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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. Madam clerk, roll
4 call.

5 (Jury roll call.)

6 THE COURT: All right. Good morning once
7 again.

8 (A chorus of good morning.)

9 THE COURT: The witness will return to the
10 stand.

11 J A M E S L Y N A M, STATE'S WITNESS, PREVIOUSLY SWORN

12 THE COURT: You're still under oath. You may
13 begin.

14 MR. MELLO: Thank you, Your Honor.

15 DIRECT EXAMINATION CONTINUED BY MR. MELLO:

16 Q Good morning, sir.

17 A Good morning.

18 Q Now let us resume your testimony regarding
19 the conversation that you had with Mr. Scharf on
20 September 22, 1992. All right?

21 A Okay.

22 Q What I'd like to do now is I'd like to ask
23 you if in the course of your discussions with Mr.
24 Scharf you discussed with him the state of his marriage
25 at that time?

1 A Yes.

2 Q Can you tell the jury what Mr. Scharf related
3 to you with respect to the state of his marriage on
4 September 22, 1992?

5 A Mr. Scharf stated to us that his marriage was in
6 decline. Had been for some time. And that he had been
7 served with divorce papers two weeks prior to speaking
8 with us.

9 Q Did he discuss with you the documents that he
10 received?

11 A Yes.

12 Q Would you tell the jury what he said about
13 that?

14 A In those documents his wife Jody Ann referred to
15 him as abusive and unfaithful.

16 MR. BILINKAS: Objection. May I be heard at
17 sidebar, Judge?

18 (At Sidebar.)

19 MR. BILINKAS: --

20 MR. MELLO: That's what makes the difference.
21 As a matter of fact, quite frankly, during the course
22 of this same session I will elicit his testimony that
23 Mr. Scharf denied that he was abusive.

24 MR. BILINKAS: If the statements of the
25 defendant is allowed --

1 THE COURT: Any further objection.

2 MR. BILINKAS: Again, just for the record,
3 that's --

4 THE COURT: And the ruling that was made
5 previously had to do with general areas of examination
6 -- make a statement about in general condition, not his
7 specific condition.

8 MR. BILINKAS: It was a statement of the
9 defendant.

10 (Sidebar concluded.)

11 THE COURT: The objection is overruled.

12 BY MR. MELLO:

13 Q He has told you that his wife alleged that he
14 was unfaithful and abusive; correct?

15 A That's correct.

16 Q Now did he in the conversation with you deny
17 that he had been abusive toward his wife?

18 A Yes, he did. With the exception of one time.

19 Q And what did he say?

20 A He said at that time he had pulled his wife by the
21 arm, taken her by the arm into the garage and he, his
22 word, chastised her for throwing out some magazines
23 that he wanted to save.

24 Q Did he during the course of this conversation
25 in the area of his marriage discuss alcohol abuse by

1 his wife?

2 A Yes, he did.

3 Q What did he tell you about that?

4 A He said that she was a heavy drinker, consumer
5 four glasses of wine per day.

6 Q Now with respect to the marriage that had
7 been in decline for a number of years, in his words,
8 did he discuss with you any other facet of the
9 marriage? Did he characterize it in any way in
10 addition to what you've already testified to?

11 A Yes, he did.

12 Q What did he say about that?

13 A Mr. Scharf told us that he had an open marriage
14 arrangement with his wife for the past 13 years of
15 their marriage.

16 Q And with respect to his description, as
17 you've testified to, did he tell you anything else
18 about that concept of open marriage?

19 A Yes. He stated that he would place ads in
20 classified sections of magazines to meet other women.
21 And he stated that Jody Ann would see other men as
22 well. And during that time he estimated he had been
23 with approximately 50 to 60 women.

24 Q Now you testified that he received the
25 subject divorce papers, or had been served with the

1 divorce papers that you're describing two weeks prior
2 to your interview; correct?

3 A Yes.

4 Q Did he in addition to providing you with that
5 information refer in any way to having received those
6 documents at a time prior to two weeks before your
7 interview?

8 A Yes, he did. He said he had been served a while
9 back before that. He was made of the divorce intent a
10 while before that.

11 Q Did he discuss with you the sleeping
12 arrangements between he and his wife at that time?

13 A Yes, he did.

14 Q What did he say?

15 A He stated that she had not been sleeping with him
16 for some time but once in a while she would. And he
17 was hoping that they could reconcile the marriage.

18 Q Now with respect to reconciliation did you
19 discuss with him the purpose that he had in going to
20 the Palisades?

21 A Yes. That whole event that he scheduled for the
22 both of them was in the hopes that he could reconcile
23 with his wife.

24 Q Did you discuss with him in this conversation
25 regarding his reference to open marriage, did you

1 discuss with him whether or not during the marriage he
2 had seen other women?

3 A Well yes. He had told us he had seen
4 approximately 50 to 60 women and he had, he was
5 currently seeing two women at the time. At that time.

6 Q Now with respect to the relationships with
7 the two women that you referred to did he identify them
8 by name?

9 A Yes, he did.

10 Q Can you tell us the name of each of those
11 persons?

12 A Yes. One woman was Cathy Scanlon (phonetic). The
13 other woman was Terry Scofield (phoentic).

14 Q Did he discuss with you the state of the
15 relationship with either or both of those two women?

16 A Yes, he did.

17 Q What did he tell you about that?

18 A He told us that he was breaking off the
19 relationship. And in fact he had seen Ms. Scofield on
20 Labor Day to inform her that the relationship was over
21 basically. And then he saw Ms. Scanlon on September
22 18th to inform her of the same thing.

23 Q Now during that period of time following your
24 first involvement beginning on September 21st, did you
25 become aware that a clawhammer had been recovered from

1 Mr. Scharf's vehicle?

2 A Yes.

3 Q Was that a topic that you inquired about in
4 your interview with Mr. Scharf on the 22nd of
5 September, 1992?

6 A Yes, it was.

7 Q Can you tell the jury how that conversation
8 went?

9 A Yes. We asked him to, you know, the reason for
10 the clawhammer being in that bag. And he stated that
11 he had fixed a drawer in his kitchen and had put the
12 clawhammer in a nylon bag along with the picnic items
13 with the intent of on the way out to the car putting
14 the clawhammer back in the garage. And he told us that
15 he just forgot to put the hammer back.

16 Q Did he tell you when he fixed that drawer?
17 What day?

18 A Yes. It was Sunday.

19 Q Did you during the course of your
20 conversation with him discuss a gold cross chain?

21 A Yes.

22 Q And you had been made aware that that had
23 been found in that same vehicle?

24 A Yes.

25 Q What did he say about that?

1 A The gold cross chain was in the nylon bag with the
2 hammer and the picnic items and he told us that the
3 chain was in that bag because he had the intent of
4 giving it to Jody during dinner in his efforts to try
5 to reconcile.

6 Q Now following the events that you have
7 testified to up until this point, did you have occasion
8 following the conversation that you had with Mr. Scharf
9 to discuss with him consent to search certain property?

10 A Yes.

11 Q Did you have occasion to discuss with him
12 consent to search a vehicle?

13 A Yes.

14 Q Did you in that discussion utilize a document
15 to assist you in that conversation with Mr. Scharf?

16 A Yes, we did.

17 Q Did you discuss that document with Mr. Scharf
18 before any signing?

19 A Yes.

20 Q And did you give him an opportunity to read
21 it before any signing?

22 A Excuse me. Yes.

23 (Showing document to defense.)

24 MR. BILINKAS: No objection.

25 BY MR. MELLO:

1 Q Is that it?

2 THE COURT: In evidence. No objection?

3 MR. BILINKAS: No objection, sir.

4 MR. MELLO: Thank you.

5 BY MR. MELLO:

6 Q Take a moment and examine what's been marked

7 S-27.

8 A (Reviewing document.)

9 Q Have you examined that document?

10 A Yes, I have.

11 Q Do you recognize that document?

12 A Yes, I do.

13 Q What do you recognize that document to be,

14 sir?

15 A This document is a generic consent to search

16 vehicle form, which is used at that time at the PIP

17 police department for the purpose of obtaining a

18 consent by somebody to search a vehicle.

19 Q And is that the document that you utilized?

20 A Yes, it is.

21 Q All right. Would you read that document to

22 the members of the jury, please?

23 A This document reads, with the heading consent to

24 search vehicle. And then it begins, I, Stephen Scharf,

25 hereby authorize senior invest --

1 Q Let me stop you. I'm sorry. Apology.

2 Stephen Scharf, did he write that in?

3 A Yes, he did.

4 Q Okay. Please continue.

5 A I, Stephen Scharf, hereby authorize senior
6 investigative Terrence Alver (phonetic), who has
7 identified himself as a law enforcement officer, and
8 any other persons he may designate to assist him to
9 conduct a complete search of the following vehicle. A
10 1991 Ford Taurus, color white, with New Jersey reg,
11 GMJ-10D or O, I can't, I don't know what that writing
12 is. Including all compartments, containers, papers,
13 and effects therein.

14 I further authorize the same officers to
15 remove any and all papers, property, and effects which
16 they may consider pertinent to their criminal
17 investigation. I give this consent to search freely
18 and voluntarily without fear, threat, coercion, or
19 promises of any kind and with full knowledge of my
20 constitutional right to refuse to give my consent to
21 search, which I hereby waive. I am also fully aware
22 that if I wish to exercise this right it would be
23 respected.

24 This consent to search is given by me this
25 22nd day of September, 1992 at 11:15 a.m. It's signed

1 by Mr. Scharf with his address, 27 Northfield Road,
2 Hackettstown, New Jersey. Zip code, telephone number,
3 witnessed by myself, signed by myself with the PIP
4 police. And T. Alver with BCPO, Bergen County
5 Prosecutor's Office.

6 Q And was that document signed by Mr. Scharf in
7 your presence?

8 A Yes, it was.

9 Q Did you and Investigator Alver sign it in his
10 presence?

11 A Yes.

12 Q The information regarding his signature and
13 his address, phone number, et cetera, did he put that
14 in?

15 A No, he put it in.

16 Q He put it in?

17 A Yes.

18 Q Okay. Now did you also similarly have a
19 conversation with respect to a search of certain
20 property, namely his residence?

21 A Yes.

22 Q And once again did you utilize a document to
23 assist you in that discussion with Mr. Scharf?

24 A Yes.

25 Q And before you asked Mr. Scharf to sign any

1 such document did you afford him the opportunity to
2 read it?

3 A Yes.

4 (Showing document to defense.)

5 MR. BILINKAS: No objection.

6 MR. MELLO: Thank you, sir. In evidence?

7 THE COURT: In evidence.

8 BY MR. MELLO:

9 Q Please take a moment to examine that?

10 A (Reviewing document.)

11 Q Have you examined that document?

12 A Yes, I have.

13 Q Do you recognize that document?

14 A Yes, I do.

15 Q What do you recognize that document to be?

16 A This document is a generic consent to search
17 premises form used by the PIP police department at that
18 time.

19 Q And, if you would, would you first tell us if
20 the name Stephen Scharf that appears at the top of that
21 document was written by Mr. Scharf?

22 A Yes, it was.

23 Q Okay. Would you then please read that
24 document to the jury?

25 A This document begins, I, Stephen Scharf, hereby

1 authorize senior investigator Terrence Alver, who has
2 identified himself as a law enforcement officer, and
3 any other persons he may designate to assist him to
4 conduct a complete search of the property and premises
5 located at 27 Northfield Road, Hackettstown, New
6 Jersey, including all buildings, structures, vehicles,
7 papers, and effects.

8 I further authorize the same officers to
9 remove any and all papers, property, and effects which
10 they may consider pertinent to their criminal
11 investigation. I give this consent to search freely
12 and voluntarily without fear, threat, coercion, or
13 promises of any kind and with full knowledge of my
14 constitutional right to refuse to give my consent to
15 search, which I hereby waive. I am also fully aware
16 that if I wish to exercise this right it would be
17 respected.

18 This consent to search is given by my this
19 22nd day of September 1992 at 11:15 a.m. Signed
20 Stephen Scharf with the address of 27 Northfield Road,
21 Hackettstown and a phone number. Witnessed by myself,
22 Detective James Lynam, PIP police and phone number.

23 Q Thank you.

24 MR. MELLO: Nothing further, Judge.

25 THE COURT: Cross examination.

1 CROSS EXAMINATION BY MR. BILINKAS:

2 Q Good morning, Detective.

3 A Good morning.

4 Q Now on direct examination the prosecutor
5 presented to you a memo written by Detective Alver. Do
6 you have that in front of you?

7 A Yes, I do.

8 Q And so there's no misunderstanding, you
9 didn't write that report; correct?

10 A That's correct.

11 Q You didn't review that report either before
12 it was submitted as an official Bergen County
13 Prosecutor's document; correct?

14 A That's correct.

15 Q What day did you take this case for my
16 client, Stephen Scharf?

17 A September 22nd.

18 Q Can you tell the ladies and gentlemen of the
19 jury what the date of that report is?

20 A Which report?

21 Q Detective Alver.

22 A Okay. That would be October 9, 1992.

23 Q And so there's no misunderstanding, will you
24 agree with me that that is the only official report
25 that has been submitted to your knowledge with regards

1 to your and Alver's interview?

2 MR. MELLO: I'm going to object to the form
3 of the question, Your Honor.

4 MR. BILINKAS: I'll rephrase it.

5 THE COURT: Thank you.

6 BY MR. BILINKAS:

7 Q Did you write an official police report
8 concerning your contact with my client?

9 MR. MELLO: Judge, actually, I've heard the
10 term official police report many times now. And it --

11 THE COURT: Ask another question.

12 MR. MELLO: -- denotes that he has --

13 MR. BILINKAS: I'll rephrase, Your Honor.

14 MR. MELLO: -- official police reporting.

15 BY MR. BILINKAS:

16 Q Is it your understanding that your notes are
17 an official police report?

18 MR. MELLO: Judge, again, it's a
19 characterization that can be confused.

20 MR. BILINKAS: Well I'm asking for the
21 purpose of opinion, Judge. I'm asking what he
22 considers official what he --

23 THE COURT: Okay. The objection is
24 sustained.

25 BY MR. BILINKAS:

1 Q Do you have any other document other than the
2 notes that you've referred to? Regarding your
3 interview with my client?

4 A No. Not my documents. I think that's what you're
5 asking me? Do I have any of my documents?

6 Q Correct.

7 A No.

8 Q So as far as the interview is concerned of my
9 client you have your notes, which are -- correct?

10 A Yes.

11 Q And you have Bergen County Prosecutor
12 Homicide Detective Alver's memo; correct?

13 A That's correct.

14 Q Now how did you get that memo?

15 A I don't recall.

16 Q Can I assume you reviewed it before you
17 testified?

18 A Oh, yes. I first saw it sometime probably 1992.
19 I don't recall when I first saw it.

20 Q When you were preparing your testimony for
21 yesterday did you have an opportunity to review Alver's
22 memorandum regarding the incident?

23 A Yes.

24 Q And did you ask for that or did the
25 prosecutor provide that to you?

1 MR. MELLO: What's the relevance in that,
2 Your Honor?

3 MR. BILINKAS: The relevance is, Judge, the
4 prosecutor was giving him someone else's memo to
5 refresh his recollection.

6 MR. MELLO: It's entirely proper to have a
7 witness review documents and to suggest otherwise is
8 just plain wrong.

9 THE COURT: Sustained.

10 MR. MELLO: And in fact not to do that would
11 be serious error on my part or anyone's part.

12 BY MR. BILINKAS:

13 Q Would you agree --

14 THE COURT: Lets be fair about this. Both of
15 you as a matter of practice and procedure will review
16 the case with your individual witnesses. Ask a
17 question, but the question should not suggest that the
18 practice is in someway unusual. All right. You're
19 preparing for trial, so ask another question.

20 BY MR. BILINKAS:

21 Q Will you agree with me that your notes in
22 many respects are different than what Bergen County
23 Homicide Detective Alver put in his report?

24 A No, I don't think I'd agree with that.

25 Q Okay. With regards to your statements

1 concerning Mr. Scharf's pants or his zipper was undone.

2 You testified to that; correct?

3 A Yes.

4 Q And can you look at your notes and see if
5 anywhere in your notes you said that his zipper was
6 undone?

7 A I know it's not in my notes.

8 Q Would you consider that a difference?

9 A Well you did say many differences. I didn't agree
10 with that. Slightly different, yes.

11 Q Okay. Well what differences do you know are
12 there between your notes and Detective Alver's memo?

13 MR. MELLO: Objection to the form of that
14 question, Your Honor. Asking the witness to do that.

15 THE COURT: Sustained.

16 BY MR. BILINKAS:

17 Q We pointed out one difference; correct?

18 A That's correct.

19 Q For instance you testified, and would you
20 agree with me that your testimony before this jury is
21 consistent with what Alver has in his report; correct?

22 A That's correct.

23 Q And in your report all you have is that he
24 stood up to fasten pants. Correct?

25 A That's correct.

1 Q Now in your notes did you mention that my
2 client had indicated during that interview that there
3 was a couple that saw him and his wife walking right
4 before they went down that worn path?

5 A I can refer?

6 Q Please refer to your notes to see if anywhere
7 in your notes you make reference of my client saying
8 they walked to the overlook area where they observed
9 another couple?

10 A Okay. That's not in my notes.

11 Q Do you remember him saying that?

12 A I don't recall him saying that.

13 Q Would you agree me that it's in Alver's
14 report?

15 A Yes.

16 Q So when my client, well was it said or not
17 said?

18 A Well it was said. It's in Alver's report. It was
19 said in our presence. Both of us did the interview.

20 Q Your testimony is you don't recall my client
21 saying that there was a potential witness who saw him
22 and his wife walking shortly before he went down that
23 worn path? You don't remember that?

24 A I know that he said it. I don't recall it
25 specifically. But he said it.

1 Q Well let me make sure I understand what your
2 testimony is. Are you now saying that you do recall
3 saying that there was a potential witness, a couple,
4 who saw him right before he and his wife walked down
5 that path?

6 A No, I'm not saying that. I said I do not recall
7 him telling me that specifically. But he did tell us
8 because it's recorded in --

9 Q Well listen, I'm not asking you to testify
10 what was said because it's in someone else's report.
11 I'm asking you specifically do you have a recollection
12 of Stephen Scharf saying that he and his wife started
13 to go for a walk. They walked to the overlook area
14 where they were observed by another couple. Do you
15 recall him saying those exact words?

16 A No.

17 Q Do you recall him saying anything with
18 regards to a couple, potential witnesses, observing him
19 and his wife walking before he went to that trail?

20 A I don't recall.

21 Q And will you agree with me that that
22 information is not in your notes?

23 A It's not in my notes.

24 Q Now you testified on direct examination that
25 Stephen Scharf has specifically told you that his wife

1 had an open marriage; correct?

2 A That's correct.

3 Q And did you put in your notes, did you use
4 that term?

5 A Yes.

6 Q Can you refer to your notes and show me
7 exactly where you used the term open marriage?

8 A (Reviewing notes.) Okay. The exact words I have
9 in my notes are open arrangement.

10 Q Open arrangement.

11 A With his wife. Yes.

12 Q And you testified on direct to a term open
13 marriage; correct?

14 A That's correct.

15 Q And would you agree with me that that's the
16 exact term that Detective Alver used in his report?

17 A Which term?

18 Q Open marriage.

19 A Yes.

20 Q And is there any reason why you changed the
21 term in your notes to the term that Detective Alver
22 used?

23 A It's the same thing. It means the same.

24 Q Any reason why you used the term open
25 marriage as opposed to open arrangement?

1 A There's not reason. To convey the same purpose.

2 Q Now with regard to the marriage you indicated
3 that my client had indicated that he was served with
4 papers a couple of weeks ago; correct?

