6 requested that she write out, which I think is  
7 important for a client to do, the background of the  
8 situation with her husband that led her to want to seek  
9 a divorce from him.

10 Q Without going into the specific information  
11 of the case information statement, can you give the  
12 jury a sense of the kind of information that is  
13 inputted into a case information statement in a  
14 matrimonial action?

15 A Yes. It gives the required information as to  
16 residence to establish that the person has been a  
17 resident for the requisite time in New Jersey. It sets  
18 out the number of family members, if there are any  
19 children.

20 It sets out specifically in specific paragraphs  
21 those events which the plaintiff claims give her the  
22 right or him the right to -- to have a divorce from  
23 their spouse.

24 It describes what the financial situation is in  
25 very, very general terms. That is to say really what

1 property there is, what the financial circumstances are  
2 in terms of the support of one party by the other.  
3 That's -- that's very generally put though.

4 But the -- the facts leading to the divorce  
5 themselves are set out in detail in the divorce  
6 complaint.

7 Q Now with respect to the information that you  
8 receive from a client regarding the state of the  
9 marriage, again I cannot ask and inquire into the  
10 substance of the information that you had received from  
11 Jody Scharf, but can you tell the jury here -- the  
12 sense to the jury of the reasons why we do such a  
13 thing?

14 A Well, there are several grounds for divorce in New  
15 Jersey, one of which is extreme cruelty. To obtain a  
16 divorce, for example, on the grounds of extreme cruelty  
17 you have to spell out events, actual events and  
18 occurrences with dates so far as it's possible for the  
19 client to remember what -- on what date those events  
20 occurred so that the court will know that there is a  
21 grounds for divorce under the law of the State of New  
22 Jersey.

23 Q And there are other grounds in the State of  
24 New Jersey?

25 A There are grounds, separation for a certain period

1 of time, desertion for a certain period of time. And  
2 those events, similarly, would have to be set out.

3 Q Now with respect to -- to this kind of a -- a  
4 writing that you request from the client, is -- is that  
5 a document -- a -- a writing that you consider  
6 significant in your evaluation of the client and the  
7 process that's about to begin?

8 A Yes, very.

9 Q Now did you receive in the course of your  
10 representation throughout 1991 certain information from  
11 Jody Ann Scharf --

12 A I received -- yes.

13 Q -- and the CIS statement? Well, the  
14 information to prepare a CIS statement?

15 A I received certain information in a series of  
16 conferences and telephone calls that I had with Jody  
17 Scharf during 1991. But I don't think we received  
18 until 1992 her written description fulfilling the need  
19 we had to be provided by the client with the basis for  
20 her divorce. I don't think that came until 1992.

21 Q Now with respect to that information coming  
22 sometime later, were you given to understand a reason  
23 for that delay?

24 MR. BILINKAS: Objection. It calls for  
25 hearsay.

1 THE COURT: Mr. Mello.

2 MR. MELLO: Withdrawn.

3 BY MR. MELLO:

4 Q Were you -- I -- I think I can ask this  
5 question. Were you made aware of the reason by the  
6 client?

7 MR. BILINKAS: Again, Judge, hearsay.

8 MR. MELLO: I'm not asking for the reason,  
9 sir.

10 MR. BILINKAS: How does he know unless he got  
11 it from hearsay?

12 MR. MELLO: All right. I'll move --

13 THE COURT: Ask another question.

14 MR. MELLO: -- I'll move on, Judge.

15 BY MR. MELLO:

16 Q At some point as you referred, you received  
17 the information regarding the narrative of the client  
18 respecting the state of the marriage and the materials  
19 to prepare a case information statement?

20 A That's correct.

21 Q Now can you tell us approximately when you  
22 received that information?

23 A I was afraid you were going to ask me that. I  
24 think it was in 1992. It -- it could have been as  
25 early as April or May. But my recollection is not

1 entirely clear as to exactly when we actually filed the  
2 divorce complaint.

3 Q Fair enough. Do you have a recollection of  
4 ultimately preparing the complaint for divorce?

5 A Oh, yes. The complaint was prepared. It was sent  
6 to Jody to sign. She signed it. The client has to  
7 sign the verification of the statements made in the  
8 complaint that constitute the cause of action for  
9 divorce. We filed it.

10 And we sent it to Mr. Scharf by mail asking him if  
11 he would acknowledge service of it. You could either  
12 have the other party acknowledge service of it or if  
13 they don't do so, you could have the sheriff serve the  
14 complaint.

15 Q Can you tell us approximately when that  
16 complaint was mailed to Mr. Scharf?

17 A Again, with apologies, sometime in mid 1992.

18 Q And would it be fair to say that July of that  
19 month would be consistent with that memory?

20 A Absolutely.

21 Q But you don't recall the specific day?

22 A I don't recall a specific date.

23 Q Now did you receive any form of  
24 acknowledgment of that mailed process?

25 A I believe we received a, from the postal

1 department, the -- the necessary form that says the  
2 person -- the mail has been delivered to the person's  
3 address.

4 But we needed more than that. You need to have  
5 the individual actually sign a document in which they  
6 acknowledge service of the complaint. We did not get  
7 that.

8 Q Having not received such a return, what was  
9 the next action you took with respect to the filing and  
10 service of the divorce complaint for Jody Scharf?

11 A We sent the summons and complaint to the sheriff's  
12 office first to serve him at his place of employment.  
13 And -- and -- and he was, in effect, served by the  
14 sheriff at his place of employment.

15 Q Do you recall that date?

16 A I'm going to say very early September. The date  
17 of September 9th sticks in my mind, but I can't say  
18 that that was the exact date. Yeah.

19 Q That, of course, would be 1992?

20 A 1992, yes. Sometime in the first week or so of  
21 September if I'm mistaken about the date.

22 Q Following the service of that complaint upon  
23 Mr. Scharf in early September 1992, do you become aware  
24 of the death of Jody Ann Scharf on September 20, 1992,  
25 the date --

1 A Yes.

2 Q -- of her death?

3 A Yes.

4 Q Can you tell us what, if any, action you took  
5 following your receipt of information that Mrs. Scharf  
6 had died on September 20, 1992 as it pertains to this  
7 matrimonial action?

8 MR. BILINKAS: Objection. Relevance.

9 THE COURT: Mr. Mello.

10 MR. MELLO: It's a very, very simple answer.

11 It's the closing of the file, Judge, and --

12 THE COURT: All right.

13 MR. MELLO: -- notification.

14 THE COURT: I'll allow it. Overruled.

15 THE WITNESS: Okay. I was out of the country  
16 when I received word. And when I returned, I had  
17 received a notice that there was to be a case  
18 management conference with respect to the divorce  
19 coming from -- I think it was Judge Bozonelis.

20 And I personally telephone Judge Bozonelis's  
21 office to inform the judge of Jody's death and that --  
22 but not to close the file for technical reasons.

23 MR. MELLO: May I approach?

24 THE COURT: You may.

25 BY MR. MELLO:

1 Q Mr. Michel, I'm going to ask you to first  
2 examine the three exhibits that I have put before you.  
3 And then I will ask you questions.

4 A Yes, I'm familiar with all three of these  
5 documents.

6 Q If you would, sir, would you first identify  
7 what has been marked S-283?

8 A S-283 is the summons in the divorce action  
9 instituted on Jody's behalf against Mr. Scharf. It is  
10 the summons that informs him of the institution of a  
11 divorce action.

12 Q And does that document bear a date?

13 A Yes. It is dated August 26, 1992.

14 Q Next I'm going to ask you to examine the  
15 document marked S-282.

16 A Yes. S-282 is the complaint for divorce on the  
17 grounds of extreme --.

18 MR. BILINKAS: Objection.

19 MR. MELLO: Let --.

20 BY MR. MELLO:

21 Q Okay. Don't tell us about it.

22 A Okay. All right. I'm reading from the document.

23 Q And I --.

24 A It is -- it is the complaint for divorce.

25 Q Excuse me one second.

1 A Excuse me.

2 MR. MELLO: Your Honor, understanding of  
3 course your ruling, I will not inquire as to the  
4 substance but will have the witness identify the  
5 document.

6 BY MR. MELLO:

7 Q Okay?

8 A Yes, I understand.

9 Q Do you mind, Mr. Michel?

10 A S-282 is the complaint for divorce filed by my  
11 office on Jody's behalf and against Stephen F. Scharf.

12 Q And its initial filing was when?

13 A June 15, 1992, filed with the Morris County  
14 Clerk's Office.

15 Q And that refers earlier to the complaint  
16 having been mailed in mid July or thereabouts?

17 A That is correct.

18 Q And if you will, can you identify that which  
19 has been marked S-284, please?

20 A S-284 is the receipt which is issued by the  
21 sheriff's office to indicate that the defendant has  
22 been served by the sheriff's office in this case on  
23 September 8, 1992.

24 MR. MELLO: Also, understanding the objection  
25 with respect to the complaint, any objection to either

1 proof of service or summons?

2 MR. BILINKAS: No objection.

3 MR. MELLO: Thank you.

4 BY MR. MELLO:

5 Q Mr. Michel, at any time either prior to the  
6 following -- the filing of the divorce complaint or  
7 after the filing of the divorce complaint did Jody Ann  
8 Scharf ever give you any direction or instruction with  
9 respect to withdrawing that complaint?

10 A Never.

11 Q Did she give you any indication of any desire  
12 to reconcile?

13 A Never.

14 MR. MELLO: Nothing further.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION BY MR. BILINKAS:

17 Q Good morning, Mr. Michel.

18 A Good morning.

19 Q You have an extensive background as far as  
20 litigation is concerned. Correct?

21 A That's correct.

22 Q You tried a lot of cases in your day?

23 A An awful lot of cases in my day.

24 Q And Riker, Danzig is a -- what we would refer  
25 to as a large firm. Correct?

1 A That's correct.

2 Q 150 lawyers at -- at any time?

3 A Plus or minus, yes.

4 Q All around the United States and -- and  
5 overseas. Correct?

6 A No. Primarily focused in New Jersey 'cause the  
7 office in New York is a satellite office as is the  
8 office in London.

9 Q Now you -- you had indicated that Mrs. Scharf  
10 first contacted you in March of '91. Correct?

11 A That's correct.

12 Q And at that point in time or shortly  
13 thereafter you and her decided that there was going to  
14 be a -- divorce proceedings. Correct?

15 A That's not correct.

16 Q Okay. She had indicated that she wanted to  
17 hire you to go on with her divorce. Correct?

18 A That's correct. The decision would be hers not  
19 mine.

20 Q Understood. I didn't mean to suggest that.  
21 And once that decision was made by her, you as her  
22 lawyer had to start planning her cause of action.  
23 Correct?

24 A Correct.

25 Q And -- and specifically started to organize

1 with her how she would prove those -- that cause of  
2 action in a court of law. Correct?

3 A Correct.

4 Q And just like any other case, specific things  
5 are addressed. For instance, possible witnesses.  
6 Correct?

7 A Correct.

8 Q Various documents to support whatever  
9 position she was alleging. Correct?

10 A Correct.

11 Q Now that started thereabouts in March of  
12 1991. Correct?

13 A Yes. No, actually more correctly in April after  
14 she signed the retainer letter.

15 Q Okay. And -- and what was that retainer for?

16 A You mean the amount of the retainer requested?

17 Q Correct.

18 A The amount was \$5,000.

19 Q And -- and do you know where she got that  
20 money from?

21 A No, I do not. I believe my recollection is that  
22 she borrowed it from her IRA account or -- or something  
23 like that.

24 Q And -- and that IRA account, was that one of  
25 the -- strike that. Would that normally be one of the

1 marital assets?

2 A Yes.

3 Q And do you know whether or not her husband  
4 consented to her using that marital asset to pay your  
5 legal fees?

6 A I don't --

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

9 THE WITNESS: -- know the answer to that.

10 THE COURT: All right. The objection is  
11 sustained.

12 BY MR. BILINKAS:

13 Q Now you indicated that Mrs. Scharf signed the  
14 divorce complaint in May of 1992. Correct?

15 A I think that that sounds about the right date.

16 Q I want to make sure.

17 A We could find out by looking at it if you wanted  
18 to.

19 Q You want to look at the last page?

20 A Yep. Her signature to the verification is dated  
21 May 27, 1992.

22 Q Okay.

23 A Sure.

24 Q Now with regard to these proceedings, you  
25 indicated that you sent the copy of this divorce

1 complaint to my client, Stephen Scharf. Correct?

2 A That's correct.

3 Q And -- and when was that, sir?

4 A It would have been done sometime after the date of  
5 the filing of the complaint, sometime that summer of  
6 1992.

7 Q Now isn't it a fact that you notified my  
8 client back in February that your firm was retained and  
9 that they would be representing Mrs. Scharf in the  
10 divorce proceedings?

11 A I don't recall doing that. But I can't say that  
12 wasn't done.

13 MR. BILINKAS: Mr. Mello.

14 MR. MELLO: That's February 1992?

15 MR. BILINKAS: Yeah.

16 MR. MELLO: Yes. Thank you.

17 BY MR. BILINKAS:

18 Q I'm going to show you a document, P-238,  
19 which is -- appears to be a letterhead. Does that  
20 refresh your recollection as to whether or not you  
21 notified my client way back in February of 1992 that  
22 your firm was retained and would be representing Jody  
23 Scharf in a divorce proceeding against him?

24 A That's correct.

25 Q So as you sit here today, there is no doubt

1 that as of February of 1992 my client, Stephen Scharf,  
2 knew that Riker, Danzig, this large law firm, would be  
3 representing his wife -- your -- his wife in a divorce  
4 proceeding against him. Correct?

5 A I would think so.

6 Q Is there any doubt in your mind?

7 A No. No.

8 Q Okay. And -- and after that, after the  
9 divorce complaint was filed, you sent him a copy of  
10 that both regular and certified mail. Correct?

11 A Correct.

12 Q So irrespective of when the certified copy  
13 came back, you sent him a copy of the complaint  
14 outlining all the specifics at that time. Correct?

15 A Correct.

16 Q And so as far as that point in time is  
17 concerned, Mr. Scharf would know the specifics and have  
18 a copy of the divorce complaint in his possession at  
19 that date. Correct?

20 A I should think so, yes.

21 Q And would that be in July of 1992?

22 A That would seem right to me.

23 Q Now you talked to the Prosecutor's Office  
24 back in 2003. Correct?

25 A That's correct, 2002 or 2003. I'm not sure which.

1 Q And you basically answered every question  
2 that they had. Correct?

3 A Well, there's a technical aspect I'd have to --

4 Q I'll --.

5 A -- interject in that.

6 Q Okay. Let -- let me move on to something  
7 else.

8 A Okay.

9 Q As far as the divorce laws are concerned,  
10 they're different now than they were in 1992. Correct?

11 A That's correct.

12 Q There's been substantial changes in the law  
13 with regards to the causes of action that someone could  
14 file as far as a divorce is concerned. Correct?

15 A The changes are not so much to the then existing  
16 causes of action as the addition of other causes of  
17 action, in particular, the no fault sort of causes that  
18 are now utilized.

19 Q For instance, now we have what you just  
20 referred to as no fault. Correct?

21 A Yes.

22 MR. MELLO: Objection. Only with this  
23 proviso, this may now open a line of inquiry into the  
24 substance of the complaint. So with that in mind, I  
25 have no objection to the question.

1 BY MR. BILINKAS:

2 Q With regards to the causes of action --?

3 MR. MELLO: Judge, if I may, can I ask that  
4 we have a sidebar?

5 (Sidebar)

6 MR. MELLO: I'm sorry, Mr. Bilinkas, but I --  
7 I just wanted to make sure that -- we took pains not to  
8 go into substantive cause of action and the basis for  
9 the -- I told Mr. Bilinkas that I would not examine on  
10 Mrs. Scharf's expressed fear of the defendant,  
11 assaulting behavior by the defendant, and so forth.  
12 And I would be reluctant to do.

13 But if we're going to talk about causes of  
14 action, I think it's walking on a dangerous line. And  
15 it really seems to me at this point not to be worth the  
16 candor, so to speak.

17 MR. BILINKAS: Judge, I -- I have -- I had no  
18 intentions of going into the specific causes of  
19 actions. I'm just asking him generally as far as how  
20 the law has changed. Again --.

21 MR. MELLO: Well, that's been -- that's been  
22 now established by the addition of no fault that I take  
23 for whatever value it has. Most respectfully, I would  
24 think that that should end the inquiry --

25 THE COURT: Counselor.

1 MR. MELLO: -- 'cause I think to go further  
2 then --.

3 MR. BILINKAS: I don't have a problem with  
4 this, Judge.

5 THE COURT: Okay.

6 MR. MELLO: Thank you, Judge.

7 (Sidebar concluded)

8 BY MR. BILINKAS:

9 Q Now are you familiar with the term divorce  
10 planning?

11 A I've heard the term.

12 Q When someone is proceeding with a divorce,  
13 part of your representation is gathering both  
14 information and potential witnesses to support your  
15 claim. Correct?

16 A That is correct. That's not the same as divorce  
17 planning as I understand it.

18 Q All right. Were you aware of the fact that  
19 Mrs. Scharf was seeing a therapist?

20 A In my notes, yes, I show that she was -- that she  
21 had consulted a counselor.

22 Q And based on your experience as a divorce  
23 lawyer, again I don't want any specifics with regards  
24 to communications, but would that be in your mind,  
25 generally, a possible witness that may be called?

1 A No. That comes up because I don't encourage  
2 people to get divorced. And one of the questions I ask  
3 them is what counseling they may have had to try to  
4 save their marriage and make a note that if the client  
5 has seen a counselor that that satisfies my wish to  
6 know that they have at least had that kind of  
7 counseling to make sure that they want to proceed with  
8 divorce and that their marriage can't be saved.

9 Q Thank you.

10 A You're welcome.

11 Q Irrespective of the -- the purpose, you were  
12 made aware that Jody Scharf was seeing a therapist.  
13 Correct?

14 A A counselor. I'm not sure of the degree that the  
15 person held.

16 Q Now based on your vast experience as a  
17 divorce lawyer, would you agree that it would be  
18 inappropriate for one parent to involve a small child  
19 in a divorce proceeding?

20 A Yes.

21 Q Okay. Based on your vast experience as a  
22 divorce lawyer practicing over many years, would you  
23 agree that it's not unusual for one parent to attempt  
24 to turn a child against the spouse?

25 A Fortunately I think it is unusual.

1 Q But it does happen based on your experience?

2 A It does happen, yes.

3 Q And in the instances based on your experience  
4 when it does happen, it's to gain an advantage in one  
5 way or another as far as the divorce is concerned?

6 A I don't think so. I think it has other  
7 motivations.

8 Q Now based on your experience, will you agree  
9 with me that it's not unusual for one side, and I'm not  
10 referring to your specific representation, but one side  
11 to embellish or make inaccurate statements with regards  
12 to various aspects?

13 MR. MELLO: Objection. That -- that calls  
14 for speculation and involvement of unknown, unknowable  
15 litigants in an action.

16 MR. BILINKAS: Judge, I'll --.

17 THE COURT: The objection is sustained.

18 BY MR. BILINKAS:

19 Q Would you agree with me it's not unusual for  
20 allegations made by one party against the other to not  
21 be true?

22 MR. MELLO: Objection. Same objection. Same  
23 question. And it is absolutely true that allegations  
24 can be true. That's what makes it an inappropriate  
25 question.

1 THE COURT: Counselor, I'd only caution you  
2 that the area that you're now delving into may cause  
3 the Prosecutor to ask additional questions in this  
4 area. We went to sidebar. You were instructed --

5 MR. BILINKAS: Understood.

6 THE COURT: -- to move on.

7 BY MR. BILINKAS:

8 Q Mr. Michel, did you meet with representatives  
9 from the insurance company at any point in time?

10 A I may have after Jody's death in conjunction with  
11 the technical matter I mentioned before where I was  
12 able to speak of my conversations with Jody with the  
13 Prosecutor's Office.

14 MR. BILINKAS: I have no further questions.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION BY MR. MELLO:

17 Q And you did speak of those conversations with  
18 the Prosecutor's Office?

19 A Yes, after the court permitted me to do so.

20 Q Thank you.

21 MR. MELLO: Nothing further.

22 THE COURT: Any further questions?

23 RECROSS EXAMINATION BY MR. BILINKAS:

24 Q And that was done back in 1992 or '93.  
25 Correct?

1 A That's correct.

2 RE-REDIRECT EXAMINATION BY MR. MELLO:

3 Q And it was a continuing conversation over the  
4 course of time because you were interviewed on more  
5 than one occasion. Is that correct?

6 A Oh, yes. Yes.

7 Q Thank you.

8 MR. MELLO: Nothing further.

9 THE WITNESS: You're quite welcome.

10 THE COURT: Anything else?

11 MR. MELLO: No, Judge.

12 MR. BILINKAS: If I could just have a moment,  
13 Judge? Nothing further, Judge.

14 THE COURT: Thank you, counselor.

15 THE WITNESS: Thank you, Your Honor. You may  
16 step down.

17 MR. MELLO: Thank you, Mr. Michel.

18 THE WITNESS: Thank you.

19 (Witness excused)

20 THE COURT: Call your next witness.

21 MR. MELLO: Paul Abbott.

22 THE COURT: Please step up, face the court  
23 clerk.

24 THE CLERK: Raise your right hand.

25 P A U L A B B O T T, STATE'S WITNESS, SWORN

1 THE CLERK: State your name for the record.

2 THE WITNESS: Paul Abbott, A-b-b-o-t-t.

3 THE COURT: Please have a seat.

4 THE WITNESS: Thank you.

5 THE COURT: You may begin.

6 MR. MELLO: Thank you, sir. If you could  
7 just give me one moment, Your Honor? Thank you, sir.  
8 I appreciate the consideration.

