

STATE OF NEW JERSEY v STEPHEN F. SCHARF -- May 5, 2011

SHEET 1

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
BERGEN COUNTY
INDICTMENT NO. 09-08-1485
APP. DIV. NO. A-1560-11T4

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

Place: Bergen Co. Courthouse
10 Main Street
Hackensack, NJ 07601

Date: May 5, 2011

BEFORE:

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

TRANSCRIPT ORDERED BY:

HELEN GODBY, ESQ., (Office of the Public Defender,
Appellate Section, 9th Floor, 31 Clinton Street, Box
46003, Newark, New Jersey 07101)

APPEARANCES:

WAYNE MELLO, ESQ.
(Bergen County Prosecutor's Office)
Attorney for the Plaintiff

EDWARD J. BILINKAS, ESQ., (Law Offices of Edward J.
Bilinkas)
Attorney for the Defendant

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I N D E X

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Nelson Pagan		25		52	
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Colloquy

1 (Recording in progress as matter commences, 9:36 a.m.)

2 MR. MELLO: -- for today.

3 THE COURT: Yes.

4 MR. MELLO: We had discussed this --

5 this --

6 (Off the record, on the record)

7 MR. MELLO: -- jury having the view today.

8 I've prepared, for your review, comments made to the

9 jury, and it reads simply, the Court has concluded that

10 it be helpful for you to view the scene of the death of

11 Jody Ann Scharf. We will go there with the Sheriff's

12 Officers. The view is not evidence in the case, but

13 may be used by you as an aid to understanding the

14 evidence introduced in the case. And so much comports

15 with case law.

16 Most importantly, while you are at the scene,

17 please do not ask any questions of the lawyers or of

18 the people who may be there. Do not discuss the case

19 with anyone, even your fellow jurors while going to or

20 from the location or at the location, itself. So, in

21 short, we want to ensure that the jury understands that

22 they are not to discuss anything of any kind at any

23 time. And most particularly, while they're at the

24 scene, they're not to say to any person, oh, is this

25 that or is -- is -- is this the place we heard about

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1 and so forth.
2 THE COURT: So you're going to see the
3 parking lot and the look-out area.
4 MR. MELLO: They're going to be taking
5 through the look-out area, down the path to the fence,
6 and Mr. Bilinkas and I have agreed that the view will
7 also encompass what they can see of the ledge of the
8 northern end. So it's about -- oh, I don't know, maybe
9 about 15 feet or longer, if that's it.
10 THE COURT: But they're going to learn that
11 by looking at it, --
12 MR. MELLO: I --
13 THE COURT: -- not from the instruction that
14 we give them.
15 MR. MELLO: No instructions. They -- they --
16 THE COURT: Can I see what you have?
17 MR. MELLO: -- they've had the evidence.
18 (The Court reviews document)
19 THE COURT: Okay. Mr. Bilinkas, you're in
20 agreement.
21 MR. BILINKAS: Yes, Judge.
22 THE COURT: Okay. We'll do this at 1:30.
23 MR. MELLO: Yes.
24 THE COURT: Now, realistically, do you
25 believe that we're going to conclude our testimony this

1 morning by 12:30?
2 MR. BILINKAS: Yes.
3 MR. MELLO: Yes.
4 THE COURT: Because we have a private bus
5 company and, you know, this should, in no way, effect
6 the amount of time that you need to do what you have to
7 do, but I also have to work with the Sheriff's
8 Department as to whether it's 1:30, 2 o'clock, or
9 whatever the time might be. So realistically, we
10 should be able to complete everything by 12:30.
11 MR. MELLO: Yes, Judge.
12 THE COURT: All right. Then we should get
13 underway. Can you bring out the jury?
14 (Record remains on, no colloquy)
15 COURT OFFICER: Jury entering.
16 (Jury enters courtroom, 9:40 a.m.)
17 THE COURT: Welcome back, ladies and
18 gentlemen of the jury. You may be seated. Madam
19 clerk, roll call.
20 (Jury roll call taken, all present)
21 THE COURT: All right. Is the state ready to
22 proceed?
23 MR. MELLO: Yes, sir.
24 THE COURT: Call your next witness.
25 MR. MELLO: Thank you, sir. David Danchak.