5 A Yes.

6 Q And correct me if I'm wrong, you indicated
7 that there were allegations of abuse and him being
8 unfaithful; correct?

9 A That's correct.

10 Q And would you agree with me that the
11 reference that he made regarding abuse had to do with
12 verbal abuse?

13 A Yes.

14 Q You never mentioned that on direct; correct?

15 A No, I wasn't specifically asked.

16 Q And did he also indicate that his wife was
17 dating other people?

18 A Yes.

19 Q And you specifically gave this jury a number
20 with regard to the number of women that he said he
21 gave. Did you or Detective Alver ever ask how many men
22 his wife had been dating?

23 A No.

24 Q Didn't care to get that information?

25 A Well he gave it to us. He said she was seeing

1 other men. He volunteered the 50 to 60 number. So.

2 Q And for whatever reason you didn't think it
3 was appropriate to ask how many men the wife was
4 seeing?

5 A I just didn't ask it.

6 Q And did he indicate to you that the wife had
7 been doing this for a considerable period of time?

8 A Yes.

9 Q And did you ask him any specifics with
10 regards to the wife and her dating?

11 A Well yes. He told me that she was seeing other
12 men and the only stipulation they had was that neither
13 one of them would bring anybody home with them.

14 Q Now he also told you that his wife was
15 drinking out of a Styrofoam cup on the night in
16 question. Correct?

17 A Yes.

18 Q And Detective Alver was there when he said
19 that; correct?

20 A That's correct.

21 Q And to your knowledge did you or anyone else
22 recover that Styrofoam cup?

23 A Not to my knowledge.

24 Q To your knowledge did anyone look for that
25 Styrofoam cup?

1 A Again not to my knowledge.

2 Q Now would you agree with me that Alver never
3 mentions anything with regards to a Styrofoam cup in
4 his report?

5 A Yes.

6 Q Yes, you'll agree with me that --

7 A I'll agree with you, yes.

8 Q You'll agree that that's another difference,
9 however slight?

10 A Yes.

11 Q And is there any reason why you didn't
12 videotape or tape record this interview so there would
13 be absolutely no dispute as to what was asked and what
14 was said?

15 A I don't know why it wasn't videotaped.

16 Q And where was this interview conducted?

17 A At 29 Linden Street, the satellite office of the
18 prosecutor's office.

19 Q And would you agree with me that it was the
20 prosecutor's decision not to record this interview?

21 A I don't know whose decision it was. It wasn't
22 mine.

23 Q Well lets try to break this down. There's
24 you and Alver from the Bergen County Prosecutor's
25 Office conducting this interview; correct?

1 A That's correct.

2 Q And can I assume that before you started to
3 question my client you and Alver talked about the case
4 up to this point; correct?

5 A That's correct.

6 Q And you relayed information back and forth as
7 to what you found; correct?

8 A Correct.

9 Q And when the decision was made to either tape
10 or not tape it, it's your testimony that you had
11 nothing to do with that decision?

12 A We --

13 Q It was not taped?

14 A No.

15 Q Would you agree, did you have anything to do
16 with whether or not this interview would be taped or
17 not taped?

18 A I did not have anything to do with it.

19 Q Okay. Will you agree with me then that it
20 was the Bergen County Prosecutor's detective who made
21 that decision?

22 A No. I can't agree with that. I don't know if
23 he's the one that made it or somebody above him made
24 it. I don't know who made it. I can tell you that I
25 did not.

1 Q Okay. When you say someone above him, was it
2 a lawyer, a prosecutor of the county, someone from that
3 office; correct?

4 A Yes.

5 MR. MELLO: Objection. Withdrawn

6 BY MR. BILINKAS:

7 Q Now in your notes did you indicate who
8 dropped off Jonathan on the day in question at the
9 Jackson's house?

10 A Yeah. I believe that is in my notes.

11 Q Can you please refer to your notes --

12 A I'll refer to them.

13 Q -- to see whether or not your notes indicate
14 who dropped Jonathan at Chuck and Nancy Jackson's house
15 on the day in question?

16 A (Reviewing notes.) I don't specifically say that
17 Jody did, but she did.

18 Q My first question is it's not in your notes;
19 correct?

20 A Those exact words are not.

21 Q When you say those exact words, will you
22 agree with me that your notes do not indicate who
23 dropped off Jonathan on the night in question?

24 A That's correct.

25 Q And will you agree with me that Detective

1 Alver's report specifically said that Jody Scharf,
2 Stephen Scharf's wife, dropped off their son at a
3 neighbor's?

4 A (No audible response.)

5 Q Isn't it a fact that Alver's report says
6 that?

7 A Yeah. But I mean that's a fact, but --

8 Q I'm not asking you if it's a fact, I'm asking
9 you is it in Alver's report?

10 A (Reviewing report.)

11 Q Page three, one, two, three, four, five lines
12 down to save a little time.

13 A Yes.

14 Q And on that night do you recall him saying
15 that 18 years later now?

16 A Yes.

17 Q And Stephen Scharf, when he told you that,
18 gave you those person's name and address so you could
19 verify that fact; correct?

20 A That's correct.

21 Q Did you verify that fact?

22 A Did I personally or --

23 Q Did your did someone to your knowledge verify
24 that his wife dropped off the son?

25 A Yes. I verified it. Well, myself among others.

1 I was contacted by the police department, the local
2 police department down there and I was told certain
3 things, which verified that he was with the Jacksons.

4 Q Now with regard to these specific times that
5 you testified to that my client told you on that night,
6 would you agree with me that he indicated to you and
7 Alver that he wasn't really sure of the exact times?

8 A Yes.

9 Q So when you testified on direct to specific
10 times do you have a specific recollection of Stephen
11 Scharf indicating that he wasn't sure of the exact time
12 and that the times that he gave you were
13 approximations; correct?

14 A I didn't say specific times in my testimony. I
15 said approximately. Of course he wasn't sure.

16 Q Now did Mr. Scharf tell you what Jody Scharf
17 did after she dropped her son, Jonathan, off?

18 A Yes.

19 Q And what did he say?

20 A He told us that she went to Oats, a farm by the
21 name of Oats Farm where she bought apples and in his
22 word, chat.

23 Q And prior to this report being submitted on
24 October 9, 1992, did you receive information that Jody
25 Scharf after she dropped off her son was drinking at

1 Schooley's Inn (phonetic)?

2 A I did not. No.

3 Q Did you review all these reports?

4 A Yes.

5 Q Mr. Scharf also gave you the name of the
6 Comedy Club in New York; correct?

7 A Yes.

8 Q He even gave you a specific time that the
9 show was to start?

10 A Yes, he did.

11 Q Did you verify whether or not there was in
12 fact a show that started at or about that time?

13 A Are you asking did I personally verify it?

14 Q Yes.

15 A No.

16 Q You'll agree with me that he did give you and
17 the prosecutor's detective a specific location and a
18 time regarding the show he was going to go in New York;
19 correct?

20 A That's correct.

21 Q Now you indicated on direct that Mr. Scharf
22 had indicated that his wife was a drinker; correct?

23 A Yes.

24 Q And did he say how many glasses of wine she
25 normally drank in a day?

1 A Yes, he did.

2 Q How many?

3 A Four.

4 Q Now is there anything in the prosecutor's
5 detective's memo regarding Jody Scharf drinking at
6 least four glasses of wine a day?

7 A No.

8 Q Did you look at the report to be sure that he
9 left that out was correct?

10 A Yes.

11 Q Did he indicate whether or not Jody had drank
12 earlier that day?

13 A Yes, he did.

14 Q And what did he say?

15 A He said that his wife had a glass of wine at 11:30
16 a.m.

17 Q And do you have that referenced in your
18 notes?

19 A Yes.

20 Q Now Mr. Scharf had indicated to you and the
21 prosecutor that he and his wife had been to this
22 location many times; correct?

23 MR. MELLO: Prosecutor Detective.

24 BY MR. BILINKAS:

25 Q Prosecutor's detective; correct?

1 A Yes. That's correct.

2 Q And he said the last time he was there was in
3 May of '92; correct?

4 A The last time he was there with his wife was May
5 of '92.

6 Q Right. And did you ask him the specific
7 date?

8 A I don't recall.

9 Q How did that conversation come up?

10 A During the course of us asking him about the
11 location, if he's familiar with it, how many times he
12 was there. During normal conversation.

13 Q And again as you sit here today would you
14 agree with me that you can't recall exactly what was
15 asked or exactly what was said with regards to this
16 entire interview?

17 A Exactly? No. But this interview tells the
18 picture. Tells the story.

19 Q And again it's the story that you and Alver
20 were trying to get out; correct?

21 A It's what he told us.

22 Q Okay. Well what specifically do you recall
23 him telling you about the area? What were his exact
24 words?

25 A I don't recall his exact words. His exact words

1 that I do recall was he was there 30 to 40 times the
2 both of them. Those are his words.

3 Q And what did he say about the last time? How
4 did that come out?

5 A I don't recall how it came out. He told us. He
6 told us May '92 was the last time he was there.

7 Q And again did he have to think or did he
8 immediately say it was definitely May 1992?

9 A I don't think he was that emphatic. But, and he
10 told us.

11 Q Did he hesitate? Like maybe April, May? Do
12 you recall?

13 A He told us May of '92.

14 Q But you don't recall --

15 A He didn't tell us April or February. He said May.

16 Q You don't recall how that came about or how
17 he specifically told you that?

18 A It come out with us asking him his familiarity
19 with the location. Him and his wife. That's how it
20 came out.

21 Q Now he told you he stopped a motorist to try
22 to get help for his wife; correct?

23 A Yes.

24 Q And did he indicate where he stopped the
25 motorist?

1 A In the lookout.

2 Q In the parking area?

3 A Yes.

4 Q Are you sure that that's what he said?

5 A Yes.

6 Q Did you indicate in your notes exactly where
7 he said he stopped the motorist?

8 A Exactly where, no. But I knew it was in the
9 parking lot because that's what he did. He went to the
10 parking lot and waived down a motorist. That's what he
11 told us.

12 Q Are you assuming that?

13 A No.

14 Q Or is that specifically what he told you?

15 A Not word for word, but --

16 Q Did he say he stopped the motorist to report
17 the incident?

18 A Yes. He waived down a motorist to report that his
19 wife had fallen off the cliff.

20 Q Okay. So when you put in your notes then
21 stopped motorist, told him to report incident, those
22 weren't his exact words; correct?

23 A That's correct.

24 Q And your notes don't indicate whether or not
25 it was the parking lot or the parkway right next to the

1 parking lot.

2 A No, they don't indicate if it was the parkway or
3 the lot.

4 Q Do you have a specific recollection as to
5 whether it was in the parking lot or on the parkway?

6 A It was in the parking lot. I have a specific
7 recollection. It was in the parking lot.

8 Q Did he indicate he had flashlight in his
9 hand?

10 A At the time he waived down the motorist?

11 Q He waived down the motorist. Did he indicate
12 when he was telling you, did he indicate that he had a
13 flashlight in his hand?

14 A No.

15 Q You never -- strike that. It's your
16 recollection that he never mentioned the word
17 flashlight with regards to him flagging down the
18 motorist?

19 A I don't recall that if he did.

20 Q Now you went to -- strike that. He also told
21 you that he was planting in the yard that day; correct?

22 A Yes.

23 Q Did you verify that?

24 A He told us.

25 Q Did you verify that? Did you go to his house

1 to see whether or not there were recent plantings in
2 his yard?

3 A I did not.

4 Q Now you're brought into this case, what, the
5 next day; correct?

6 A That's correct.

7 Q The 21st. And would you agree with me that
8 as of this point you're involved in a possible homicide
9 investigation; correct?

10 A Yes.

11 Q No doubt about that; correct?

12 A Well there was a doubt at that time. I considered
13 a suspicious death, but actual homicide well that would
14 have to be verified after an investigation.

15 Q Okay. Would you agree with me that on that
16 day you talked to the prosecutor's office; correct?

17 A Yes.

18 Q You even brought the prosecutor's detective
19 with you to the scene at some point; correct?

20 A Yes.

21 Q You were communicating back and forth with
22 the prosecutor's office with regards to your
23 department's findings; correct?

24 A Yes.

25 Q You were even communicating with a local

1 police department, Washington Township; correct?

2 A Correct.

3 Q Now on the day after the incident, the next
4 morning, you went to the scene; correct?

5 A Yes.

6 Q And one of your duties was to photograph the
7 area; correct?

8 A Yes.

9 Q And you went there with Sergeant Pagan
10 (phonetic); correct?

11 A I don't know if I drove with him, but I met him
12 there. We were there.

13 Q Who showed you the flat rock where this
14 incident occurred?

15 A Well I knew exactly where it occurred, but
16 Sergeant Pagan was directing me to an exact spot where
17 he may have repelled. But I knew exactly where that
18 location was.

19 Q And that's a common well known area; correct?

20 A Yes.

21 Q And to get to it there's a well worn path;
22 correct?

23 A Yes.

24 Q And it's certainly not difficult to maneuver
25 from the parking lot to that flat rock; correct?

1 A That's correct.

2 Q And many people do that all the time;
3 correct?

4 A Yes.

5 Q And that specific rock on the day that you
6 went there had graffiti on the flat rock; correct?

7 A That's correct.

8 Q And that's been a problem in the past with
9 regards to that lookout area; correct?

10 A Which problem graffiti or --

11 Q Graffiti. Kids going, people going beyond
12 the fence line and spray painting things on the rock?

13 A Yeah. I wouldn't say it's a major problem, but
14 occasionally, it's all over the place.

15 Q And when you got there on the day after this
16 incident there was graffiti.

17 A Yes.

18 Q And would you agree with me that based on
19 your investigation that graffiti had no connection to
20 my client; correct?

21 A Yes. Correct.

22 Q Now who told you that that flat rock was
23 where Jody Scharf had fallen from?

24 A I read the, I read the reports.

25 Q Whose reports did you read?

1 A (No audible response.)

2 Q Let me go through them. Abbott?

3 A Abbott, Siri (phonetic), Karnick (phoentic).

4 Q And they described a flat rock; correct?

5 A They didn't have to get too detailed with me.

6 Again, I was very familiar with that location.

7 Q Okay. So you go there on that day. Did
8 Pagan point that area out to you or did you go there on
9 your own?

10 A He was there with me.

11 Q Did you walk down together?

12 A Some point we were together, I don't recall
13 exactly, you know, what we did at each moment we were
14 there. But, again, I knew exactly where the location
15 was.

16 Q Okay. And did Pagan indicate where off of
17 that flat rock Jody Scharf had fallen?

18 A I don't recall.

19 Q Well your job at this point in time in this
20 homicide investigation is to document the scene;
21 correct?

22 A Yes.

23 Q And would you agree with me that as a
24 detective, and you were the person put in charge of
25 documenting the scene for your department; correct?

1 A Yes.

2 Q And did you talk to the prosecutor's office
3 as to what you intended to do?

4 A At which time? The first time I went there?

5 Q Yes.

6 A I don't recall if I did.

7 Q Okay. Well for instance would you agree with
8 me that in any investigation it's important to document
9 everything as far as the scene?

10 A Yes.

11 Q Now you go there, you take various
12 photographs; correct?

13 A That's correct.

14 Q And you took photographs of a ledge
15 approximately ten feet below the flat rock; correct?

16 A Yes.

17 Q And did you take photographs of that ledge
18 because you were told that that's where a purse had
19 been retrieved?

20 A Yes.

21 Q Who told you that?

22 A One of the officers that was, I don't know. I
23 don't recall.

24 Q Did you see a diagram with regards to the
25 location of the purse?

1 A I did not.

2 Q Did Pagan, while he was there with you, show
3 you exactly where he had found the purse the night
4 before?

5 A I don't recall.

6 Q Why did you take photographs of that ledge
7 ten feet down?

8 A Because I was, I was made aware that the
9 pocketbook was recovered there and it's part of the
10 scene.

11 Q And the photographs that you took you found
12 certain items that had been left there from the night
13 before; correct?

14 A That's correct.

15 Q Specifically a credit card and a makeup case;
16 correct?

17 A That's correct.

18 Q Now I've gone over your notes concerning the
19 interview that you conducted with my client. Do you
20 have any notes with regards to you going to the scene
21 the next day?

22 A To take the photos?

23 Q Yeah. And your actions on the next day. Do
24 you have the notes associated with all the things you
25 did on that day?

1 A I have a typed report.

2 Q Okay. Something different than notes;
3 correct?

4 A That's correct.

5 Q And is that entitled Special Report,
6 Palisades Interstate Parkway Police?

7 A Can I see that?

8 Q I show you S-75. This is a typed written
9 report; correct?

10 A Correct.

11 Q And you didn't sign this report; correct?

12 A That's correct.

13 Q Are your notes signed?

14 A No.

15 Q Were these notes ever typed up into a special
16 report?

17 A No, they were not.

18 Q When you examined the scene tell the jury
19 what as left on that ledge from the night before?

20 A There was a credit card, a makeup case, and a
21 little brush, a little makeup brush.

22 Q And you're the guy that's sent out to
23 document the scene; correct?

24 A Yes.

25 Q And when you see those items you take

1 photographs; correct?

2 A Yes.

3 Q And you memorialize what you saw in your
4 report; correct?

5 A In which report?

6 Q Your special report.

7 A Can I refer to it?

8 Q Sure. Second paragraph.

9 A (Reviewing report.) Yes.

10 Q Is there any mention of a makeup brush there?

11 A No.

12 Q Why did you leave that out?

13 A I don't know.

14 Q Did you turn these photographs -- strike
15 that. Did you retrieve the makeup case, the credit
16 card, and the brush which was seen in photographs?

17 A No, I didn't, I did not retrieve them.

18 Q To your knowledge did anyone else retrieve
19 the makeup case, the credit card, and the makeup brush?

20 A I don't recall if anybody did.

21 MR. BILINKAS: Prosecutor, do you have those
22 items in evidence?

23 MR. MELLO: We have the photographs. We do
24 not have the items.

25 BY MR. BILINKAS:

1 Q You photographed those items because you
2 believed they were relevant to your criminal
3 investigation; correct?

4 A I believed that they certainly could be relevant.

5 Q For instance if they were my client's
6 fingerprints on the makeup case, that might indicate
7 that he threw them over; correct?

8 A Could.

9 Q Correct?

10 A Could be.

11 Q And the credit card, the brush, those items
12 could have been secured and retained by the prosecutor;
13 correct?

14 A Could -- are you asking me did they or could they?

15 Q Could they? They were right there, ten feet
16 below; correct?

17 A I don't know if any, well, yeah, they were there.
18 I don't know what they did, if they retrieved them, or
19 who retrieved them. I just photographed them.

20 Q And Pagan was with you when you saw those
21 items; correct?

22 A Yes.

23 Q Did he make any statements like oh, geez, I
24 didn't see those the night before. I missed them, or
25 words to that effect?

1 A I do not recall.

2 Q Did he indicate that he didn't see them due
3 to the dark conditions from the night before?

4 A I note that as a reason. I don't know if he, I
5 don't recall if he said that specifically to me.

6 Q Well you'll agree with me that in your
7 special report rescuing officers, who apparently did
8 not see items due to dark conditions it seemed. Did
9 you put that in your special report?