9 THE COURT: Yes.

10 DIRECT EXAMINATION BY MR. MELLO:

11 Q Good morning, Mr. Abbott.

12 A Morning.

13 Q If you would, Mr. Abbott, would you please  
14 tell the ladies and gentlemen of the jury your  
15 background in law enforcement? That is to say, would  
16 you begin with its earliest date when you first became  
17 employed as a law enforcement officer and conclude with  
18 its ending date? Thank you.

19 A Yes. I've been in law enforcement for a little  
20 over 24 and a half years, just retired. I began as a  
21 -- was -- for ten years I was police commissioner of my  
22 town, which was non enforcement on member council.  
23 From there I became a special police officer in my town  
24 for approximately a little over a year.

25 And then I went into law enforcement with the

1 Palisades Interstate Parkway Police in 1986. Until  
2 just the first of this month, I was an active officer  
3 and sergeant with them. I was a sergeant for  
4 approximately 17 years.

5 Q Thank you. Mr. Abbott, I'm going to ask you,  
6 if you would, can you keep your voice up so that the  
7 members of the jury, the Court, and counsel, and all  
8 parties can hear your answers to any questions? All  
9 right?

10 A Yes, sir.

11 Q And I believe you testified that you began  
12 your law enforcement career in 1986 with the Palisades  
13 Interstate Park Police?

14 A Yes, that's correct.

15 Q You retired this April 1st of 2011 as a  
16 sergeant within that department?

17 A That is also correct.

18 Q I'm going to ask you if in September of 1992  
19 you were employed as a law enforcement officer with the  
20 Palisades Interstate Parkway Police?

21 A Yes, I was a patrol officer with the Palisades  
22 Interstate Parkway Police.

23 Q And at that time you would have been so  
24 employed as a patrol officer with the Palisades  
25 Interstate Parkway Police for some six years or

1 thereabout?

2 A Yes, sir.

3 Q If you would, would you give the jury an  
4 understanding of the jurisdiction that Palisades  
5 Interstate Parkway Police Department covers?

6 A Yes, sir. Our jurisdiction is on the New Jersey  
7 side, the New Jersey section of the Palisades  
8 Interstate Parkway. The road continues into New York,  
9 but we cover the New Jersey section.

10 The main road goes from the George Washington  
11 Bridge up through Exit 4 and then slightly beyond,  
12 which borders on Rockland County, New York. That's the  
13 main highway of the road.

14 We also have all together about 30 miles of roads.  
15 There's multiple boat basins. There's a civil war  
16 museum. Actually it goes into revolutionary times  
17 museum. There's lookout areas, recreation areas within  
18 that area. We cover all that, both on the highway and  
19 off the highway areas.

20 Q Now with respect to that jurisdictional base,  
21 I believe you just stated that there are certain scenic  
22 lookout locations within your jurisdiction?

23 A Yes, there are.

24 Q If you would, can you tell us if you are  
25 familiar with one of those particular locations and

1 that is the Rockefeller Lookout in Englewood Cliffs,  
2 Bergen County, New Jersey?

3 A Yes, I'm familiar with that. Uh-huh.

4 Q I'm going to ask that you direct your  
5 attention to a specific date. And that date will be  
6 September 20, 2000 -- strike that, 1992. Understood?

7 A Yes. Uh-huh.

8 Q If you would, can you tell us on  
9 September the 20, 1992 if you worked a shift as a  
10 patrol officer with the Palisades Interstate Parkway  
11 Police?

12 A Yes. I was on the 4:00 to 12:00 tour that day.

13 Q Can you tell us at this point the general  
14 nature of your assignment on the 4:00 to 12:00 shift of  
15 September 20, 1992?

16 A Yes. It was patrol duties along the -- the  
17 Parkway and adjacent properties.

18 Q Can you tell us if in the performance of  
19 those duties you were in a marked, unmarked police  
20 vehicle?

21 A I was a marked police vehicle.

22 Q Can you tell us if you were alone during the  
23 course of that patrol duty or were you with a partner?

24 A No, I was alone.

25 Q Can you tell us if at that time during the

1 course of your patrol duties you were in uniform or  
2 not?

3 A I was in uniform.

4 Q Now I am going to bring you to approximately  
5 the midpoint of that 4:00 to 12:00 shift. Understood?

6 A Yes.

7 Q I'm going to direct your attention to  
8 approximately 8:00 p.m. Understood?

9 A Yes.

10 Q And I will specifically refer your attention  
11 to that time period for the purpose of this question.  
12 At that time, can you tell us if it was in fact dark?

13 A Yes, it was dark.

14 Q Can you tell us if the weather was clear or  
15 not?

16 A I remember the weather as clear. It was  
17 comfortable temperature. I believe in the low 60's.  
18 Pleasant weather.

19 Q Specifically directing your attention to  
20 approximately -- or specifically eight minutes past  
21 8:00 p.m. on September 20, 1992, did you receive a  
22 specific assignment?

23 A Yes. I was sent to the Rockefeller Lookout in the  
24 Englewood Cliffs section to check on a -- a reported  
25 cliff case, which would entail somebody falling from

1 the cliff or going over the cliff.

2 Q Now obviously such a call was an emergent  
3 situation?

4 A Absolutely.

5 Q Did you, in response to that emergent  
6 situation, immediately proceed to the Rockefeller  
7 Lookout in Englewood Cliffs?

8 A Yes, sir.

9 Q In so doing, did you, in that emergent  
10 situation, respond with appropriate emergency vehicle  
11 lights?

12 A Yes, I did.

13 Q Can you tell us approximately how long it  
14 took you to arrive at the location of the Rockefeller  
15 Lookout?

16 A It was approximately four minutes.

17 Q At that time, is it now pitch dark?

18 A Yes, it is. Absolutely.

19 Q And had it been for a period of time?

20 A Yes.

21 Q Now can you tell us on what side of the  
22 Palisades Interstate Parkway does the Rockefeller  
23 Lookout sit? That is to say the northern or southern  
24 side of the Parkway?

25 A Oh, it's off the northbound main lanes. It comes

1 off the northbound lanes.

2 Q Is it fair to say then that you must traverse  
3 the Northern Parkway to enter that lookout?

4 A Yes.

5 Q And is it also fair to say that one would  
6 enter from a south portal, traverse the lookout, and  
7 exit from a north portal?

8 A That's correct.

9 Q Now if you would, can you tell us at that  
10 time, in 1992, did that lookout have any artificial  
11 lighting?

12 A No, it does not. It didn't then and it doesn't  
13 now.

14 Q Can you tell us, with respect to foliage, can  
15 you tell us whether foliage was full on  
16 September 20, 1992 or not?

17 A No, foliage was filled -- full. Everything was  
18 green, overgrown areas, very full foliage.

19 Q All right. Now if you would in words, can  
20 you describe for us the general layout of the  
21 Rockefeller Lookout in Englewood Cliffs, New Jersey as  
22 it existed in 1992?

23 A Okay. It was very much as it is now. As you  
24 would enter the lookout area from the Parkway going  
25 north, entering from the south end, you came in on a

1 slight angle, oblique angle from the roadway.

2 To your right were parking areas marked off as  
3 they are today. There was what was referred to as --  
4 what we referred to as a binocular area where there  
5 were binoculars. You could look out. People can look  
6 out over the river and across the river with. That  
7 area is kind of marked off.

8 It extended north with a series of parking places  
9 along a -- a concrete area curving to the north end.  
10 And then it would extend back out to the -- in fact,  
11 there was another, I think, trash bin up there, but  
12 then it would exit back out onto the Northbound  
13 Parkway.

14 So you'd be going north on the Parkway. You'd  
15 pull into the lookout, go north, and then back out to  
16 egress from it.

17 Q Thank you. Now I think at this time what I'd  
18 like to do is, to help the jury, I'd like to show you  
19 certain photographic illustrations.

20 MR. MELLO: Your Honor, the illustrations  
21 that I am about to show the witness have been shown to  
22 Mr. Bilinkas of course. And counsel and I have agreed  
23 that each of them in turn shall be admitted into  
24 evidence at this time.

25 THE COURT: Mr. Bilinkas, you --?

1 MR. BILINKAS: That's --

2 THE COURT: Yes?

3 MR. BILINKAS: -- accurate and correct.

4 THE COURT: Okay. You may proceed.

5 MR. MELLO: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. MELLO:

8 Q I'm going to first show you --?

9 MR. MELLO: Your Honor, for the record, S-243  
10 in evidence.

11 BY MR. MELLO:

12 Q And I'm going to ask you first if you  
13 recognize this exhibit?

14 A Yes. This would be an aerial view of the  
15 Rockefeller Lookout, the Englewood Cliffs section of  
16 the Parkway.

17 Q Now I'm going to turn this document -- this  
18 photograph to the jury. And if you would, would you  
19 just step off the witness stand.

20 (The witness stepped down from the witness  
21 stand to stand in front of the jury.)

22 MR. MELLO: If I may, Your Honor, so that the  
23 jury can see the photograph and have the witness  
24 identify certain facets of the photograph? And then I  
25 will pass the photograph to the attorneys and the jury.

1 BY MR. MELLO:

2 Q But if you would --?

3 MR. MELLO: Your Honor, we do have a clip on  
4 microphone. Is there a need for that here?

5 THE COURT: Just a little. Go ahead.

6 MR. MELLO: Thank you.

7 BY MR. MELLO:

8 Q Okay. This is a depiction of the lookout as  
9 you just testified. Correct?

10 A Yes.

11 Q All right. If you would, can you show the  
12 jury the south portal of the lookout?

13 A (Indicating) Yeah, it's right here. This is the  
14 south over here. This is the lookout. -- in this  
15 direction. You'll see that there's vehicles here with  
16 -- that indicates where the parking places are  
17 around --.

18 Q And can you indicate the northbound lanes of  
19 the Palisades Interstate Parkway?

20 A Yes. That would be the straighter lanes here  
21 (indicating).

22 MR. MELLO: I think the easiest thing to do  
23 at this point would be to have this photograph  
24 published to the jury and have you take a look at it  
25 and pass it down.

1 (Pause)

2 MR. MELLO: The next photograph, S-245 in  
3 evidence, please.

4 MR. BILINKAS: No objection.

5 MR. MELLO: Thank you, sir.

6 BY MR. MELLO:

7 Q And if you would, would you again -- and  
8 let's see if we can make sure the jury can all see it.  
9 If you would, would you identify the northbound lanes  
10 of the Palisades Interstate Parkway?

11 A Yes, that's this lower, straighter lane here  
12 (indicating).

13 Q Can you identify the lookout?

14 A (Indicating) This would be the northern portion  
15 of the lookout. This goes back in to merge with the  
16 Parkway.

17 Q Thank you.

18 MR. MELLO: I'll show the jury.

19 (Pause)

20 MR. MELLO: S-244 now.

21 BY MR. MELLO:

22 Q Mr. Abbott, if you would. Again, can you  
23 identify the northbound lanes of the Palisades  
24 Interstate Parkway?

25 A (Indicating) There's a dip here. These cars are

1 going south to north.

2 Q And can you indicate and tell us if that  
3 particular photograph, S-244, if that is -- shows the  
4 northern portal if you were to exit the Rockefeller  
5 Lookout?

6 A Yes, it does. (Indicating) This would be the  
7 exit here. And this is the northern portion of the  
8 lookout itself right there.

9 Q Thank you.

10 MR. MELLO: Publish to the jury that picture.

11 (The witness returned to the witness stand.)

12 (Pause)

13 BY MR. MELLO:

14 Q Now I'd like to direct your attention to that  
15 point in time when you arrived at the Rockefeller  
16 Lookout, --

17 A Yes.

18 Q -- Englewood Cliffs, New Jersey. Understood?

19 A Yes, sir.

20 Q You enter through the south portal. Correct?

21 A That's correct.

22 Q Your emergency vehicle lights are on.

23 Correct?

24 A Oh, absolutely.

25 Q What, if anything, attracts your attention as

1 you enter the south portal of the lookout?

2 A Okay. As I entered the lookout area, I was  
3 approximately in the middle of the lanes. I had my  
4 emergency lights activated, headlights on 'cause it was  
5 pitch black.

6 And I saw a male walking toward me also in the  
7 middle of the lookout, walking slowly with his hands  
8 extended out at -- at his sides (demonstrating), just  
9 walking slowly toward me, directly at the front of the  
10 police car.

11 Q At the time you make the observation that you  
12 describe of that male with respect to his hands, which  
13 you've demonstrated to the jury as being out at his  
14 side, are there anything in his hands?

15 A No, his hands are extended and empty  
16 (demonstrating).

17 Q And it would be fair to say that the hands  
18 are extended in a motion directed toward flagging you  
19 down?

20 A Yes, just --

21 Q Attracting your attention?

22 A -- very gently. Kind of more extended than  
23 moving, but just, yes, extended out from his body and  
24 slightly upward (demonstrating).

25 Q Do you see the male in court that you saw at

1 the lookout as you've described it on  
2 September 20, 1992?

3 A Yes, I do.

4 Q Would you point him out, please?

5 A (Indicating) Yes, he's at the table over here.  
6 He's the gentleman to the right of the woman sitting at  
7 the middle of the table. Her right.

8 MR. BILINKAS: I'll stipulate that he's  
9 identified my client.

10 THE COURT: The record will identify the  
11 defendant.

12 MR. MELLO: Thank you.

13 BY MR. MELLO:

14 Q Now I want to focus you on this moment in  
15 time. You have now made the observation of the  
16 defendant as you've described it. Tell us the very  
17 next thing that occurs?

18 A Okay. I stopped the patrol car. I exited my  
19 patrol car. And I walked over to Mr. Scharf, I later  
20 found out. He just said my wife fell off the cliff.

21 Q I'm going to show you what has been marked  
22 S-70 for identification. I want to ask if you'd just  
23 take a moment --

24 A Uh-huh.

25 Q -- to examine that exhibit. Just examine.

1 A Can I slip this out?

2 Q You may.

3 A Okay.

4 Q Do you recognize that document?

5 A Yes, I do.

6 Q What do you recognize that document to be?

7 A That was my report completed later that night  
8 pertaining to this case.

9 Q Does it bear a date?

10 A Yes, it does.

11 Q What's the date?

12 A The date is September 20, 1992.

13 Q Now with respect to the words said by  
14 Mr. Scharf to you at the time indicated, my wife fell  
15 off the cliff, --

16 A Yes, those were --.

17 Q -- did you note --

18 A I'm sorry.

19 Q -- those words in your report?

20 A Yes, I did. I have them in quotations as a matter  
21 of fact.

22 Q All right. Now let's go back to that moment  
23 when he has said to you my wife fell off the cliff.

24 What is the very next thing that occurs or what is your  
25 recollection of the next thing that is said?

1 A Okay. I basically asked him where. I asked him  
2 to get in the patrol car after he said it was up at the  
3 northern end off the -- past the northern end of the  
4 lookout. I asked him just to get in the patrol car so  
5 that we could go up to that location, get a more  
6 definitive location on it.

7 Q Now with respect to your instruction to  
8 Mr. Scharf to get into the patrol car, where did you  
9 direct him to enter?

10 A I had him sit in the back because the front had a  
11 lot of equipment on it.

12 Q Did he follow your instruction?

13 A Yes, without question. Uh-huh.

14 Q Did you then proceed immediately to the  
15 northern end of the lookout?

16 A Yes, we drove directly up to the north end,  
17 followed by Officer Tamayo, who had arrived in another  
18 patrol car.

19 Q Now you've referred to an Officer Tamayo  
20 arriving. Is that Patrol Officer Lowell Tamayo?

21 A Yes, it is.

22 Q And did he arrive after you did?

23 A He was seconds behind me as I pulled in.

24 Q And he thereafter followed you to the  
25 northern end?

1 A That's correct.

2 Q At that moment in time you have what is now  
3 before you quite clearly a life or death situation.

4 Correct?

5 A Yes, absolutely. Uh-huh.

6 Q Can you tell us, as you initially observed  
7 Mr. Scharf, can you tell us his demeanor as it appeared  
8 to you?

9 A He was calm. He was controlled. I thought his  
10 speech was controlled. He did not demonstrate any  
11 emotion. He made the one simple explanation and then  
12 only responded to give us a location. After that there  
13 was no other spontaneous statements or concerns at that  
14 point, basically emotionless response.

15 Q And did you take note of that?

16 A Yes, I did.

17 Q Why is that?

18 A I felt based on my experience with people that it  
19 was a very unique response to a stressful situation.

20 Q And with respect to your experience in these  
21 kinds of situations, can you tell us something about  
22 that experience?

23 A I've been a police --.

24 MR. BILINKAS: Objection, Judge. Relevance  
25 with regards to other --.

1           MR. MELLO: It's -- it's laying a  
2     foundational basis for which he has made observations,  
3     Your Honor.

4           THE COURT: I will allow it. Overruled.

5           THE WITNESS: My experience in situations  
6     which are -- we consider stressful, similar to this,  
7     I've been a sergeant and a patrol officer for 24 and a  
8     half years for the Palisades Interstate Parkway Police.  
9     Prior to that I served on my local rescue squad where  
10    there were medical emergencies. I was with the special  
11    police in my town.

12           Prior to that I worked in hospitals in  
13    various positions, from an x-ray technician to an  
14    instructor to a department manager to a radiology  
15    department administrator.

16           During those years, I dealt with people and  
17    families in the best and worst of times where whole  
18    families were stressed with situations and  
19    circumstances all through those years.

20           I also served for a tour and a half in  
21    Vietnam. Part of my job there was an x-ray tech. And  
22    I used to volunteer for MEDCAPS. We'd go out to  
23    villages.

24           We dealt with the Montagnard tribesmen for  
25    the large part in the highlands. We did medical care

1 for their families. These people were subjected to  
2 horrendous treatment at times requiring more advanced  
3 medical aid. They often came to our hospitals. I  
4 dealt with them.

5 I've seen different cultures under stressful  
6 situations. Members of my family also, but I -- it --  
7 all through those years I've dealt with people in  
8 stressful situations and tried to assist them. And  
9 I've observed their responses to those -- to those  
10 stresses.

11 BY MR. MELLO:

12 Q Now after making the observations of  
13 Mr. Scharf's demeanor in the context that you've just  
14 described it, you are now at the northern end of the  
15 lot. Correct?

16 A Yes.

17 Q I would like you to take the jury through the  
18 next event as you arrive at the northern end of the  
19 lot?

20 A Okay. As we arrived at the northern end of the  
21 lot, I exited from my car. We -- Mr. Scharf exited  
22 from the patrol car. Officer Tamayo also exited from  
23 his patrol car, which had followed us up to the lot.

24 We inquired a more -- trying to get a more  
25 pinpointed location as to where the incident had

1 actually happened. We radioed for help to get that  
2 going underway.

3 And Mr. Scharf was guiding us up north of the  
4 parking lot area into the wooded area, down a path that  
5 went to the cliffs.

6 Q Now if you would, would you first describe  
7 the foliage at that time at the lookout generally and  
8 in the wooded area that you referred to?

9 A Okay. The -- the lot itself is a -- was a paved  
10 area. As you left the lot, you entered a wooded area.  
11 It's not a formal path. It's more one that's been worn  
12 there and kind of natural over the years.

13 It's overgrown with foliage, various bushes,  
14 branches, vines. There's a lot of tree limbs down in  
15 that area often because of the storms. There are trees  
16 which are, sorry, tipped over, blocking. I think the  
17 trail was partially obstructed. Leaves cover  
18 everything from -- from the fall when they start coming  
19 down.

20 So it's -- season to season it changes. But at  
21 that time of year it's very thick with -- with  
22 overgrowth, undergrowth, and vines, et cetera. It's a  
23 -- it's a -- it's not a paved walking path like a  
24 sidewalk. It's -- it's definitely -- has a rural and  
25 wooded atmosphere to it. They don't really maintain

1 those to try to keep the natural beauty of the park.

2 Q And that path at this time is overgrown as  
3 you suggest?

4 A Yes.

5 Q Now as you have testified, it was now  
6 certainly pitch dark. Correct?

7 A Yes, pitch dark.

8 Q There is no artificial lighting. Correct?

9 A There -- no, there's nothing in that area and all  
10 the foliage is around it, you know, the area.

11 Q Foliage is full?

12 A Right.

13 Q And now at that time as you are about to  
14 enter the wooded area that you've described to the  
15 jury, did you do so, first of all, by means of any  
16 artificial illumination?

17 A I had my -- I had a three cell flashlight that I  
18 carried at that time. And Officer Tamayo also had a  
19 flashlight.

20 Q Did you see any flashlight in Mr. Scharf's  
21 hands?

22 A No. He did not have a light.

23 Q Now I want you to tell the jury as you  
24 entered that wooded area to begin to traverse the path  
25 that you described, who entered the wooded area first?

1 A I started leading off.

2 Q And were you being directed in that  
3 particular direction by Mr. Scharf?

4 A Yes. He was immediately behind me, to the side.

5 Q And where was Tamayo?

6 A Officer Tamayo would have been the third one  
7 behind Mr. Scharf.

8 Q As you entered the wooded area, did it become  
9 darker than it would have been, for example, in the  
10 parking lot?

11 A Yes. Uh-huh.

12 Q Now as you entered the wooded area, did you  
13 illuminate your way by means of the flashlights that  
14 you and Tamayo had?

15 A I'm sorry, you --.

16 Q I'm sorry.

17 A I couldn't hear you.

18 Q As you entered the wooded area, did you  
19 illuminate your way by means of the flashlights that  
20 you and Tamayo had?

21 A Yes, we did.

22 Q And as you continued through the wooded area,  
23 did you do so at the direction of Mr. Scharf?

24 A Yes.

25 Q Can you tell us as you walked through that

1 wooded area, did Mr. Scharf in any way become  
2 emotional?

3 A No. He was very quiet through there, just -- he  
4 was -- a minimal amount of direction.

5 Q Now tell us as you passed through that wooded  
6 area, what, if anything, you will come to?

7 A We eventually came to a green vinyl cable fence,  
8 which is a restricting fence that runs along the cliffs  
9 to keep people back.