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1 THE COURT: Please step up here, face the
2 court clerk.
3 D A V I D D A N C H A K, STATE'S WITNESS, SWORN
4 COURT CLERK: State your name for the record.
5 THE WITNESS: David Danchak.
6 THE COURT: Please have a seat.
7 THE WITNESS: Yes, sir.
8 THE COURT: You may begin.
9 MR. MELLO: Thank you, sir.
10 DIRECT EXAMINATION BY MR. MELLO:
11 Q Good morning, sir.
12 A Good morning.
13 Q If you would, would you tell us first by whom
14 you're presently employed?
15 A Yes, USAA Life Insurance Company.
16 Q And where is USAA Life Insurance Company
17 headquartered?
18 A In San Antonio, Texas.
19 Q Can you tell us the manner in which you are
20 employed by USAA Life Insurance?
21 A Yes, sir, I am the executive director of the Life
22 and Health Claims Division.
23 Q And with respect to your employment with USAA
24 Life Insurance, can you tell us how long you have been
25 employed by that company?

1 A For 19 years.
2 Q Have you been designated as custodian of
3 records by the USAA Life Insurance Company for purposes
4 of these proceedings?
5 A Yes, I have.
6 Q And are you prepared to testify to records
7 that have been kept in the normal course of business at
8 USAA Life Insurance?
9 A Yes, I am.
10 Q If you would, I'm going to ask you if you
11 would examine what has been marked S-190 and tell us,
12 if you would, if that document represents the records
13 that have been kept in the course of business for USAA?
14 A Yes, it has.
15 Q All right. Now, I'm going to ask you a
16 series of questions that pertain to the file that is
17 before you and pertain to a particular life insurance
18 policy, namely a policy on the life of Jody Ann Scharf.
19 Understood.
20 A Yes, sir.
21 Q If you would, would you begin to discuss with
22 us first how the policy on the life of Jody Ann Scharf
23 came into effect?
24 A Okay.
25 MR. BILINKAS: Objection, Judge. Can I --

1 THE COURT: Your objection.
2 MR. BILINKAS: -- I have no objection to
3 certain documents being presented to this witness, but
4 how it came about, any conversations, anything like
5 that.
6 THE COURT: Ask another question. Sustained.
7 BY MR. MELLO:
8 Q If you would, can you locate for us, in the
9 document that is before you, the application for life
10 insurance relative to the life insurance policy on the
11 life of Jody Ann Scharf?
12 A Yes, sir. (Witness reviews exhibit.)
13 Q Have you located that document?
14 A Yes, sir.
15 MR. MELLO: And for purposes of the
16 proceedings, Mr. Bilinkas, I'll have that marked S-
17 190(a). Any objection to -- to receipt into evidence?
18 (Counsel reviews exhibit)
19 MR. BILINKAS: No objection.
20 MR. MELLO: Thank you.
21 THE COURT: In evidence.
22 BY MR. MELLO:
23 Q Now, with respect to S-190(a), the
24 application, can you tell us the proposed insured?
25 A Yes, the proposed insured is Jody Ann Scharf.

1 Q Can you tell us the policy owner of the
2 proposed policy?
3 A Stephen F. Scharf.
4 Q Can you tell us the beneficiary designation
5 in that application?
6 A Yes, sir, primary beneficiary, Stephen F. Scharf;
7 contingent beneficiary, Jonathan W. Scharf.
8 Q With respect to this application, and without
9 going into the content of any conversation, was there a
10 prior contact that proceeded the receipt of this
11 application by USAA?
12 A Yes.
13 Q Was that contact with Mr. Stephen Scharf?
14 A Yes.
15 Q Following that contact, can you tell us,
16 first, the approximate date of the contact?
17 A (Witness reviews exhibit.) It was approximately
18 -- it was probably February of '91.
19 Q All right. Can you tell us the date that the
20 application that you've identified was received by
21 United Services Automobile Association?
22 A (Witness reviews exhibit.) The postmark is April
23 26th, I don't have the exact date here on these
24 documents, as far as when it was received.
25 Q Okay. Is the postmark April 26th, 1991?