10 A I did.

11 Q So based on your investigation up to this
12 point there were numerous items that the police and the
13 rescued people had missed the night before; correct?

14 A Three items.

15 Q That you know of; correct?

16 A That I know of, yes.

17 Q And you only mentioned two of the items in
18 yours; correct?

19 A Yes.

20 Q Now do you believe that you did a complete
21 job in documenting the scene?

22 A I did the best that I could.

23 Q In your mind did you properly document a
24 potential crime scene?

25 A Yes.

1 Q You took various photographs of what was on
2 the top of the cliff; correct?

3 A Yes.

4 Q Can I assume that you took photographs of the
5 bottom of the cliff where Jody Scharf's body had
6 landed?

7 A I did not, no.

8 Q Would you agree with me that the top only
9 tells you half the story?

10 MR. MELLO: Objection to the form of the
11 question. The top could tell a lot of the story.

12 THE COURT: Sustained.

13 BY MR. BILINKAS:

14 Q Why didn't you document the bottom of the
15 cliff where the body had landed?

16 A Why didn't I personally? I didn't want to spend
17 too much time near that ledge.

18 Q When you say that ledge, would you agree with
19 me that if you go down along the river there's a road
20 that you can hike up to get to the exact point where
21 Jody Scharf's body had fallen?

22 A Yes.

23 Q And the closeness to the ledge or the danger
24 up top has nothing to do with you getting to where the
25 body was found; correct?

1 A It could have. I didn't go to where the body was
2 found.

3 Q Tell the jury why you didn't go there?

4 A I don't recall. I don't know. I didn't go.

5 Q You just did the top; correct?

6 A Yes.

7 Q And you had reviewed Pagan's report; correct?

8 A Yes.

9 Q Did you see Jody Scharf's shoes anywhere?

10 A No. I don't recall if I did. I don't believe I
11 did.

12 Q Did you look at the bottom of the cliff for
13 her shoes?

14 A I did not look for her shoes, no.

15 Q As a matter of fact you never to this day
16 never went to the location where the body was laying;
17 correct?

18 A That's correct.

19 Q Now when you saw the items on the ledge, the
20 credit card, makeup brush, makeup case, did you tell
21 representatives from the prosecutor's office that there
22 was potential pieces of evidence left at the scene?

23 A I don't recall if I told anybody. I did report
24 it. I don't recall.

25 Q Well do you recall going back there the same

1 day with investigators from the prosecutor's office and
2 the medical examiner?

3 A Yes.

4 Q And did you show the prosecutor's detective,
5 is that Alver?

6 A Yes. Well it was two of them there.

7 Q Okay. But I'm talking to you about Alver at
8 this point. Did you show investigator Alver that there
9 was potential evidence on the ledge approximately ten
10 feet below? Did you point that out to him?

11 A Well if you look at the photos we're all at the
12 ledge. We're all at the edge of the cliff. I don't
13 recall that I specifically said there's a credit card
14 and makeup case.

15 Q But Alver was there. Alver was in a position
16 to see the credit card, makeup case, makeup brush;
17 correct?

18 A Yes.

19 Q Now the medical examiner was there; correct?

20 A That's correct.

21 Q She wasn't there the night before; correct?

22 A I don't know if she was there the night before.

23 Q To your knowledge did she -- strike that.
24 Was she in a position to see those items left on the
25 ledge?

1 A Not to my knowledge.

2 Q Did she ever go down along the road that goes
3 by the river and hike up to the exact position where
4 the body had fallen?

5 A Not to my knowledge.

6 Q To your knowledge in reviewing all these
7 reports before you went out to document the scene were
8 there any photographs taken of the body before it was
9 removed from that spot?

10 A I don't know. I don't, not to my knowledge.

11 Q Would you agree with me that in a homicide
12 case the position of the body and the circumstances of
13 where it laid could be very important as far as an
14 investigation is concerned?

15 A Could be.

16 Q You know the crime shows, you see white chalk
17 lines outlining a body; correct?

18 A Sometimes, yes.

19 Q That's one of the first things that you do in
20 a homicide investigation is document the scene where
21 the body is found; correct?

22 A Correct.

23 Q And to your knowledge as you sit here today
24 no one has ever done that?

25 A I'm aware of arial photographs that were taken,

1 photographs where something is placed to show where the
2 body was. I'm aware of it, but I had nothing to do
3 with it.

4 Q Would you agree with me that photographs
5 should have been taken of the area where the body was
6 found before it was removed? From an investigative
7 standpoint.

8 A I was not there that night. I don't know if she
9 was deceased right then and there when the rescue was
10 got to her, I don't know.

11 Q Well, for instance, if she was clearly
12 deceased and there was no way to save her life would
13 you agree with me from an investigative standpoint that
14 photographs should have been taken of the body;
15 correct?

16 A I would have taken them.

17 Q The tree where the body supposedly struck;
18 correct?

19 A And you're talking the night that she fell?

20 Q Correct. Before the body is removed?

21 A If it was an obviously DOA, I might have done all
22 those things.

23 Q Did you talk to Pagan with regards to that
24 issue?

25 A No.

1 Q Never even brought that up?

2 A I don't recall if I ever brought it up. I don't
3 remember talking to him about it. If I did.

4 Q Now you testified on direct examination to
5 various statements that you said my client made with
6 regards to different women that he was dating. Two in
7 particular; correct?

8 A Yes.

9 Q Did you put that in your notes?

10 A No.

11 Q You didn't even look at your notes. Are you
12 sure that there's no reference to the two women that
13 you testified my client had discussed during the day?

14 A I didn't put it in my notes.

15 Q So there's nothing in your notes with regards
16 to my client saying that he was dating Scanlon and
17 Scofield; correct?

18 A Not in my notes.

19 Q There's nothing in your notes with regards to
20 my client saying he broke up with them shortly before
21 this accident; correct?

22 A Correct.

23 Q Another difference between you and Detective
24 Alver; correct?

25 A That's correct.

1 Q And as you sit here 18 years later even
2 though it's not in your notes you have a specific
3 recollection of my client talking about these two
4 girls, and about breaking up with them?

5 A It's a big case, so that kind of information will
6 tend to stick with you over the years. And I have a
7 specific recollection of him with these women that he
8 was with.

9 Q How did that come up?

10 A In the discussion of his open marriage. And --

11 Q Specifically what was asked of him?

12 A The exact question? I don't --

13 Q Yes.

14 A I don't recall the exact question.

15 Q Specifically what did he say about his
16 relationship with those women?

17 A He said he was breaking it off because he was in
18 the process of trying to reconcile with his wife.

19 Q Did he say when he was breaking it off?

20 A He said, he gave, he told us the dates that he
21 talked to them. So I would, that's probably the dates.
22 He did Labor Day and September 18th.

23 Q And none of that is anywhere, even remotely,
24 contained in the notes that you did of that interview;
25 correct?

1 A That's correct.

2 Q Did Detective Alver's report assist you in
3 recalling certain things that were not in your notes?

4 A Yes.

5 Q -- one of them?

6 A The specific dates, yes. The relationships, no.
7 That's an independent recollection I have. September
8 18th and Labor Day, yeah, that is his report assisted
9 me in that.

10 Q And as you testified on direct how much of
11 your testimony was based on another detective's report?

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

14 THE COURT: Sustained.

15 BY MR. BILINKAS:

16 Q As far as what my client said about the
17 specific instance, he says that he and his wife were
18 kissing and hanging on the flat rock; correct?

19 A Hanging?

20 Q Words to that effect.

21 A Oh, no words to that effect. I don't think he
22 mentioned the word hanging at all. He said they were
23 petting.

24 Q Hugging, not hanging.

25 MR. MELLO: You said hanging.

1 MR. BILINKAS: I said hanging. I apologize.

2 BY MR. BILINKAS:

3 Q They were kissing and hugging on the flat

4 rock; correct?

5 A Petting.

6 Q Words to that effect?

7 A I'll give you a word. They were petting. That's

8 what he told us.

9 Q Would you consider that kissing and hugging a

10 part of petting?

11 A Maybe.

12 Q And did he say words to the effect in his

13 interview that they were looking out over the river

14 enjoying the view?

15 A Yes.

16 Q And at some point in time he said words to

17 the effect that he was uncomfortable for whatever

18 reason; correct?

19 A That's correct.

20 Q And he basically told his wife that he was

21 going to get a blanket and some wine; correct?

22 A Yes.

23 Q And she said something to the effect don't

24 go. He gets up. She falls forward and he doesn't see

25 her anymore; correct?

1 A Yes.

2 Q And that's the gist of what he told you in
3 the interview with Alver; correct?

4 A Yes.

5 Q And again we don't have the exact words
6 because you can't remember exactly what he said;
7 correct?

8 A Quote, no.

9 Q Quote.

10 A No.

11 (Brief pause for defense counsel to retrieve
12 an exhibit.)

13 BY MR. BILINKAS:

14 Q I'm going to show you what's been marked in
15 evidence S-94, which is the handwritten statement of
16 Stephen Scharf on the night in question. Will you
17 agree with me that the specific questions that I just
18 asked you was basically a reiteration of what's
19 contained in his written report on the night in
20 question; correct?

21 A Yes.

22 Q And your time with him was how many hours?

23 A A couple of hours.

24 Q And you and Alver were asking specific
25 questions; correct?

1 A Yes.

2 Q Focusing on different details that you found
3 significant; correct?

4 A Yeah, for the most part.

5 Q Would you agree with me that with regards to
6 the basic facts concerning what happened regarding her
7 fall that he said the same thing to you that he said in
8 his description of incident?

9 A Not word for word, but --

10 Q Pretty close; correct?

11 A Pretty close.

12 MR. BILINKAS: Judge, are we going to take a
13 morning break?

14 THE COURT: Yes. Would you like to take it
15 now?

16 MR. BILINKAS: Yeah. I need to make --

17 THE COURT: We'll take a ten minute break.

18 (The jury exited the courtroom.)

19 (Ten minute recess.)

20 (The jury entered the courtroom.)

21 THE COURT: Welcome back ladies and gentlemen
22 of the jury. You may be seated. You may continue.

23 MR. BILINKAS: Thank you, Judge.

24 BY MR. BILINKAS:

25 Q Detective, on the day after Detective Alver

1 is on the scene with you; correct?

2 A Yes.

3 Q He was in a position to observe everything
4 that you observed; correct?

5 A That's correct.

6 Q Who was in charge? Can you tell the jury
7 what the hierarchy is as far as local police versus the
8 county prosecutor's office?

9 A In a situation like this the local police would be
10 the first responder. They would evaluate the scene.
11 If there's anything out of the ordinary, such as in
12 this case, a call would be made to the prosecutor's
13 office who would determine whether or not they would
14 send a representative over to assist. And if that
15 happens and in a case like this the prosecutor's office
16 homicide squad would take the lead.

17 Q And so when Detective Alver from the homicide
18 section was called to the scene with you, you agree
19 with me, he was the one in control; correct?

20 A Yes.

21 Q Now when you took a statement from my client,
22 an oral statement, he specifically told you and
23 Detective Alver that on the night before this incident
24 that he and his wife, Jody, had gone out to dinner
25 together; correct?

1 A He didn't use the word dinner. They went out late
2 the night before for something to eat.

3 Q Okay.

4 A He said 11:30. I wouldn't call dinner at 11:30
5 dinner.

6 Q I stand corrected. But he did tell you and
7 Alver in no uncertain terms that on the night before he
8 and his wife had gone out together; correct?

9 A Yes.

10 Q And he even gave you a specific restaurant or
11 location that you and Alver could have checked out to
12 make sure he wasn't lying; correct?

13 A That's correct.

14 Q To your knowledge did anybody check out that
15 fact?

16 A Not to my knowledge.

17 Q You testified on direct to statements my
18 client made concerning why he had the hammer in his car
19 on that night; correct? Do you recall your testimony?

20 A Yes.

21 Q And that statement regarding a hammer was
22 made in the presence of Detective Alver from the Bergen
23 County prosecutor's office; correct?

24 A Yes.

25 Q Specifically told you according to your

1 direct, and correct me if I'm wrong, that he said he
2 used that hammer to fix a drawer; correct?

3 A That's correct.

4 Q And Alver was sitting right next to you when
5 he said that; correct?

6 A Correct.

7 Q Now did you put anywhere in your notes any
8 conversation with regards to this hammer?

9 A No.

10 Q You don't have to look?

11 A No, I know it's not there.

12 Q Are the statements regarding that hammer in
13 the conversation with my client Alver's report?

14 A Yes.

15 Q And did you use Alver's report to refresh
16 your recollection 18 years later with regard to the
17 conversation?

18 A No. I recall specifically the hammer being there
19 and his explanation for it, because it's unusual to me
20 that it would be in the picnic stuff. But then that
21 could be the reason why it stuck with me, but I have an
22 independent recollection of that hammer and what was
23 said and why it was there.

24 Q And you don't recall the exact words;
25 correct?

1 A Exact words, no.

2 Q You don't recall exactly how that
3 conversation came up at this point; correct?

4 A Yeah, I do. We asked him --

5 Q Who we?

6 A Oh, both of us were present, so either one of us
7 or, you know, both of us. You know, we asked him to
8 explain the clawhammer.

9 Q And he explained to both you and Alver that
10 he used the hammer to fix a drawer that same night;
11 correct?

12 A That's what he said.

13 Q And you went to his house the following day;
14 correct?

15 A That's correct.

16 Q And Alver was with you; correct?

17 A Correct.

18 Q Did you or Alver ever take a look at that
19 specific drawer that he was talking about the day
20 before?

21 A I didn't, no.

22 Q Did Alver?

23 A I can't speak for Detective Alver. And the other
24 detective.

25 Q But you would agree with me that when you

1 went to the house the next day, when he consented to
2 allow you into his house that that drawer was available
3 to you; correct?

4 MR. MELLO: -- next day, counsel.

5 MR. BILINKAS: Two days?

6 MR. MELLO: September 22nd.

7 BY MR. BILINKAS:

8 Q September 22nd, irrespective, that drawer was
9 available to you; correct?

10 A Correct.

11 Q If it had any evidential value it could have
12 been taken and put into evidence by you; correct?

13 A Not by me, no.

14 Q By Alver.

15 A Yes.

16 Q By the Bergen County prosecutor's office;
17 correct?

18 A Correct.

19 Q And to your knowledge did Bergen County
20 homicide Detective Alver take that drawer and take it
21 into evidence?

22 A Not to my knowledge.

23 Q Would you agree with me that based on your
24 law enforcement experience that if the drawer had been
25 fixed that that could have been either proving or

1 disproving by one of the many experts that you've used
2 over the years?

3 A Based on my law enforcement experience I would
4 conclude if it was fixed, yeah, then fixed.

5 Q That is explanation as to why he had that
6 hammer was reasonable; correct?

7 A It could be reasonable. He said he used it to fix
8 a drawer, so.

9 Q Now you started your interview with my client
10 at about, what, 10:56 in the morning on the 22nd?

11 A 9:56.

12 Q Excuse me. I stand corrected. 9:56 in the
13 morning you start your interview with my client;
14 correct?

15 A Yes.

16 Q What time did you go to his house that night?

17 A Can I refer?

18 Q Sure. Please.

19 A (Reviewing report.)

20 Q Are you referring to Alver's report or your
21 notes, for the record?

22 A I'm going to refer to my notes. Now which times
23 specifically are you asking for?

24 Q What time did you go enter my client's house
25 on the same day?

1 A 22:00 hours.

2 Q Which is what time?

3 A 10:00.

4 Q So 10:00 in the morning to 10:00 at night?

5 A Is what?

6 Q Let me back up. I may have misunderstood
7 you. My client comes to the prosecutor's office to
8 give a statement just before 10:00 in the morning;
9 correct?

10 A That's correct.

11 Q And he was basically at the prosecutor's
12 office the entire day; correct?

13 A Basically.

14 Q And at some point in time after he signed
15 that consent form, and what's the date -- strike that.
16 What's the time on that?

17 A For the premises the time he signed it was 11:15
18 a.m.

19 Q And what time did you go to his house with
20 him?

21 A Did I arrive there?

22 Q Yes.

23 A 10:00. 10:00 p.m.

24 Q At night.

25 A At night.

1 Q So when you arrived there my client arrived
2 with other members from the prosecutor's office;
3 correct?

4 A I don't recall who he arrived with. I don't know.
5 I don't recall.

6 Q Do you recall him walking in the house with
7 law enforcement officers?

8 A I recall him being in the house at the time we
9 searched, yes.

10 Q No, no. Do you recall him entering the house
11 with law enforcement officers before the search took
12 place?

13 A I don't recall him entering with law enforcement
14 officers. I don't recall.

15 Q For instance, in your law enforcement
16 experience, when you ask someone to sign a consent to
17 search their house it would be unlikely that you would
18 let that person go back to his house and possibly
19 destroy pieces of evidence until you search it;
20 correct?

21 A Correct.

22 Q But as you sit here today you don't recall
23 where my client is when you first entered the house?

24 A Exactly, he was in the house.

25 Q You don't recall if he went in the house with

1 other persons from the law enforcement sector?

2 A I don't recall.

3 Q Okay. Fair enough. And who did you enter
4 the house with?

5 A Detective Alver, Detective Hernest (phonetic).
6 And that's all I remember.

7 Q How about Lieutenant Ehrenberg from the
8 Washington Township police department?

9 A Him too.

10 Q And as we had indicated you had spoken to
11 Washington Township a day or so before; correct?

12 A Correct.

13 Q And before you went in to search my client's
14 house everyone was briefed as to what you were going to
15 do inside; correct?

16 A Correct.

17 Q What specific items you were looking for;
18 correct?

19 A I can't speak to that. I don't know.

20 Q Did you have an idea of what specific items
21 you were looking for?

22 A I did, yeah. Specific, yeah, general, yeah.

23 Q Anything to do with a possible homicide;
24 correct?

25 A Correct.

1 Q And Ehrenberg was under the same impression;
2 correct?

3 A He should have been --

4 MR. MELLO: Objection. How -- I'm sorry.
5 That's asking him to speculate --

6 THE COURT: Sustained.

7 MR. MELLO: -- that person's mind. Thank
8 you.

9 BY MR. BILINKAS:

10 Q Irrespective of what anyone knew or didn't
11 know would you agree with me that at this point in time
12 it was clear to everyone that this was a homicide
13 investigation?

14 A Yes.

15 MR. BILINKAS: Nothing further.

16 THE COURT: Redirect?

17 MR. MELLO: Not at all, thank you.

18 THE COURT: You may step down.

19 (Witness excused.)

20 THE COURT: Please collect the exhibits up
21 here and call the next witness.

22 MR. MELLO: Yes, sir. State calls Captain
23 Joseph Hornyak.

24 (Pause to collect exhibits.)