10 Q Now at that fence, do you ask Mr. Scharf to  
11 tell you where his wife fell from the cliff?

12 A Yes.

13 Q Does he do so?

14 A Yes, he did. He indicated a flat rock area that  
15 was just ahead of us.

16 Q Have you been to that particular area before?

17 A Yes.

18 Q And are you familiar with that particular  
19 location as a result of having been there before?

20 A Yes.

21 Q And with respect to his indication, was that  
22 the precise point that he indicated to you?

23 A Yes. It's a flat rock that was basically clear.

24 It -- it -- it's rock so nothing was growing on that.

25 It's a little clear area there. It comes out slightly,

1 drops slightly, and out, you know. So it's like two  
2 flat areas with this little drop on it.

3 Q And with respect to that rock and that stone  
4 area, it -- would you say one could sit at that  
5 location?

6 A Yes.

7 Q Now what happens?

8 A We had Mr. Scharf stay behind the fence. He had  
9 indicated. And I went with Officer Tamayo. We went  
10 through the fence over to the edge of the cliffs and  
11 tried to call out to see if we could get a -- a voice  
12 response.

13 Q Can you tell us what you called out?

14 A At first we just called the -- Mr. Scharf told us  
15 her first name was Jody. His wife's first name was  
16 Jody. And we used that to continuously call more.

17 Q Did you --?

18 A Numerous times.

19 Q Did you receive any response to the numerous  
20 calls that you made for his wife Jody?

21 A No, there were none.

22 Q Does there come a point now when you advise  
23 headquarters of your situation?

24 A Yes. We had given them a -- a general location to  
25 start with. And now we can give them a more pinpointed

1 location for them to respond with equipment and  
2 assistant -- additional personnel.

3 Q At the time that you are now at that rock,  
4 that point where Mr. Scharf has indicated his wife fell  
5 from the cliff, do you make any observation beyond the  
6 edge of the cliff?

7 A Yes. I had looked over and I noticed about  
8 approximately eight feet below there was another small  
9 ledge with a pocketbook on it.

10 Q Now with respect to the location indicated by  
11 Mr. Scharf, that is literally at the cliff edge, is it  
12 not?

13 A The -- the point --

14 Q The rocks.

15 A -- he point -- the area he pointed out?

16 Q Yes.

17 A Yes. It was -- it is the edge right there.

18 Q And approximately eight feet down you  
19 observed what you say was a pocketbook?

20 A Yes.

21 Q Did you recover that pocketbook at that time?

22 A No, I -- I did not at that -- at that time it was  
23 not recovered.

24 Q Now as you were at that cliff edge calling  
25 for Mrs. Scharf, where is Mr. Scharf?

1 A He was behind us, back at the fenced area where  
2 the -- the cables go through the woods at that point.  
3 And he was just on the other side of that.

4 Q And was he directed to stay at that  
5 particular location?

6 A Yes. He had been told to stay back there.

7 Q And can you tell us if in fact that was  
8 obviously for his safety as well as your own?

9 A Yes, absolutely. It's a -- it's a -- the cliff  
10 edges are dangerous. We lose, unfortunately, we lose  
11 people every year off those cliffs, usually people  
12 getting too close or other various things, different  
13 influences. But they're hazardous.

14 Q What is the next event that you recall?

15 A Officer Tamayo walked Mr. Scharf back to the  
16 parking lot area.

17 Q Did you remain at the cliff edge?

18 A Yes, I did.

19 Q What is the next event that you recall  
20 happening?

21 A The next event was when then Sergeant Pagan of our  
22 department, Palisades Interstate Parkway Police,  
23 responded to the area for -- to repel down and attempt  
24 to, you know, perform a rescue.

25 Q Now Sergeant Pagan is attached to your

1 headquarters. Correct?

2 A Yes. Uh-huh.

3 Q And he arrives at the scene you said?

4 A Yes.

5 Q Did other police, fire, rescue units arrive  
6 at the scene?

7 A Yes. There were other officers from our  
8 department that responded. Then there were the fire  
9 department from Englewood Cliffs. The fire department  
10 responded and that included Michael Cioffi, who was  
11 both a policeman and a fireman in Englewood Cliffs.

12 Q Now with respect to the rescue effort that is  
13 about to begin, I believe you testified that Sergeant  
14 Pagan was involved in that effort?

15 A Yes, he was.

16 Q And was Michael Cioffi also involved in that  
17 effort?

18 A Yes, they both actually repelled down the -- down  
19 the cliffs.

20 Q During the course of that rescue effort, what  
21 were you doing?

22 A I was at the top. I tried to assist in any way I  
23 could, maintained communications with our headquarters  
24 via portable radio.

25 We've always had a problem being above an agency

1 that has areas above and below the cliffs with our  
2 radio communications. And very often if you're below  
3 the cliffs and you're on a portable radio, our  
4 headquarters does not hear you.

5 So I was staying in position so I could relay any  
6 messages back and forth from headquarters down to the  
7 officers that were repelling down, also assisting with  
8 lighting, whatever I could help with.

9 Q Now with respect to the repelling down the  
10 cliff base by Officers Pagan and Cioffi, did either of  
11 those officers secure the pocketbook that you referred  
12 to earlier?

13 A Yeah. Sergeant Pagan secured the -- retrieved the  
14 pocketbook and he threw it up to me at the top of the  
15 cliff. I secured it and later turned it over to a  
16 detective.

17 Q And what detective would that be?

18 A That was Detective Karnick, K-a-r-n-i-c-k.

19 Q Now does there come a point in time when the  
20 rescue effort becomes a recovery of the body of the  
21 wife of Mr. Scharf?

22 A Yes.

23 Q And I want to direct your attention to that  
24 period of time when the body has been located and  
25 recovered. All right?

1 A Yes, sir.

2 Q Is that a considerable period of time between  
3 the repel beginning and ultimate recovery?

4 A Yes, it takes -- it -- I believe the recovery was  
5 approximately 11:30 when there was a -- a pronouncement  
6 made.

7 Q Now during this rescue/recovery process, are  
8 you remaining at the cliff edge in that vicinity until  
9 recovery?

10 A Yes, until -- until that was completed.

11 Q Now what do you do after notification of the  
12 recovery of the body of Mr. Scharf's wife?

13 A Well, following that, I assisted momentarily with  
14 -- well, a short time, but as they were gathering  
15 equipment by the Englewood Fire Department at the top,  
16 collecting their lights and things. And then I went  
17 back to the lookout, back to my patrol car at the  
18 northern end of the lookout, the asphalt area.

19 Q And as you entered the asphalt area of the  
20 lookout, was your attention drawn to any particular  
21 vehicle?

22 A Yes, it was. I observed one vehicle that was a  
23 non emergency or police vehicle in the lot. I called  
24 the license plate into headquarters just to verify if  
25 it belonged to the Scharf's, which it did.

1 Q At that time when you made the observation  
2 that you refer to and receive the information that you  
3 testified to, did you have occasion to check the doors  
4 on the car?

5 A Yes, I did. I had to -- one, they told me to stay  
6 with the car and, two, I had to complete a -- what we  
7 call an abandoned vehicle report. Any --.

8 Q All right. Tell us about that, what that  
9 means?

10 A Okay. Any vehicle that's found unattended in the  
11 park jurisdiction that there's no obvious explanation  
12 or appears that it's going to be there for any period  
13 of time, we complete an information sheet on the  
14 vehicle.

15 We note whether there's damage, whether it's open  
16 or closed, if there's any obvious defects such as a  
17 flat tire or anything like that. It's generally  
18 checked to see if the car's stolen or if it's been left  
19 there.

20 This is made a record that then goes into  
21 headquarters. It is put on a board and other -- if the  
22 vehicle's not removed by the end of your tour, the next  
23 tour will be -- can use that to become aware of why the  
24 vehicle's there, you know, if we have a reason so that  
25 they just don't come out and have to recheck cars

1 constantly because we get a large number of them.

2 Sometimes we find out if the car's broken down,  
3 you talk to an owner. If they explain they're going to  
4 be leaving the car -- but any vehicle that's going to  
5 be left for a period of time or that we find unoccupied  
6 goes on that form.

7 Q So that's a protocol that's established not  
8 necessarily relating to a "abandoned car" in the sense  
9 of a person relinquishing any interest in that vehicle?

10 A No. It just means that there's nobody occupying  
11 that vehicle or associated with that vehicle -- with it  
12 at that time.

13 Q So with respect to this report and your  
14 observation, did you ascertain whether the doors were  
15 locked or not?

16 A The doors were unlocked.

17 Q And with respect to that particular vehicle  
18 -- and if you would, can you tell us what kind of car  
19 that was?

20 A I believe it was a Ford Taurus, color white.

21 Q Okay. Did you have occasion to take the  
22 opportunity to view the interior of the --

23 A Yes, I did.

24 Q -- white Ford Taurus?

25 A Yes, I did. I shined my light into it, walked

1 around it.

2 Q Okay. Did you happen to notice anything as  
3 you did so --

4 A I did --.

5 Q -- that struck you?

6 A I did observe a wine cooler bottle on the floor in  
7 the backseat.

8 Q Wait a minute. Hold on. Hold on.

9 A Uh-huh.

10 Q I'm sorry. Can you repeat your answer?

11 A Yes. Yes, I looked in the windows with my  
12 flashlight. I did observe a wine cooler bottle on the  
13 floor of the vehicle. And there was also a plastic  
14 cooler type container commonly used to keep drinks cool  
15 in the summertime or food.

16 Q Now with respect to your observations of the  
17 white Ford Taurus, did you advise anyone of those  
18 observations?

19 A I advised headquarters as to the -- the car when I  
20 -- that it was there when I ran the vehicle plate  
21 number. And at that time they told me to stay with the  
22 vehicle to secure it.

23 Q And did you remain at that location as  
24 instructed?

25 A Yes, I do.

1 Q Does there come a point in time when you  
2 leave the location?

3 A Yes. At approximately 12:30 -- can I just refer  
4 to my report momentarily?

5 Q If you need it to refresh your recollection  
6 of the particular detail of the time, please.

7 A I just want to make sure I was relieved. All  
8 right. Yeah, I was -- yes, I was relieved there at  
9 approximately 12:30 by Sergeant Pagan and Officer  
10 Joseph Zedo (phonetic), who was with our department at  
11 that time.

12 Q Now that would be 30 minutes past midnight.

13 A Yes.

14 Q Correct?

15 A Yes.

16 Q And it would now be the 21st of September  
17 1992. Correct?

18 A Correct. Uh-huh.

19 Q After being so relieved, do you return to the  
20 lookout?

21 A Yes. I returned in approximately 20 minutes at --  
22 I left at 12:30 and it was ten of -- ten minutes to  
23 1:00 when I returned.

24 Q With respect to your return, did you have a  
25 particular duty at that time?

1 A To continue the -- watching the vehicle.

2 Q And did you do so?

3 A Yes, sir.

4 Q Does there come a point in time when  
5 Detective Ronald Karnick arrives at the scene?

6 A Yes. He came at 2:00 o'clock.

7 Q And that would be 2:00 a.m.?

8 A Yes, sir.

9 Q And with respect to his arrival, did you have  
10 a conversation with him?

11 A I don't recall any specific conversation. I -- I  
12 mentioned the bottle and the cooler, but --

13 Q Okay.

14 A -- I don't recall the other --.

15 Q So you did have a conversation of a brief  
16 nature?

17 A I'm sure we did. Uh-huh.

18 Q And you advised him of the observations you  
19 made?

20 A Yes.

21 MR. BILINKAS: Objection as to the leading.

22 BY MR. MELLO:

23 Q Did you make any observations --?

24 THE COURT: All right. Hold on. There's an  
25 objection.

1 MR. MELLO: I'm sorry.

2 THE COURT: Sustained.

3 MR. MELLO: I'm sorry.

4 BY MR. MELLO:

5 Q Did you make any observations of any action  
6 that Detective Karnick took?

7 A Yes. He removed some items from the vehicle.

8 Q Does there come a point in time when you are  
9 relieved from the scene?

10 A Yes.

11 Q Do you recall approximately when you were  
12 relieved from the scene?

13 A It was basically right after Detective Karnick  
14 retrieved the items and said I could go.

15 Q All right. And after being relieved from the  
16 scene, what did you do?

17 A I went back to headquarters and prepared my  
18 report.

19 Q At any time during your time with Mr. Scharf,  
20 did you ever see him cry?

21 A No.

22 MR. MELLO: Judge, can we take the morning  
23 recess at this time? I think it will be --.

24 THE COURT: All right. We'll take a ten  
25 minute break.

1 MR. MELLO: Thank you, Your Honor.

2 (Brief Recess)

3 (Jury not present)

4 THE CLERK: That's on the record?

5 THE COURT: Yes. Mr. Scharf, I just wanted  
6 to go over something that I spoke to your attorney  
7 about.

8 OFFICER: Quiet please.

9 THE COURT: Mr. Scharf, you -- you have the  
10 right to be present at any of the proceedings. We  
11 anticipate next week going over to the Rockefeller  
12 Lookout for what we call a view by the jury to actually  
13 see the -- the area in question.

14 As indicated, you have the right to be there  
15 or not be there. Typically at a view no evidence is  
16 taken. So the argument could be raised that it's not  
17 essential for you to be there. As far as I am  
18 concerned, you are entitled to be at all of these  
19 proceedings.

20 However, if after speaking to your attorney  
21 you decide that you don't want to be there and you make  
22 that choice voluntarily, intelligently, and knowingly,  
23 then I would understand if you didn't want to be there.  
24 It's your choice.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. BILINKAS: Judge, for -- for the record,  
3 I have discussed that with Mr. Scharf. And -- and his  
4 decision --.

5 THE COURT: Okay. Well, he -- he -- you  
6 might change your mind. And what we're going to do is  
7 maybe the day before, the day of you'll tell us what  
8 you want to do. But I want you to think about it. And  
9 whatever the decision may be, it will be in  
10 consultation with your attorney.

11 THE DEFENDANT: Absolutely, Your Honor.

12 THE COURT: And it'll be part of your trial  
13 strategy. Correct?

14 THE DEFENDANT: Correct.

15 THE COURT: Okay. Understood. All right.  
16 Bring out the jury.

17 (The jury entered the courtroom.)

18 THE COURT: Welcome back ladies and gentlemen  
19 of the jury. You may be seated. Please return to the  
20 witness stand. You are still under oath.

21 P A U L A B B O T T, STATE'S WITNESS, PREVIOUSLY  
22 SWORN

23 THE WITNESS: Yes, sir.

24 THE COURT: You may begin.

25 MR. MELLO: Thank you, Judge.

1 DIRECT EXAMINATION RESUMED BY MR. MELLO:

2 Q Sir, I'd like to direct your attention now  
3 again to that moment when you have arrived at the  
4 Rockefeller Lookout and you see Mr. Scharf. All right?

5 A Yes. Uh-huh.

6 Q As you enter the lookout and see Mr. Scharf,  
7 do you observe cars in that lookout?

8 A Yes. Yeah. There were several of them, yeah.

9 Q Do you have the occasion to observe people,  
10 in addition to the cars, people who are outside of  
11 cars?

12 A Yes, there were. Yeah, I was aware there were  
13 people.

14 Q Other than your encounter with Mr. Scharf, is  
15 there any other person that approaches you?

16 A Nobody else approached me at all.

17 Q Other than the encounter with Mr. Scharf, is  
18 there any commotion of any kind by any person at that  
19 location?

20 A No, there wasn't.

21 Q So at this moment in time it is simply you  
22 and he?

23 A Yes.

24 Q At any time does any other person approach  
25 you during the entire time you are at the lookout? And

1 by that I meant non law enforcement --

2 A Right. That's what I was going to qualify.

3 Q -- or rescue --

4 A Okay.

5 Q -- related.

6 A No. No civilian personnel at all.

7 Q If you would, with the Court's permission,

8 Mr. Abbott, --

9 A Uh-huh.

10 Q -- would you please step down?

11 THE COURT: Please step down.

12 (The witness stepped down from the witness  
13 stand to stand in front of the jury.)

14 MR. MELLO: And I hope everyone can see. If  
15 you can't -- good.

16 BY MR. MELLO:

17 Q Now if you would, my question is, utilizing  
18 what's been marked S-243 in evidence, can you show us  
19 where you first encountered Mr. Scharf at the  
20 Rockefeller Lookout?

21 A Let me get on this side so I'm more out of the  
22 way. As I entered, the lookout is right past here,  
23 just about even with the binocular area (indicating).

24 Q All right.

25 A About (indicating). Can you see? Right at that

1 point (indicating).

2 Q Now with respect to the location that you  
3 have just purposed it, you refer to the binocular area,  
4 can you first tell us what you mean by the binocular  
5 area?

6 A There's an area there at the beginning of the  
7 lookout where people can go to observe, of course, on  
8 the river or across the river. And there's, you know,  
9 binoculars there. You put a coin in --.

10 Q And that's located at the extreme south end?

11 A Yes.

12 Q From the south end where the binoculars are  
13 located in that -- that area, can you see what we refer  
14 to as part of the Manhattan Skyline and the GWB, George  
15 Washington Bridge --?

16 A You're really too far north at Rockefeller Lookout  
17 to see that 'cause it's further north of the city at  
18 that point.

19 Q From this point can you see the GWB? If you  
20 recall.

21 A I don't believe you can really see -- I -- I don't  
22 believe you can.

23 Q Now when you go to the point where Mr. Scharf  
24 took you, what do you see across the river?

25 A Basically, I guess, south of Yonkers -- Riverdale

1 Park over there. But it's not really what you think of  
2 as the city at that point.

3 Q Now on this photograph, can you show us the  
4 approximate location where Mr. Scharf's car was? Just  
5 the approximate sense of the location.

6 A Okay. (Indicating) It was approximately here in  
7 this area here. Right in this section.

8 Q I'm going to show you what's been marked  
9 S-244 in evidence. Okay. Now does that show the  
10 northern end of the lot?

11 A Yes. This would be the northern portion  
12 (indicating).

13 Q Okay. Do you see this area here  
14 (indicating)?

15 A Yeah.

16 Q Okay. Can you tell us what this area is that  
17 appear to be rocks?

18 A They are in fact rocks. And this is the area you  
19 can kind of walk around to them (indicating). The  
20 rocks are there to act as a barricade or a barrier to  
21 keep people from getting -- getting too close to the  
22 edge in these areas as -- as opposed to the other area  
23 that had cable to -- these are physical rocks that mark  
24 a boundary in that area.

25 There's a trash can up here (indicating). This is

1 a concrete curbing along here (indicating).

2 Q And when you enter into the wooded area, do  
3 you enter beyond this rock protective barrier  
4 (indicating)?

5 A Yes. You're going onto the path area that's to  
6 the -- what would be, so facing this, my right side  
7 (indicating). The -- you can see the rock line here  
8 and just outside of that (indicating).

9 Q That would be to the north?

10 A Yes, exactly.

11 MR. MELLO: Can everyone see that? Thank  
12 you. Please return to the stand.

13 THE WITNESS: Thank you.

14 MR. MELLO: Actually, I'm sorry. Let me just  
15 hold it up for a moment. This is closer view of the  
16 northern end -- S-245.

17 THE WITNESS: This is -- (indicating).

18 MR. MELLO: Okay.

19 BY MR. MELLO:

20 Q Does this give us a closer view of that rock  
21 area that you described?

22 A Sure. (Indicating) Right there and right there.  
23 Yeah, actually it does. It shows going along that way.

24 Q And this --?

25 A Well, this actually showed the -- on the other

1 one --

2 Q Okay.

3 A -- where you can see the line of them clearly  
4 forming a barrier.

5 Q Is this area to the south (indicating)?

6 A Yes. This would be down where the binoculars are  
7 here (indicating).

8 Q Do you know how many binoculars are there --  
9 were there?

10 A At that time I believe there were two.

11 MR. MELLO: Thank you. You can have a seat  
12 Mr. Abbott.

13 (The witness returned to the witness stand.)

14 BY MR. MELLO:

15 Q I'm going to show you what's been marked  
16 S-247. I'm going to first ask you if you recognize  
17 that exhibit?

18 A Yes, I do.

19 MR. MELLO: By the way, Your Honor, this is  
20 in evidence. Right, counsel?

21 MR. BILINKAS: Yes, no objection.

22 THE COURT: In evidence without objection.

23 BY MR. MELLO:

24 Q What is that a photograph of?

25 A This was the car that was identified as

1 Mr. Scharf's car, the Ford Taurus.

2 Q And do you see this receptacle (indicating)?

3 A Yes.

4 Q What is that?

5 A That's a permanent garbage receptacle which is  
6 supposed to be bear proof. It's affixed to that area  
7 just right in front of his car.

8 MR. MELLO: To the jury, S-247.

9 (Pause)

10 BY MR. MELLO:

11 Q Sir, I'm going to show you what's been marked  
12 S-257.

13 MR. MELLO: Your Honor, this has been marked  
14 into evidence. Counsel, right?

15 MR. BILINKAS: Could I just see which one  
16 you're referring? No objection.

17 BY MR. MELLO:

18 Q Do you recognize this photograph?

19 A Yes.

20 Q What do you recognize this photograph to be?

21 A This would be at the north end of Rockefeller  
22 Lookout with the entrance to that path that goes north.  
23 And it shows the rock wall. We were talking about the  
24 rocks in the other picture.

25 Q Okay.

1 A And the -- it just shows a double curve line  
2 across -- adjacent to this blacktop.

3 Q All right. Now the white Taurus was parked  
4 just up here, south (indicating)?

5 A Yes.

6 Q Okay. And regarding this big boulder that  
7 you referred to, this is the point at which you and  
8 Scharf and Tamayo entered (indicating)?

9 A Yes. Uh-huh.

10 Q And that is the point that he directs you to?

11 A Yes.

12 MR. MELLO: To the jury.

13 MR. BILINKAS: Judge, can we have a -- a time  
14 when that photograph was taken?

15 THE COURT: Prosecutor.

16 MR. MELLO: Sure. The next day. Or actually  
17 what will now be the 21st. And that will be true,  
18 Mr. Bilinkas, for the next two.