1 A Yes, sir.
2 Q Okay. Now, what was the -- within the
3 context of the application, the policy information and
4 optional benefits?
5 A The policy was -- had a basic amount of insurance
6 of \$300,000 and the application was applied for also in
7 \$200,000 of accidental death benefit.
8 Q The total would be?
9 A Would be 500,000.
10 (Record remains on, no colloquy)
11 Q Now, with respect to the policy application
12 that is before you, would it be protocol and did, in
13 fact, a medical examination of the proposed insured,
14 Jody Ann Scharf, take place?
15 A Yes, it did.
16 Q Can you locate in the document, S-190, the
17 medical information?
18 A Yes.
19 MR. MELLO: And, Mr. Bilinkas, for purposes
20 of the proceeding, I'm going to ask it be marked S-
21 190(b).
22 Q Have you located that document?
23 A Yes, sir.
24 Q And with respect to the application for
25 insurance on the life of Jody Ann Scharf, she was

1 required to undergo a physical examination.
2 A Yes, sir.
3 Q And was that done in this case?
4 A Yes, it was.
5 Q Okay. And does that document reflect that
6 examination?
7 A Yes, it does.
8 MR. MELLO: Any objection, sir, to S-190
9 (sic)?
10 MR. BILINKAS: No objection.
11 BY MR. MELLO:
12 Q And can you give us the date of that medical
13 document?
14 A Yes, sir, it was May 23rd, 1991.
15 (Record remains on, no colloquy)
16 Q Can you tell us, was a life insurance
17 contract issued on the life of Jody Ann Scharf by USAA
18 Life Insurance Company?
19 A Yes, it was.
20 Q Can you identify in the document before you
21 that policy?
22 A (Witness reviews exhibit.) Yes.
23 (Record remains on, no colloquy)
24 Q Can you tell us the date of that contract?
25 A Yes, the effective date of this contract was June

1 4th, 1991.
2 MR. MELLO: Sir, for purposes of the record,
3 I'm going to have it marked S-190(c), the policy, and
4 ask that it be received in evidence.
5 THE COURT: Any objection?
6 (Counsel reviews exhibit)
7 MR. BILINKAS: No objection.
8 THE COURT: In evidence.
9 (Record remains on, no colloquy)
10 BY MR. MELLO:
11 Q Now, if you would, referring to the insurance
12 contract, all right, can you tell us the insured under
13 the contract?
14 A The insured is Jody Ann Scharf.
15 Q Can you tell us the owner of the contract?
16 A The owner is stated as Stephen F. Scharf.
17 Q Can you tell us the amount of the insurance
18 on the contract?
19 A It's 300,000, base amount, and 200,000 accidental
20 death benefit.
21 Q Is the accidental death benefit an option
22 that is offered to prospective holders?
23 A Yes.
24 Q Now, with respect to accidental benefit
25 payment under the contract that is before you, is

1 murder an event -- a payable event under the accidental
2 death benefit term?
3 A Yes, it is.
4 Q Is there an exception to payment for murder
5 under the accidental benefit term?
6 A Yes, there is. In the event that it was
7 determined that the murder -- the murderer or the
8 person committing the murder was the beneficiary, then
9 we would not pay that amount to them.
10 Q Can you tell us the beneficiaries under the
11 life insurance contract that is before you?
12 A Yes. The primary beneficiary is Stephen F.
13 Scharf, with a contingent beneficiary of Jonathan W.
14 Scharf.
15 (Record remains on, no colloquy)
16 Q Can you tell us, in this matter, did you
17 receive notification of the death of Jody Ann Scharf?
18 A Yes, we did.
19 Q Do your records reflect the date that you
20 received such notification?
21 A Yes, it was in September, I believe, of '92, and
22 it came from your office.
23 Q That would be the office of the Bergen County
24 Prosecutor.
25 A Correct, sir.