25 THE COURT: Good morning.

1 THE WITNESS: Good morning, Your Honor.

2 THE COURT: Please step up here, face the
3 court clerk.

4 J O S E P H H O R N Y A K, STATE'S WITNESS, SWORN

5 THE CLERK: Please state your name and spell
6 your last name.

7 THE WITNESS: Joseph Hornyak, H-O-R-N-Y-A-K.

8 THE CLERK: Thank you.

9 THE COURT: Please have a seat.

10 THE WITNESS: Thank you.

11 THE COURT: You may begin.

12 MR. MELLO: Thank you, Your Honor.

13 DIRECT EXAMINATION BY MR. MELLO:

14 Q Good morning Captain.

15 A Morning, sir.

16 Q If you would, sir, would you tell us by whom
17 you are presently employed?

18 A Yes, sir. I'm employed with the Bergen County
19 prosecutor's office.

20 Q Can you tell us in what capacity you are
21 presently employed by the office of the Bergen County
22 prosecutor?

23 A I'm a captain of detectives.

24 Q With respect to your rank as captain of
25 detectives, can you tell the jury your duties at such

1 rank in the Bergen County prosecutor's office?

2 A Of course. My main responsibility is the
3 oversight of anywhere from seven to eight different
4 reactive squads. And reactive I mean crimes that occur
5 and that we respond and lend assistance in the
6 investigation.

7 Squads such as sex crimes, computer crimes,
8 white collar crimes, major crimes which consist of
9 fatal accident, arson, and homicide. Also cold case
10 homicide investigations, property and evidence as well.

11 Those are my main responsibilities, but as a
12 captain you're considered administration and there's
13 also administrative duties that need to be performed
14 each and every day and my time is divided amongst
15 administrative duties and also the oversight of the
16 squads, case supervision, personnel supervision.

17 Q Detective, I'd like to direct your attention
18 to 1992. All right?

19 A Sure.

20 Q Specifically directing your attention to
21 September 22, 1992. Understood?

22 A Yes, sir.

23 Q Can you tell us if you were employed by the
24 Bergen County prosecutor's office as a law enforcement
25 officer at that time?

1 A Yes, sir. I was.

2 Q And while I'm at that point can you tell us
3 when you began your career with the Bergen County
4 prosecutor's office?

5 A In May of 1988.

6 Q Again, moving to September 22, 1992, can you
7 tell us what your rank was at that time?

8 A Detective or county investigator.

9 Q Can you tell us the specific squad assignment
10 that you were attached to at that time?

11 A Sure. At that time I was assigned to the sex
12 crimes, child abuse squad.

13 Q On September 22, 1992 did you have occasion
14 to meet an individual known as Stephen Scharf?

15 A Yes, sir.

16 Q Do you see him in court?

17 A Yes, sir. I certainly do.

18 Q Could you point him out please?

19 A He's wearing a navy suit sitting at counsel table.

20 MR. BILINKAS: Stipulate he's --.

21 THE COURT: All right. The record will so
22 identify the defendant.

23 BY MR. MELLO:

24 Q With respect to your meeting with Mr. Scharf
25 on September 22, 1992, can you tell us if that was for

1 the purpose of interview?

2 A Yes, sir. It was.

3 Q And with respect to that interview is it fair
4 to say that Mr. Scharf was in all ways cooperative and
5 consenting to that interview?

6 A Yes, sir.

7 Q Now can you tell us first where you met with
8 Mr. Scharf on the 22nd of September 1992?

9 A Sure. In this very building, second floor,
10 prosecutor's office, in an interview room within I
11 believe it was 205, room 205.

12 Q And can you give the jury a general
13 understanding of the physical layout of the interview
14 room that you met Mr. Scharf in?

15 A Yes. I would describe it as the size of a small
16 bedroom, anywhere from 12 by 12 with solid walls and
17 possible I think at that time there's an observation
18 room window in that interview room.

19 Q Now with respect to that interview room and
20 your conversation with Mr. Scharf did you conduct that
21 conversation in the room that you've described alone or
22 were any other police officers with you and Mr. Scharf
23 when you had the conversation?

24 A Initially alone.

25 Q Now it's fair to say, is it not, that the

1 conversation that you had with Mr. Scharf involved an
2 investigation into the death of his wife, Jody Ann
3 Scharf?

4 A Yes, sir.

5 Q Now if you would can you give the jury a
6 sense of how the conversation with Mr. Scharf on the
7 22nd of September, 1992, began?

8 A I introduced myself to Stephen, advised him of the
9 purpose of the interview. Took some general background
10 information, name, address, employment, various family
11 history. And then got into the issue under
12 investigation.

13 Q Now as the conversation began did you take
14 the opportunity to take certain notes regarding
15 information that Mr. Scharf was giving you?

16 A Yes, sir. One of the first things I did was to
17 advise Stephen that I wanted to take a verbatim step-
18 by-step event what occurred on the particular day in
19 question, and this was the 20th of September 1992. I
20 asked him to tell me everything that he did from the
21 time that he got up until the event itself when his
22 wife went off the cliff.

23 Q Detective, I'm showing you what's been marked
24 S-49. Do you recognize that document?

25 A Yes, sir. I do.

1 Q What do you recognize that document to be?

2 A This is the statement of events that I just spoke
3 about. This is a, well it's a legal piece of paper,
4 naturally. This is a copy of my handwriting and the
5 events as I asked Stephen to relate to them.

6 Q Can you tell the jury what he related to you
7 as captured in that document?

8 A Narrative, or would you like me to read it, sir?

9 Q If you would --

10 MR. BILINKAS: --

11 MR. MELLO: I'm sorry. I was just about to
12 say something I don't think you were going to object
13 to.

14 MR. BILINKAS: Go ahead.

15 MR. MELLO: Let me see if I'm right.

16 BY MR. MELLO:

17 Q Would you please narrate to the jury what he
18 told you? Okay?

19 A Okay. Again, I asked Stephen to tell me
20 everything he did from the time he got up until the
21 time that the event itself, his wife going off the
22 cliff.

23 MR. BILINKAS: Judge, I would ask if he's
24 referring to the document that the record reflect that.

25 THE COURT: You need to refer to that

1 exhibit?

2 THE WITNESS: Yeah, at times. I mean if
3 you'd like me to go line-by-line or narrative.

4 Narrative is fine.

5 BY MR. MELLO:

6 Q If you would. Lets start to tell the jury
7 what you recall that Mr. Scharf --

8 A Okay.

9 Q -- told you. And if you need that document
10 to refresh your recollection --

11 A Well I prefer, I prefer it so I can --

12 Q -- just let us know. Okay.

13 THE COURT: You need to refer to the document
14 to refresh your recollection?

15 THE WITNESS: Of course, sir. Yes.

16 THE COURT: Then please do so, but let us
17 know when you're referring to the document.

18 THE WITNESS: Okay. Well it began by saying
19 that he got up and he had a catch with his son. They
20 planted, when I say they, I'm sorry, Jody and him
21 planted some mums. Again, we're talking about Sunday,
22 September 20th. He showered, shaved, fixed a drawer in
23 his kitchen. And then just packed some stuff to get
24 ready to go to the cliffs.

25 He waited for Jody. At some point Jody had

1 to drop off his son, Jonathan, at a friend's house. He
2 hung out at the house. He read some professional
3 literature, a liability handbook, watched some
4 football, and then when Jody came back they went to the
5 park, as he describes it.

6 And that was it. The accident happened. He
7 didn't get into great detail, but this is what's
8 contained in this verbatim statement.

9 BY MR. MELLO:

10 Q All right. Now those notes are made
11 contemporaneous with the information that you just
12 testified to?

13 A Well yes. This is the statement, as I said. It's
14 verbatim from what he had told me. I had told him that
15 I'd be writing down everything he said verbatim.

16 Q Thank you.

17 A And that's what this is.

18 MR. MELLO: Now, Your Honor, I would like to
19 have that document read into evidence as a verbatim
20 statement.

21 THE COURT: Any objection?

22 MR. BILINKAS: Judge, it's notes.

23 THE COURT: I'm sorry?

24 MR. MELLO: The testimony is it's the
25 verbatim statement that he wrote contemporaneously with

1 the conversation at this point.

2 MR. BILINKAS: Judge, it's notes. I don't
3 think --

4 THE COURT: Prosecutor.

5 MR. MELLO: He just testified and established
6 that these are verbatim notes made contemporaneous with
7 the information that he's just narrated to the jury. I
8 don't --

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

10 BY MR. MELLO:

11 Q Would you please just read that information?

12 A Read it --

13 Q Yes.

14 A Sure. I had a catch with my son. Jody and I
15 planted some mums. I kind of straightened up my garage
16 and bedroom. Showered, shaved. Fixed a drawer in the
17 kitchen. Just packed stuff up and got ready to go to,
18 then waited while Jody took Jonathan to his friend's
19 house. And then I read some professional literature or
20 reliability handbook and watched some football.

21 And then we drove, she came home and we left
22 and then we arrived at the park. And then that, then
23 the accident. That's it, you know, without going into
24 detail like going to the bathroom, putting on, trying
25 to find CNN.

1 Q Now following the discussion as you testified
2 thus far, can you tell us how the conversation with Mr.
3 Scharf now evolves?

4 A I began asking more direct questions.

5 Q Please tell us about it.

6 A Got into a little more detail as to what happened
7 and what happened on September 20th. And we actually
8 started with the plan or arrangements they had made on
9 the 19th, Saturday evening the 19th. The plan was to
10 have a picnic and to go into the city. But to go to
11 the Rockefeller Lookout.

12 Stephen worked that day at his regular job,
13 arrived home at approximately 5:30 or so and found Jody
14 asleep I believe on the couch. So they changed plans
15 and decided to go the following day.

16 Getting into the events on Sunday the 20th,
17 he said he left the house, and this would be
18 Hackettstown, approximately 6:00 and they drove to the
19 park. On the way they had a discussion regarding the
20 pending divorce.

21 They arrived at the park, sat in the car,
22 began kissing, making out, and then eventually migrated
23 out to the rocks. Again they engaged in some petting
24 and kissing and at some point Stephen stated that he
25 was uncomfortable and wanted to go back to the car to

1 get a blanket and a bottle of wine. Soon, or right
2 after that, Jody asked him to, not to go and protested
3 and attempted to get up, getting to a hip and then into
4 a squatting position. And then she tripped forward
5 over cliffs.

6 Q Did he during that discussion tell you in
7 terms of lighting conditions when that fall occurred?

8 A Yes, sir. At the time of the fall, or actually I
9 believe at the time he that he was starting to go back
10 to the car for the blanket and a bottle of wine it was
11 dark at that time.

12 Q Did you during this conversation discuss his
13 relationship with his wife at this time?

14 A Yes, sir.

15 Q What did he tell you regarding that subject
16 matter?

17 A Well we had talked about the fact that there was a
18 pending divorce. He described his relationship as
19 improving but distant due to a couple of different
20 factors. He indicated that he had been seeing some
21 other women and stated, claimed that he believed that
22 Jody also was possibly seeing another, another
23 individual.

24 We talked about two individuals in
25 particular, a Terry Scofield and a Cathy Scanlon and

1 that we talked about how he had attempted to break off
2 those relationships with those individual women.

3 Q Did he indicate in the conversations with you
4 regarding Scanlon and Scofield and his breaking up with
5 those persons, did he indicate when those events may
6 have occurred?

7 A Yes. I believe --

8 MR. BILINKAS: Objection to the form of the
9 question.

10 MR. MELLO: Did he indicate when?

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

12 THE WITNESS: Scofield, Labor Day weekend,
13 that would be September 1992. Scanlon I believe was
14 September 18, Friday night, 1992.

15 BY MR. MELLO:

16 Q And did he during this conversation tell you
17 what he said his present feelings were for his wife?

18 A That he loved her and was looking to reconcile.

19 MR. MELLO: Thank you, Captain.

20 THE WITNESS: Yes, sir.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION BY MR. BILINKAS:

23 Q Captain, you have a -- you took two
24 statements from Stephen Scharf on September 22nd?

25 MR. MELLO: I'm going to object to the form

1 of that question. As I understood the testimony it was
2 one continuing conversation.

3 THE COURT: All right. Rephrase.

4 BY MR. BILINKAS:

5 Q This continuing conversation, one part of it
6 has word for word statements of what you say my client
7 said; correct?

8 A Yes, sir.

9 Q Would you agree with me that the other part
10 of this statement isn't word for word?

11 A The way I begin my interviews is I start off with
12 a verbatim. That's how -- and then I take notes --

13 Q That's very general; correct?

14 A Well no, this is not general. What I'm getting at
15 is I tell them and the instructions are very, very
16 specific, tell me everything you did from the time that
17 you woke up up until the time your wife went off the
18 cliffs. And he had an opportunity to tell me as much
19 detail as possible what happened.

20 Q Once I'm done with that then I start my
21 interview, a general interview, where I interview, I
22 ask him questions, I record answers. I write them down
23 and I take notes. So I would say that this would be
24 his statement, his words, and then the rest of the
25 interview is a general interview.

1 Q Okay. And you said in the general interview
2 you would take notes.

3 A Yes, sir.

4 Q I assume you have those notes?

5 A No, sir. I don't.

6 Q You don't have the notes that you took when
7 you were taking my client's general interview?

8 A Sir, per office guidelines --

9 Q Policy?

10 A -- attorney general guidelines and directives,
11 notes are taken in an interview and then we write a
12 report. You write a report, you may keep your notes,
13 you may hold your notes. You may discard your notes
14 depending on --

15 Q On what?

16 A -- circumstances. Well, depending on, once you
17 review your notes and you check it for accuracy
18 generally they're discarded. Sometimes they're not.
19 Sometimes they're preserved.

20 Q Is it the Bergen County prosecutor's office
21 policy to destroy notes after --

22 MR. MELLO: Objection.

23 THE COURT: Is there an objection?

24 MR. MELLO: Yes, sir. Objection --

25 THE COURT: What's your objection?

1 MR. MELLO: -- to the form of the question as
2 the policy. This was a reference made by the witness
3 in 1992.

4 MR. BILINKAS: He's talking about the
5 attorney general. I want to know what the prosecutor's
6 policy is, Judge.

7 THE COURT: All right. Do you know the
8 policy?

9 THE WITNESS: I don't believe there's any
10 policy regarding the preservation of notes up until
11 just recently.

12 BY MR. BILINKAS:

13 Q Recently is what?

14 A There's, I believe a supreme court decision on
15 which, which there are police reports should be, shall
16 be kept and preserved for discovery purposes.

17 Q Notes should be --

18 A All notes, yes, sir.

19 Q Okay. Is that because -- strike that.

20 A Okay.

21 Q For whatever reason you decided not to keep
22 your notes with regards to the brunt of your interview
23 with my client; correct?

24 A Counsel, I can't --

25 MR. MELLO: Objection to the form.

1 THE COURT: What is objectionable? What is
2 your --

3 MR. MELLO: The brunt, the characterization.

4 BY MR. BILINKAS:

5 Q Everything after this brief narrative that
6 you've read to this jury, everything after that that's
7 contained in your typed memorandum you decided to
8 destroy those notes?

9 A No, I can't. I can't honestly say that I
10 destroyed them. I'm not, and there's other things that
11 were mentioned in that interview that are not only in,
12 that are in that report and in the file.

13 Q My specific question to you, do you have any
14 notes with regards to the rest of your interview?

15 A I do not have any notes --

16 Q And what happened --

17 A -- with me right now, no, I do not.

18 Q Do you have any back in your office?

19 A I don't know, sir. I may have gotten rid of them
20 over the years I may have not. I think everything I
21 have is what you have.

22 Q For the last 16 years you've been waiting to
23 arrest my client; correct?

24 MR. MELLO: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. BILINKAS:

2 Q Have you ever told anyone in an interview
3 that for the last 16 years you've been waiting to
4 arrest my client?

5 MR. MELLO: Objection, Your Honor. Beyond
6 the scope.

7 MR. BILINKAS: Beyond the scope, Judge?

8 THE COURT: Lets go to sidebar.

9 (At sidebar.)

10 MR. BILINKAS: Judge, this witness has made
11 various statements to different people which I
12 document, showing his bias against my client in
13 thinking that he got a pass for the last 16 years. And
14 I think that goes to his credibility and this is cross
15 examination.

16 MR. MELLO: And it's beyond the scope of
17 direct examination. And I don't know that it bears on
18 his credibility.

19 THE COURT: Are you going to ask him a
20 specific question?

21 MR. BILINKAS: Yes.

22 THE COURT: He said something to a particular
23 person?

24 MR. BILINKAS: Yes, Judge. And I have a
25 videotape of him saying that stuff.

1 MR. MELLO: Are you talking about the
2 interview with Jonathan Scharf?

3 MR. BILINKAS: Jonathan Scharf. He made
4 statements with regards to, again, that clearly shows
5 his bias against my client and --

6 THE COURT: Well did he say it in that
7 interview, that he's been waiting --

8 MR. BILINKAS: Yes.

9 THE COURT: -- all this time?

10 MR. BILINKAS: Yeah. For 16 years.

11 THE COURT: All right. I'll allow it then.

12 (Sidebar concluded.)

13 THE COURT: The objection is overruled. The
14 witness may answer the question.

15 THE WITNESS: Yes, sir.

16 BY MR. BILINKAS:

17 Q Did you specifically state in a official
18 interview that for 16 years my client got a pass, or
19 words to that effect?

20 A In an official interview to who?

21 Q In any interview involving this case did you
22 ever tell anyone that my client got a pass for 16
23 years?

24 A I'm not sure.

25 Q What?

1 A I'm not sure. Perhaps. Not sure. The only
2 person I could think of is one individual.

3 Q Jonathan Scharf; correct?

4 A Yes. That would be the son of Stephen, yes.

5 Q Do you recall telling Jonathan Scharf that
6 his dad got a pass for 16 years?

7 A It's possible.

8 Q Do you recall telling him that he got a
9 payday because he received a \$700,000 insurance policy?

10 A Yeah, I think so. Something to that effect, yes.

11 Q A payday you called it; correct?

12 A Well it's a substantial amount of money.

13 Q And did you tell Jonathan Scharf words to the
14 effect that he had to grow up without his mother?

15 A Yeah. He was ten years old at the time, and yeah,
16 he grew up without his mother. Yeah, I think that's --

17 Q And did you tell him over and over again that
18 you were trying to help his mom?

19 A Perhaps. If you show me a transcript of the
20 interview that I allegedly had with him. I don't
21 remember having a formal interview. I remember at one
22 point sitting at an interview that was being conducted
23 and towards the end speaking, and meeting with
24 Jonathan, yes.

25 Q I'm going to show you S-275.

1 A Okay. Direct me to the page, sir.

2 Q Page 119.

3 A (Reviewing document.) Okay, sir.

4 Q Do you recall walking into the interview room
5 with Jonathan Scharf?

6 A Yes, sir.

7 Q At or about this point in the interview, page
8 119?

9 A Yes, sir.

10 Q And do you recall telling Jonathan Scharf,
11 okay, look at once before I let you look at it anymore
12 or write, now, listen, like I said, your dad got a pass
13 for 16 years. It's up to you. I mean, you know,
14 you're in a position right now and I know this like
15 this hits like you a ton of bricks, just like it hit
16 him, like a ton of bricks. But in the back of his mind
17 you can't tell me that he hasn't been waiting for this
18 day. I know he has. I know I have.

19 A Yes, sir.

20 Q You'd been waiting for 16 years at this point
21 for Mr. Scharf to be arrested; correct?

22 A Yes, sir.

23 Q It bothered you for 16 years for whatever
24 reason that he hadn't been arrested; correct?

25 A Certainly. As a homicide detective and you work

1 cases in which you strive and build cases to see that
2 justice is done. This is definitely one of them, yes.
3 Yes, sir.