19 (Pause)

20 BY MR. MELLO:

21 Q And just to be clear, if you would take this  
22 257 and showing it to the jury, can you show them  
23 precisely where you entered with Scharf and Tamayo?

24 A (Indicating) Yes, just -- just to the left of  
25 these rocks where the foliage --.

1 MR. MELLO: Can everyone see that?

2 BY MR. MELLO:

3 Q Thank you. I'm going to show you what's been  
4 marked S-249.

5 MR. MELLO: In evidence, Your Honor.

6 THE WITNESS: Where do you want me to sit  
7 this?

8 MR. MELLO: This will be marked in evidence,  
9 Your Honor, without objection.

10 THE COURT: Do -- do you want to step down to  
11 go over that exhibit?

12 MR. MELLO: Yes, why don't we do that, Judge.  
13 Thank you. Let's do that. Step right down here  
14 (indicating).

15 (The witness stepped down from the witness  
16 stand to stand in front of the jury.)

17 MR. MELLO: S-249 in evidence. Counsel?

18 MR. BILINKAS: No objection.

19 MR. MELLO: Thank you.

20 BY MR. MELLO:

21 Q Do you recognize that photograph?

22 A Yes. It's at the north end of the lookout.

23 (Indicating) And here there's -- you see the steps go  
24 off of here. And these are the written notices that  
25 the trails close at dusk and --.

1 Q What is the warning on the street?

2 A Cliffs and steep slopes are dangerous. For your  
3 safety, please observe park rules. Stay on designated  
4 trails. Do not climb cliffs or slopes. Alcoholic  
5 beverages are prohibited. Trails close one hour after  
6 sunset. And violators will be prosecuted.

7 Q Now despite that warning -- and there are  
8 other warnings like it, are there not?

9 A Yes, there are.

10 Q Despite that warning and warnings like it,  
11 people do transgress the boundaries, do they not?

12 A Yes, they do.

13 MR. MELLO: S-249 to the jury.

14 (Pause)

15 BY MR. MELLO:

16 Q Sir, I'm going to show you what's been marked  
17 S-251 in evidence.

18 MR. BILINKAS: Can I see that? No objection.

19 BY MR. MELLO:

20 Q Do you recognize that photograph?

21 A Yes, I do.

22 Q What do you recognize that photograph to be?

23 A This is the place -- the flat rock I described  
24 before that was identified --.

25 Q All right. I'm going to ask you to keep your

1 voice up. Okay?

2 A Okay. This was the flat rock I described before  
3 that Mr. Scharf directed us to that he said he had been  
4 on. It's beyond the fence. And this is where -- cable  
5 fence --.

6 Q And is that the area where Mr. Scharf  
7 remained behind the fence?

8 A Yes.

9 Q Thank you.

10 MR. MELLO: You want to show that to the  
11 jury, please?

12 (Pause)

13 (The witness returned to the witness stand.)

14 BY MR. MELLO:

15 Q I'm going to show you what's been marked  
16 S-250. Would you step from the witness box, please?

17 (The witness stepped down from the witness  
18 stand to stand in front of the jury.)

19 MR. BILINKAS: No objection.

20 BY MR. MELLO:

21 Q I'm going to ask you if you would, tell me  
22 what's been marked S-250 in evidence and tell us if you  
23 recognize that photo?

24 A Yes. It shows again sort of a view of the rock  
25 here, the restraining fence (indicating). Basically

1 there's rough ground, foliage, rocky.

2 MR. MELLO: Okay. May I have that, please?

3 To the jury.

4 (Pause)

5 (The witness returned to the witness stand.)

6 MR. MELLO: Thank you, Mr. Abbott. If you  
7 would again step from the --?

8 (The witness stepped down from the witness  
9 stand to stand in front of the jury.)

10 MR. MELLO: And I have a series of  
11 photographs. So to make it easy --

12 THE WITNESS: Okay.

13 MR. MELLO: -- stay there. Thank you. S-253  
14 in evidence, Your Honor.

15 MR. BILINKAS: No objection.

16 THE COURT: It's in evidence.

17 BY MR. MELLO:

18 Q Can you tell us what S-253 in evidence  
19 depicts?

20 A Yes. This is a closer in picture of the same flat  
21 rock. --.

22 Q All right. I'm going to have to ask you to  
23 please concentrate --

24 A I'm sorry.

25 Q -- on keeping your voice up. I -- I know

1 it's the natural inclination to do it while you're up  
2 here, but if you would start again.

3 A Okay. This would be a zoomed in picture of that  
4 same rock, which has already been identified, right  
5 here (indicating). It's very flat and very square --  
6 rock.

7 And then this edge (indicating) shows where I was  
8 talking about there's a slight drop to it. It's like  
9 two levels. This level drops --.

10 Q And can you give us a -- a sense of the  
11 dimension of the drop that you refer to of that stone  
12 step?

13 A I'd say it's approximately an eight out -- an  
14 eight inch drop in the two levels of the rock. It will  
15 almost get to the back -- short chair back.

16 Q Okay. So -- thank you.

17 MR. MELLO: 253 to the jury.

18 (Pause)

19 BY MR. MELLO:

20 Q I'm going to show you what's been marked  
21 S-259 in evidence, sir.

22 MR. MELLO: No objection?

23 MR. BILINKAS: No objection.

24 MR. MELLO: Thank you.

25 THE COURT: The exhibit will be received in

1 evidence.

2 MR. MELLO: Thank you, Your Honor.

3 BY MR. MELLO:

4 Q All right. Sir, would you please identify  
5 S-259 in evidence and tell us what that photograph  
6 depicts?

7 A Yes. This is, again, the rock they were purported  
8 to be on, the flat rock here (indicating) and --.

9 Q Thank you.

10 MR. MELLO: S-259 for the jury.

11 (Pause)

12 MR. MELLO: S-252 in evidence.

13 MR. BILINKAS: No objection.

14 THE COURT: All right. S-252 in evidence as  
15 well as the other previously enumerated exhibits.

16 MR. MELLO: Thank you, sir.

17 BY MR. MELLO:

18 Q Sir, would you please examine S-252 in  
19 evidence and tell us what does that photograph depict?

20 A This, again, depicts that rock -- same area.

21 Q Thank you.

22 MR. MELLO: S-252 to the jury, please.

23 (Pause)

24 MR. MELLO: S-260. Judge, this will be in  
25 evidence without objection.

1 THE COURT: Any objection?

2 MR. BILINKAS: No.

3 THE COURT: In evidence.

4 BY MR. MELLO:

5 Q Mr. Abbott, let me show you what's been  
6 marked S-260. Do you recognize this photograph?

7 A Yes.

8 Q Okay.

9 A Yes.

10 Q Can you first tell us what the photograph  
11 generally depicts?

12 A This is the area below the cliff just to where the  
13 pocketbook was found -- beyond the northern lot, turn  
14 this --.

15 Q All right. Do you see this area here  
16 (indicating) --

17 A Uh-huh. Yes, this is the --.

18 Q -- at the top of the photo?

19 A Yes.

20 Q What does that depict?

21 A That's the same rock we saw in the other pictures  
22 closer in. This depicts the -- an angle a little  
23 more --.

24 MR. MELLO: That's this area here  
25 (indicating). Can everyone see?

1 BY MR. MELLO:

2 Q All right. Now you refer to the ledge where  
3 you saw a pocketbook. Can you see this area here  
4 (indicating)?

5 A Yes, I do.

6 Q And what is that?

7 A This is a portion of the lower ledge. That lower  
8 ledge where the pocketbook was -- all this is rocky  
9 (indicating). As we came over, it got a little more  
10 angled --.

11 Q And by came around, you're talking about  
12 north of the rock?

13 A Yes.

14 Q Just stay there just a moment. I'm going to  
15 show you what's been marked S-254 in evidence.

16 MR. MELLO: It's marked in evidence, Judge,  
17 without objection.

18 BY MR. MELLO:

19 Q Now I'm going to ask you if you recognize  
20 what this photograph generally depicts?

21 A Yes. Again, the -- the rock at the top here  
22 (indicating) and the lower area where the ledge is  
23 right here (indicating).

24 Q Now the -- the ledge is the ledge that you  
25 referred to where you found the pocketbook?

1 A Right.

2 Q You saw the pocketbook?

3 A Yes. That was back --.

4 Q And this area (indicating) is the rock that  
5 you referred to earlier today?

6 A Yes.

7 Q And this is a view taken from the north?

8 A From the north end, the sloping section --.

9 MR. MELLO: To the jury, S-260. And S-254 in  
10 evidence to the jury.

11 MR. BILINKAS: 254?

12 MR. MELLO: Yes, I think that's what it is.

13 Yes.

14 (Pause)

15 MR. MELLO: S-255. S-255 in evidence without  
16 objection, Your Honor.

17 THE COURT: In evidence.

18 BY MR. MELLO:

19 Q Sir, I'm going to show you what's been marked  
20 S-255 in evidence. Remember to keep your voice up.

21 Would you explain what this photograph depicts?

22 A This is that area, the lower ledge, about  
23 approximately eight feet below -- below -- or whatever.

24 This is the ledge where the pocketbook was --.

25 Q Okay. Can you specifically show the jury by

1 means of kind of a circular motion where you saw the  
2 pocketbook?

3 A Yes. (Indicating) It was right down in this  
4 area.

5 Q The rock area?

6 A (Indicating) -- right up in this general --.

7 MR. BILINKAS: Judge, again -- identified an  
8 area by making a circle. The Prosecutor then said the  
9 rock area. And then this witness switched from the  
10 back of the cliff to the rock area that --.

11 MR. MELLO: Okay. I -- I don't think that's  
12 accurate, --

13 THE COURT: Okay.

14 MR. MELLO: -- Your Honor.

15 BY MR. MELLO:

16 Q Wait. Why don't we just do this? Let's  
17 start over. Show the jury, again, where you saw the  
18 pocketbook?

19 A (Indicating) I was -- I believe it was right in  
20 this area.

21 MR. MELLO: Did everybody see that?

22 BY MR. MELLO:

23 Q Now when you saw the pocketbook, did you see  
24 any blood or any kind of contact with human?

25 A No, I didn't.

1 MR. MELLO: To the jury, S-255.

2 (Pause)

3 MR. MELLO: Thank you. Thank you. I have  
4 nothing further. You may resume your seat.

5 (The witness returned to the witness stand.)

6 THE COURT: Cross examination.

7 CROSS EXAMINATION BY MR. BILINKAS:

8 Q Mr. Abbott, just preliminary questions.

9 Okay? That sign that you referred to basically says  
10 that people are allowed on the trails an hour after  
11 sunset. Correct?

12 A Yes.

13 Q And you were told by whoever to respond to  
14 the scene at 8:08. Correct?

15 A Yes.

16 Q And I assume that someone somehow must have  
17 notified your department that there was a problem at  
18 the cliffs before that. Correct?

19 A Yes. Uh-huh.

20 Q Okay. And do you know as you sit here today  
21 whether or not that was done by telephone or someone  
22 actually came in and reported it?

23 A I don't know that firsthand. I wasn't -- wasn't  
24 there.

25 Q Well, it was sometime before 8:08. Correct?

1 A Yes. I got the dispatch at 8:08.

2 Q Okay. Now when you said the dispatch, did  
3 you get that over your radio?

4 A Yes, radio message. Uh-huh.

5 Q And are those conversations recorded or were  
6 they recorded back then?

7 A They -- I believe yes. Okay.

8 Q So those recordings were available to the  
9 Prosecutor's Office and whoever wanted them back in  
10 1992. Correct?

11 A Well, I know they have problems with it at times  
12 with -- I mean I have no way -- I can't really answer.  
13 I wasn't involved in the -- how the tapes worked or --.

14 Q When you say they had problems with them at  
15 times, my specific question --

16 A Uh-huh.

17 Q -- is after you told me --

18 A Uh-huh.

19 Q -- that there were recordings that documented  
20 exactly what was said over your radio, do you know  
21 whether or not there's a recording of the  
22 communications between you, the department, and  
23 everyone else involved in this?

24 A I -- I believe there should have been from what I  
25 knew at the time. But I -- I never saw those tapes. I

1 don't know.

2 Q All right. But based on your recollection  
3 back to 1992, you believe there was a recording system  
4 and -- and it existed at that time. Correct?

5 A That -- that I can say yes.

6 Q Now do you recall what time sunset was that  
7 day?

8 A No, I don't.

9 Q I'm going to show you what is defense exhibit  
10 242. It's a U.S. Naval Observatory Astronomical  
11 Applications Department and ask you to look at this to  
12 see if this refreshes your recollection as to whether  
13 or not sunset was at 6:56 p.m. that night?

14 A Yeah. I believe the Naval Observatory, yeah.  
15 6:56 p.m. is what this says.

16 Q Okay. Does that coincide with your  
17 recollection for the sunset at or about that time of  
18 year?

19 A I -- I would not argue with the center.

20 Q Okay. And would you agree with me that,  
21 according to this anyway, people would be allowed to be  
22 on those trails up until 7:56. Correct?

23 A Yes.

24 Q A short time --

25 A Right.

1 Q -- before someone notified your department  
2 you better get out to the cliffs, something happened.  
3 Correct?

4 A Yes. Uh-huh.

5 Q Now with -- in regards to these trails, the  
6 area that you traversed with my client, with Tamayo  
7 that's a trail. Correct?

8 A Yes. That would be -- by definition of that sign,  
9 yes. Yeah.

10 Q But I see you shaking your head like there's  
11 any hesitation. Is there any doubt in your mind as you  
12 sit here today that the path that you took down to this  
13 flat rock area with my client on the night is in fact a  
14 trail?

15 A That's a trail.

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

17 BY MR. BILINKAS:

18 Q You said true?

19 A Yes, it's a trail. Uh-huh.

20 Q A trail that is commonly used by many people?

21 A Uh-huh.

22 Q Yes?

23 A Yes.

24 Q And because of the amount of use that trail,  
25 is it fair to say, is well worn?

1 MR. MELLO: May I ask when, Judge?

2 THE WITNESS: Yeah.

3 BY MR. BILINKAS:

4 Q Well, back in 1992, was it well worn?

5 MR. MELLO: No, that's not the point of my  
6 question. I'm sorry. The point of my question was the  
7 season.

8 THE COURT: Mr. Bilinkas.

9 BY MR. BILINKAS:

10 Q Was the trail well worn back in September of  
11 1992?

12 A Yes. As I said before, that they had -- they  
13 don't really maintain those trails. They didn't much  
14 at that time. So whenever there is the natural  
15 occurring, you know, for people on it.

16 Q My specific question is, --

17 A I'm sorry.

18 Q -- on the day in question, --

19 A Uh-huh.

20 Q -- was the trail well worn?

21 A Yes.

22 Q So obviously people had traversed that path  
23 even in that time of year based on your recollection of  
24 the trail on the day in question. Correct?

25 A Yes. Uh-huh.

1 Q And -- and when you talk about brush and you  
2 talk about a -- a tree, do you have a specific  
3 recollection of a tree being over the path on that day?

4 A I remember climbing over logs, some type of a log,  
5 trunk.

6 Q You have a specific recollection --

7 A Yes.

8 Q -- of climbing over a -- a log?

9 A I -- I may have moved to the side of the path  
10 because there were three of us going down there, but  
11 yes.

12 Q Okay. You don't recall --?

13 A I mean the general terrain --.

14 Q You don't recall whether or not there was a  
15 log directly across the entire path. Correct?

16 A No, I don't recall that. Uh-uh.

17 Q So -- so when the Prosecutor asked you that  
18 question and you mentioned that there was a log, as you  
19 sit here today, you don't recall whether or not there  
20 was a -- a log across the entire path. Correct?

21 A No, I don't remember that. The -- uh-huh.

22 Q Well, if there wasn't a log across the entire  
23 path, it would be relatively easy for virtually anyone  
24 to navigate their way to that flat rock. Correct?

25 A You have the restraining fence in there. But

1 other than that you --

2 Q Aside from the restraining fence?

3 A -- you could -- you could get there pretty much  
4 along that trail. But there's also a lot of overgrowth  
5 abundant in that area also.

6 Q Mr. Abbott, I'm going to show you a  
7 photograph that was taken the day after and -- and ask  
8 you if this accurately depicts the second half of the  
9 path leading to the flat rock area?

10 A Yes. Uh-huh.

11 Q And -- and that's how you recall it back in  
12 1992. Correct?

13 A Yeah, it was very overgrown like this.

14 Q Well, --

15 A Uh-huh.

16 Q -- when you say very overgrown, would you  
17 agree with me that there's a worn path --

18 A There -- yes.

19 Q -- that looks or appears it would be  
20 relatively easy to navigate to get to that clearing  
21 area --

22 A Uh-huh.

23 Q -- depicted to the left of the tree?  
24 Correct?

25 A Right. And a log here (indicating).

1 Q The -- the log you pointed out is where?

2 A This -- this appears to be a log (indicating).

3 Q Okay. And -- and will you agree with me that  
4 that is not going to stop anyone from navigating this  
5 path? Correct?

6 A No, not -- it's not going to prevent -- no, it  
7 doesn't prevent you. It makes it a little more  
8 difficult.

9 Q Okay.

10 MR. BILINKAS: Counsel, do you have any  
11 objection to me showing this to the jury?

12 MR. MELLO: Not at all.

13 MR. BILINKAS: D-123 in evidence.

14 BY MR. BILINKAS:

15 Q Can you step down, --

16 A Uh-huh.

17 Q -- from the stand, please? Step over here  
18 (indicating).

19 (The witness stepped down from the witness  
20 stand to stand in front of the jury.)

21 BY MR. BILINKAS:

22 Q Can you step on this side, please  
23 (indicating)?

24 A Sure.

25 Q First -- first of all, can you -- can you

1 show the jury the -- the log that you pointed out on  
2 the stand that would -- made it a little bit more  
3 difficult to navigate?

4 A Right in this space here I can see the --.

5 Q And will you agree with me that based on your  
6 extensive knowledge of this area that this clearing  
7 path is the area where the flat rock is?

8 A Yes, I believe. Uh-huh. Yeah, over in that  
9 section (indicating).

10 Q Okay. And that's the path directly coming  
11 down from the north end. Correct?

12 A Directly -- I mean I'm not sure --.

13 Q This path is the -- you see the fence. It's  
14 to the right. Correct?

15 A Yeah. Showing this would be the only way.

16 Q Right. It would be going down the path  
17 towards the flat rock from the lookout parking lot.  
18 Correct?

19 A Yeah, going through here (indicating).

20 Q So when you walked --?

21 A That would be --.

22 Q When you walked down with Stephen Scharf and  
23 -- and Officer Tamayo, you were walking facing the  
24 opening to the left of that tree (indicating).  
25 Correct?

1 A We -- well, again, this was taken during the  
2 daytime. You could see out there that -- that  
3 direction.

4 Q Okay. Now --?

5 MR. MELLO: I'd just like the record to note  
6 that that photograph is a daylight photograph.

7 MR. BILINKAS: I agree. The next day. The  
8 same daylight photographs that were taken by the  
9 Prosecutor's Office.

10 MR. MELLO: Uh-huh.

11 MR. BILINKAS: Now --.

12 MR. MELLO: No objection.

13 MR. BILINKAS: No objections --

14 MR. MELLO: No objection.

15 MR. BILINKAS: -- from the Prosecutor, D-124  
16 in evidence.

17 THE COURT: You may proceed.

18 BY MR. BILINKAS:

19 Q Now, Mr. Abbott, so -- so there's no  
20 misunderstanding, this is taking at a different time of  
21 year. Correct?

22 A Yes. Uh-huh.

23 Q (Indicating) But aside from that fact, aside  
24 from the foliage and so forth, would you agree with me  
25 that this photograph is an accurate depiction of the

1 rock, flat rock, and the ledge taken from the left of  
2 the ledge?

3 A Yeah.

4 Q And do you see the ledge that I'm referring  
5 to (indicating)? It's --.

6 A (Indicating) I believe you're referring to this  
7 one, how it comes around, goes like that and then --.

8 Q Okay. Thank you. (Indicating) Will you  
9 agree with me that you can walk from this side down  
10 onto that ledge? There's a continuous barrier.

11 A I -- I wouldn't want to take that. (Indicating)  
12 I don't know 'cause this angles a little more and the  
13 other side is flatter. And this side angles a little.  
14 I don't know if I'd try walking on it.

15 Q Okay.

16 A -- determination.

17 Q Understood.

18 A Okay.

19 Q But you'll agree with me that this photograph  
20 shows that, you know, someone could, you know, --

21 A It would --.

22 Q -- navigate that area?

23 A It would appear there's a physical connection.

24 Q Okay. I won't try it again.

25 A Okay.

1 Q And can you point to the jury on this  
2 photograph where the pocketbook was found?

3 A I don't think you really see it on this.

4 (Indicating) I think it's around -- this actually goes  
5 back around --.

6 MR. BILINKAS: D-132 in evidence.

7 MR. MELLO: No objection.

8 BY MR. BILINKAS:

9 Q In regards to D-132, does that depict the  
10 continuous area to the left leading to that ledge?

11 A Right. (Indicating) This is the one we were just  
12 looking at. It -- direction and then it goes --.

13 Actually, this is back more, more to -- area --.

14 Q Okay. But then does it depict a continuous  
15 area leading to the ledge where you found that purse?  
16 Correct?

17 A Yes. Uh-huh.

18 Q Now with regards to this (indicating) flat  
19 rock area that you talk about, --

20 A Uh-huh.

21 Q -- you indicated that the distance between  
22 the top of the flat rock and the step down in -- in  
23 your estimation is -- is eight inches?