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1 Q Now, if you would, would you discuss with the
2 jury the claims process relative to a life insurance
3 contract at USAA?
4 A Sure. Once USAA receives notification of someone
5 passing away who's insured under a life insurance
6 policy, what we do is, we'll then verify who the
7 beneficiary is, and then we send claim forms to this
8 beneficiary. They must sign it, give us a little bit
9 of information about themselves; address, primary
10 address, et cetera. Once those claim forms are
11 returned back to USAA, we require that and a death
12 certificate with cause of death and then once
13 everything is validated, then we pay the beneficiary.
14 That's in simplest terms.
15 Q Now, can you discuss with us if, in fact, in
16 this particular case, claim forms were sent to Stephen
17 Scharf?
18 A Yes, they were.
19 Q Did you receive a claims form packet from Mr.
20 Scharf?
21 A No, sir, we never received a claim on this file.
22 Q Did you send claim forms to Mr. Scharf and/or
23 any representative of Mr. Scharf on more than one
24 occasion?
25 A Yes, sir.

1 Q On how many occasions?
2 A Four -- claim forms were sent four times.
3 Q At any time, did you receive the appropriate
4 claim forms from Mr. Scharf and/or any representative
5 of Mr. Scharf?
6 A No, sir, a claim was never made.
7 (Record remains on, no colloquy)
8 Q Now, with respect to this policy, did USAA
9 initiate an investigative process?
10 A Yes.
11 Q And would that be done pursuant to the policy
12 itself?
13 A Yes.
14 Q And can you tell us the rule that applies to
15 that particular facet of the policy?
16 A Yes. Any time a death of the insured occurs
17 within the first two years of a policy, it's considered
18 a contestable claim. So what we do is, we have to go
19 out and validate that the insured represented
20 themselves appropriately on the application, and in
21 addition to this, if there's non-natural death, we
22 would go in, gather documents, get as much information
23 as we could to help us make a determination on the
24 claim.
25 Q And with respect to the investigative process

1 conducted by USAA, is it not true that you, in fact,
2 were in communication with the office of the Bergen
3 County Prosecutor?
4 A Yes, we were.
5 Q Now, if you would, I'd like you to discuss
6 the chronology following the death of Jody Ann Scharf
7 in terms of that policy? In the years and following
8 Jody Ann Scharf's death, did you ever receive any claim
9 forms from Mr. Scharf?
10 A No, sir.
11 Q Did you ever receive the required claimant
12 statement from Mr. Scharf?
13 A No, sir.
14 Q Did you make multiple requests for that
15 information?
16 A Yes, we did.
17 Q Following that failure to make a claim, what
18 does USAA do with respect to this policy?
19 A Well, since a claim was never made on this policy,
20 and there was a -- there was a death, so USAA is
21 required to pay someone. So we held these funds for
22 five years up until December of 2000, the five years
23 was up, we closed our investigation in 1995. And
24 following that, we are required to pay this money, as
25 far as the escheatments process, which means we have to

1 pay the state. So we closed the -- the file at that
2 point, we waited the five years, and then USAA sent a
3 check to the State of New Jersey as part of unclaimed
4 funds.
5 Q And with respect to the testimony that you
6 offered regarding this particular point, in no way can
7 USAA retain those monies.
8 A No, sir.
9 Q And there are statutes that apply to turning
10 sums of money over by insurance companies to state
11 funds.
12 A Yes, sir.
13 Q Okay. Can you tell us the approximate date,
14 and specific date if you can, that a sum of money was
15 turned over to the State of New Jersey?
16 A It was January of 2001, I don't have the exact
17 date in front of me, but it was January of '01.
18 Q And that would be to the Unclaimed Property
19 Trust Fund of the State of New Jersey.
20 A Yes, sir.
21 Q And can you tell us the amount that was
22 turned over to the Unclaimed Property Trust Fund of the
23 State of New Jersey?
24 A Yes. It was approximately \$720,000. I don't know
25 the exact dollar amount of it.

Direct - Danchak 18

1 (Record remains on, no colloquy)

2 Q And fair to say that would represent the

3 policy amount of \$500,000, --

4 A Yes, sir.

5 Q -- plus interest.

6 A Yes, sir. It represented the 500,000 -- the

7 \$300,000 base, the accidental death benefit, and then

8 USAA's required to pay interest on that money to the

9 beneficiary. So it included interest, as well.