4 Q And on this day, the day of the arrest, five
5 detectives from your office interviewed Jonathan
6 Scharf; correct?

7 A At certain times, yes.

8 Q And you were the ranking detective, the
9 highest ranking member in the office that took part in
10 that interview; correct?

11 A Yes, sir.

12 Q Can you tell me why there were five different
13 investigators interviewing this kid?

14 A Well, sir, I don't think there was five different
15 investigators interviewing him for the whole length of
16 time. I think at some point initially that there was
17 two, perhaps three. I'm not sure. I'd have to go
18 through the whole statement, which I haven't gone
19 through. I haven't had a chance to look at this
20 statement yet.

21 Q Okay. And you were in charge of this
22 interview; correct?

23 A In charge of the interview --

24 Q You were the ranking detective handling this
25 interview; correct?

1 A No. I wouldn't agree to that. There was --

2 Q Who was in charge?

3 A Well the people who were assigned to interview
4 him. There's various interviews going on at that same
5 time.

6 Q And what was your job --

7 A My job was --

8 Q -- with Jonathan's interview?

9 A -- overseeing, overseeing --

10 Q Everyone.

11 A Overseeing everything. Yes.

12 Q Okay.

13 A Yes.

14 Q And at some point in time, particularly when
15 Jonathan Scharf was not admitting to acknowledging any
16 observations of abuse, you walk into the interview
17 process while it's already going on; correct?

18 A Yeah. The interview was in progress, sir.

19 Q Approximately 114 pages worth of interview.
20 Three hours where this kid had not said anything to
21 help you with your objection. Right?

22 MR. MELLO: Objection to the form of the
23 question. That's not accurate.

24 THE COURT: Sustained.

25 BY MR. BILINKAS:

1 Q Three hours he did not say anything specific
2 with regards to observing any abuse by his father,
3 either against him or his mother; correct?

4 MR. MELLO: Objection.

5 THE COURT: Sustained.

6 BY MR. BILINKAS:

7 Q Three hours you walk into the interview and
8 make that statement about you waiting 16 years;
9 correct?

10 A Yes, sir.

11 Q Now would you agree with me that it would be
12 improper for a representative of the prosecutor's
13 office to lie to a witness while they're interviewing
14 them? Improper; correct?

15 A Yes, sir.

16 Q How about mislead that witness? Improper;
17 correct?

18 A Yes, but not this witness.

19 Q I meant generally. It would be improper for
20 you or any other member of your office to mislead a
21 witness when you're taking a statement; correct?

22 A A witness, yes, sir.

23 Q And would you agree that it would be improper
24 to ask that witness to guess about something; correct?

25 MR. MELLO: Objection to the form of that

1 question, Your Honor.

2 MR. BILINKAS: Interview improper --

3 MR. MELLO: It's not really that. It's every
4 interview is different and the word guess would be an
5 approximation.

6 THE COURT: Rephrase your question.

7 BY MR. BILINKAS:

8 Q Would it be improper to attempt to make a
9 young man feel guilty for his mother's death when
10 you're interviewing him?

11 MR. MELLO: Objection, Your Honor, to the
12 form of the question to making him --

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

14 BY MR. BILINKAS:

15 Q Would it be improper for you or any other
16 member of the prosecutor's office to attempt to make a
17 young man feel guilty for his mother's death to get a
18 statement from him?

19 A Are you implying that I did this, sir?

20 Q I'm asking you a specific question. Would it
21 be improper, you're in charge of the whole interviewing
22 process.

23 A Well we're talking about a specific interview.

24 Right? We're talking about Jonathan.

25 Q Correct.

1 A Okay. I don't think there was any attempt
2 whatsoever to make him feel guilty for what he may or
3 may not have done. Not --

4 Q May or may not have done?

5 A Yes.

6 Q Did you say may not have done?

7 A May or may not have done. That's why were' here
8 in court. Okay.

9 Q So you agree --

10 A If you want me to offer my opinion, I'm trying to
11 not do that.

12 Q We know what your opinion is, don't we?

13 MR. MELLO: Objection, Your Honor. That's
14 inappropriate.

15 THE COURT: Sustained.

16 BY MR. BILINKAS:

17 Q Would it be improper for someone in your
18 office to attempt to make a kid feel guilty about his
19 mother's death when taking his statement?

20 MR. MELLO: Objection, again.

21 BY MR. BILINKAS:

22 Q Would it be improper? Yes or no.

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

24 THE WITNESS: Yes. I would agree with that.

25 But certainly that's not the case here.

1 BY MR. BILINKAS:

2 Q Would it be improper to only show a witness
3 -- strike that. Do you always give witnesses details
4 of a homicide investigation when you're attempting to
5 question them?

6 MR. MELLO: Objection to the form of the
7 question. Do you always.

8 THE COURT: Sustained. I've given you
9 adequate leeway.

10 MR. BILINKAS: Yes, sir.

11 THE COURT: In terms of cross examination. I
12 think you're going to have to narrow it down and
13 specifically focus those questions as to the interview
14 with this witness.

15 BY MR. BILINKAS:

16 Q The statement that you read to the jury,
17 S-49, for whatever reason my client says something
18 about not going into specific detail; correct?

19 A I'm sorry. I don't understand your question.

20 Q In S-49, your verbatim statement, would you
21 agree with me that my client --

22 A At the bottom here?

23 Q Right. At the bottom, says something to the
24 effect --

25 A Yeah, without going into detail, going to the

1 bathroom, putting on, trying to find CNN.

2 Q Okay. And will you agree with me that after
3 this statement you interviewed him for over an hour;
4 correct? Regarding the other statement.

5 A (No audible response.)

6 Q How long did that statement that you
7 testified to take?

8 A What was covered in my memorandum?

9 Q Right.

10 A Specifically my memorandum?

11 Q Correct.

12 A Is that what you're asking?

13 Q Correct. The specific questions that you
14 answered for the prosecutor.

15 A About an hour.

16 Q And that wasn't videotaped or recorded;
17 correct?

18 A No, sir.

19 Q Okay. And you have no notes with regards to
20 that conversation; correct?

21 A Just a memorandum.

22 Q Now with regards to that portion of your
23 interview he basically says with regards to the 20th
24 that they drove to the Rockefeller Lookout Center;
25 correct?

1 A Yes, sir.

2 Q And you mentioned on direct the word petting;
3 correct?

4 A Yes, sir.

5 Q Did you use the word petting?

6 A I used the word petting in direct, yes, sir.
7 Making out, petting.

8 Q My question is in your memorandum regarding
9 that conversation did you use the word petting?

10 A It's not in my memorandum. Making out is in my
11 memorandum.

12 Q And why did you use the word petting on
13 direct as opposed to what's in your memo? If you know.

14 A They were fooling around. They're making out.
15 They were, according to him, they were, it's just a
16 word. A descriptive word, making out.

17 Q That's not the word that he told you;
18 correct?

19 A It may have been.

20 Q And it may not have been.

21 A And it may not have been.

22 Q And you didn't use the word petting in
23 your --

24 A No. I specifically used making out.

25 Q And before you testified did you talk to

1 Lynam with regards to what word he said, Stephen
2 Scharf?

3 A No.

4 Q Do you know as you sit here today that in his
5 interview the word petting was used?

6 A No, sir.

7 Q And as you sit here today you just decided to
8 use petting versus what you put in your report;
9 correct?

10 A No. I just didn't decide. As I said before he
11 may have used that in his interview. I put making out.
12 To me it's the same thing. Petting, making out. Same.

13 Q Well did you put the word making out in
14 quotes?

15 A Yes, sir.

16 Q And why do you put quotes around a specific
17 phrase?

18 A It's what he said.

19 Q His specific words?

20 A Yeah.

21 Q So when you just said he may have said this,
22 he may have said that, you're official memorandum puts
23 in quotes the term making out; correct?

24 A It's just like you taking notes at the table,
25 there's certain things that you write down that you put

1 in quotes. There's certain things that you don't that
2 you could recall from memory and you could testify to
3 or put in a report. You know that.

4 Q My question is the word making out you did
5 put in quotes in your report.

6 A Yeah, and maybe because he used it twice. You
7 know, once in the car and then once at the rocks. Not
8 really sure why.

9 Q Did he tell you that they were both sitting
10 on the rocks enjoying the view?

11 A Yes, sir.

12 Q Did he indicate at some point in time that
13 hew as uncomfortable and wanted to get up to go to the
14 car to get a blanket and a bottle of wine?

15 A Yes, sir.

16 Q That his wife protested it in some form?

17 A Yes.

18 Q And that she got up to her feet and tripped
19 forward, or words to that effect?

20 A Tripped forward, I believe is in quotes. The
21 phrase he used.

22 Q Now when you put something in quotes like
23 tripped forward, is that the exact words that he said?

24 A Yes, sir.

25 Q Now with regards to his relationship with his

1 wife, you testified that he indicated to you that he
2 was seeing other women; correct?

3 A Yes, sir.

4 Q Did you indicate that the wife was seeing
5 other people?

6 A Did I indicate that?

7 Q No, no. Did he indicate to you --

8 A He did.

9 Q And did you question him about that in any
10 detail?

11 A I'm not sure if I did. He indicated he thought
12 that she was seeing someone else.

13 Q You did question him specifically with
14 regards to two women that he was seeing; correct?

15 A Certainly.

16 Q Now he didn't tell you, correct me if I'm
17 wrong, that on the days that you testified to on direct
18 that he definitely broke off the relationship with both
19 of those women; correct?

20 A I have to look at the exact language I have in my
21 report.

22 Q Let me show you S-84. Last page.

23 A That's the third page, right?

24 Q First line. Isn't it a fact that he didn't
25 indicate to you that he had definitively broken up with

1 these women. That he was trying to break up with them?

2 A Trying to break off the relationship because he
3 wanted to save his marriage.

4 Q So he didn't say that on those dates he broke
5 up with Scanlon and Scofield. He said he was trying --

6 A Well I asked him the last time that he saw them.

7 Q Right.

8 A And I believe what he told me was when he last saw
9 them, specifically Scofield, Labor Day weekend he
10 attempted to break off the relationship. Scanlon would
11 have been that Friday.

12 Q When you say attempted, my specific question
13 is he never told you or any other member of the
14 prosecutor's office to your knowledge that on those
15 days he definitely broke off the relationship --

16 A No, sir. I said trying to break off the
17 relationship, yes.

18 Q Right. So as far as your interview with him,
19 their relationships had not completely been broken off;
20 correct?

21 MR. MELLO: Objection to the
22 characterization.

23 BY MR. BILINKAS:

24 Q Based on what he said --

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

1 THE WITNESS: I didn't, for the purpose of my
2 interview with him --

3 BY MR. BILINKAS:

4 Q Right.

5 A -- I didn't concentrate on what the word trying
6 meant.

7 Q Okay.

8 A I was more focused on another aspect of it.

9 Q But you would agree with me that your
10 official report indicates trying and not that he
11 definitely broke up with them. Right?

12 A Certainly. As I said, trying. I put down trying
13 in my memo.

14 MR. BILINKAS: Judge, I think we're through.

15 THE COURT: Any other questions?

16 MR. BILINKAS: Just checking.

17 (Brief pause to discuss with other counsel.)

18 MR. BILINKAS: No further questions. Thank
19 you.

20 THE COURT: Redirect?

21 MR. MELLO: Oh, not at all. Thank you,
22 Judge.

23 THE COURT: All right. You may step down.
24 Thank you, Captain.

25 THE WITNESS: Can I help the court officer

1 here?

2 THE COURT: The paperwork must be collected.

3 THE WITNESS: Certainly.

4 THE COURT: The exhibits.

5 THE WITNESS: Do you want this also?

6 (Witness excused.)

7 THE COURT: All right. Call your next

8 witness.

9 MR. MELLO: Judge, our next witnesses will be

10 ready for the 1:30 session.

11 THE COURT: All right. Then what we'll do is

12 we'll break now. It's almost 12:15. We'll resume at

13 1:30. Sheriff's officers will escort the jury.

14 (The jury exited the courtroom.)

15 (Luncheon recess.)

16 (The jury entered the courtroom.)

17 THE COURT: Welcome back ladies and gentlemen

18 of the jury. You may be seated. Madam clerk, roll

19 call.

20 (Jury roll call, all jurors present.)

21 THE COURT: Mr. Mello, are we ready to

22 proceed?

23 MR. MELLO: We are, Judge.

24 THE COURT: Call your next witness.

25 MR. MELLO: Yes, sir. Ted Ehrenberg, please.

1 THE COURT: Good afternoon.

2 THE WITNESS: Good afternoon.

3 THE COURT: Please step up. Face the court
4 clerk.

5 THE CLERK: Raise your right hand.

6 T E D E H R E N B E R G, STATE'S WITNESS, SWORN

7 THE CLERK: State your name for the record.

8 THE WITNESS: Ted Mark Ehrenberg.

9 THE COURT: Please have a seat. You may
10 begin.

11 MR. MELLO: Thank you, sir.

12 DIRECT EXAMINATION BY MR. MELLO:

13 Q Mr. Ehrenberg, if you would, would you please
14 tell us how you are presently employed?

15 A I am the Borough Administrator of the Town of
16 Bloomingdale.

17 Q And what county would that be located?

18 A That's in Passaic County.

19 Q If you would, would you please describe to
20 the jury your background in law enforcement?

21 A Okay. I started my law enforcement career as a
22 cadet, as a special when I was 16 years old. I moved
23 on from that to when I turned 19 years old I became a
24 special police officer in the Township of Randolph,
25 which was 1976.

1 August 1, 1978 I became a probationary
2 patrolman in the Town of Washington Township, which is
3 in Morris County, New Jersey. In 1983 I was assigned
4 to the detective bureau. And October 17, 1986 I became
5 a sergeant. On June 20, 1992, I became a lieutenant.
6 In, it will take me a minute here, April 1, 2005 I
7 became the Chief of Police of Washington Township. And
8 I subsequently retired as Chief of Police after 11
9 years April 1, 2006.

10 Q Thank you, sir. Now I'm going to direct your
11 attention to that period of time when you were at the
12 rank of lieutenant in the Washington Township police
13 department. All right?

14 A Okay.

15 Q And specifically I'm going to direct your
16 attention to September 21, 1992. Understood?

17 A Yes, sir.

18 Q Now with respect to that particular date, the
19 21st of September 1992, can you tell us the general
20 nature of your assignment as a lieutenant with the
21 Washington Township police department?

22 A Okay. At that current position, as a lieutenant,
23 I was the support services lieutenant. There's a
24 patrol lieutenant that took care of all of the uniform
25 patrol. And the support services lieutenant was

1 assigned the responsibility of the detective bureau,
2 the traffic bureau, and any supporting community
3 activities like senior aide assistance program or the
4 DARE program, or something like that.

5 Q On September 21, 1992, did you have occasion
6 to meet with one Charles Jackson?

7 A Yes, sir. I did.

8 Q And was Mr. Jackson a resident of Long
9 Valley, New Jersey residing at 38 North Broad Ridges
10 Road?

11 A Yes, he was.

12 Q And with respect to your meeting with Mr.
13 Jackson, did Mr. Jackson come to you or did you somehow
14 contact him? And, if you would, just tell us the
15 manner of contact without the substance of
16 conversation.

17 A Mr. Jackson responded to the Washington Township
18 headquarters.

19 Q Now when you say responded, do you mean he
20 arrived at?

21 A Okay. He arrived at the Washington Township
22 police department, which was located at that time at
23 214 West Mill Road, Long Valley, New Jersey.

24 Q At no time to your knowledge did any police
25 officer of your department contact Mr. Jackson --

1 MR. BILINKAS: Objection. How does he know
2 it?

3 MR. MELLO: To his knowledge.

4 THE COURT: Sustained. Ask another question.

5 BY MR. MELLO:

6 Q Did you in any way contact Mr. Jackson?

7 A No, sir.

8 Q Have you in the course of your tenure been
9 made aware of any other police officer contacting --

10 MR. BILINKAS: Objection. Calls for hearsay.

11 MR. MELLO: It's simply whether or not --

12 THE COURT: Not the content.

13 MR. MELLO: -- whether or not he --

14 THE COURT: Whether he was contacted.

15 MR. MELLO: Exactly.

16 THE COURT: Overruled.

17 THE WITNESS: Could you repeat the question?

18 BY MR. MELLO:

19 Q Yes. Have you been made aware of any other
20 police officer who contacted Mr. Jackson?

21 A No.

22 Q Now you may not tell us the substance of the
23 conversation, but is it accurate to state that you had
24 a conversation with him on that date?

25 A Yes, I had a conversation with Mr. Jackson.

1 Q After you had a conversation with Mr.
2 Jackson, did you contact any other law enforcement
3 agency?

4 A Yes, I did.

5 Q What law enforcement agency was that?

6 A A Palisades Parkway authority, police department.

7 Q Now, again without referring to the substance
8 of your conversation in that contact, did you speak to
9 a representative, a law enforcement officer of the
10 Palisades Interstate Parkway Police?

11 A Yes, I did.

12 Q Can you tell us who you spoke to?

13 A My original request for a Detective Karnick. And
14 I spoke to, who was not on duty at the time, but I
15 spoke to Detective Lem, or not, I'm probably not
16 pronouncing his name right.

17 Q Would that be noted in any report?

18 A It would be noted in my report.

19 MR. BILINKAS: Judge, I have no objection to
20 him reading --

21 BY MR. MELLO:

22 Q I'm going to show you what's been marked
23 S-20. And first of all let me ask you if that is the
24 report that you filed in this matter?

25 A Yes, it is.

1 Q Okay. And if you would, if you refer to your
2 report, can you tell us the name of the police officer
3 that you spoke to from the Palisades Interstate Parkway
4 Police?

5 A I spoke to Detective James Lynam.

6 Q Now with respect to that conversation without
7 reference to specific details did Detective Lynam make
8 you aware of an investigation into the death of one
9 Jody Ann Scharf?

10 A He did.

11 Q Following the receipt of information pursuant
12 to the conversation you had with Detective Lynam I'd
13 like to now bring you to the next day, September 22nd.
14 All right?

15 A Okay.

16 Q On that date did you have occasion to be
17 contacted by one of your department members?

18 A I was.

19 Q Okay. Now I'm going to direct your attention
20 to the evening hours and ask you if you recall first
21 who from your department contacted you on the 22nd?

22 A On the 22nd I received a phone call from Sergeant
23 William Gundersdorf.

24 Q And did Sergeant Gundersdorf advise you of
25 any event?

1 A He called me to advise that the Bergen County
2 prosecutor's office and detectives from the Palisades
3 Parkway police authority were responding to our
4 municipality.

5 Q Now is it accurate to state that those
6 members of Bergen County police departments were
7 responding for purposes of conducting a search in your
8 jurisdiction?

9 A Yes.

10 Q Can you tell us first the residence of that
11 search?

12 A It was identified that 27 Knob Hill Road, mailing
13 addressed listed as Hackettstown, but it's in the
14 jurisdictional boundaries of Washington Township.

15 Q Now with respect to that search and the
16 information you received from Gundersdorf, what role
17 were you to play in that particular event?

18 A The role by common practice is we would be
19 referred to as we call assist other. If they're coming
20 out to conduct a search and they have an investigation
21 we're there basically to stand by, assist them in the
22 process. But only as an assisting agency, not as the
23 main investigating agency.

24 Q And with respect to the kind of assist that
25 you were to provide in this matter, is that protocol

1 generally followed any time a police agency from
2 another jurisdiction comes into a foreign police
3 jurisdiction?