24 A That's, you know, roughly going -- yeah. That was  
25 what I --.

1 Q Now do you see this (indicating) rock that  
2 I'm pointing to, --

3 A Uh-huh.

4 Q -- which is to the left of the step down?  
5 See this rock here (indicating)?

6 A Yeah.

7 Q Okay. Is there also not a step down on this  
8 rock leading to the base of the flat rock?

9 A It -- flat here -- in that --.

10 Q Now --?

11 THE COURT: Would this be a good time to  
12 break?

13 MR. BILINKAS: Yes, Judge.

14 THE COURT: All right. We'll break until  
15 1:30.

16 (Luncheon Break)

17 (Jury not present)

18 THE COURT: All right. Good afternoon.  
19 Please be seated.

20 OFFICER: He's coming up right now. Okay?  
21 We'll send him up. And then we will get --.

22 THE COURT: Okay. Great.

23 (Long Pause)

24 OFFICER: Judge, you ready?

25 THE COURT: I'm ready. Where's Mr. Mello?

1 Have Diane give him a call. Mr. Bilinkas, you had  
2 asked about something else. It was a court appearance.  
3 Can I see you for a minute?

4 (Recording shut off. Recording turned back  
5 on.)

6 (The jury entered the courtroom.)

7 THE COURT: Welcome back ladies and gentlemen  
8 of the jury. Roll call. You may be seated.

9 (Jury roll call)

10 THE COURT: Where is the witness?

11 MR. MELLO: Mr. Abbott. Try outside. Or I  
12 could do it. You can do it.

13 THE COURT: Please have a seat.

14 THE WITNESS: Thank you.

15 P A U L A B B O T T, STATE'S WITNESS, PREVIOUSLY  
16 SWORN

17 THE COURT: You may continue.

18 MR. BILINKAS: Thank you, Judge.

19 THE WITNESS: Hi.

20 CROSS EXAMINATION RESUMED BY MR. BILINKAS:

21 Q Good afternoon, Mr. Abbott.

22 A Good afternoon.

23 Q Mr. Abbott, when we left I was questioning  
24 you about this larger rock to the left of the flat area  
25 that my colleague pointed out to you. Do you recall

1 those questions?

2 A Yes. Uh-huh.

3 Q And it's your recollection that there's a  
4 step down if you're facing the flat rock directly from  
5 the -- the wire fence. It goes down about eight  
6 inches. Correct?

7 A Yes, sir.

8 Q And you describe that as almost a natural  
9 seat?

10 A It could be described that way, yes. Uh-huh.

11 Q And -- and to your knowledge, many people  
12 have sat on this lower level with their backs arched  
13 against that seat. Correct?

14 A Yes.

15 MR. MELLO: Objection.

16 THE WITNESS: I -- I would say so.

17 MR. MELLO: Objection. Unless he's seen it.

18 But --.

19 MR. BILINKAS: He's indicated yes, I have  
20 seen it. It happens.

21 THE WITNESS: Over the years I have seen  
22 people in that --

23 MR. MELLO: Thank you.

24 THE WITNESS: -- area.

25 THE COURT: Thank you.

1 BY MR. BILINKAS:

2 Q You're chasing people out of that area.

3 Correct?

4 A Yeah. Yes, sir.

5 Q And -- and people are like drinking, meeting,  
6 throwing things over the cliff edge, correct, based on  
7 your experience?

8 A It's -- yes, people do go back in that area, not  
9 infrequently and -- yeah.

10 Q Commonly. Correct?

11 A Pardon?

12 Q Common --

13 A Yeah, common --.

14 Q -- common occurrence?

15 A Yes. Uh-huh.

16 Q Now you agree with me that if it has a back  
17 to this step down that you've described, it'd be facing  
18 directly looking across the Hudson River. Correct?

19 A Yeah.

20 Q Yes.

21 A Uh-huh.

22 Q Now as you sit here today being familiar with  
23 this area, isn't it a fact that there's even a deeper  
24 ledge on this side (indicating), and I'm referring to  
25 this large rock to the left, which creates a natural

1 seat looking towards New York City?

2 A Now I'm really not sure I think of it as a flat  
3 rock. And I -- I'm not sure on how far that is above  
4 the rock at that point.

5 MR. BILINKAS: In evidence?

6 MR. MELLO: Sure. What's the number?

7 MR. BILINKAS: D-212.

8 THE COURT: In evidence without objection?

9 MR. MELLO: Without objection.

10 BY MR. BILINKAS:

11 Q Does this refresh your recollection as to  
12 whether or not that big flat rock that I was pointing  
13 to --

14 A Uh-huh.

15 Q -- also has a deep seated area?

16 A It -- it could if you can mold the story and on as  
17 far as which direction that is.

18 Q Can you step down and get a closer look here?  
19 How far?

20 (The witness stepped down from the witness  
21 stand to stand in front of the jury.)

22 BY MR. BILINKAS:

23 Q Let me see if I can walk you through this.

24 A Yes.

25 Q (Indicating) Would you agree with me that

1 this area, the bottom right-hand portion is the -- is  
2 the portion of the flat rock that we're talking about?  
3 Correct?

4 A Right. That's it. Uh-huh.

5 Q And -- and will you agree with me that  
6 directly to the side of that flat rock is this larger  
7 rock that protrudes up approximately 20, 24 inches?

8 A Yeah. Now we're facing the river. This is to the  
9 left. I certainly agree with you. I just couldn't  
10 tell from back there which was the left or back.

11 Q Okay. Let me -- let me make sure --.

12 A It's a little disorienting.

13 Q I'm showing you D-132. Would you agree with  
14 me that the area that I pointed to, to the left, is  
15 this area here (indicating)?

16 A Yes. That --.

17 Q So does that refresh your recollection as to  
18 whether or not there's another seating area facing  
19 towards the George Washington Bridge?

20 A (Indicating) This would be here and that would be  
21 facing to the south. So --

22 Q So the answer is yes?

23 A -- if you refer to it --.

24 Q And do my eyes deceive me or is that graffiti  
25 that someone has put on there?

1 A It looks like graffiti.

2 Q And -- and would you agree with me that  
3 there's graffiti all over the place at that lookout  
4 beyond the wire barriers?

5 A Yes. It's a problem --.

6 Q All right. Would you take your seat?

7 (The witness returned to the witness stand.)

8 BY MR. BILINKAS:

9 Q I'm going to show you Prosecutor's exhibit  
10 259. Can you step down --

11 A Uh-huh.

12 Q -- from the stand?

13 (The witness stepped down from the witness  
14 stand to stand in front of the jury.)

15 BY MR. BILINKAS:

16 Q Now was this (indicating) graffiti on the  
17 flat rock on the day in question when you went there?

18 A --.

19 Q You can't recall whether or not there was a  
20 white stick figure on the day in question?

21 A I know it was dark. I just didn't know any  
22 better. --.

23 Q Okay. And -- and you were on this rock area  
24 coordinating the rescue efforts for how long?

25 A A couple hours, maybe.

1 Q And -- and when -- were you on the edge or  
2 were you back closer to the fence?

3 A In between. At times I was over here (indicating)  
4 and had to lean back -- with the rope lines that were  
5 -- I -- I don't -- I don't recall that.

6 Q Okay. Do you recall how long you were  
7 looking over the edge?

8 A No. Initially and -- there -- and it happened in  
9 a span of time?

10 Q Correct. For instance, let's -- let's walk  
11 through this. When you walked down with Scharf and you  
12 walked to the edge and you were calling Jody Scharf's  
13 name with Tamayo, how many times did you call the name?

14 A Numerous times. At least a half a dozen or more.

15 Q Your recollection is six or more?

16 A Probably. Yeah, four, six. Yeah, we -- we did it  
17 several times.

18 Q Okay. And -- and when you didn't hear  
19 anything, did you walk away from the edge?

20 A Yes, sir. I believe I walked back a little bit.

21 Q Okay. And -- and again, did you wait for the  
22 repelling people to come at that point?

23 A Yes. I didn't stand on this (indicating) rock at  
24 that point. I was back.

25 Q Okay. And when did you observe the

1 pocketbook down on the ledge?

2 A That was -- it was within a few minutes of me  
3 going over -- when we were calling, I leaned over and  
4 then started to shine the light down. And --.

5 Q And -- and would you agree with me that up  
6 between that ledge directly below that there were  
7 numerous trees, treetops, and branches that were  
8 obstructing your view to the bottom?

9 A Oh, yes. Uh-huh.

10 Q Any doubt in your mind that someone would  
11 have to go through those trees and branches to get to  
12 the bottom?

13 MR. MELLO: Objection. That calls for --

14 BY MR. BILINKAS:

15 Q Based --?

16 MR. MELLO: -- speculation.

17 THE COURT: Sustained.

18 MR. BILINKAS: No problem.

19 BY MR. BILINKAS:

20 Q So I'm clear on this point, when you're  
21 looking over the edge, after the ledge, you see various  
22 treetops, branches, heavily foliated trees. Correct?

23 A Yeah. There's trees down below, yes.

24 Q Okay. You can have a seat.

25 (The witness returned to the witness stand.)

1 BY MR. BILINKAS:

2 Q Versus if I show you S-260.

3 MR. BILINKAS: Counsel.

4 BY MR. BILINKAS:

5 Q A photograph introduced by the Prosecutor.

6 Does this foliage beyond the ledge accurately depict

7 the foliage at the time to the day in question?

8 A I can't really see that from -- from -- yeah, I --

9 yes, I would think so. Yeah.

10 Q Okay. When you say I would think so,

11 does --?

12 A I -- I believe it does. Yeah.

13 Q Thank you. And -- and when you see the --

14 the green beyond the ledge that's treetops. Correct?

15 A Could I see it again, please?

16 Q Sure.

17 A You're talking about down in this area here

18 (indicating)?

19 Q No. Looking --

20 A Or down in this (indicating)?

21 Q -- looking below the ledge, which is right

22 here (indicating) at the bottom, maybe four inches from

23 the bottom, --

24 A Okay.

25 Q -- down further, would you agree that it's

1 heavy -- heavily foliated?

2 A Yes. On -- on this portion (indicating), yeah.

3 Uh-huh.

4 Q And beyond the bottom of the cliff. Correct?

5 A Yes, at that point. Uh-huh.

6 Q And first, this photograph that's on the ELMO

7 that we referred to earlier, do you agree that this

8 foliage here out beyond the ledge was there on the day

9 in question?

10 A Yes, further -- uh-huh.

11 Q Now the Prosecutor had questioned you with

12 regards to the exact location of the pocketbook. Do

13 you recall that testimony?

14 A Yes.

15 Q And specifically, you were shown S-255.

16 MR. BILINKAS: Counsel.

17 MR. MELLO: Yes. Thank you.

18 BY MR. BILINKAS:

19 Q And can you step down for --

20 A Uh-huh.

21 Q -- the jury?

22 (The witness stepped down from the witness

23 stand to stand in front of the jury.)

24 BY MR. BILINKAS:

25 Q And if you can just do an X exactly where you

1 remember that purse lying 18 years ago?

2 A You're talking about the purse that was recovered  
3 from the scene?

4 MR. BILINKAS: Counsel, do you have any  
5 problems --

6 THE WITNESS: The purse --.

7 MR. BILINKAS: -- with me having him put an X  
8 on your exhibit?

9 MR. MELLO: No.

10 BY MR. BILINKAS:

11 Q Can you point to that -- well, put a circle,  
12 it's probably easier, a circle where you remember  
13 exactly where the purse was.

14 A The purse was exactly -- put a circle there?

15 Q Yeah, put a circle.

16 A (Indicating) --.

17 Q And put your initials in the middle of that  
18 circle.

19 A Okay.

20 Q Now you never -- you can have your seat.

21 (The witness returned to the witness stand.)

22 BY MR. BILINKAS:

23 Q You never drew a diagram of exactly where the  
24 purse was found. Correct?

25 A No, I didn't.

1 Q And as you sit here today, you have a  
2 specific recollection of the exact location based on  
3 your testimony. Correct?

4 A Yeah.

5 Q Now I'm going to show you what has been  
6 marked D-243.

7 MR. MELLO: No, I'm sorry. May I just see  
8 that one second? I don't think I have -- first of all,  
9 I -- I have no problem examining so long as he can  
10 identify that as a sketch that he drew or not.

11 BY MR. BILINKAS:

12 Q Well, so the record's clear, you never drew a  
13 sketch. Correct?

14 A I don't recall it. I -- no, I'm sure I didn't.

15 Q Okay. I'm going to show you D-243 and ask  
16 you if this refreshes your recollection with regards to  
17 the exact location of that purse?

18 A No, I would say -- no, it doesn't help. I know it  
19 was, you know, right down on this ledge (indicating).  
20 But I don't -- this is -- I don't know where this --.

21 Q Well, when you say right down on this ledge,  
22 will you agree with me that the official diagram puts  
23 the purse right up against --

24 A Uh-huh.

25 Q -- the ledge where you originally pointed it

1 out before the Prosecutor asked you another question?

2 MR. MELLO: I'm going to object to that  
3 question.

4 MR. BILINKAS: I'll withdraw it.

5 THE COURT: Sustained.

6 BY MR. BILINKAS:

7 Q Where -- was the purse right up against the  
8 ledge or where you circled and depicted on that  
9 last --?

10 A I remember it as out a little bit from the ledge.  
11 But there -- there's no scale on this. I can't -- I  
12 can't judge this. There's -- I --.

13 Q But you have a specific --

14 A Yeah.

15 Q -- recollection of it being away from the  
16 edge?

17 A I don't remember it being -- you know, touching  
18 right against the -- that -- the vertical part of the  
19 cliff.

20 Q Okay.

21 A Okay. I remember -- recall it out slightly.

22 Q Okay.

23 A But as I --.

24 Q As you sit here 18 years later, can you  
25 really say --

1 A Maybe, maybe not.

2 Q -- exactly where that purse was located?

3 A Not from this. I remember --

4 Q From your own recollection?

5 A -- I remember it being down on the -- on the  
6 stone. And I believe it overlapped on that darker  
7 part.

8 Q Okay. Now --?

9 A Which is, I guess, loose soil.

10 Q Right. And -- and did you point that out to  
11 anyone?

12 A I pointed it out to Lieutenant Pagan when he  
13 responded up there.

14 Q Okay. And did you seem him retrieve it,  
15 actually see him pick it off the ledge and throw it up  
16 to you?

17 A Well, he -- he went down and he threw it up to me.  
18 I didn't actually see him grab it 'cause I was above  
19 that. And -- I'm sorry.

20 Q Okay.

21 A And then he flipped it kind of up.

22 Q Okay. And when you say he --

23 A And then he --.

24 Q -- flipped it kind of up to you, was the  
25 purse open or closed?

1 A It -- it stayed closed at that point. He threw it  
2 up and I just caught it. I mean it was just like kind  
3 of a reaching toss I guess.

4 Q Okay. And -- and --

5 A Uh-huh.

6 Q -- did you see a compact and a credit card on  
7 that ledge --

8 A I did --.

9 Q -- at any point in time?

10 A I did not notice, no.

11 Q You never saw an actual makeup compact and a  
12 credit card --

13 A Not that I --.

14 Q -- on the ledge?

15 A Not that I recall.

16 Q Did you look at -- look at the ledge after he  
17 threw the purse up to you?

18 A I don't recall. Probably not. I was more  
19 interested in his repelling and communications at that  
20 point.

21 Q Okay. So --?

22 A I -- I really don't -- I can't say one way or the  
23 other --

24 Q Okay. So --

25 A -- to be fair.

1 Q -- after the purse was thrown up to you, --

2 A Uh-huh.

3 Q -- your attention was drawn to other things.

4 Correct?

5 A Right.

6 Q And -- and your recollection as you sit here

7 today is that you were not looking at that specific

8 ledge. Correct?

9 A Correct.

10 Q And if there was a compact and credit card

11 left on that ledge for whatever reason, because your

12 attention wasn't drawn to it, you don't remember seeing

13 those items. Correct?

14 A I don't recall those items.

15 Q Do you remember any other item that you saw

16 other than the purse on that ledge?

17 A All I recall is seeing the -- the purse that I

18 recall now.

19 Q Okay. Well, again, the Prosecutor --

20 A Uh-huh.

21 Q -- asked you a specific question, did you see

22 any blood? He used the word blood.

23 A I don't recall seeing any blood. I don't recall

24 seeing any.

25 MR. MELLO: What number?

1 MR. BILINKAS: D -- D-175 in evidence --.

2 THE COURT: In evidence without objection.

3 BY MR. BILINKAS:

4 Q I'm going to show you D-175, which is a  
5 photograph that was taken the next day. Do you recall  
6 seeing a makeup brush on that same ledge?

7 A No.

8 Q You never did.

9 MR. BILINKAS: I want to show it to the jury  
10 now.

11 MR. MELLO: No objection.

12 MR. BILINKAS: After I learn how to work  
13 this, you may never have to get up.

14 BY MR. BILINKAS:

15 Q Now does this look like a portion of a ledge  
16 that you had looked at that day?

17 A I believe this is -- would be -- facing the river  
18 from the cliffs that this was part of the ledge that  
19 would have been down to the left. Remember I said that  
20 it --?

21 Q Left away from?

22 A It would have been my left as I was viewing east.

23 Q Okay.

24 A So the north portion on it. In other words, the  
25 -- the ledge had a rocky portion with some dirt to it.

1 And as you went to the left from that, it became more  
2 overgrown like that with foliage where dirt had built  
3 up deeper.

4 Q As you sit here today, recalling your  
5 observations of that ledge on the night in question,  
6 you were only there one day. Correct?

7 A The --?

8 Q At the --

9 A I -- I don't understand.

10 Q -- at the site, you were there one day?

11 A Yes.

12 Q Okay. On the day of the incident, at night,  
13 in the darkness with your flashlight, do you recall  
14 seeing that makeup brush?

15 A No, I said I didn't see it.

16 Q D-174. You see this makeup case here?

17 A Yeah. Okay. Yes.

18 MR. MELLO: Well, probably Mr. Bilinkas  
19 shouldn't testify to that. I don't -- I don't really  
20 have a problem with it. But if he can just ask a  
21 question.

22 THE COURT: It will be helpful if both of you  
23 would not point to the items on the diagram.

24 MR. BILINKAS: Okay.

25 BY MR. BILINKAS:

1 Q Do you see anywhere on this diagram a makeup  
2 case and a credit card in the general vicinity of where  
3 you say you saw the purse?

4 A Yes.

5 Q And can you come and point them out for me?

6 A Okay.

7 MR. MELLO: Thank you.

8 (The witness stepped down from the witness  
9 stand to stand in front of the jury.)

10 THE WITNESS: (Indicating) It appears in --  
11 to be a round or spherical object. It appears right  
12 here. I can't identify what it is. This looks like a  
13 rectangular object. The same thing, there's not enough  
14 detail to identify what they are --.

15 BY MR. BILINKAS:

16 Q And -- and will you agree with me that on the  
17 night in question when you were looking at that ledge  
18 that you missed those two rather obvious items?

19 MR. MELLO: Object to the form, Your Honor.

20 THE COURT: Sustained.

21 BY MR. BILINKAS:

22 Q You missed those two items?

23 A If they were there when I looked, then yeah.

24 Q Okay. You can have a seat.

25 (The witness returned to the witness stand.)

1 BY MR. BILINKAS:

2 Q Now you've been -- you worked for the  
3 Palisades Interstate Police Department for how many  
4 years?

5 A 24 and a half.

6 Q And -- and would you agree with me that  
7 you're very familiar with the area and -- and more in  
8 particular this specific lookout. Correct?

9 A Reasonably familiar with it, yes.

10 Q Well, you testified on behalf of --

11 A I patrolled it for a number of years and --.

12 Q -- the Prosecutor regarding to --

13 A Yeah.

14 Q -- various aspects --

15 A Uh-huh.

16 Q -- of that exact lookout. Correct?

17 A Right. I patrolled it for a lot of years.

18 Uh-huh.

19 Q And -- and did you ever look in the  
20 binoculars across the river or towards New York City at  
21 any point in time during your tenure on the department?

22 A Yeah, I don't think I ever did.

23 Q Have you ever gotten out of your car and  
24 looked across --

25 A Yes.

1 Q -- the way so to speak?

2 A Yes.

3 MR. BILINKAS: Would that be in evidence?

4 MR. MELLO: Uh-uh, not yet.

5 BY MR. BILINKAS:

6 Q Okay. I'm going to show you D-6 for  
7 identification, which is a picture that the defense is  
8 showing you. Do you recognize the person in that  
9 photograph in the green shirt with the sunglasses  
10 sitting next to a cooler?

11 A I'm not --.

12 Q You just looked over at my --.

13 A I believe --.

14 Q You just looked over at my client. Is --

15 A Yes. Uh-huh.

16 Q -- is that a picture of my client --

17 A I --.

18 Q -- back in 1992?

19 A Uh-huh.

20 Q Yes or no?

21 A I -- I --.

22 MR. MELLO: Judge, objection. I'm sorry.

23 How do we know the date?

24 MR. BILINKAS: It's on the back of the  
25 photograph.

1 MR. MELLO: It's on the back of the  
2 photograph?

3 MR. BILINKAS: Back of the photograph.

4 MR. MELLO: And -- and we're going to hear  
5 testimony who put it there?

6 MR. BILINKAS: I'm going to ask him specific  
7 questions.

8 MR. MELLO: No, that's not my question,  
9 Judge. I want to know how that is going to be  
10 established.

11 MR. BILINKAS: Again, Judge --.

12 MR. MELLO: I -- I have no problem with him  
13 showing the photograph. I have no problem with him  
14 asking what is depicted in the view. But as far as  
15 anything that's the back of the photograph, who wrote  
16 it, when it was written that's objectionable.

17 BY MR. BILINKAS:

18 Q You've -- you've identified the gentleman  
19 over there --

20 A Uh-huh.

21 Q -- as, my client, Stephen Scharf, as the  
22 person who talked to you on the night in question.  
23 Correct? Correct?