10 Q In any way, does the payment to that fund

11 occur as a result of any determination made by USAA?

12 A No, sir.

13 Q And is that a statutorily required turn over?

14 A Right.

15 MR. MELLO: Thank you. I think I'm done.

16 THE COURT: Cross.

17 (Record remains on, no colloquy)

18 CROSS-EXAMINATION BY MR. BILINKAS:

19 Q Good morning, sir.

20 A Good morning.

21 Q You are the custodian of records for the

22 Scharf life insurance policy, correct?

23 A Yes, sir.

24 Q Are you aware of the fact that Stephen Scharf

25 had two life insurance policies on his life, with his

Direct / Cross - Danchak 19

1 wife, Jody Scharf, --

2 MR. MELLO: Objection.

3 BY MR. BILINKAS:

4 Q -- as beneficiary?

5 MR. MELLO: Object -- objection.

6 THE COURT: Your objection.

7 MR. MELLO: My objection is, first, I'd like

8 a foundation laid if that is a policy that USAA has

9 owned by Mr. Scharf. If that's the question, then I

10 don't have any objection.

11 MR. BILINKAS: Yes.

12 MR. MELLO: So with that -- if that

13 foundation can be laid --

14 THE COURT: Understood.

15 BY MR. BILINKAS:

16 Q Isn't it a fact that Stephen Scharf, at one

17 time, had two life insurance policies with your

18 company, where his wife, Jody Ann Scharf, was the

19 beneficiary?

20 A That is correct.

21 Q Now, with regards to the policy discussed

22 with you by the prosecutor, you indicated that the

23 initial amount was 300,000, correct?

24 A Yes, sir.

25 Q And the accidental death -- death benefit was

1 another \$200,000, correct?
2 A That's correct.
3 Q Now, isn't it a fact that both of those
4 amounts were part of the original policy purchased back
5 in April of 1991?
6 A Yes, sir.
7 Q The accidental death benefit portion was not,
8 under any circumstances, purchased a month or two
9 before Jody Scharf's death, correct?
10 A Correct.
11 Q No question with regards to that fact,
12 correct?
13 A Correct.
14 Q Now, with regards to this life insurance
15 policy, in order to get this policy, is it not a
16 specific requirement that the insured undergo an
17 extensive medical examination?
18 A Yes.
19 (Record remains on, no colloquy)
20 Q Blood work is taken from that person,
21 correct?
22 A Correct.
23 Q And is there any doubt in your mind, based on
24 the records that have been introduced to evidence, that
25 Jody Scharf was, indeed, examined by your medical

1 technician?
2 MR. MELLO: I'll stipulate to that, she
3 certainly was.
4 THE WITNESS: Yes, she was.
5 BY MR. BILINKAS:
6 Q Now, you indicated that there's a two year
7 period in which time the insurance company can contest
8 the policy, correct?
9 A Correct.
10 Q And the prosecutor talked to you about your
11 insurance company hiring an investigator to look into
12 all the facts surrounding this policy, correct?
13 A Yes, sir.
14 Q And would you agree with me that that
15 investigation was very extensive, based on your review
16 of the records?
17 A Yes, sir, I would agree.
18 Q And during that investigation, from the
19 beginning, September of 1992, up until the point where
20 the funds were turned over to Unclaimed Funds, your
21 insurance company was in constant contact with the
22 Bergen County Prosecutor's Office.
23 A We had a lot of contact with them, yes, sir.
24 Q And you were giving each other information,
25 correct?