4 A Yes, it is.

5 Q Can you tell us if you met with Sergeant
6 Gundersdorf in the evening of September 22, 1992?

7 A Yes. I --

8 Q Can you tell us where?

9 A I met him at our police station at 214 West Mill
10 Road.

11 Q Can you tell us the approximate time that you
12 met with him at your police headquarters?

13 A My report notes 8:35 p.m.

14 Q At the time you met with Sergeant Gundersdorf
15 were either of you in uniform?

16 A Sergeant Gundersdorf was in uniform. I was not.
17 I was coming from home.

18 Q Did you and Sergeant Gundersdorf proceed to
19 the residence 27 Knob Hill Road?

20 A We did.

21 Q Did you proceed to that location together or
22 in separate vehicles?

23 A We responded in one vehicle.

24 Q Was that a marked or unmarked patrol vehicle?

25 A Marked.

1 Q When you arrived at the residence, 27 Knob
2 Hill Road, did you observe any police officers from
3 Bergen County?

4 A Not at the time we arrived, no.

5 Q Can you tell us or approximate the time that
6 police officers from Bergen County were to arrive?

7 A I don't have the exact time, but I would
8 approximate it exceeded past an hour easy.

9 Q Can you tell us if there comes a point in
10 time when police authorities from Bergen County arrive?

11 A Yes.

12 Q Can you tell the jury what happens at that
13 point?

14 A We are seated in the police vehicle from
15 Washington Township in front of the residence. The
16 vehicles pull up. The occupants exit their vehicles
17 and we basically meet in the driveway at the Scharf
18 house.

19 Q Now with respect to the police officers that
20 you see, did you know any of them?

21 A No, I did not.

22 Q And did they arrive in more than one vehicle?

23 A Yes, they did.

24 Q Were you able to at that moment in time
25 ascertain who might be a police officer and who might

1 not be?

2 A I did not know any of them and I did not know who
3 was a police officer or not.

4 Q Did those police officers identify themselves
5 as police officers?

6 A They subsequently did, but in all candor one of
7 the, which was identified later as a detective, walked
8 up to Sergeant Gundersdorf because he was in uniform
9 and introduced himself. And a conversation commenced.

10 Q Now do you see a man in court today that you
11 recognize?

12 A I do.

13 Q Who is that please?

14 A Mr. Scharf, Stephen Scharf, seated at the counsel,
15 blue suit, multi-colored tie.

16 MR. BILINKAS: Stipulate he's identified my
17 client.

18 MR. MELLO: Thank you, sir.

19 THE COURT: Defendant is so identified.

20 BY MR. MELLO:

21 Q Now Mr. Scharf is in the company of the
22 police officers that you saw?

23 A Yes.

24 Q And how many police officers do you recall?

25 A I believe that there were four people in total.

1 Three police officers and Mr. Scharf.

2 Q Can you tell us if the premises are entered
3 for purposes of conducting a search?

4 A Yes, they were.

5 Q Can you tell us how entry to the premises is
6 gained?

7 A Mr. Scharf entered the residence through the
8 garage door. We walked into the garage and there was
9 like one step up and then we walked into the immediate
10 kitchen area. Kitchen, laundry room.

11 Q Can you tell us at this point what begins to
12 transpire?

13 A The Bergen County and officers from Palisades
14 Parkway start the process of their search. And myself,
15 Sergeant Gundersdorf and Mr. Scharf are in basically
16 the kitchen, which my recollection opened into
17 basically a den.

18 Q Now with respect to the search that was being
19 conducted by Bergen County authorities do you play a
20 role in that search?

21 A I do not.

22 Q Does Sergeant Gundersdorf play a role in that
23 search?

24 A I have -- no.

25 Q As police officers from Bergen County are

1 beginning their search activities, can you tell the
2 jury what happens?

3 A Mr. Scharf starts to walk behind Bergen County and
4 I stated that these officers are here to conduct a
5 search because we have an investigation. It's nothing
6 personal. It's a standard that all police departments
7 are duty bound to investigate cases, and they were
8 there to perform this service.

9 And we, as your local police department, are
10 there as the assisting agency but we want to make sure
11 that things conform to, you know, the proper
12 procedures. And if he just lets them do their job the
13 process will take less time and we'll be all on our way
14 and move the process forward.

15 Q And how did that seem, that conversation seem
16 to affect Mr. Scharf?

17 A He finally took my, I don't want to use the word
18 finally, strike that. I think he understood what I was
19 trying to say and we basically found a seat at a table
20 right in the kitchen area there and Bergen County and
21 Palisades Parkway proceeded to process the residence.

22 Q Now can you tell us what events occur as you
23 are seated in the area you've described and thereafter?

24 A Well there's a, obviously about an hour period of
25 time that we're seated there. And I start having a

1 conversation with Mr. Scharf, friendly, because I
2 really don't have a dog in the fight, so to speak, here
3 with this case. We're just here assisting this other
4 agency.

5 So obviously this gentleman has just lost a
6 wife. And he has a young son. And at that time my
7 children were ages five and six and I was thinking how
8 tough that would be to raise a child as a single parent
9 and the emotion and the time it would take to do this.
10 And through that conversation I make the comment that
11 it's funny you wake up one morning and you think you're
12 going to go to the grocery store and you think you're
13 going to go work and you think you're going to do that,
14 and you don't do anything. Because you don't come
15 home because somebody else has a different plan for us.

16 And my point was that I personally try to
17 keep myself in check, so to speak, and the conversation
18 led to the fact that in life we should try to keep
19 ourselves in balance. Because I'm of the personal
20 opinion that we need to prepare ourselves going forward
21 or backward depending on our life and how we carry
22 ourselves.

23 Q Can you tell us how this conversation now
24 develops from this point?

25 A There is some back and forth conversation and at

1 some point Mr. Scharf, I don't know whether it's that
2 he saw in my eyes or in my body language, finally turns
3 to me and says you don't believe this was an accident.

4 Q Now when he said that had you asked him any
5 questions at all about any, if any?

6 A No. I had asked him no questions about this.
7 We're just having a conversation.

8 Q What, if anything, occurs following that
9 statement by Mr. Scharf?

10 A I stated I believe, I'm going to look at my exact
11 words so I don't misrepresent anything here.

12 (Reviewing notes.) Mr. Scharf said, you don't believe
13 me. I responded saying I believe an accident happened.
14 And then I said, it was an accident. And he said, no,
15 and put his head down.

16 Q Did he say anything else at that point?

17 A We, well at one point shortly after that he asked
18 to speak with a priest.

19 Q Now with respect to the conversation that
20 you've just described did you capture that conversation
21 in your report?

22 A I did.

23 Q And did you set off language that you had and
24 heard in quotation marks?

25 A I did.

1 Q Is the conversation that you related to the
2 jury captured in quotation marks in your report?

3 A Yes, it is.

4 Q Can you tell us what happens immediately
5 following the conversation that you just related to the
6 jury?

7 A Well I was, realized that at that point when he
8 put his head down and said no that we had a defining
9 moment here. Because I'm there to assist another
10 agency with a police investigation and now without
11 questioning or making a request of him he made that
12 statement, which changes the focus of this. But
13 because Washington Township is a assist other, I didn't
14 ask any other questions. I didn't go into any other
15 details. I basically stopped.

16 But subsequently when he made that statement
17 two of the detectives from Bergen County were coming
18 into the kitchen area and a complete change in tone,
19 like you just dropped a shade, instantly and the
20 conversation basically just stopped.

21 Q During this conversation was anyone present
22 for the conversation that you related to the jury?

23 A Yes.

24 Q Who was that?

25 A Sergeant Gundersdorf.

1 Q The conversation had now stopped in the
2 manner that you described. What happens next?

3 A Bergen County acknowledges that they are packing
4 up, as we refer to, closing up their investigation at
5 the scene and they were going to, as they refer to,
6 head out, meaning head for home, and they, the
7 detectives all joined up and we stepped from the
8 kitchen into the garage and then out into the driveway.

9 Q Did you have any conversation with any of the
10 detectives from Bergen County regarding the
11 conversation with Mr. Scharf where he said it was not
12 an accident?

13 A I wait until one of the detectives, I cannot
14 recall which one it was, and said that this statement
15 was made and I received that they had previously
16 interviewed him prior to responding to Washington
17 Township.

18 Q Now at the time that you had that
19 conversation did you tell them you had a conversation
20 with him or did you tell them the conversation that you
21 had, the words that you heard?

22 A I explained that he had said this and I received
23 they had already interviewed him. So I had no
24 knowledge whether this statement was made prior, I
25 don't know. They never discussed what information they

1 had prior, they just were there to do the search.

2 Q What happens following those events?

3 A They pack up, we leave the scene. We respond back
4 to Washington Township. And I make a call to Bergen
5 County to make sure that they understand, in my
6 opinion, the magnitude of this statement and this
7 event.

8 Regrettably I have to remind people that 19
9 years ago there were, weren't cell phones. There were
10 pay phones. There was no direct communication with the
11 detectives and the officers leaving the scene. So I
12 was unsuccessful of speaking to them directly.
13 Following the next morning I made a call to Bergen
14 County.

15 Q And in that call did you recite and tell them
16 the specific details of the conversation you had with
17 Mr. Scharf?

18 A I did.

19 Q Thank you.

20 THE COURT: Anything further?

21 MR. MELLO: No, sir. Thank you.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION BY MR. BILINKAS:

24 Q This conversation with the prosecutor's
25 office the next day was back in September of 1992;

1 correct?

2 A Yes, sir.

3 Q Now you'll agree with me that prior to the
4 search of my client's house you had at least two
5 conversations with a Detective Lynam from the Palisades
6 Police Department; correct?

7 A I have documented on my report at least one
8 conversation. I may have had two conversations. I
9 don't know that to be factual. I'm not saying it
10 didn't happen.

11 Q Well can you look at your report on the first
12 page?

13 A (Reviewing report.) Yes. It says here this
14 officer advised --

15 Q No, I don't want you to read it. I'm just
16 asking you --

17 A Okay.

18 Q -- on the third paragraph where you tried to
19 talk to Detective Karnick and he was unavailable, did
20 you talk to Detective Jim Lynam on the 21st?

21 A Yes, sir.

22 Q When Detective Lynam -- strike that. Isn't
23 it a fact that Detective Lynam was one of the people
24 that searched my client's house on that night?

25 A I don't know that to be a fact at this time.

1 Q Is it a fact that you were instructed prior
2 to the search that Detective Lynam and the Bergen
3 County prosecutor's office were in route to 27 Knob
4 Hill Road?

5 A I was advised that detectives from Bergen,
6 identify Detective Lynam as the person, I don't know
7 that to be a fact.

8 Q Would you agree with me that in your official
9 police report with regards to references on 9/22/92 at
10 8:35 p.m. you indicated --

11 A Detective Ly --

12 Q -- that you called Palisades Parkway P.D. and
13 learned that Detective Lynam and the Bergen County
14 prosecutor's office was in route to the Scharf
15 residence?

16 A Yes, sir.

17 Q So you did know that Lynam was coming;
18 correct?

19 A Yes.

20 Q And will you also agree that you were
21 debriefed by Detective Lynam regarding the stages of
22 the investigation prior to the search?

23 A We were advised of what had basically transpired.
24 The length, depth, and breadth of this investigation I
25 candidly did not know the complete.

1 Q My specific question is --

2 A Yes, sir.

3 Q -- isn't it a fact that you were debriefed by
4 Detective Lynam with regards to this investigation?

5 A Yes.

6 Q So you talked to Lynam at least once the
7 previous day; correct?

8 A Okay.

9 Q At some point in time when you call the
10 Palisades Police Department your instructed that Lynam
11 is on his way with the prosecutor's office; correct?

12 A Yes.

13 Q And at some point prior to the search Lynam
14 debriefed you?

15 A Yes.

16 Q And how did you know to put in your report
17 that Detective Lynam was the one that debriefed you, if
18 you don't recall whether or not he was there?

19 A I think the misunderstanding was I thought you
20 were indicating that I could identify Detective Lynam,
21 and I can't, as a person.

22 Q Was he the one that debriefed you?

23 A Yes.

24 Q When you say you can't identify him how did
25 you identify him as the one that debriefed you?

1 A When (reviewing report).

2 Q Middle of page two.

3 A Right. Okay. I have it noted in my police report
4 that we met Bergen County and Detective Lynam was
5 present.

6 Q Well doesn't it also indicate that
7 specifically Detective Lynam debriefed you?

8 A Yes.

9 Q And can I assume that when you wrote this
10 report 18 years ago that you knew who Detective Lynam
11 was and that's why you referred to him by name as the
12 person who debriefed you?

13 A Yes.

14 Q Now irrespective of whether or not you had a
15 dog in this fight, would you agree with me as a law
16 enforcement officer you tend to want to assist other
17 law enforcement officers?

18 MR. MELLO: Object to the form of that
19 question. I'm not sure what tend to want assist means.

20 BY MR. BILINKAS:

21 Q You think like a cop.

22 THE COURT: Hold on a second. There's an
23 objection. Sustained.

24 BY MR. BILINKAS:

25 Q You think like a cop; correct?

1 MR. MELLO: I'm also going to object to that
2 question.

3 THE COURT: Sustained.

4 BY MR. BILINKAS:

5 Q Other police officers and the prosecutor's
6 office come to Mr. Scharf's house; correct?

7 A Yes.

8 Q And you indicated that there were three other
9 people other than my client; correct?

10 A Yes.

11 Q And do you recall a Detective Alver being
12 present?

13 A Yes, I do.

14 Q And he was the homicide detective for the
15 Bergen County prosecutor's office; correct?

16 A Yes.

17 Q And there was a Mr. Hernest also. Do you
18 recall him?

19 A Vaguely.

20 Q Irrespective of Hernest you definitely know
21 who Alver is; correct?

22 A I do.

23 Q Did he come and talk to you at some point in
24 time with regard to this investigation; correct?

25 A Yes, he did.

1 Q He was the case agent, so to speak, for the
2 Bergen County Prosecutor's Office handling this
3 homicide case; correct?

4 A I don't know that to be a fact.

5 Q Well he was the one who led the search on the
6 night in question; correct?

7 A That's correct.

8 Q When there was an interview of you he was the
9 one that came to interview you; correct?

10 A Yes.

11 Q And Mr. Scharf arrived with the prosecutor's
12 detective and Detective Lynam from the Palisades at
13 approximately 9:35 at night; correct?

14 A I don't know that to be a fact.

15 Q You were waiting at Mr. Scharf's house for
16 the prosecutor's office to arrive; correct?

17 A Yes.

18 Q Would you agree with me that Mr. Scharf,
19 irrespective of how he got there, arrived at the same
20 time as the Bergen County prosecutor?

21 A Yes, that's true.

22 Q No one was in the house prior to the
23 prosecutor and Mr. Scharf arriving; correct?

24 A That's correct.

25 Q Everybody was going to enter the house

1 together; correct?

2 A That's correct.

3 Q And were you instructed that Mr. Scharf had
4 consented to the search of his home?

5 A I don't know that.

6 Q No one mentioned whether or not it was a
7 warrant or a consent search?

8 A I received the instructions that they were coming
9 up. Bergen County prosecutor's office and the
10 Palisades Parkway. Did I ever physically see a warrant
11 or know that to be a fact? I don't.

12 Q Well didn't you say on direct that the reason
13 why the local police are there is to make sure all the
14 proper procedures --

15 A Correct.

16 Q -- are followed; correct?

17 A Yes.

18 Q And would you agree with me that one of the
19 procedures is you've either got to have a warrant or
20 consent to search someone's residence?

21 A That is true. But the difference is that that
22 could have transpired prior to the arrival at 27 Knob
23 Hill Road. So I don't know whether that he consented,
24 they showed him a search warrant, he signed up. I just
25 don't know those to be facts.

1 Q Okay. Well when you discussed on direct your
2 need to make sure that all the procedures were followed
3 properly, what were you referring to?

4 A When you take jurisdictions that respond to a
5 different town, and they pull up, if the local police
6 aren't there and a neighbor wanders over or somebody
7 says who are these people, what's going on here.
8 That's why they bring the local agency who is familiar
9 with the town and the residences and the people that
10 are involved and basically maintains order and makes
11 sure that procedurally this agency can further their
12 investigation and process it.

13 Q Now prior to the search in your report it
14 indicates that Detective Lynam briefed you about the
15 stage of the investigation. Is that contained in your
16 report?

17 A Yes, it is.

18 Q And did Lynam tell you what had happened up
19 to this point?

20 A What I knew at the time was that there was a
21 suspicious death that occurred and they were
22 investigating it.

23 Q Now the Bergen County prosecutor's office and
24 the Palisades Police Department had free access to Mr.
25 Scharf's house throughout this process; correct?

1 A Yes, they did.

2 Q And can you tell us how long they were
3 searching his house on that day?

4 A Regrettably I can't give you the exact times
5 because those records no longer exist. But I can say
6 that it was, in my recollection, more than an hour but
7 under probably two.

8 Q Okay. So somewhere between one to two hours;
9 correct?

10 A That's my recollection, yes.

11 Q And is it your recollection that during that
12 time you were talking to Mr. Scharf for at least an
13 hour of that search?

14 A Yes.

15 Q And were you talking about religion to him?

16 A Well as I stated prior the conversation basically
17 started with the loss. And, obviously, rasing the
18 child. And it kind of evolved into the issue of
19 religion, yes.

20 Q And is it your recollection that the
21 statement that you testified to occurred right before
22 the prosecutor's office were attempting to leave?

23 A It was very close because I distinctly remember
24 there was a complete change when they walked into the
25 room. It was just like he dropped, and it changed

1 everything the minute they walked into the room.

2 Q Okay. And did you make any reference with
3 regards to that observation that you told this jury in
4 your official report?

5 A (No audible response.)

6 Q Page two, fourth paragraph.

7 A Right.

8 Q You never mentioned this change of, how do
9 you describe it?

10 A Change of, his whole composure --

11 Q Demeanor.

12 A Demeanor, composure.

13 Q Okay. Lets talk about that demeanor. He was
14 upset when he was talking to you; correct?

15 A He was.

16 Q Upset about what he told you about the loss
17 of his wife and the fact that he had to raise his son
18 alone; correct?

19 A We had this conversation, yes.

20 Q And so I'm clear on this point, you have a
21 specific recollection of his demeanor; correct?

22 A I do.

23 Q And your recollection is that he was upset,
24 that sticks in your mind; correct?

25 A Absolutely.

1 Q And you're talking about religion to him for
2 how long in that hour conversation?

3 A I, to be honest with you, don't, well, how do you
4 define that? I think that we're talking about people's
5 lives and how they could change that fast, and the part
6 that I mentioned about getting up in the morning with
7 all these plans and then all of a sudden that changes.
8 So if you're referencing that, we hit on that point and
9 then moved away from it. But it was towards the last
10 part of the conversation when, whether it was body
11 language, he looked into my eyes, that he just brings
12 up out of the blue you don't believe me.

13 Q Okay. Now when he said you don't believe me,
14 can I assume that prior to him saying that he was
15 telling you it was an accident? You know, that they
16 had gone there and that she fell off of that cliff?