24 A Yes. Uh-huh.

25 Q Okay. Is there any doubt on your mind that

1 the person in the green shirt in this photograph is  
2 Stephen Scharf back in 1992, the date that you had your  
3 conversation with him, the day that you met with him  
4 and have testified to this jury what he said --

5 A Uh-huh.

6 Q -- to you?

7 MR. MELLO: That still does not establish  
8 what is --

9 MR. BILINKAS: I'm not putting the  
10 photograph --.

11 MR. MELLO: -- is referring to.

12 MR. BILINKAS: I'm asking him whether or  
13 not --.

14 MR. MELLO: He can ask him if -- who that  
15 person is in the photograph, if he recognizes that  
16 person, and he can ask if it is the person he  
17 recognized as the person he spoke to in September of  
18 1992 --

19 THE COURT: Rephrase your question.

20 MR. MELLO: -- but not --.

21 BY MR. BILINKAS:

22 Q Is this the person that you've identified in  
23 court as the person you spoke to in 1992?

24 A Yeah, I believe it is. It's -- yes.

25 Q When you say you believe it is, when you

1 identified my client, Stephen Scharf, 18 years later,  
2 did you have any hesitation --

3 A Okay.

4 Q -- as to whether or not he was the person you  
5 talked to back in '92?

6 A No. The -- the lighting's completely different  
7 than -- you know I had him in the -- I saw him at first  
8 in the headlights of my car, which is a flat light.  
9 This has a lot of shadowing on the face.

10 Q And it was dark when you saw him in '92?

11 A Yes.

12 Q And you really didn't get a -- a good look at  
13 him --

14 A But you didn't --.

15 Q -- at him. Is that what you're --?

16 A His whole face was illuminated where you didn't  
17 have shadows. This shows probably 50 percent of the  
18 face is shaded over here (indicating). A completely  
19 different setting.

20 Q So -- so as you sit here today, can you say  
21 that the person depicted in this photograph is the same  
22 person that you talked to in 1992?

23 A I believe it is.

24 Q And will you agree with me that the view in  
25 the background behind that person is the view from the

1 Rockefeller Lookout Point?

2 A Yes.

3 Q Do you see the buildings there --

4 A Uh-huh.

5 Q -- on the other side of the Hudson River?

6 Correct?

7 A Yeah, there's building's here. Uh-huh.

8 Q And there's absolutely no doubt in your mind

9 that -- that that photograph depicts Stephen Scharf

10 sitting at the Rockefeller Lookout Center? Correct?

11 A Yeah, I believe that is. Yes.

12 Q Okay. And -- and do you have any idea who

13 took that photograph?

14 A No. That would --.

15 Q Does the person --

16 A Uh-huh.

17 Q -- depicted in this photograph look like

18 Stephen Scharf did back in 1992, to the best of your

19 recollection?

20 A To the best of my recollection, I would say yes.

21 MR. BILINKAS: Counsel, any objection to it

22 coming into evidence?

23 MR. MELLO: I -- I have an objection to the

24 photograph coming in evidence with respect to the

25 writing. I do not have an objection to it being

1 published to the jury via the screen.

2 MR. BILINKAS: D-6 in evidence with the  
3 Prosecutor's objection regarding the date on the back.

4 Will you blow it up?

5 BY MR. BILINKAS:

6 Q On the night in question, did you observe a  
7 cooler in Mr. Scharf's car?

8 A Yes.

9 Q Is that the exact same cooler that you  
10 observed in Mr. Scharf's car?

11 A It appears same type and color, but I have no way  
12 to tell if that's --

13 Q And will --

14 A -- you know.

15 Q -- will you agree with me that on that night  
16 members of your police department seized and took a  
17 cooler exactly like that into evidence and have -- and  
18 have had it in their possession since 1992?

19 A I --.

20 Q Was it taken in evidence --

21 A I believe --

22 Q -- on the night --

23 A -- I believe it --.

24 Q -- in question?

25 A I believe it was.

1 Q So will you agree with me that if that's the  
2 same cooler that this picture with the cooler --

3 A Uh-huh.

4 Q -- depicted on it was taken sometime before  
5 the day in question? Is that a fair assumption?

6 A I wouldn't disagree with the assumption. You --  
7 you were asking me about a chain of custody since 1992.  
8 And I -- I just can't -- I -- I don't know. I can't  
9 give you an answer whose possession --

10 Q That's okay.

11 A -- it's been in or anything. And that's why --

12 Q There -- there are going to be other people  
13 that are --.

14 A -- that's why I'm hesitating with your question --

15 Q Understood.

16 A -- to give you an answer because it becomes very  
17 convoluted.

18 Q Fair enough. But on that night you were told  
19 to stand by the car. Correct?

20 A Yes.

21 Q And you made certain observations of what was  
22 in the vehicle. Correct?

23 A Yes.

24 Q One of which was a cooler that looks exactly  
25 like this one. Correct?

1 A That's correct.

2 Q At some point in time another officer comes  
3 and takes control of the car. Correct?

4 A Yes, Detective Karnick.

5 Q And takes -- and puts into evidence whatever  
6 items they thought were appropriate as far as their  
7 case was concerned. Correct?

8 A Correct. And I haven't seen those items since  
9 then. So --.

10 Q Understood.

11 A Okay.

12 Q Fair enough. Now on the day in question  
13 you're called to the scene shortly after an hour after  
14 sunset. Correct?

15 A Yes.

16 Q Minutes. Correct?

17 A Yes.

18 Q Okay. You get there and -- and in your mind  
19 you're hurrying to the area because you want to try to  
20 save someone's life. Correct?

21 A Absolutely. It's an emergency situation. Uh-huh.

22 Q And again, you're in rescue mode. Correct?

23 A Absolutely.

24 Q You get there and you pull into the lot. And  
25 will you agree with me that when you first pulled into

1 the lot, there were six or seven other cars parked in  
2 this lookout area?

3 A Yes. Multiple other cars. Uh-huh.

4 Q And some people were in their car and other  
5 people were walking around. Correct?

6 A Yes. Uh-huh.

7 Q And some of those cars were close to Stephen  
8 Scharf's car. Correct?

9 A I noticed at the point where I first saw him, his  
10 car was parked at the other end. And I don't remember  
11 what cars were parked up there.

12 Q Okay. And -- but there were a number of  
13 cars. People in and out of their cars.

14 A Right.

15 Q Correct?

16 A Uh-huh.

17 Q Clearly, based on your recollection, within  
18 sight distance of Stephen Scharf's car. Correct?

19 A I'm -- yeah, I'd agree with that. Uh-huh.

20 Q And will you also agree that if Stephen  
21 Scharf and his wife walked north to the area to enter  
22 that path that they would have been seen, in all  
23 likelihood, based on the positioning of the people  
24 there. They would have been seen by these other  
25 people.

1 MR. MELLO: Objection. That is speculative.

2 THE COURT: Sustained. Ask another question.

3 BY MR. BILINKAS:

4 Q Well, you testified that no witness ever came  
5 up to you while you were at the lookout. Correct?

6 A That's correct. Nobody approached me. Uh-huh.

7 Q And -- and are you aware of the fact that  
8 when the police -- other police from your department  
9 got there, they ordered everyone out of that lookout  
10 area without taking their names, telephone numbers, or  
11 addresses? Are you aware of that fact?

12 A I've heard that fact.

13 Q And will you agree with me that if your  
14 comrades in arms chase everyone out of that lookout,  
15 anyone who was a potential witness to confirm that my  
16 client was having a good time with his wife and  
17 casually walked down that track have been lost forever?

18 MR. MELLO: Objection to the form of the  
19 question. We don't know that he was having --

20 THE COURT: Sustained.

21 MR. MELLO: -- a good time with his wife.

22 BY MR. BILINKAS:

23 Q Okay. Would you agree with me that those  
24 people --

25 A Uh-huh.

1 Q -- that there were there within sight  
2 distance of my client's car and the area that they  
3 walked down to that path have been lost forever because  
4 no one got their names? Correct?

5 A I -- their names were not taken to my knowledge.  
6 That's what I heard later that they had been sent out.

7 Q Okay. How about the person who notified your  
8 police department that started the entire chain of  
9 events, to your knowledge, was his name ever gotten?

10 A To my knowledge, no.

11 Q And wasn't that the person who first saw  
12 Stephen Scharf immediately after this incident?

13 MR. MELLO: It calls for speculation.

14 THE COURT: Sustained.

15 BY MR. BILINKAS:

16 Q Wasn't that obviously someone who had  
17 communicated with Stephen Scharf right after the  
18 incident?

19 A I don't know that I have knowledge of that  
20 directly. I --.

21 Q Okay. Well, let me --.

22 MR. MELLO: Judge, that's -- that's the  
23 problem with --

24 THE WITNESS: It's --.

25 MR. MELLO: -- this line of questioning.

1 MR. BILINKAS: Okay. I'll --.

2 MR. MELLO: There are other witnesses that  
3 will testify. And Mr. Bilinkas certainly can examine  
4 them. But that's not within the purview of this  
5 witness.

6 MR. BILINKAS: The only witnesses are the  
7 police officers, Judge. And that's the point I'm  
8 trying to make.

9 THE COURT: Your next question.

10 BY MR. BILINKAS:

11 Q Someone notified your department that there  
12 was an incident or problem at the cliffs. Correct?

13 A Yes.

14 Q And will you agree with me that that had --

15 A Uh-huh.

16 Q -- to be either by phone or in person?

17 Correct? Those are the only two ways.

18 A Or by radio would be a third way. But yeah, one  
19 of those ways. Yes.

20 Q Okay. And as you sit here today, you do  
21 realize that no one ever got that person's name?

22 A That's what I've heard.

23 Q And would you agree that that is -- is not  
24 sound law enforcement procedure?

25 MR. MELLO: Objection. That's argumentative.

1 THE COURT: Sustained. Ask another question.

2 BY MR. BILINKAS:

3 Q You were doing an investigation. Correct?

4 A Well, it was going to be a rescue. It wasn't an  
5 investigation when I was dispatched. It was an  
6 emergency. Yeah.

7 Q So irrespective rescue, --

8 A Okay.

9 Q -- accident, murder investigation, you'll  
10 agree with me that --

11 A I --.

12 Q -- you're trying to find out what happened.  
13 Correct?

14 A Yes, absolutely.

15 Q And -- and will you agree with me --

16 A Yeah.

17 Q -- that in order to do that it's important --

18 A Uh-huh.

19 Q -- to identify all the potential witnesses?  
20 Correct?

21 A Yes.

22 Q And identify the names and -- and ways to  
23 communicate with those people to either question them  
24 later on or at some point in time. Correct? Correct?

25 A Yeah. As a general statement, I would say yes.

- 1 Q Okay. Well, general law enforcement stating.
- 2 A I -- I don't -- as I said, I wasn't --.
- 3 Q You're doing an investigation.
- 4 A You're better with more information than less.
- 5 Q There -- for instance, if -- if there was a
- 6 shooting and there were ten people around, you get
- 7 their names and numbers at least. Correct?
- 8 A I would like to know who they were.
- 9 Q All right. And you'd like --
- 10 A Uh-huh.
- 11 Q -- to talk to those people. Correct?
- 12 A Yes.
- 13 Q Because they may have information with
- 14 regards to what they saw at the lookout. Correct?
- 15 A Uh-huh. Yes.
- 16 Q For instance, you know, did someone walk a
- 17 female into the woods with a hammer raised, things like
- 18 that?
- 19 A Yeah.
- 20 Q Okay.
- 21 A Any -- anything. Uh-huh.
- 22 Q Was he holding a steak knife in her back, you
- 23 know, leading her to the edge of the cliff, things like
- 24 that. Correct?
- 25 A You'd want to know what happened and if somebody

1 saw it.

2 Q Okay. And in this particular case both the  
3 identity of the person who first communicated with my  
4 client, who could have noted his exact demeanor right  
5 after --

6 A Uh-huh.

7 Q -- the incident, is gone. Correct? He's  
8 gone.

9 A I -- I'm not aware that that person's name was  
10 taken.

11 Q And -- and all the people, --

12 A Uh-huh.

13 Q -- the six or seven cars that were there when  
14 the police first responded, all those people have not  
15 been identified. Correct?

16 A To my knowledge, correct.

17 Q Now when you get there, you said my client  
18 approaches your car with his arms out. Correct?

19 A Yes.

20 Q There's -- is there any doubt in your mind  
21 that by doing whatever he did, stepping towards your  
22 car with his arms out, that he was attempting to flag  
23 you down? Correct?

24 A I -- yes.

25 Q Did he --

1 A Uh-huh.

2 Q -- appear surprised to see you?

3 A No. He was in the middle walking that way. I

4 assume he saw my lights coming and started down.

5 Q He went directly to you. Correct?

6 A Yes. He -- he was right in the middle of the --

7 the drive area.

8 Q Right. He didn't run away or, you know, walk

9 in the opposite direction. Correct?

10 A No, he didn't.

11 Q Okay. He approached you and your lights were

12 flashing. Correct?

13 A Yes.

14 Q And he stood in front of your car. Correct?

15 A He was right in the headlights. Uh-huh.

16 Q But he jumped in front of your car to make

17 sure that you could see him and you were going to stop.

18 Correct?

19 MR. MELLO: Well, he didn't say he jumped in

20 front of the car. He flagged him down.

21 BY MR. BILINKAS:

22 Q He maneuvered his body in front of your car

23 hoping that you would see him and not run him over.

24 Correct? How about that?

25 MR. MELLO: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MR. BILINKAS:

3 Q He flagged you down. Correct?

4 A Okay.

5 Q Okay. He flagged you down, puts his hands  
6 up --

7 A He -- he --.

8 Q -- around --?

9 THE COURT: We let -- let the witness  
10 respond.

11 THE WITNESS: I would say he -- he was  
12 getting my attention.

13 BY MR. BILINKAS:

14 Q And when he got your attention, whatever he  
15 said to you -- strike that. When he got your attention  
16 and you had an opportunity to communicate with him, you  
17 saw a problem in his demeanor. Correct? Something you  
18 felt --.

19 A I noted his demeanor. I noted it and I tucked it  
20 away.

21 Q Okay. And -- and it was so important that  
22 you put it in your police report. Correct?

23 A The words he had said, yes.

24 Q Okay. Aside from the words that he said --  
25 aside from the words he said, you took a look at his

1 demeanor. Correct? The Prosecutor asked you, did you  
2 look at his -- what was his demeanor like?

3 A Yeah. Uh-huh. Yes.

4 Q Okay. And do you recall putting your -- in  
5 -- in your official report that he was in control of  
6 himself and followed directions or words to that  
7 effect?

8 A When we took the break before, my report was here  
9 (indicating). I don't have it to refer to. If I could  
10 take a --?

11 MR. BILINKAS: Do you have that Mello?

12 BY MR. BILINKAS:

13 Q I'm going to show you S- --

14 A And could you just --

15 Q -- 70.

16 A -- ask me again?

17 Q And I'm -- and I'm --.

18 A I'm sorry.

19 Q And I'm going to refer you to --.

20 A Oh, S-70. Which -- that's the first page? Yeah.

21 Q All right.

22 A And you're asking?

23 Q And ninth line. Did you write --

24 A Yes, I did.

25 Q -- in your report he seemed in control of

1 himself and followed directions?

2 A Yes.

3 Q Did you put anything in that report back in  
4 1992, 18 years later, that he was unemotional or words  
5 to that effect?

6 A No, I don't have anything about him -- him -- no.

7 Q And would you agree with me that the only  
8 thing you put in your report as far as demeanor noted  
9 was how he was in control?

10 A Yes.

11 Q There's nothing in there about him being  
12 unemotional?

13 A No.

14 Q And when you got to the scene, he said  
15 specifically my wife fell off the cliff. That's all he  
16 said to you. Correct?

17 A Yes. Initially, when I first walked up to him, he  
18 said that.

19 Q And -- and again, you were looking to rescue  
20 a life at that point. Correct?

21 A Yes.

22 Q And -- and again, will you agree with me that  
23 your main focus was getting to the area where his wife  
24 had fallen? Correct?

25 A Identifying the location, trying to get rescue

1 personnel there, get people down to her, and hopefully  
2 have a -- a good outcome.

3 Q Okay. And so when you put him in the back of  
4 your car, you weren't really paying much attention to  
5 him as you drove to the north end. Correct?

6 A No. It was to save time, get us up there as  
7 quickly as we could.

8 Q Okay. And when you got out of the car,  
9 Tomato -- Tamayo jumps out of his car right behind you.  
10 Correct?

11 A Yes, he was -- pulled in behind me. He had just  
12 gotten out of his car, back in his. He followed me  
13 right up there.

14 Q And -- and when you -- you got out of the  
15 car, you had Stephen Scharf lead you and Tamayo to that  
16 flat rock. Correct?

17 A That's correct.

18 Q And will you agree with me that it's  
19 approximately 50 feet from the parking lot?

20 A That was my best estimate at -- at the time.

21 Q 50 -- 50 feet, from here (indicating) to not  
22 -- not even the back of the courtroom. Correct?

23 A When, pretrial, when I went back there and saw  
24 where it was, it was probably more than 50 feet. But  
25 that was my best estimate at night in that situation.

1 Q Your best estimate that you put in your  
2 official report is approximately 50 feet. Okay?

3 A Uh-huh.

4 Q So at that point in time, can I assume that  
5 you and Tamayo were moving quickly to try to rescue  
6 Mrs. Scharf? Correct?

7 A Yes. We were trying to get down to identify an  
8 area as quickly as we could.

9 Q And -- and where was Mr. Scharf as you and  
10 Tamayo walked out of the -- walked down that path?

11 A He was between us.

12 Q Okay. Well, and -- and you were in the  
13 front. Correct?

14 A I was more in front. Then it was Mr. Scharf and  
15 Officer Tamayo.

16 Q And -- and can I assume that when you were in  
17 front walking, trying to save a life, that you really  
18 weren't paying that much attention to Stephen Scharf's  
19 demeanor on the way down. Correct?

20 A No. I was trying to light the way along with a  
21 flashlight so we wouldn't all trip all over the place.

22 Q And -- and then when you got to the -- to the  
23 wire fence area, --

24 A Uh-huh.

25 Q -- you had him stay on the opposite side.

1 A On the -- on the outside.

2 Q Correct?

3 A Yeah. I think it was actually Officer Tamayo that  
4 made that request.

5 Q Okay. And he -- and he stood there.

6 Correct?

7 A Yes.

8 Q And you and Tamayo went over --

9 A Yes.

10 Q -- and -- and went to the ledge and called  
11 out Jody Scharf's name. Correct?

12 A Yes.

13 Q And after you called -- how many times?

14 A Probably at least six.

15 Q Okay.

16 A Uh-huh.

17 Q After six times, you stayed there and Tamayo  
18 brings Scharf back up to the parking lot area.

19 Correct?

20 A That's correct. Uh-huh.

21 Q Can I assume that you really didn't have a  
22 great deal of time to observe his demeanor while he was  
23 standing beyond the fence while you were looking over  
24 the edge calling out his wife's name? Correct?

25 A No, we were -- yeah. Yes, I was not staring at

1 him. We were trying to get a response from down below.

2 Q Understood. Understood. And when he showed  
3 you the area where his wife fell, he basically just  
4 showed you this big flat rock area. Correct?

5 A Yes.

6 Q You never asked him did she go over the left  
7 side, the right side, or the middle of that flat rock  
8 area. Correct?

9 A No, he identified that -- the flat rock portion,  
10 but --.

11 Q Right. That area, --

12 A Yeah.

13 Q -- pointing to the area --

14 A Right.

15 Q -- of the big flat rock that we've seen in a  
16 number of pictures. Correct?

17 A Right. It's a --.

18 Q And at that point in time, --

19 A Uh-huh.

20 Q -- he's taking away and -- and you don't  
21 really see him anymore. Correct?

22 A No.

23 Q Now how did you get over that fence to get --

24 A You can --.

25 Q -- to the flat rock?

1 A I don't remember if I went over it or pulled the  
2 -- the vinyl cords apart and went through it.

3 Q Okay. Didn't my client also tell you at some  
4 point that he and his wife had climbed between the  
5 wires?

6 A He told me that he had passed the point of the  
7 fence. I'm not sure he told me how, in what manner  
8 they did.

9 Q Let me show you S-70.

10 A Okay. I didn't see that.

11 Q Did he admit to you --

12 A Okay.

13 Q -- that he and his wife had climbed through,  
14 not over, through the fence?

15 A Okay. Yeah. I have through --.

16 Q Do you --?

17 A I'm sorry.

18 Q Do you have a specific recollection of him  
19 using those terms, through as opposed to over?

20 A If I put through, he may have said through. That  
21 may have been fresh in my mind.

22 Q And he may not have said the exact words that  
23 you put in the report?

24 A The feeling -- well, this is not quoted. Okay.  
25 So this is --.

1 Q Do you --?

2 A At this point what I wanted -- was trying to  
3 demonstrate in my report and record was the fact that  
4 he admitted they had gone past the barrier, the  
5 restricted area.

6 Q And -- and my --?

7 A And I was not concerned with the word through. If  
8 -- he may have said through. It may have been his --  
9 his word.

10 Q And as you sit here 18 years later, do you  
11 recall the exact words that he told you as to how he  
12 and his wife got through the fence?

13 A No.

14 Q You never testified before the Grand Jury.  
15 Correct?

16 A No.

17 Q This report was drafted back in September of  
18 1992. Correct?

19 A Yes, that is correct?

20 Q Now when you went back up to the parking  
21 area, was Mr. Scharf there?

22 A When I returned back -- back up there?

23 Q Yes.

24 A No, he was not there.

25 Q Well, didn't you say that his car was there?

1 A His car was there.

2 Q Do you have any idea where Mr. Scharf was  
3 when you went back up to the parking lot area?

4 A I believed he had been transported to our  
5 headquarters.

6 Q Did you make a phone call?

7 A Yeah, I didn't have a concern. I probably heard  
8 radio traffic or whatever. Somebody must have  
9 identified on the radio that they were transporting.