1 A We were sharing what we had, yes, sir.
2 Q And -- and you were out interviewing
3 witnesses that the prosecutor had identified for your
4 company, correct?
5 A We interviewed witnesses, I don't know if they
6 were identified or not. I don't --
7 Q Now, after your investigation, was completed,
8 did you or your lawyers attempt to void this policy and
9 not pay the amount to the State of New Jersey?
10 A No, sir.
11 Q And you had a right to do that, if your
12 investigation determined sufficient cause, correct?
13 MR. MELLO: Objection, Your Honor.
14 THE COURT: Sustained.
15 BY MR. BILINKAS:
16 Q So there's no misunderstanding, your
17 insurance company, after an extensive investigation,
18 where you were communicating with the prosecutor's
19 office, never attempted to void payment of the policy.
20 MR. MELLO: Objection.
21 THE COURT: Your objection.
22 MR. MELLO: The -- the question that is being
23 asked is asking this witness to make a determination
24 that is speculative. He's testified that this is a
25 statutorily required turn over. There is no claim that

1 has been made. There is no conclusion that has been
2 made.
3 THE COURT: Sustained.
4 (Record remains on, no colloquy)
5 BY MR. BILINKAS:
6 Q Irrespective of the statutory obligation to
7 turn over the funds to Unclaimed Funds of New Jersey,
8 prior to that, at no point in time did you attempt to
9 void the policy.
10 A No.
11 (Record remains on, no colloquy)
12 Q Now, you're the custodian of the records that
13 the prosecutor has introduced various documents,
14 correct?
15 A Yes, sir.
16 Q And is it common practice to keep all records
17 associated with a file and a potential claim?
18 A Yes, sir.
19 Q At any time, are certain documents either
20 removed or kept out of a file in anticipation of some
21 form of litigation?
22 A No, sir.
23 (Record remains on, no colloquy)
24 Q Isn't it a fact that in the records kept by
25 your insurance company, on this particular policy, that

1 there is a note that someone within your company was
2 told not to put anything on ODOC because that
3 information could possibly be subpoenaed. Do you
4 recall seeing any document to that effect?
5 A No, sir.
6 Q I show you D-263. I ask you to refer to the
7 note on the bottom of that page.
8 A (Witness reviews exhibit.) Okay.
9 Q Isn't it a fact that in this file, someone
10 wrote that certain documents were not to be put in it
11 because of a fear that they may be subpoenaed?
12 A That is what this says, yes.
13 Q And would that be proper or improper as the
14 custodian of records, in charge of keeping this file?
15 A That shouldn't have been in here.
16 MR. BILINKAS: Nothing further.
17 MR. MELLO: Nothing further, thank you.
18 THE COURT: You may step down, thank you.
19 THE WITNESS: Thank you, sir.
20 THE COURT: Next witness.
21 MR. MELLO: Nelson Pagan.
22 (Record remains on, no colloquy)
23 THE COURT: Good morning.
24 THE WITNESS: Good morning, sir.
25 THE COURT: Please step up here.

1 THE WITNESS: Thank you.
2 THE COURT: Face the court clerk.
3 N E L S O N P A G A N, PLAINTIFF'S WITNESS, SWORN
4 COURT CLERK: State your name for the record.
5 THE WITNESS: Raymond Nelson Pagan, P-A-G-A-
6 N.
7 THE COURT: Please have a seat.
8 THE WITNESS: Thank you, sir.
9 THE COURT: You may begin.
10 MR. MELLO: Thank you, sir.
11 DIRECT EXAMINATION BY MR. MELLO:
12 Q Good morning, sir.
13 A Good morning.
14 Q First, I'd like to ask you to keep your voice
15 up so that everyone present can hear your answers to
16 any questions that are asked. All right.
17 A Yes, sir.
18 (Record remains on, no colloquy)
19 Q Let's begin, if you would, by telling the
20 jury something about yourself. Let's first discuss
21 your law enforcement, police background. All right.
22 A Yes.
23 Q All right. Please, if you would, tell us
24 your background in law enforcement.
25 A I started the law enforcement in 1973, I retired