17 A We had no conversation about that.

18 Q Do you have any idea where he would get the
19 impression that you wouldn't think it was an accident?

20 MR. MELLO: How would he know that, Judge?
21 That's speculative.

22 MR. BILINKAS: I'm asking him if he had any
23 idea --

24 MR. MELLO: Well that's still speculative.

25 MR. BILINKAS: -- what prompted --

1 MR. MELLO: That's speculative.

2 MR. BILINKAS: -- that --

3 THE COURT: It is speculative.

4 BY MR. BILINKAS:

5 Q At some point in time, according to your
6 recollection, Stephen Scharf says you don't believe me
7 and you say I believe an accident happened; correct?

8 A Yes.

9 Q You then question him it was an accident.
10 And did my client say that, or did you say that?

11 A I said that.

12 Q And can you tell me why in your official
13 police report immediately after that, in the quotes, in
14 the same quotes that contains the words it was an
15 accident you typed in Stephen?

16 MR. MELLO: Actually he put Stephen in
17 parenthesis.

18 BY MR. BILINKAS:

19 Q Inside the quotes.

20 MR. MELLO: Now you're accurate.

21 BY MR. BILINKAS:

22 Q Correct?

23 A (Reviewing report.) It was an accident?

24 (Stephen)?" Yes.

25 Q And why did you put Stephen in the quotes?

1 A Because that, it was an accident and then Stephen,
2 the way it was typed.

3 Q And the only thing that you recall him saying
4 after that was no?

5 A He said no and put his head down.

6 Q Right. And do you know, you have no idea
7 specifically why he said no, do you?

8 A I have no idea.

9 Q You're talking about religion with him and
10 did you ever say things like things happen for a
11 reason, you know? God decides things that sometimes we
12 don't understand. Did you mention things like that to
13 him during this hour long conversation?

14 A As I previously stated we started off with a
15 conversation on how hard it would be to raise a child
16 and the starting point where people get up in the
17 morning and think they're going to average their day
18 and it doesn't turn out that way.

19 Q We understand what the conversation started,
20 but --

21 A Okay. So --

22 Q -- during that hour long, that probably took
23 15 seconds of the hour conversation --

24 A Right.

25 Q -- when you're talking about religion did he

1 or you at any point talk about, you know, God's divine
2 plan, or something to the effect that, you know, you
3 don't know why things happen. God has a reason, you
4 know. You're never going to know exactly why things
5 happen or words to that effect?

6 A My remembrance of this is that it's unknown to us
7 what is held for all of us and basically we're all left
8 to what cards were dealt. Was this --

9 Q Everything happens for a specific purpose as
10 far as God is concerned, or words to that effect;
11 correct?

12 A No. This was not a fire brimstone speech about
13 religion. It was just trying to console somebody --

14 Q Who was very upset.

15 A That is upset about the loss of their wife. And
16 obviously my personal concern was being a single parent
17 and what that responsibility would take on under this
18 new role.

19 Q Okay. Now at some point he makes that
20 statement, no. He puts his head down. Would you agree
21 with me that throughout this hour long conversation he
22 put his head down a number of times when he was upset?

23 A Yes, I would assume that he put his head down.

24 Q And when he said that word, no, as a police
25 officer, a defining moment that you described, did you

1 attempt to clarify specifically what he meant by that?

2 A I was fearful that to move forward with anything
3 because this is not my investigation. I'm just
4 basically for all intents and purposes babysitting a
5 resident who is going to sit through a process and once
6 they move on to their investigation, we move on. Never
7 did I think that this was ever going to be stated.

8 Q So as far as you're concerned if you're
9 babysitting a potential homicide suspect and he
10 attempts to say, confess to you, you want to have
11 nothing to do with that. You're not going to question
12 him or at the very least make sure that the people who
13 are in charge of this investigation clarify what was
14 said?

15 A I think that I demonstrate that in my report that
16 I did do that.

17 Q Okay. We'll get to that. Once this
18 statement is made you consider it a defining moment.
19 You talked to a investigator from the prosecutor's
20 office; correct?

21 A I did.

22 Q Was it Alver? Do you know who he is?

23 A I spoke to one of the detectives. Nineteen years
24 later if you ask me I could tell you which one it was,
25 I can't. And I'm just being honest.

1 Q Okay. Well is it my understanding that you
2 told one of those persons who were investigating a
3 possible homicide exactly what Mr. Scharf told you?

4 A I did tell them.

5 Q And when you told them that did they, the
6 people in charge of this investigation, attempt to
7 question Mr. Scharf?

8 A I was told that they had already interviewed him
9 and that they were done at that point.

10 Q So even after you told representatives from
11 the prosecutor's office exactly what you conveyed to
12 this jury they considered that obviously and told you
13 as far as they were concerned that didn't matter.
14 You're done, or words to that effect.

15 A As I previously stated I don't know what occurred
16 prior to Bergen County and Palisades Parkway. All I
17 know that there was an interview prior to their
18 arrival. I don't know if Mr. Scharf had made any prior
19 statements or made any omissions. I don't know that.

20 Q And you didn't seek to clarify that? At this
21 defining moment you never tried to clarify that with
22 the detectives?

23 A As I previously stated I walked down the driveway,
24 told them what happened. I went back to the Washington
25 Township police station, tried to contact Bergen County

1 to make sure that the detective I spoke to completely
2 understood what I referred to as the defining moment
3 because of that omission.

4 When I called the following day and obviously
5 forwarded my police report to them, it was their
6 investigation. I have no authority to motivate, change
7 the investigative techniques or process of Bergen
8 County.

9 Q When you say you have no authority, if a
10 potential homicide suspect is attempting to confess to
11 you while you're babysitting him, do you believe you
12 have the authority to take that information down?

13 A I have the authority to note the spontaneous
14 statement and bring it to Bergen County. I don't think
15 assisting other police agencies go open their own
16 investigation with the lead agency not being made aware
17 of it. Obviously if they invited us in and asked us to
18 work in concert that would be one issue, but as I
19 reported this to Bergen County, they stated they had
20 already interviewed him and they were leaving.

21 Q And when you called the next day just to
22 verify that they didn't need to do any further with
23 regards to what you had told them, who did you talk to
24 in the prosecutor's office there?

25 A I do not note who the detective was that I spoke

1 to from the Bergen County prosecutor's office.

2 Q Irrespective who it actually was did they
3 express any concern about this defining moment that you
4 described to them and them missing a lost opportunity?

5 A I have no recollection or knowledge of that.

6 Q Let me ask you a specific question. Based on
7 your, how many years have you been involved in law
8 enforcement?

9 A Twenty-eight full time.

10 Q And would you agree with me that if this was
11 your case and you were advised on the night immediately
12 after a statement like this is made you would have
13 without a question attempted to clarify and talk to
14 that individual further?

15 A Absolutely.

16 Q Do you ever recall telling homicide detective
17 Terrence Alver that you were unable to question Scharf
18 any further because headquarters radioed you to respond
19 to another call?

20 A I know that that's mentioned in the report, but I
21 do not remember the call or leaving anytime earlier
22 than the departure of the prosecutor's office. I do
23 remember that Sergeant Gundersdorf was the road
24 sergeant at the time but I have no recollection of him
25 leaving or myself.

1 Q Well my specific question is do you have a
2 specific recollection of ever telling homicide
3 detective Terrence Alver that you were unable to
4 question Scharf any further because headquarters
5 radioed you to respond to another call?

6 A I have no recollection of that.

7 Q I'm going to show you what's been marked
8 S-40 and refer you to the second page, last sentence.
9 Can you review that, and I know it's 18 years, can you
10 review that and tell me whether or not it refreshes
11 your recollection as to whether or not you told the
12 homicide detective that the reason you were unable to
13 question Scharf any further was because headquarters
14 had radioed you to respond to another call?

15 A That may be true, but we didn't leave before the
16 prosecutor's office secured.

17 Q Do you recall saying that to Alver?

18 A I don't recall that.

19 Q Would you agree with me that the statement in
20 Alver's report is different than what you testified to
21 on direct?

22 A Terry Alver's report indicates that, states that I
23 was unable to question Scharf any further because
24 headquarters radioed him to respond, meaning me, to
25 another call.

1 Q Okay. And do you --

2 A I don't know if --

3 Q -- have any idea how Detective Alver would
4 get that statement other than through some
5 communication he had with you?

6 A I could assume that, but I don't know that to be
7 factual. Because I have no record of that.

8 MR. BILINKAS: Nothing further.

9 REDIRECT EXAMINATION BY MR. MELLO:

10 Q While you have that document that Mr.
11 Bilinkas handed you, that document refers to a
12 conversation that you had with Detective Alver on the
13 day following; correct?

14 A (Reviewing document.) Let me read the document
15 first, please.

16 MR. BILINKAS: Judge, --

17 MR. MELLO: The question is this document
18 refers to a conversation he had with Alver the day
19 following, which is September 23.

20 MR. BILINKAS: Thank you.

21 MR. MELLO: You're welcome.

22 THE WITNESS: Okay. This report indicates
23 that on September 23rd there was a conversation.

24 BY MR. MELLO:

25 Q Now earlier you testified that you called the

1 prosecutor's office the next day?

2 A Yes.

3 Q This report reflects the conversation that
4 you had with Alver?

5 A Yes, it does.

6 Q In that report does it not note the
7 conversation that you had with Mr. Scharf?

8 A It does.

9 Q Can you tell us what it says and are they in
10 quotations?

11 A Yes. You don't believe me. Lieutenant Ehrenberg
12 responds, I believe it's an accident happened. It was
13 an accident? Scharf with his head down to Lieutenant
14 Ehrenberg, no.

15 Q Is that something you're likely to ever
16 forget?

17 A No.

18 MR. MELLO: Nothing further.

19 THE COURT: Recross?

20 RE-CROSS EXAMINATION BY MR. BILINKAS:

21 Q Were you made aware of the fact that Mr.
22 Scharf was in the presence of the prosecutor's
23 detectives from 10:00 in the morning until after 10:00
24 when this statement was made?

25 A I have no knowledge of that.

1 MR. BILINKAS: Nothing further.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Witness excused.)

6 MR. MELLO: Next witness is William

7 Gundersdorf.

8 THE COURT: Please step up, face the court

9 clerk.

10 THE CLERK: Raise your right hand.

11 W I L L I A M G U N D E R S D O R F, STATE'S WITNESS,

12 SWORN

13 THE CLERK: State your name for the record.

14 THE WITNESS: William Gundersdorf.

15 THE COURT: Please have a seat. You may

16 begin.

17 MR. MELLO: Thank you, Judge.

18 DIRECT EXAMINATION BY MR. MELLO:

19 Q Good afternoon, sir.

20 A Good afternoon.

21 Q Lets begin by telling the jury something
22 about yourself, all right? Lets, tell the jury your
23 background in law enforcement.

24 A As a police officer for 25 years I worked in
25 patrol division, detective division. I was a police

1 sergeant. I rose to the rank of lieutenant. And my
2 final position I was captain of the police department,
3 which I oversaw the daily activities of that police
4 department.

5 Q And that police department would be what?

6 A Washington Township police in Morris County.

7 Q I'm going to direct your attention, sir, to
8 September 22, 1992. All right?

9 A Yes.

10 Q I'm going to ask you first, obviously you
11 were employed by the Washington Township police
12 department at that time?

13 A Yes, I was.

14 Q Can you tell us the rank that you held at
15 that time?

16 A I was a sergeant in charge of patrol squad.

17 Q Can you tell us the tour of duty that you
18 worked on September 22, 1992?

19 A I was working the afternoon shift, which was 4:00
20 to 12:00.

21 Q During the evening of September 22, 1992, did
22 you have occasion to receive a contact from your
23 headquarters regarding a Bergen County investigation?

24 A Yes, I did.

25 Q With respect to that contact is it fair to

1 say that it involved a Bergen County investigation into
2 the death of one Jody Ann Scharf?

3 A Yes, it was.

4 Q And is it also fair to say that with respect
5 to that contact you were apprised of Bergen County
6 authorities coming into your jurisdiction?

7 A Yes, I was.

8 Q All right. Now as a result of the contact
9 that we've just discussed did you after receiving that
10 contact notify any Washington Township police officers?

11 A Yes, I did. I notified my immediate superior,
12 which was Lieutenant Ehrenberg.

13 Q Now can you tell us after you notified
14 Lieutenant Ehrenberg of the contact that you had
15 received what, if anything, you did?

16 A I met him at headquarters and from headquarters we
17 drove over to Hastings Drive.

18 Q Now with respect to the drive that you
19 referred to, were you in uniform?

20 A Yes, I was.

21 Q Was Lieutenant Ehrenberg in uniform?

22 A No, he was not. He was in civilian clothing.

23 Q Did you go together?

24 A Yes, we did.

25 Q Did you go in a marked or unmarked police

1 unit?

2 A In my marked unit.

3 Q Now with respect to what is about to
4 transpire are you there to assist Bergen County
5 authorities?

6 A Yes.

7 Q And are you there to assist them in a search
8 of a residence at 27 Knob Hill Road, Washington
9 Township?

10 A Yes, I was.

11 Q Can you tell us about what time you may have
12 arrived to the best of your recollection?

13 A The lieutenant and I arrived about 8:30, 8:30/8:45
14 in that area.

15 Q When you arrived at that location were any
16 police authorities at that location?

17 A No.

18 Q Did you wait an appreciable time before
19 authorities did arrive?

20 A Yes, it was. I thought it was a long wait.

21 Q Okay. Can you tell us approximately how much
22 time elapsed before you saw police authorities in
23 Bergen County?

24 A I thought it was about two hours.

25 Q Now can you tell us and describe for us the

1 occurrence of Bergen County authorities arriving at 27
2 Knob Hill Road in Washington Township?

3 A Yes. After a while two cars pulled up. And one
4 pulled up behind us and one pulled into the driveway.

5 Q And with respect to the cars that arrives, as
6 you described it, can you recall approximately, or can
7 you recall specifically the number of persons that
8 arrived?

9 A There were three people. I believe there were
10 three people.

11 Q Do you see any of the persons here today in
12 the courtroom?

13 A I believe one was Mr. Scharf.

14 Q Now at the time of the arrival of Mr. Scharf
15 and police authorities did you obviously identify
16 yourself as a police officer with Washington Township?

17 A Yes, we did.

18 Q And did they similarly identify themselves as
19 police officers --

20 A Yes.

21 Q -- from the prosecutor's office in Bergen
22 County?

23 A Yes.

24 Q Okay. Tell us what happens next?

25 A Well at that point we all as a group, we moved up

1 to the garage doors and Mr. Scharf opened the garage
2 and we proceeded into the garage through the garage
3 into the kind of kitchen family room area.

4 Q At the time that you now arrived at the area
5 that you've described did Bergen County authorities
6 begin the search process?

7 A Yes, they did.

8 Q Now with respect to your involvement, are you
9 or Lieutenant Ehrenberg in any way involved in the
10 conducting of the search of the premises of Stephen
11 Scharf?

12 A No, not at all.

13 Q And with respect to your presence at that
14 location do you play any role in this investigation?
15 Either you or Lieutenant Ehrenberg?

16 A No.

17 Q And would you describe for the jury your
18 understanding with respect to your presence at that
19 location?

20 A We were called to the location because Bergen
21 County wanted to search the house. And as courtesy
22 they notified the department in the town that they're
23 going to search. So the lieutenant and I were there
24 merely at their invitation. And they were searching
25 the house, and while they were searching the house we

1 stood by with Mr. Scharf.

2 Q Now if you would, can you tell us what
3 transpired as you sat in stood by Mr. Scharf? Can you
4 tell us first of all where you spent that time?

5 A It was a kind of like a family room. There was a
6 table and some chairs and we were situated in the
7 chairs, the three of us. And at that time Lieutenant
8 Ehrenberg had engaged Mr. Scharf, they were having a
9 conversation back and forth about various things during
10 the time we were there.

11 Q Can you tell us how you saw that picture of
12 the two of them? How they appeared to you in terms of
13 conversation?

14 A They seemed to be enjoying a normal, not a normal
15 conversation, but a give and take with each other.

16 Q And were you participating in that or you
17 were merely standing by?

18 A No. I was sitting there. I was listening, but I
19 didn't participate in that conversation at all.

20 Q And can you tell us if this conversation that
21 Mr. Scharf and Lieutenant Ehrenberg were having, did
22 that last for an appreciable time?

23 A It did.

24 Q Can you give the jury some sense of about how
25 long Lieutenant Ehrenberg and Mr. Scharf were talking?

1 A They seemed to be talking the whole time. They
2 were going back and forth pretty good. Mostly nothing
3 specific. It was conversation.

4 Q I'm trying to fix right now, I'll get to the
5 substance in a moment, but about how long does this
6 conversation that you're listening to take?

7 A At least an hour.

8 Q Okay. And during the course of the
9 conversation can you relate to the jury generally some
10 of the things that you may have heard being discussed
11 between Mr. Scharf and Lieutenant Ehrenberg? And by
12 that I mean the general nature of the conversation as
13 you recall it.

14 A Well Lieutenant Ehrenberg is a religious person.
15 And a lot of times when he deals with people who've
16 experienced a loss or a tragedy in their family he
17 likes to talk about God and he talks about religion and
18 how things happen and how people feel about that and
19 how it's going to affect their life.

20 Q And keeping what you just said in mind, is
21 that a way you would characterize the conversation that
22 was ongoing between Mr. Scharf and Lieutenant --

23 A Yes, I would.

24 Q -- Ehrenberg?

25 A Yes.

1 Q Now in this conversation did there come a
2 point where you hear something unusual?

3 A Yes.

4 Q I want you to tell the jury what you recall
5 with that?

6 A Lieutenant Ehrenberg was talking with Mr. Scharf
7 and he was talking about how God has mysteries and you
8 never know what God has in store for us, and things
9 happen. And who knows what accidents happen. At that
10 point Mr. Scharf said this was no accident.

11 Q What was your reaction to that?

12 A I was astonished. I was actually holding my
13 breath because I believe Mr. Scharf was going to admit
14 to a crime in front of us.

15 Q What happens immediately thereafter?

16 A There was a brief discussion about seeing a
17 priest. Shortly thereafter the two investigators from
18 Bergen County came back into the room. And when they
19 came into the room it changed the atmosphere. The
20 atmosphere changed. And Mr. Scharf changed. I could
21 see a change come over him and he didn't say any more.

22 Q Now with respect to the overall event of the
23 search, is there any more conversation, before asking,
24 is there any more conversation with Mr. Scharf
25 following the appearance of the Bergen County

1 detectives?

2 A No.

3 Q Tell the jury what happens next.

4 A Well at that point the detective said we're done,
5 we're leaving. And they started to walk out. Mr.

6 Scharf accompanied them out. I was telling Lieutenant

7 Ehrenberg get these guys, you've got to talk to them.

8 He's going to go if they interview him again get them

9 to push him a little bit, he's going to admit to this.

10 Q And what happens now?

11 A Lieutenant Ehrenberg spoke to them, but the

12 detectives, I wasn't privy to that conversation, but

13 they didn't re-interview Mr. Scharf. Not in my

14 presence.

15 Q And following the events that you've

16 described thus far what happens thereafter?

17 A The lieutenant and I went back to headquarters.

18 Q Now with respect to this conversation did you

19 report on this conversation?

20 A I did. I wrote a full report on it.

21 Q Have you been able to locate that report?

22 A No, I have not.

23 Q Are you able to tell us anything about that

24 report?

25 A In 2003 I was interviewed by the Bergen County

1 prosecutor's office. I had a copy of the report. I
2 had obtained it from the Washington Township police
3 files. In 2007 I was advised by the chief of police
4 that they had purged a number of the records and among
5 those records was my report. So there's no copy of it
6 for this day.