10 Q Now were you there when the guy repelled  
11 down?

12 A Yes.

13 Q Now where did he tie off his repel lines?

14 A He -- I remember he tied to several points. I --.

15 Q Beyond the fence line, back?

16 A I -- it may have been beyond the fence line. It  
17 may have been some closer. I'm not --.

18 Q And -- and --?

19 A I don't remember specifically which items he tied  
20 on. I know he tied it multiple points.

21 Q As you're looking at S-251 --.

22 MR. BILINKAS: Counsel.

23 BY MR. BILINKAS:

24 Q Can you step down please?

25 A Uh-huh.

1           (The witness stepped down from the witness  
2 stand to stand in front of the jury.)

3 BY MR. BILINKAS:

4           Q     Will you agree with me that his lines were  
5 tied off to the left if you're looking out?

6           A     You know I can't be specific. I -- I knew he tied  
7 up multiple points. (Indicating) This tree is beyond  
8 the, you know -- I don't know if he tied to those, or  
9 beyond, or both.

10          Q     Okay. Where's --?

11          A     I just don't really know.

12          Q     Irrespective of where he tied off, where did  
13 he go down?

14          A     (Indicating) He went right off of that cliff,  
15 directly in front -- here.

16          Q     Okay. Well, and again, you were there that  
17 night. Correct?

18          A     Yes.

19          Q     And so he's going -- and you're pointing to  
20 the middle of this flat rock, the middle of that area.  
21 Correct?

22          A     Right. (Indicating) In that -- right in this  
23 vicinity.

24          Q     Okay.

25                MR. BILINKAS: Counsel, do you have any --?

1 THE WITNESS: This -- this half of that long  
2 rock (indicating), if I can narrow it that much.

3 BY MR. BILINKAS:

4 Q Okay. Okay. You seem to be widening your --  
5 your --?

6 A No, that's not -- I -- I just -- I'm not trying to  
7 widen it.

8 MR. BILINKAS: Any problems with him putting  
9 an X?

10 MR. MELLO: Pardon me?

11 MR. BILINKAS: Any problems with him putting  
12 an X on your diagram?

13 MR. MELLO: Not at all.

14 BY MR. BILINKAS:

15 Q Okay. Place an X where he went --

16 A Uh-huh.

17 Q -- went over the edge.

18 A (Indicating) Right -- I hope this is the center.  
19 I -- I would say, as I recall, about right here.

20 Q Put a circle around your X and put your  
21 initials.

22 A (Responding).

23 (The witness returned to the witness stand.)

24 BY MR. BILINKAS:

25 Q Now the Prosecutor asked you if Mr. Scharf

1 had a flashlight in -- in his hand?

2 A Uh-huh.

3 Q Do you know whether or not he had a  
4 flashlight in his hand when he summoned someone to  
5 help, that notified your police department?

6 A No, I hadn't seen him by then.

7 Q You testified on direct examination that  
8 people die every year falling off those cliffs. You  
9 recall that testimony?

10 A Yes. Some are -- yes.

11 Q Who was in control of the scene on the night  
12 in question?

13 A The -- it would have been Sergeant Pagan --

14 Q He's the guy --

15 A -- as far as --.

16 Q -- that makes all the police decisions?

17 A He -- he was the ranking officer.

18 Q Now --?

19 A I -- I would -- I would have to say that at some  
20 point when the detectives arrived on the scene, they  
21 actually would be in charge of it.

22 Q And who --?

23 A The detectives.

24 Q Well, what detectives arrived on the scene?

25 A I saw Detective Karnick.

1 Q After Karnick arrived, did -- did he take  
2 over with regards to this investigation?

3 A It would be the normal procedure for the detective  
4 to be the lead investigator.

5 Q As you sit here today, do you know whether or  
6 not that was the case?

7 A I know he was called in that night and he came in.  
8 I would believe so.

9 MR. BILINKAS: If I could have a moment,  
10 Judge, I think I'm done.

11 BY MR. BILINKAS:

12 Q The Prosecutor asked you that -- whether or  
13 not any witnesses came up to you.

14 A Uh-huh.

15 Q Do you recall that question?

16 A Yes.

17 Q Will you agree with me that from the moment  
18 you got to the scene you immediately went with my  
19 client to the flat rock? Correct?

20 A Right. Yes.

21 Q And -- and basically stayed there until the  
22 body was recovered. Correct?

23 A Yes.

24 Q And when you went back up to the parking  
25 area, everyone -- all the people that had been there

1 when you first arrived were no longer there. Correct?

2 A You talking about civilians?

3 Q Civilians.

4 A Yes, they were gone.

5 Q So when the Prosecutor asked you did any  
6 witnesses come up and talk to you about anything, they  
7 were all chased away before you got back up there.

8 Correct?

9 A They were gone when I came back up there.

10 Q I think I did chased away. It was an  
11 inappropriate term. They -- they were gone. Correct?

12 A Yes, they were gone.

13 Q And when the Prosecutor asked you if anybody  
14 talked to you, can I assume that no one, to your  
15 knowledge, spoke to you or anyone else as to any  
16 problems between Stephen Scharf and his wife while they  
17 were there --

18 A That is --.

19 Q -- in the daylight hours?

20 MR. MELLO: Objection. Daylight hours.

21 THE COURT: Sustained.

22 BY MR. BILINKAS:

23 Q While they were there prior to you arriving,  
24 no one said --?

25 A I'm sorry. I -- I got confused on that now with

1 -- could you repeat that?

2 Q Sure. No one, to your knowledge, told you or  
3 anyone else that there was a problem between Stephen  
4 Scharf and his wife prior to you arriving on that night  
5 regarding --?

6 A That what you said would be correct. I mean I get  
7 confused with a yes or no. But it's, yes, nobody  
8 approached me and gave me that information.

9 MR. BILINKAS: Nothing further.

10 THE WITNESS: Uh-huh.

11 THE COURT: Redirect?

12 MR. MELLO: No redirect. Thank you.

13 THE COURT: You may step down. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused)

16 THE COURT: Call your next witness.

17 MR. MELLO: Lowell Tamayo.

18 THE COURT: Please step up, face the court  
19 clerk.

20 L O W E L L T A M A Y O, STATE'S WITNESS, SWORN

21 THE CLERK: Please state your name, spell  
22 your last name.

23 THE WITNESS: Yes. Sergeant Lowell Tamayo,

24 T-a-m-a-y-o.

25 THE CLERK: Okay.

1 THE COURT: Please have a seat. You may  
2 begin.

3 MR. MELLO: Thank you, sir.

4 DIRECT EXAMINATION BY MR. MELLO:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q Would you please tell us by whom you're  
8 presently employed?

9 A Yes. The Palisades Interstate Parkway Police  
10 Department.

11 Q How long have you been a member of that  
12 police department?

13 A I've been a member since August of 1988.

14 Q Now with respect to your employment as a  
15 police officer with the Palisades Interstate Parkway  
16 Police, I'm going to ask you if in fact you were a  
17 member of that department on September 20, 1992?

18 A I was.

19 Q And I'm going to ask you if you recall if you  
20 worked a shift as a patrol officer with the Palisades  
21 Interstate Parkway Police on September 20, 1992?

22 A I did.

23 Q If you would, could you tell us what shift  
24 you were working on that date?

25 A I was working the 4:00 p.m. to 12:00 midnight

1 shift.

2 Q I'm going to ask you to keep your voice up so  
3 that everyone can hear your answers. All right?

4 A Okay.

5 Q I believe you said you were working the 4:00  
6 to 12:00?

7 A 4:00 to 12:00, yes.

8 Q Can you tell us with respect to that tour of  
9 duty what the general nature of your assignment was for  
10 that shift?

11 A To patrol the Palisades Parkway.

12 Q Can you tell us if you were in that patrol  
13 utilizing a marked or unmarked patrol vehicle?

14 A I was using a marked vehicle.

15 Q Were you alone or with you with -- were you  
16 with any other police officer?

17 A I was alone.

18 Q Were you in uniform or not?

19 A In uniform.

20 Q Now I'm going to direct your attention to  
21 shortly after 8:00 p.m. on the 20th of September 1992.  
22 Understood?

23 A Yes.

24 Q And I'm going to direct your specific  
25 attention to 8:08 p.m. on that evening. Understood?

1 A Yes.

2 Q Did you receive a specific dispatch  
3 assignment at that time on that date?

4 A Yes, I did.

5 Q What was the nature of the dispatch  
6 assignment at that time on that date?

7 A I was to report to the Rockefeller Lookout for a  
8 possible cliff case.

9 Q Did you in fact respond immediately to that  
10 location?

11 A Yes, I did.

12 Q In responding to that location, did you  
13 respond utilizing your overhead emergency lights?

14 A Yes, I did.

15 Q Can you tell us how you entered the  
16 Rockefeller Lookout upon your arrival?

17 A I entered from the south end entrance.

18 Q As you entered from the south end of the  
19 Rockefeller Lookout, did you observe any other police  
20 vehicle?

21 A Yes, I did.

22 Q Can you tell us what you first observed when  
23 you entered the south entrance of the Rockefeller  
24 Lookout?

25 A Yes. I observed Officer Paul Abbott. He was

1 outside of his vehicle. And he was talking to a male  
2 later identified Mr. Scharf.

3 Q Do you see the male in court today that you  
4 have referred to?

5 A Yes, I do.

6 Q Would you point him out, please?

7 A Yes. Sitting right over there (indicating).

8 THE COURT: Let the record reflect that the  
9 witness is pointing to the left indicating the  
10 defendant.

11 BY MR. MELLO:

12 Q Can you tell us after making the observation  
13 that you have testified to what, if anything, occurred  
14 next?

15 A Yes. Officer Abbott waived at me. He said to  
16 follow him.

17 Q What, if anything, did you do?

18 A I proceeded to follow him to the north end of the  
19 parking lot.

20 Q Now as you entered that parking lot of the  
21 Rockefeller Lookout, did you observe any cars other  
22 than the police vehicle that you referred to?

23 A Yes, there were numerous cars parked.

24 Q At the time you made that observation, did  
25 you observe whether or not there were any persons in

1 the area that you saw, not in cars?

2 A No, at that -- at that point, no. Only  
3 Mr. Scharf. That's all.

4 Q Now at this time when you arrived at  
5 Rockefeller Lookout, can you tell us whether or not it  
6 was completely dark?

7 A It was completely dark.

8 Q Can you tell us if there is and was any  
9 artificial lighting at the Rockefeller Lookout?

10 A No, there wasn't. And there still isn't.

11 Q Can you tell us what you recall of the  
12 weather at that time upon your arrival at the lookout?

13 A It was a clear, cool night.

14 Q Can you give us an estimate of the  
15 temperature as you recall it to be?

16 A Somewhere in the 60's I would assume.

17 Q Fair enough. Now I'm going to take you to  
18 that point where Officer Abbott has indicated to you to  
19 follow him. All right?

20 A Yes.

21 Q Can you tell us specifically what occurs  
22 after he tells you to follow him?

23 A Yes. We pulled up at the north end of the  
24 lookout. We exit our vehicles. And Mr. Scharf  
25 proceeded to lead us to where his wife had fallen from

1 the cliffs.

2 Q Now can you tell us when you began to go to  
3 the location indicated by Mr. Scharf who was first as  
4 you walked?

5 A Officer Abbott.

6 Q Where was Mr. Scharf?

7 A Behind Officer Abbott.

8 Q Where were you?

9 A Behind Mr. Scharf.

10 Q Did Officer Abbott have any kind of  
11 artificial light device, a flashlight, something of  
12 that kind?

13 A Yes, he did.

14 Q Did you?

15 A Yes, I did.

16 Q Did Mr. Scharf?

17 A I did not see any flashlight from him, no.

18 Q Can you tell us approximately where you began  
19 to walk at the direction of Mr. Scharf?

20 A What's the question again?

21 Q Sure. Can you tell us approximately where  
22 you began to walk to the location where Mr. Scharf  
23 indicated his wife had fallen?

24 A Yes. It's toward the end of the parking lot.  
25 There's a foot trail that begins.

1 Q Can you at this time describe the foliage in  
2 that area, whether or not it was full?

3 A It was full foliage, yes.

4 Q Now Mr. Scharf indicated to you a path.

5 A Yes.

6 Q Is that correct?

7 A Correct.

8 Q And with respect to that path, had you been  
9 at that location previously, had you seen that path  
10 previously?

11 A I have seen it. I just don't recall I've ever  
12 been on it.

13 Q Now if you would, would you tell us what  
14 happens as you begin to walk down that path led by  
15 Patrolman Abbott and following Mr. Scharf?

16 A Yes. We walked down the path. And we stop at a  
17 location by the fence where Mr. Scharf indicated to us  
18 that's where they were at. That's where his wife fell  
19 off.

20 Q Can you describe the location that he  
21 indicated to you his wife had fallen from?

22 A Yes. It's a rock ledge by the cliff's edge.

23 Q Had you seen that location previously in your  
24 employ?

25 A Probably, but I don't recall.

1 Q Okay. Now after Mr. Scharf shows you the  
2 location where his wife had fallen from, can you tell  
3 us what happens next?

4 A Yes. Officer Abbott and myself go over the fence.  
5 And we stand on the rock and we start calling out  
6 Mr. Scharf's wife's name.

7 Q What was the name that you called?

8 A Jody.

9 Q And presumably Mr. Scharf had, of course,  
10 told you that?

11 A He did.

12 Q Did you receive any response to your calls?

13 A We did not.

14 Q Where was Mr. Scharf when you called out  
15 Jody?

16 A He was standing behind the fence.

17 Q And was that at your direction or the  
18 direction of you and Patrolman Abbott?

19 A Yes.

20 Q And why was he behind the fence?

21 A It's for his safety.

22 Q And did he follow that instruction?

23 A Yes, he did.

24 Q Now at the time you are at that cliff edge at  
25 the location that Mr. Scharf has indicated his wife

1 fell from, did you personally look out over the edge  
2 and down?

3 A I did not.

4 Q Can you tell us what happens at this point?

5 A At this point I went behind the fence again where  
6 Mr. Scharf was standing and I walked him back to the  
7 parking lot.

8 Q And prior to your walking him back to the  
9 parking lot, had headquarters been advised of your  
10 location?

11 A Oh, yes. It was constantly being updated.

12 Q And of course at this time this was a life or  
13 death situation?

14 A That's correct.

15 Q And emergency personnel were being notified  
16 of your location for purposes of a rescue effort?

17 A That's correct.

18 Q At this point you testified that you are  
19 escorting Mr. Scharf back to the parking lot. Correct?

20 A Correct.

21 Q What does Patrolman Abbott do at this time?

22 A He stays at that scene, at that rock.

23 Q Now if you would, would you tell us what  
24 occurs when you take Mr. Scharf back to the parking  
25 lot?

1 A Yes. We arrived at my patrol vehicle. And we was  
2 both standing outside the vehicle. And I asked  
3 Mr. Scharf what happened.

4 Q Do you recall what he told you?

5 A Yes, I do.

6 Q What did he tell you at that time?

7 A He told me that he and his wife were sitting on  
8 the rock by the cliff's edge. They were hugging and  
9 kissing. He got up to go back to his vehicle to  
10 retrieve a blanket and wine. And he turned around and  
11 his wife was gone.

12 Q I'm going to show you what's been marked S-71  
13 for identification. Do you recognize that exhibit?

14 A Yes, I do.

15 Q What do you recognize that exhibit to be?

16 A That's my report.

17 Q With respect to that report, did you capture  
18 the conversation that you just related to the jury in  
19 that report?

20 A Yes, I did.

21 Q Now at this point in time when you have this  
22 conversation with Mr. Scharf, does he stay within your  
23 company?

24 A Yes, he does.

25 Q And at the time that he's having this

1 conversation with you, do you have occasion to observe  
2 his demeanor?

3 A Yes, I do.

4 Q What do you recall, if anything, about his  
5 demeanor?

6 A That he was very nervous, but in control of his  
7 emotions.

8 Q What, if anything, do you do with Mr. Scharf  
9 at the time you're having the conversation with him  
10 that you've described?

11 A We were just both standing outside the vehicle at  
12 that point.

13 Q Okay. What -- let me ask you this. Does  
14 there come a point in time when he is not outside your  
15 vehicle?

16 A Yes.

17 Q Okay. Tell us about that?

18 A Yes. At one point I asked him to take a seat in  
19 the backseat of my vehicle so he can relax. And I open  
20 the door and he took a seat.

21 Q Now during this period of time while you're  
22 with Mr. Scharf, does he stay in the car or will he get  
23 out of the car?

24 A At times he would get out the car and walk and get  
25 back inside the car.

1 Q And while you were making observations of him  
2 during this period of time, can you tell us if you  
3 recall anything else about Mr. Scharf at that time?

4 A Yes. At one point he was saying his wife's name.  
5 And at another point he kneeled by the car and appeared  
6 to be praying.

7 Q During the course of your time with him, do  
8 you ever see Mr. Scharf cry?

9 A I did not.

10 Q Now does there come a point in time when  
11 Sergeant Nelson Pagan arrives on scene?

12 A Yes.

13 Q And at that particular time, which is to say  
14 Pagan's arrival on scene, are you still with  
15 Mr. Scharf?

16 A Yes.

17 Q At the time of Pagan's arrival on scene, is  
18 Pagan at that point the ranking Palisade Interstate  
19 Parkway Police Officer?

20 A Yes, he is.

21 Q At that time, did you receive any  
22 instruction?

23 A Yes, I did.

24 Q Who did you receive instruction from?

25 A Sergeant Pagan.

1 Q What was the instruction you received?

2 A To transfer Mr. Scharf from my vehicle to Officer  
3 Siri's vehicle.

4 Q Did you in fact follow that direction?

5 A Yes, I did.

6 Q And did Mr. Scharf at all times follow your  
7 direction?

8 A Yes, he did.

9 Q Did you in fact take him to Officer Siri's  
10 car?

11 A Yes, I did.

12 Q Does there come a point in time when  
13 Mr. Scharf is taken from that location?

14 A Yes.

15 Q And by whom?

16 A Officer Siri.

17 Q Now following the events that you've  
18 described thus far, what occurs next as far as your  
19 participation at that scene?

20 A I remain at the parking lot securing the scene,  
21 securing the parking lot.

22 Q Do you recall approximately how long you  
23 remained on scene?

24 A Until I was relieved by the midnight shift.

25 Q And upon being relieved by that shift, did

1 you thereafter report to headquarters and ultimately  
2 depart headquarters?

3 A Yes.

4 Q I'm going to ask if you would just step down  
5 here for a moment, please.

6 (The witness stepped down from the witness  
7 stand to stand in front of the jury.)

8 BY MR. MELLO:

9 Q Make sure the jury can see. Okay. If you  
10 would, can you locate for us the Palisades Interstate  
11 Parkway northbound lanes?

12 A (Indicating).

13 Q Can you indicate for us the Rockefeller  
14 Lookout?

15 A There (indicating).

16 Q Can you indicate for us the south entrance to  
17 the lookout?

18 A (Indicating).

19 Q Can you indicate for us the location where  
20 you first see Mr. Scharf and Officer Abbott?

21 A Right around this area right here (indicating).

22 Q Was that in the general vicinity of the  
23 binocular area?

24 A Yes.

25 Q Now can you indicate for us the approximate

1 location of the northern exit?

2 A (Indicating).

3 Q And can you indicate on this particular  
4 photograph the approximate area where you will enter  
5 the wooded area with Mr. Scharf?

6 A (Indicating).

7 Q This is S-244. Do you recognize this  
8 photograph?

9 A Yes.

10 Q Okay. Can you again show us the northbound  
11 lanes of the Parkway?

12 A (Indicating).

13 Q Can you show us the northern exit from the  
14 Rockefeller Lookout?

15 A (Indicating).

16 Q And do you see this area here (indicating),  
17 which appear to be stone?

18 A Yeah.

19 Q Okay. Do you recognize that?

20 A Yes.

21 Q And with respect to where you will enter the  
22 wooded area that you referred to in your testimony with  
23 Mr. Scharf and Patrolman Abbott, can you tell us  
24 approximately where that was on this photograph?

25 A Yes (indicating).

1 Q Just past that stone barrier?

2 A Yeah.

3 MR. MELLO: You can return to your seat.

4 Thank you. If you would.

5 (The witness returned to the witness stand.)

6 BY MR. MELLO:

7 Q I'm going to show you what's been marked  
8 S-257 in evidence. Do you recognize that photograph?

9 A Yes, I do.

10 Q Okay. What does that photograph depict?

11 A The entrance to the pathway we took on that day.

12 Q Okay. If you would, can you show the jury  
13 precisely where?

14 A Right there (indicating).

15 Q And does the foliage that you see there  
16 accurately depict the foliage that you saw that night?

17 A Yes, it does.

18 Q But of course that was at night not in the  
19 day?

20 A Correct.

21 Q Now step down.

22 A Uh-huh.

23 (The witness stepped down from the witness  
24 stand to stand in front of the jury.)

25 BY MR. MELLO:

1 Q I'm going to show you what's been marked 250  
2 in evidence.

3 MR. MELLO: Counsel.

4 MR. BILINKAS: Thank you.

5 BY MR. MELLO:

6 Q If you would, can you tell us what this  
7 photograph depicts?

8 A Yes. This is the rock Mr. Scharf indicated to us  
9 his wife fell from.

10 Q Can you indicate generally where Mr. Scharf  
11 was as he stood as you called out for his wife?

12 A Right here (indicating).

13 Q And that would be behind the fence?

14 A Correct.

15 MR. MELLO: Can everyone see it?

16 BY MR. MELLO:

17 Q I'm going to show you what's been marked  
18 S-251 in evidence. Do you recognize this photograph?

19 A Yes.

20 Q Now what does that photograph depict?

21 A The rock (indicating).

22 Q And does it also show the general area that  
23 Mrs. Scharf slipped?

24 A Yes, it does.

25 Q And this (indicating) is, of course, the

1 restraining fence?

2 A Correct.

3 Q And is that fence the fence that you  
4 indicated that his wife and he had to kind of go over  
5 or through to get to the rock?

6 A That's correct.

7 Q S-252 in evidence. Do you recognize that  
8 photograph?

9 A Yes.

10 Q What do you recognize that photograph to be?

11 A That's the rock (indicating) --.

12 MR. MELLO: Thank you. You may resume your  
13 seat.

14 (The witness returned to the witness stand.)