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1 in 1997. I performed --
2 Q All right. Can you tell us what department
3 you were employed?
4 A With the Palisades Interstate Parkway Police.
5 Q Can you tell us your background with that
6 department, which is to say, what ranks you achieved
7 and what rank you retired at?
8 A Okay. I started as a patrol officer, I was
9 promoted to sergeant, I was again promoted to
10 lieutenant, and I was assigned as a detective
11 lieutenant prior to my retirement.
12 Q Can you tell us, if you would, your
13 experience in rescue operations on the cliffs?
14 A Yes, sir. I began rescue operations there. I
15 learned my experience in the United States Army
16 Paratroopers.
17 Q All right. What -- what experience are you
18 referring to?
19 A As far as repelling.
20 Q Okay.
21 A I used to repel out of helicopters.
22 Q All right. Why don't you tell us first your
23 experience with respect to repel.
24 A Repel, I started repelling with the Palisade
25 Interstate Parkway Police back in -- in the '70s. And

1 I taught the members of our department and other police
2 departments. I taught repelling to the National Guard.
3 I taught repelling to the local fire and rescue, which
4 supported us in different events that we had with
5 people going off the cliffs.
6 Q Speaking of the cliffs, can you tell us about
7 your experience regarding repelling down the Palisades
8 Cliffs as a law enforcement officer in rescue and/or
9 recovery operations?
10 A Yes, sir. I performed this numerous times
11 throughout my career. I also practiced there. I
12 practiced there with other departments. I was sent out
13 on different repel missions to either look for a
14 missing person or accidental falls, suicides. Rescue
15 of canines off the cliffs, whatever.
16 Q Now, what I'm going to do now is, I'm going
17 to ask you to reflect back to September of 1992. All
18 right.
19 A Yes, sir.
20 Q And I'm going to specifically direct your
21 attention to September 20 of 1992. And ask if you
22 were, in fact, employed by the Palisade Interstate
23 Parkway Police on that date.
24 A Yes, sir, I was employed. I was --
25 Q Can you tell us the rank that you held on

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1 September 20, 1992?

2 A I was a sergeant, I was the tour commander. I was
3 assigned to the police desk.

4 Q Specifically, directing your attention to the
5 evening of September 20, 1992, can you tell us the
6 specific nature of your assignment on that date?

7 A My --

8 Q That -- in the evening hours.

9 A My assignment was, basically, desk duties;
10 assigning the officers to their positions, their
11 locations, and sending them out to different missions
12 that occurred that night.

13 Q Can you tell us at eight minutes past eight
14 on the evening of September 20, 1992, were you, in
15 fact, on the duty that you've described?

16 A Yes, sir, I was.

17 Q On that date, at that time, did an individual
18 appear at your headquarters?

19 A Yes, sir, through the camera, within our
20 headquarters, I noticed a vehicle pull up to the front
21 door.

22 Q Can you tell us what occurred regarding the
23 appearance of that individual?

24 A That individual had walk -- ran in, very
25 excitable, related to me that someone was out of the --

1 on the highway, flashing the light. He pulled over to
2 investigate. That individual told him that --

3 Q I'm sorry, I didn't hear you.

4 A The individual that he -- that was flashing the
5 light, told the driver, the motorist, that his wife had
6 fallen off the cliffs.

7 Q Now, did you, at the time that you had this
8 conversation with the individual you've described to
9 the jury, did you take any identifying information from
10 him?

11 A No, I did not, sir. I -- what I start to do is --
12 is send -- I got on the radio, I started to -- to send
13 my cars up there, to the location.

14 Q All right. Tell us exactly what you did.

15 A Well, I went into -- for a rescue. I sent two
16 vehicles to the Rockefeller lookout, which was the
17 location indicated to me from this motorist where the
18 incident occurred. I started to get a -- I called in
19 another officer to relieve me of my duties on the
20 police desk. I called a fourth officer to pick me up
21 and drive me to the maintenance center, so I could pick
22 up the tactical vehicle, which has all of the repel
23 equipment.