7 Q The report that you --

8 MR. BILINKAS: Judge, I didn't hear that
9 answer.

10 MR. MELLO: There's no copy of the report.

11 MR. BILINKAS: Which report?

12 MR. MELLO: The report that he filed.

13 THE COURT: The report was purged.

14 MR. MELLO: The report was purged in 2007.

15 He was interviewed. The witness testified he was
16 interviewed by Bergen County prosecutor's office -- in
17 2003. He had a copy of the report a that time.
18 Thereafter in 2007 he's testified that certain records
19 were purged by his department. Among them would be
20 this report.

21 BY MR. MELLO:

22 Q Now with respect to --

23 MR. BILINKAS: Counsel, again, for the
24 record, are we referring to the prosecutor's
25 statement --

1 MR. MELLO: No, we are not.

2 MR. BILINKAS: You're talking about a
3 different report?

4 MR. MELLO: Yes.

5 BY MR. MELLO:

6 Q Let me go back to this so we are clear.
7 Following the events that you've described you prepared
8 a report?

9 A Yes, I did.

10 Q You were interviewed in 2003 by Bergen County
11 prosecutor's office detectives?

12 A Yes, I was.

13 Q I'm going to show you what's been marked
14 S-25. Take a look --

15 A (Reviewing exhibit.) Yes, sir.

16 Q Do you recognize that exhibit?

17 A Yes, I do.

18 Q What do you recognize that exhibit to be?

19 A It was a taped statement I gave to the Bergen
20 County prosecutor's office.

21 Q And what date was the date of that statement?

22 A Date says February 5, 2003.

23 Q And with respect to that statement is that
24 the statement that you referred to earlier in your
25 testimony?

1 A Yes.

2 Q Okay. And at that time when you made that
3 statement were you in possession of the report that you
4 had prepared shortly after the events that you
5 testified to?

6 A Yes, I was.

7 Q But at subsequent time you find that that
8 report has been purged by your department?

9 A Yes, it was.

10 Q Now with respect to the information that is
11 contained in the report, do you recall it?

12 A Yes.

13 Q Do you recall in that information in that
14 report to be the same information that you provided in
15 2003?

16 A Yes.

17 Q And, again, at that time you had that report?

18 A Yes, I did.

19 Q Okay. Now was that report marked in a
20 certain way?

21 A Yes. When I wrote the report for the profile that
22 we do when we answer calls I marked it as assist
23 another agency.

24 Q And can you explain how that relates to the
25 ultimate purging of that report and other documents?

1 A When the department purged their reports they kept
2 all the major crimes and all the cases that were
3 pending. When this case was marked as an assist other
4 agency there was no link to a suspicious death, a
5 homicide or anything else. So when they purged it they
6 didn't feel it was worthy of keeping.

7 Q So it never made its way into a file?

8 A No.

9 Q Now with respect to the testimony that you've
10 given today is the testimony that you've given today --
11 strike that. The testimony that you've given today is
12 that based on your recollections of the event that
13 you've described?

14 A Yes, it is.

15 Q Did you find that to be a startling event?

16 A Very.

17 Q Is that something that you think you will
18 ever forget?

19 MR. BILINKAS: Objection. He's leading the
20 witness.

21 THE COURT: Sustained.

22 MR. MELLO: Nothing further. Thank you.

23 THE COURT: Cross.

24 CROSS EXAMINATION BY MR. BILINKAS:

25 Q You wrote a report regarding your

1 observations on this night?

2 A Yes, sir.

3 Q Did you send it to the Bergen County
4 prosecutor's office because you were assisting them in
5 their investigation?

6 A I wouldn't have done it personally and I don't
7 know if it was done.

8 Q Was it supposed to have been sent to the
9 prosecutor's office?

10 MR. MELLO: I'm going to object to what
11 supposed to have been. If it wasn't, it wasn't.

12 MR. BILINKAS: If he doesn't know, Judge, I'm
13 trying to determine what normally happens --

14 THE COURT: If he knows.

15 BY MR. BILINKAS:

16 Q You drafted a report according to you;
17 correct?

18 A Yes.

19 Q And that report had to do with your actions
20 on the night of the search of my client's house;
21 correct?

22 A Yes.

23 Q And you indicated that you were astonished as
24 a result of your observations; correct?

25 A Yes.

1 Q And after you wrote that report where did you
2 send it?

3 A I sent it into the secretary's office to be typed.

4 Q And after it was typed did you look it over?

5 A Yes, I did. And I signed it.

6 Q And where did it go after you signed it?

7 A To my knowledge it went to the file.

8 Q Okay. And who has the file?

9 A Washington Township police.

10 Q And what happened to that file?

11 A As I said before it was purged because it was
12 listed as an assist other agency, which is what I did.

13 Q And when did you find out that the report
14 that you wrote concerning a homicide case had been
15 destroyed?

16 A When I was called by Mr. Bardino (phonetic) a few
17 months ago.

18 Q Did you tell Detective Bardino that your
19 official report had been destroyed?

20 A Yes, I did.

21 Q Now on this day you recall waiting
22 approximately two hours; correct?

23 A Yes.

24 Q And would you agree with me that back then
25 there would a record with regards to when you left

1 headquarters and when you got to the Scharf residence?

2 A Yes.

3 Q And would there be a record also indicating
4 when the prosecutors arrived?

5 A (No audible response.)

6 Q Did you call it in?

7 A Yes, I would have called it in.

8 Q And if you called it in would there be a
9 record of that somewhere within your department?

10 A No longer.

11 Q Well would there have been back then had
12 someone requested it?

13 A Yes.

14 Q Your recollection is that you waited two
15 hours; correct?

16 A Approximately.

17 Q Now the prosecutor asked you if at the time
18 in 2003 whether or not your report coincided with the
19 statement that you gave in 2003.

20 A Yes.

21 Q And your recollection is that everything you
22 said in your report is the same thing that's contained
23 in the prosecutor's statement ten years later?

24 A Yes.

25 Q And how long was your statement?

1 A Half a page, page and a quarter.

2 Q And would you agree with me that the
3 prosecutor's statement is seven pages?

4 A Yes.

5 MR. MELLO: You should be clear it's a
6 question and answer.

7 BY MR. BILINKAS:

8 Q Question and answer --

9 MR. MELLO: Thank you.

10 BY MR. BILINKAS:

11 Q -- is seven pages?

12 A Yes.

13 Q Does the prosecutor's statement contain more
14 information than your half a page report?

15 A I wouldn't say that.

16 Q Okay. Well lets go over your specific
17 recollection. On the night in question the
18 prosecutor's office asked you to assist them by
19 accompanying them to a house of a homicide suspect;
20 correct?

21 A Yes.

22 Q That's the term that you used; correct?

23 A In 2003, yes.

24 Q Did you use that term back in '92?

25 A No, I would not have.

1 Q What term did you use in '92?

2 A A suspicious death.

3 Q So would you agree with me that based on your
4 recollection your official report is different than, at
5 least in some respects, your report to the prosecutor's
6 office?

7 A I guess.

8 Q Okay. Well your purpose there was to assist
9 the prosecutor's office; correct?

10 A Yes.

11 Q And you were made aware of the fact that they
12 were going to be searching Stephen Scharf's house;
13 correct?

14 A Yes.

15 Q Now do you have a specific recollection of
16 the Bergen County prosecutor's office investigators
17 arriving with Stephen Scharf?

18 A Yes, I remember.

19 Q They were in their car; correct?

20 A There were two cars.

21 Q And one, both cars had -- strike that. Mr.
22 Scharf wasn't driving alone; correct? He was in one of
23 the two cars with another individual?

24 A I don't recall what car he was in.

25 Q But you do recall him arriving with the

1 prosecutor's office?

2 A Yes.

3 Q Now you indicated on direct that you had
4 nothing to do with the search. Do you recall that?

5 A Right.

6 Q Did you previously tell the prosecutor's
7 detective at some point we were going through the house
8 and we were keeping an eye on Mr. Scharf? Do you
9 recall telling the prosecutor Detective Alver that at
10 some point we, which I assume you were part of that,
11 were going through the house?

12 A Yes.

13 Q And did you go through the house?

14 A I walked around the area we were in, which was the
15 kitchen and that little family room area. And there
16 was a desk just outside the area.

17 Q And were you keeping an eye on Mr. Scharf?

18 A If I wasn't, Lieutenant Ehrenberg was.

19 Q Between you and Ehrenberg you were watching
20 Mr. Scharf like a hawk; correct?

21 MR. MELLO: Objection to the
22 characterization.

23 BY MR. BILINKAS:

24 Q You were watching him --

25 THE COURT: Sustained.

1 BY MR. BILINKAS:

2 Q You were watching him very closely?

3 A We were watching him.

4 Q To make sure he didn't do anything.

5 A Yes.

6 Q Did you control his movements in his own
7 house?

8 A No. He was free to walk around.

9 Q And if he walked around would you follow him?

10 A Yes.

11 Q Now Ehrenberg talked to Mr. Scharf for
12 approximately an hour. Do you recall that?

13 A Yes.

14 Q It's a long time; correct?

15 A Yes.

16 Q And do you recall Ehrenberg specifically
17 discussing the incident itself with Mr. Scharf?

18 A Not specifics about it, no.

19 Q Do you recall discussing the incident?

20 A Other than it was just an accident and accidents
21 happen.

22 Q Mr. Scharf was telling Ehrenberg it was an
23 accident?

24 A No. Ehrenberg was telling Mr. Scharf it was an
25 accident and accidents happen.

1 Q And was Mr. Ehrenberg also telling MR. Scharf
2 how specific accidents happen?

3 A I don't understand the question, counselor.

4 Q Do you recall Detective Alver in your
5 official prosecutor's statement Ehrenberg, he was
6 talking about how it was unfortunate and how accidents
7 happen?

8 A That's what he said. Accidents happen.

9 Q Ehrenberg said that?

10 A Ehrenberg said that.

11 Q And this was in the context of religion to --

12 A Yes.

13 Q -- a certain extent?

14 A Yes.

15 Q And Ehrenberg was talking about God's plan
16 and sometimes we don't know why things happen?

17 A Yes.

18 Q Basically saying that according to God there
19 is no accidents. Everything happens according to his
20 plan, or words to that effect?

21 A That's your twist on it.

22 Q Well do you recall him talking about God and
23 accidents?

24 A Yes, he did.

25 Q And at some point Mr. Scharf said it was no

1 accident?

2 A That's the way I remember it.

3 Q And you remember that exact phrase?

4 A Yes, I do.

5 Q It was no accident.

6 A Yes.

7 Q That's what you remember?

8 A Yes.

9 Q He didn't just say, no, one word? He was
10 specific and used that phrase that you testified to?

11 A That's the way I remember it.

12 Q Now would you agree with me that Mr. Scharf
13 was extremely upset during this conversation at
14 different points?

15 A No, I wouldn't.

16 Q Well did he seem upset?

17 A Seemed kind out of it.

18 Q Did he seemed zoned out?

19 A Yes, he did.

20 Q Were you made aware of the fact that he had
21 been with the county prosecutor since 10:00 that
22 morning, over 12 hours?

23 A Not at that time.

24 Q But your recollection of him at that point
25 was that he was zoned out?

1 A Yes.

2 Q Did he seem upset?

3 A Not in the context of what happened.

4 Q Irrespective of the context, did he seem
5 upset?

6 A Not overly so.

7 Q Well did you tell the Bergen County
8 prosecutors on page six of your statement, was he upset
9 or crying or emotional. Your answer being he seemed
10 upset. I didn't see him crying.

11 A Right.

12 Q So you did use the words he seemed upset?

13 A Yes.

14 Q Now you've had an opportunity to review the
15 prosecutor's, and this is a statement that was taken
16 down by a stenographer. Someone took your exact words;
17 correct?

18 A Yes.

19 Q And you testified that you in fact reviewed
20 it and everything contained in this report is accurate
21 as to what you told them?

22 A Yes.

23 Q Isn't it a fact that with regards to the
24 statement that you claim my client said it was no
25 accident, that in your official statement taken down by

1 a stenographer on page five, it says, Stephen Scharf
2 stated it was no accident? Question mark. Can you
3 look at your statement?

4 A (Reviewing statement.)

5 MR. MELLO: Where is that, counsel?

6 MR. BILINKAS: Page five.

7 MR. MELLO: Line?

8 MR. BILINKAS: Six lines from the bottom.

9 BY MR. BILINKAS:

10 Q Isn't it a fact with regards to the exact
11 statement that you testified to and you reviewed that
12 that exact statement, as stated by my client, was a
13 question that he asked Ehrenberg?

14 A No. No.

15 Q Well will you agree that there's a question
16 mark?

17 A There is a question mark. I didn't put it there.

18 Q But you reviewed it; correct?

19 A I did.

20 Q And you told this jury that it was accurate
21 when you did review it; correct?

22 A Yes, it was.

23 Q And however you told it to that stenographer
24 she put that you said that the statement made by Scharf
25 was a question, not a statement as you now testify?

1 A Well that's what she put, yes.

2 MR. BILINKAS: Nothing further.

3 REDIRECT EXAMINATION BY MR. MELLO:

4 Q Just go up a few lines, just since we're on
5 question marks and periods. Page five. Lieutenant
6 Ehrenberg was talking about how accidents happen and
7 Mr. Scharf said it was no accident.

8 A Yes.

9 Q Is there a period there?

10 A Period.

11 Q Now lets forget about question marks and
12 periods that are typed in. Let me just ask you this.
13 When he said it was no accident, was that an
14 affirmative statement by him?

15 A Yes.

16 Q And you were astonished by it?

17 A Yes, I was. Absolutely astonished.

18 Q You would not have been astonished by a
19 question, would you?

20 A No, I wouldn't.

21 MR. BILINKAS: Judge, --

22 MR. MELLO: Nothing further.

23 MR. BILINKAS: -- can we stop the leading?

24 RECROSS EXAMINATION BY MR. BILINKAS:

25 Q Well this astonishment, didn't you testify

1 originally that you thought Mr. Scharf was about to
2 confess?

3 A Yes.

4 Q About to; correct?

5 A About to give us the details.

6 Q And you said that you talked to Ehrenberg
7 about that and you told him he had to talk to the
8 prosecutor's office with regard to what had just
9 transpired; correct?

10 A Yes.

11 Q And although you never heard exactly what he
12 said, you know, he attempted to do that; correct?

13 MR. MELLO: He didn't say he didn't hear
14 exactly what he said.

15 MR. BILINKAS: Yes, he did.

16 MR. MELLO: He said exactly what he said.

17 BY MR. BILINKAS:

18 Q Did you hear?

19 A No.

20 THE COURT: Hold on.

21 BY MR. BILINKAS:

22 Q You didn't hear Ehrenberg tell the
23 prosecutor's detective what you and he talked about?

24 MR. MELLO: Oh, I'm sorry. I may have
25 misunderstood the question. I thought he was talking

1 about what Mr. Scharf said, not what Mr. Ehrenberg may
2 have said, which I'm not concerned about.

3 BY MR. BILINKAS:

4 Q First of all, isn't it a fact that you had a
5 conversation with Ehrenberg; correct?

6 A As we were walking out, yes.

7 Q And you told him, you have to go talk to the
8 prosecutor's detective about what just happened;
9 correct?

10 A Yes.

11 Q And he went and talked to them?

12 A Yes, he did.

13 Q You saw him talk to them; right?

14 A I saw him.

15 Q And for whatever reason, even though Mr.
16 Scharf had been with the prosecutor for over ten hours
17 that day and had given numerous statements and had
18 cooperated a thousand percent --

19 MR. MELLO: Is that a speech, I'm sorry. Can
20 we just have one question?

21 THE COURT: The question.

22 BY MR. BILINKAS:

23 Q For whatever reason the Bergen County
24 prosecutor's office never questioned Mr. Scharf on that
25 night to clarify, to make sure, what was being said?

1 A No, they didn't.

2 Q If you were in charge of this investigation,
3 this homicide investigation, would you have done that?

4 A Yes, I would have.

5 Q Is that a huge mistake in your mind regarding
6 the prosecutor's actions?

7 A It's an error.

8 Q It's like they didn't want to know.

9 MR. MELLO: Objection to what --

10 THE COURT: Sustained.

11 MR. BILINKAS: Nothing further.

12 RE-REDIRECT EXAMINATION BY MR. MELLO:

13 Q Now not with --

14 THE COURT: Any further questions?

15 MR. MELLO: Yes.

16 BY MR. MELLO:

17 Q Notwithstanding all that Mr. Bilinkas has
18 just said, does it make it any less so that he said no,
19 it wasn't an accident?

20 A No.

21 MR. MELLO: Now I have no further questions.

22 THE COURT: You may step down. Thank you.

23 THE WITNESS: Thank you, sir.

24 (Witness excused.)

25 THE COURT: Can I see the attorneys for a

1 moment?

2 MR. MELLO: Sure, Judge.

3 (At sidebar.)

4 THE COURT: We'll break now?

5 MR. MELLO: --.

6 (Sidebar concluded.)

7 THE COURT: All right. Ladies and gentlemen
8 of the jury, we appear to be a little bit ahead of
9 schedule. We finished our witnesses for this
10 afternoon. You would go home in approximately a half
11 hour anyway. You didn't take a break, so about 15/20
12 minutes.

13 I'm going to excuse you until next Tuesday.
14 We're coming back on May 3rd, which is a Tuesday, and
15 we have Tuesday, Wednesday, and Thursday of next week.
16 As we get into the trial and we start to complete
17 witnesses I'll be able to give you a better idea next
18 week as to where we are in terms of our ultimate
19 completion day.

20 But from what I can see we've covered
21 approximately 16 witnesses, which is an accomplishment
22 considering that we have both direct and cross
23 examination. And you've been very, very cooperative.
24 And on behalf of all of the lawyers I want to thank
25 you.

1 So you are excused. Do not listen to, read,
2 or watch any news coverage. I indicated to you that
3 each and every day increases the likelihood of
4 different types of news coverage, whether it be cable,
5 whether it be print, or TV. You have to completely
6 avoid listening or watching any of those news accounts.

7 Also, I told you before not to use the
8 computer to do your own research, not to visit the
9 area, not to do anything, because you're supposed to
10 keep your minds clear until you have heard all of the
11 evidence, have reviewed all of the exhibits that have
12 been marked into evidence, and basically started your
13 deliberations.

14 So at this point you're not to have any
15 conversations of any nature with anyone about this
16 case, and not to watch any law related programs. As I
17 told you there's so many law related programs there
18 could be subject matter that parallels the information
19 in this case. So, discretion is the better part of
20 valor. Do not watch any of those programs.

21 Have a good weekend. Have a good evening.
22 And I will see you next Tuesday at 9:00 a.m. Thank
23 you.

24 (The jury exited the courtroom.)

25 (Adjourned for the day.)

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Certification

I, Janice T. Warner, the assigned transcriber,
do hereby certify the foregoing transcript of proceedings
on Video, from index number 9:26:15 to 10:48:50; and, from
index number 11:10:49 to 12:10:14; and, from index number
13:45:47 to 15:24:49, is prepared in full compliance with
the current Transcript Format for Judicial Proceedings and
is a true and accurate non-compressed transcript of the
proceedings as recorded.

Janice T. Warner

Janice T. Warner 009 (AAERT #00315)

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