15 MR. MELLO: Judge --.

16 (Sidebar away from microphone.)

17 THE COURT: All right.

18 (Sidebar concluded)

19 THE COURT: Let's take a ten minute break.

20 (Brief Recess)

21 (The jury entered the courtroom.)

22 THE COURT: Welcome back ladies and gentlemen  
23 of the jury. Please be seated. Counsel, you may  
24 continue.

25 MR. MELLO: I've concluded my direct, Your

1 Honor.

2 L O W E L L T A M A Y O, STATE'S WITNESS, PREVIOUSLY  
3 SWORN

4 CROSS EXAMINATION BY MR. BILINKAS:

5 Q What -- what's your current rank?

6 A Sergeant.

7 Q Sergeant. You were dispatched to the  
8 Rockefeller Lookout area on September 20th. Correct?

9 A Correct.

10 Q And you basically wrote a report reflecting  
11 what happened on that night. Correct?

12 A Correct.

13 Q Now have you had an opportunity to review  
14 that report with the Prosecutor?

15 A Yes.

16 Q And -- and do you have a specific  
17 recollection of all the events of that night without  
18 your recollection being refreshed with your report?

19 A Yes, I do.

20 Q Okay. Now on this particular night you  
21 arrive right after Abbott. Correct?

22 A Correct.

23 Q Approximately 8:08. Correct?

24 A Right. That was the time we were dispatched.

25 Q Okay. And -- and people are allowed to use

1 the hiking paths for an hour after sunset. Correct?

2 A It's -- I'm trying to think -- our rules. Sunset.

3 It should be closed at sunset. At that time they

4 should not be using the path once the sun goes down.

5 Q And -- and you're sure of that fact?

6 A That's my best recollection of the rules of the

7 Palisades, yes.

8 Q Okay. And -- and will you agree with me that

9 the path that you, Mr. Scharf, and -- and Abbott took

10 on that night is a path that's frequented by a lot of

11 people all the time?

12 A Yes. It was a worn down path, yes.

13 Q Okay. And -- and there weren't any problems

14 with you, Abbott, and my client walking to that area

15 where he pointed out the flat rock. Correct?

16 A No. Other than the bushes, undergrowth, no.

17 Q And you didn't have any problems getting

18 through that barrier fence. Correct?

19 A No. You have to get down -- you have to --.

20 Q Like a boxing match?

21 A Exactly.

22 Q Okay. And -- and when you got through the

23 barrier fence, did you walk and look out over the edge?

24 A I did not.

25 Q Okay. So as far as between you and Abbott,

1 Abbott's the only guy who actually looked over the  
2 edge. Correct?

3 A Between us two that day, yes.

4 Q All right. And you didn't do that because  
5 you're afraid of heights. Correct?

6 A I -- I -- I didn't do that 'cause I'm afraid of  
7 heights. Correct.

8 Q Okay. And -- so how close did you get to the  
9 edge?

10 A Not close. I just got on the -- right over the --  
11 the fence on the rock.

12 Q Okay. So you're approximately ten feet away  
13 from the edge? Approximately.

14 A Approximately.

15 Q Were you able to see the -- the flat rock  
16 from where you stood?

17 A Yes.

18 Q All right. And -- and did you have a  
19 flashlight?

20 A Yes.

21 Q And will you agree with me that Abbott had a  
22 flashlight? Correct?

23 A Yes.

24 Q And -- and the only illumination out on that  
25 flat rock was Abbott's flashlight. Correct?

1 A No, and mine also.

2 Q Okay. You were holding your flashlight a  
3 distance from about me to you, ten feet, towards the  
4 flat rock?

5 A A little bit more closer. I was more closer.

6 Q Okay. About -- about this close  
7 (indicating)?

8 A Approximately.

9 Q Okay. And -- and Abbott called out over the  
10 edge. Correct?

11 A Yes.

12 Q How -- how many times did he call Jody  
13 Scharf's name?

14 A I don't know. I called about four or five times.

15 Q Okay. You called four or five times back  
16 away from the ledge. Correct?

17 A Yes.

18 Q Okay. And -- and was he calling looking over  
19 the edge?

20 A I don't recall.

21 Q Do -- do you recall him going to the edge and  
22 looking over at any point?

23 A Yes, I do.

24 Q And how long was he -- did he do that?

25 A Just briefly.

1 Q A matter of seconds?

2 A Yes.

3 Q And did he -- every time he called out Jody's  
4 name, was he doing it looking over the edge or back  
5 away from the -- the edge?

6 A Yes, both over the edge and back away from the  
7 edge.

8 Q And will you agree with me that because it  
9 was dark at that point he wasn't right on the edge.  
10 Correct?

11 A At one point he was right up -- right on the edge.

12 Q Okay. And -- and did he shine his flashlight  
13 over the edge?

14 A Yes.

15 Q And how long did he do that for?

16 A Seconds.

17 Q And were you there when the purse was found?

18 A No.

19 Q After you and Abbott called out Jody Scharf's  
20 name, you took Mr. Scharf back up to the parking lot  
21 area. Correct?

22 A Correct.

23 Q And do you recall who walked in front of who?

24 A I walked.

25 Q In front of him?

1 A In front of him, yes.

2 Q All right. And will you agree with me that  
3 as you're -- you were walking and he's behind you, you  
4 weren't really focusing on his demeanor so to speak.  
5 Correct?

6 A At -- at that point, no.

7 Q And -- and will you agree with me that on  
8 your way down he was in front of you and you really  
9 weren't focusing on his demeanor at that point?  
10 Correct?

11 A Correct.

12 Q And -- and when he was standing on the  
13 opposite side of the wire fence and you were shining  
14 your flashlight in the direction of the flat rock that  
15 you weren't looking at his demeanor at that point.  
16 Correct?

17 A At that point, correct.

18 Q At some point in time, however, you take him  
19 up to the parking area. Correct?

20 A Yes.

21 Q And at that point in time, were you  
22 instructed to do that?

23 A No.

24 Q You did that on your own?

25 A Correct.

1 Q Okay. And -- and you put him in your car.

2 Correct?

3 A I asked him to take a seat in the backseat of the  
4 car, yes.

5 Q Okay. And -- and again, he -- he followed  
6 your command. Correct?

7 A He sat down, yes.

8 Q And you -- you were in uniform?

9 A Yes, I was.

10 Q Badge?

11 A Yes.

12 Q And you basically told him to get in the back  
13 of your car. Correct?

14 A I asked him -- I said if you want to relax, get --  
15 -- sit -- take a seat in the backseat of my car.

16 Q All right. Is -- is there any reason why you  
17 didn't have him sit in his car, which was right there?

18 A At that point I didn't even know he had a car.

19 Q Okay. So he sits in your car. At some point  
20 in time after that you observe him. Correct?

21 A Yes.

22 Q And -- and correct me if I'm wrong, at some  
23 point in time he's -- he's calling out his wife's name.

24 Correct?

25 A He's saying his wife's name.

1 Q And he's -- he's mumbling, correct, almost  
2 incoherent? You didn't know what he was saying at  
3 first. Correct?

4 MR. MELLO: Object. Objection. I'm sorry.

5 THE COURT: Sustained.

6 MR. MELLO: Maybe I misunderstood.

7 MR. BILINKAS: Okay. I'll -- I'll rephrase  
8 it.

9 MR. MELLO: Thank you.

10 BY MR. BILINKAS:

11 Q At some point in time he says something about  
12 his -- his wife. Correct?

13 A No, I could clearly hear him say his wife's name.

14 Q And -- and how many times did he say his  
15 wife's name?

16 A About two or three times.

17 Q And was he calling out his wife's name or  
18 just saying it in a -- in a low tone?

19 A Yes. Saying it in a low tone, yes.

20 Q Can -- can you describe to the jury how he  
21 was calling out his wife's name?

22 A (Demonstrating) Like Jody, Jody.

23 Q Just like that?

24 A Yes.

25 Q And at some point in time you say he knelt

1 down and -- and he -- and he started to pray. Correct?

2 A That's what it appeared to me.

3 Q When you say what it appeared to you, can

4 you --

5 A Yes.

6 Q -- can you -- can you demonstrate to the jury

7 exactly what you saw him do?

8 A Sure. If I may?

9 Q You can come down here (indicating).

10 (The witness stepped down from the witness

11 stand to stand in front of the jury.)

12 THE WITNESS: Right at this part here

13 (indicating). And he was (demonstrating). And he was

14 mumbling something I couldn't understand. He was

15 mumbling.

16 BY MR. BILINKAS:

17 Q His hands clapped as if -- was he calling

18 Jody's name at this point?

19 A No. --.

20 Q Okay. And when you say he was saying

21 something, what -- was he saying a prayer?

22 A I don't really know.

23 Q Are you familiar with the Hail Mary?

24 A Yes.

25 Q Was he saying the Hail Mary?

1 A I don't really know.

2 Q But as far as your observations of him, you  
3 believe, based on what you saw, he was praying.

4 Correct?

5 A --.

6 Q Thank you. Take your seat. I appreciate you  
7 coming down.

8 (The witness returned to the witness stand.)

9 BY MR. BILINKAS:

10 Q Now when you first got to the area, will you  
11 agree with me -- will you agree with me that there were  
12 six or seven cars in the immediate area of the lookout  
13 parking lot?

14 A Approximately, yes.

15 Q Okay. And do you have any idea what happened  
16 to all those people that were in those cars?

17 A No. I know they started to leave once they saw  
18 the emergency vehicles arrive.

19 Q Okay. And do you know if they were directed  
20 to leave by anyone in your department?

21 A Yes.

22 Q Who? Who directed them to leave?

23 A I -- I was instructed to have the vehicles leave  
24 the -- the lookout.

25 Q And -- and how did you do that?

1 A I walked over to the cars and told them to leave.

2 Q And how many cars did you walk over to?

3 A I would say about -- not too many, about four or  
4 five.

5 Q Okay. And did you get those person's names,  
6 telephone numbers, addresses before you had them leave?

7 A I did not.

8 Q And -- and who told you to have those people  
9 leave? Who, from your department, told you that?

10 A Sergeant Pagan.

11 Q And did you do that after you came up with my  
12 client?

13 A I did that after he left the scene.

14 Q Okay. When you say he left the scene, you  
15 escort him from the flat rock and put him in your car.  
16 Correct?

17 A I didn't put him in my car. I asked him if he  
18 wanted to take a seat in my car and he sat down in my  
19 car.

20 Q Is there any doubt in your mind that when --  
21 when a person hears a police officer ask him to do that  
22 that, especially when they're in uniform, they usually  
23 do what you ask them to do?

24 A Like I say, I asked him do you want to relax, take  
25 a seat in the back of my car.

1 Q And -- and he sits in the back of your car.

2 Correct?

3 A Correct.

4 Q Okay. Was -- was he in custody at that  
5 point --

6 MR. MELLO: Objection.

7 BY MR. BILINKAS:

8 Q -- from the scene?

9 MR. MELLO: We've already had --

10 THE COURT: Sustained.

11 MR. MELLO: -- this ruling.

12 BY MR. BILINKAS:

13 Q After you asked him to sit in your car, were  
14 you instructed to do something else with him?

15 A Not until Sergeant Pagan arrived at the scene.

16 Q And what did Sergeant Pagan order you to do?

17 A To walk Mr. Scharf to Officer Siri's vehicle.

18 Q So from your vehicle to another patrolman's  
19 vehicle. Correct?

20 A Correct.

21 Q Okay. And when Mr. Scharf -- after you were  
22 instructed by Sergeant Pagan to take Scharf from your  
23 vehicle to Siri's vehicle, was he free to -- to walk  
24 away essentially?

25 MR. MELLO: Objection, Your Honor. The

1 Court's already ruled on these matters.

2 MR. BILINKAS: I'm just asking a fact  
3 question.

4 MR. MELLO: No.

5 MR. BILINKAS: And I believe --.

6 MR. MELLO: The Court has -- the Court has  
7 made a ruling on --.

8 MR. BILINKAS: Judge, can we be heard at  
9 sidebar?

10 THE COURT: Sure.

11 (Sidebar)

12 MR. BILINKAS: Judge, I'm not asking him with  
13 regards to any statements. I understand the Court made  
14 a rule on there. I'm asking him specific questions as  
15 to what he did, why he did. And I think it affects his  
16 credibility. And -- and I think irrespective of the  
17 Court's ruling is --.

18 THE COURT: The voluntariness of any  
19 statement is always before the Court. But you're  
20 asking was he free to do certain things and was he in  
21 custody. You knew that was wrong.

22 MR. MELLO: And that was --.

23 THE COURT: You knew that was wrong.

24 MR. BILINKAS: Well, but -- but, again,  
25 Judge, irrespective of the Court's ruling, I believe

1 that I am allowed to -- to question him with regards to  
2 the same circumstances with regard to --.

3 THE COURT: You're entitled to bring the  
4 voluntariness of those statements before the jury's  
5 attention. But we're not to revisit this entire area.

6 MR. MELLO: And not to revisit the issue of  
7 custody -- legal conclusions.

8 THE COURT: The objection is sustained.

9 (Sidebar concluded)

10 BY MR. BILINKAS:

11 Q Officer, at some point in time Sergeant Pagan  
12 ordered you to take Mr. Scharf from your car to his --  
13 to Siri's car. Correct?

14 A That's correct.

15 Q Okay. And did you do as you were told by  
16 your sergeant?

17 A Yes, I did.

18 Q Now did Mr. Scharf have any choice but to  
19 follow your directive at that point?

20 MR. MELLO: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. MELLO: Same objection.

23 BY MR. BILINKAS:

24 Q Did Mr. Scharf do as you requested?

25 A He did.

1 Q And you put him in Siri's car. Correct?

2 A Correct.

3 Q And was he taken from the lookout area at  
4 that point?

5 A Correct.

6 Q Now you testified that Mr. Scharf made a  
7 specific statement to you in response to your question.  
8 Correct?

9 A Yes.

10 Q What was your specific question?

11 A What happened?

12 Q And what was his exact words?

13 A He told me that he was sitting on a rock with his  
14 wife. They were hugging and kissing. He got up to go  
15 to his car to get a blanket and wine. He turned around  
16 and she was gone.

17 Q Okay. And as you sit here today, do you  
18 recall those exact words without the use of your police  
19 report?

20 A That's how I remember it. That's -- yes.

21 Q Okay. And did you take notes at any point on  
22 that night?

23 A I did not.

24 Q Is that statement reflected in your official  
25 police report?

1 A Yes.

2 Q Is it in quotes?

3 A It's not.

4 Q And how many days after this incident did you  
5 write that report?

6 A It was written on the 22nd. The incident happened  
7 on the 20th.

8 Q So two days later?

9 A Approximately.

10 Q And prior to your writing that report, did  
11 you talk to Abbott, Pagan, Karnick, and other members  
12 of your department with regards to what had transpired  
13 that night?

14 A I did not.

15 Q Before you wrote that report, you never had  
16 any conversations about what you did on the 20th --?

17 A That's correct.

18 Q Now I'm going to show you what has been  
19 marked in evidence D-6 and ask you if you recognize the  
20 gentleman in the green shirt sitting on that rock  
21 ledge?

22 A It appears to be Mr. Scharf.

23 Q When you say it appears to be Mr. Scharf,  
24 does that person look exactly the way that Mr. Scharf  
25 looked like back in September of 1992?

1 A Yes. He had a mustache. Yes.

2 Q Okay. And do you recognize the -- the view  
3 behind Mr. Scharf sitting on that ledge?

4 A I don't recognize exactly, no.

5 Q Isn't that the view looking from the  
6 Rockefeller Lookout stop?

7 A It could be.

8 Q When you say it could be -- take -- take a  
9 hard look. Do you see these buildings in the  
10 background?

11 A Yes.

12 Q Do you see the rock wall that he's sitting  
13 on?

14 A Yes.

15 Q In all your years of being in that, isn't it  
16 a fact that that photograph depicts Mr. Scharf being at  
17 the Rockefeller Lookout?

18 A I can't say for certain. It could be either -- it  
19 look like going out on lookouts, either Rockefeller or  
20 the Alpine. But I, as I sit here today, I can't say  
21 for certain it's the Rockefeller.

22 Q Okay. And what's to the left of him in that  
23 picture?

24 A A cooler.

25 Q Now you indicated on direct that Mr. Scharf

1 was very nervous?

2 A Yes.

3 Q And -- and was that before or after you saw  
4 him calling out his wife's name and kneeling down in  
5 prayer?

6 A No, it's like he was nervous since the first --  
7 since I first had contact with him.

8 Q Okay. Now prior to that evening you had  
9 never met Mr. Scharf. Correct?

10 A Correct.

11 Q You don't know how he reacted to a stressful  
12 situation. Correct?

13 A Correct.

14 Q Now with regards to S-252, do you see that  
15 graffiti painted on that flat rock?

16 A Yes, I do

17 Q And was that there on the night in question?

18 A I don't recall.

19 Q Well, when you were shining your flashlight  
20 during the time that Abbott was on that flat rock, do  
21 you recall seeing any graffiti on the flat rock?

22 A I don't recall if it was or wasn't on there.

23 MR. BILINKAS: I believe I'm almost done,

24 Judge.

25 BY MR. BILINKAS:

1 Q And was -- did Abbott ever come back up to  
2 your patrol car while Mr. Scharf was either sitting in  
3 your car or Mr. Siri's car?

4 A He did not.

5 Q So would you agree with me that you arrived  
6 right after Abbott got there? Correct?

7 A Yes.

8 Q And upon your arrival Abbott immediately  
9 drove to the well worn path. Correct?

10 A Yes.

11 Q And he led the way down to the flat rock.  
12 Correct?

13 A Officer Abbott, yes.

14 Q And -- and Abbott climbed through the fence  
15 and he looked over the edge or stayed on the flat rock  
16 while you stayed back with your flashlight pointing in  
17 his direction. Correct?

18 A In his direction, all directions. I was just  
19 looking in general anywhere.

20 Q Okay. But will you agree with me that  
21 Mr. Scharf's face was not illuminated at any time?  
22 Correct?

23 MR. MELLO: At -- at what point may I ask?

24 BY MR. BILINKAS:

25 Q At any point in time?

1 A His face with our flashlights, not directly, no.

2 Q And when you took Mr. Scharf back up to the  
3 parking area, will you agree with me that Abbott didn't  
4 have an opportunity to observe Mr. Scharf at that  
5 point? Correct?

6 MR. MELLO: I'm sorry. Can I have that  
7 question again, please?

8 MR. BILINKAS: Right.

9 BY MR. BILINKAS:

10 Q Abbott is on the flat rock calling out Jody  
11 Scharf's name. Correct?

12 A Correct.

13 Q You are eight feet, ten feet back, you know,  
14 looking in Abbott's direction. Correct?

15 A Correct.

16 Q Mr. Scharf is behind you. Correct?

17 A Correct.

18 Q Will you agree with me that at that point  
19 Abbott was not looking at Stephen Scharf at any point  
20 while on that flat rock? Correct?

21 A Well, not at that point he wasn't. But at some  
22 point we both went -- came back over the fence where  
23 Mr. Scharf was standing.

24 Q Okay.

25 A And I walked Mr. Scharf back to the parking lot.

1 Q Okay. And how long did that last for?

2 A Seconds.

3 Q So Abbott got a look at Mr. Scharf for only a  
4 few seconds before you took him back up to the parking  
5 area. Correct?

6 A Correct.

7 Q And by the time Mr. Scharf left Abbott never  
8 came back up to that parking area to have any contact  
9 with Mr. Scharf. Correct?

10 A That's correct.

11 Q When you were walking up to the cars telling  
12 them to leave the lookout area, did any one of those  
13 persons indicate to you that they had seen anything  
14 suspicious with regards to Stephen Scharf and his wife?

15 A No.

16 MR. BILINKAS: No further questions.

17 REDIRECT EXAMINATION BY MR. MELLO:

18 Q While you were at those cars and they did not  
19 indicate to you that there was anything suspicious, did  
20 they indicate that there was anything loving between  
21 Mr. Scharf and his wife?

22 A No.

23 Q As a matter of fact, nobody indicated  
24 anything, did they?

25 A That's correct.

1 Q As a matter of fact, nobody said there's a  
2 guy in the parking lot running around screaming his  
3 wife just fell off a cliff?

4 MR. BILINKAS: Judge, is this leading? I  
5 believe it is. I will object.

6 MR. MELLO: I'll withdraw it. Thank you.

7 THE COURT: Anything further?

8 MR. MELLO: No, sir. Thank you.

9 RECROSS EXAMINATION BY MR. BILINKAS:

10 Q Will you agree with me that if you took those  
11 person's names and got their contact information that  
12 you could have or the Prosecutor could have asked all  
13 the questions that Mr. Mello just proposed to you?

14 A I suppose so, yes.

15 MR. BILINKAS: Nothing further.

16 RE-REDIRECT EXAMINATION BY MR. MELLO:

17 Q They said nothing, did they?

18 A They said nothing. No.

19 Q Whatsoever, did they?

20 A Nothing whatsoever, no.

21 MR. MELLO: Nothing further.

22 THE COURT: Step down. Thank you.

23 THE WITNESS: Okay.

24 (Witness excused)

25 THE COURT: We'll break now.

1 MR. MELLO: Thank you, sir.

2 THE COURT: We'll resume tomorrow at  
3 9:00 a.m. Once again, do not read, listen, or watch  
4 any media accounts. Don't watch any law related  
5 programs. Don't have any discussions of any nature. I  
6 will see you in the morning at 9:00 a.m. Thank you.

7 (Trial adjourned for the day.)

8

9

10 Certification

11 I, K. Annette Higgs, the assigned transcriber, do  
12 hereby certify the foregoing transcript of proceedings on  
13 Video, from 9:19:30 a.m. to 3:56:11 p.m., is prepared in  
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16 non-compressed transcript of the proceedings as recorded.

17

18 *K. Annette Higgs*

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