24 Q All right.

25 A During this period of time, is the -- the motorist

1 who came in left headquarters.
2 Q Now, tell us the personnel that you
3 dispatched in patrol cars to the Rockefeller lookout.
4 You said there were two.
5 A Yes. I sent -- I -- I dispatched Officer Abbott
6 (phonetic) and Officer Tomaio(phonetic).
7 Q Can you tell us who relieved you on desk
8 duty?
9 A Okay. I had Officer James Elliott (phonetic), he
10 -- he took over my duties at the desk.
11 Q Can you tell us the officer that you referred
12 to regarding the obtaining of the emergency police
13 response vehicle?
14 A That was Officer Seri (phonetic), Officer Seri.
15 Q Now, tell us what happens next.
16 A Once everything took a place, I had -- I received
17 a later transmission from Officer Abbott, stating that
18 yes, indeed --
19 MR. BILINKAS: Objection.
20 THE COURT: Your objection.
21 MR. BILINKAS: Objection is to what you
22 stated.
23 THE COURT: Sustained.
24 BY MR. MELLO:
25 Q Without going into the content of the

1 transmission, that's -- now reset -- you've received
2 the transmission from a police officer, correct?
3 A Yes.
4 Q That police officer was Abbott.
5 A Officer Abbott, yes.
6 Q Without telling us what Abbott told you, what
7 did you do?
8 A I -- Officer Seri drove me to the maintenance
9 center. I picked up the tactical vehicle, which had
10 all the repel equipment in it, and proceeded directly
11 to the Rockefeller lookout.
12 Q Now, at the time you arrived at Rockefeller
13 lookout, who is in command?
14 A At the time, it was the two officers that were
15 there.
16 Q Upon your arrival, who is now in command?
17 A I took command.
18 Q Okay. Now, tell us what occurs at this
19 point?
20 A At this point, I had -- I spoke with Officer
21 Abbott. And he showed me where the victim had possibly
22 fallen off the cliff.
23 Q Now, why don't you describe for us exactly
24 what happens, step by step, when you arrive at the
25 lookout. All right.

1 A All right. Sir, I -- first, I -- I had pulled
2 over. I had my discussion with the -- Officer Abbott.
3 I walked with him at the extreme north end of the
4 lookout. There's a trail that we took. I walked about
5 approximately 50 feet. And you come into a -- a cable
6 fence. We went over the cable fence and there's a kind
7 of a flat rock surface. And Officer Abbott pointed out
8 to me that's where the victim fell. He also pointed
9 out to me, he looked down and he says, there's a
10 pocketbook down there.

11 Q Now, I'm going to back you up. Upon your
12 arrival at the Rockefeller lookout, apart from that
13 which you have just testified to, do you give any
14 directions to any police personnel?

15 A Yes, I did. I gave several directions. One, I
16 had Officer Tomaio take Mr. Scharf into the back of his
17 vehicle, to have him just sit down, the door was open.
18 I had Officer Seri drive up to the south end of the
19 park -- of the parking lot, which is the entrance of
20 the Rockefeller lookout and to secure that, put
21 barricades there, and to clear it so the -- I was
22 calling out for the Englewood Cliffs emergency units,
23 so they could bring in their fire trucks and equipment
24 that they need in without any interference.

25 Q Okay. Can you tell us why you had Mr. Scharf

1 put into Tomaio's vehicle?

2 A Well, it was my concern that anything could
3 happen. I mean, from my past experience, that people
4 move around and they could get too close to the cliffs
5 and then we have a double tragedy. For his safeguard,
6 I had him sit -- to be seated. So I knew exactly where
7 he was at all that time.

8 Q Can you tell us why you had the parking lot
9 cleared?

10 A For -- again, it's -- it's for the fact that the
11 rescue equipment was coming in and the fire department
12 needed the room to bring in -- I -- I didn't know how
13 many trucks were coming. They were just calling out.
14 I could just hear the sirens. So they're huge trucks,
15 so we needed the room.

16 Q And with respect to the situation at this
17 point in time, what you have before you, fair to say is
18 a tragic accident.

19 MR. BILINKAS: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. MELLO:

22 Q What did -- what -- how did you view the
23 situation at the time you arrived at the lookout,
24 received the information that you did, and gave the
25 orders that you just described?

1 A I responded there as a first responder. I was
2 there for a rescue.

3 Q Now, let me now bring you back to that point
4 in time that you referred to earlier in your testimony,
5 where you are now at that point of the rock ledge that
6 was indicated to be the point of fall. All right.

7 A Yes, sir.

8 Q You mentioned the observation of a
9 pocketbook.

10 A Yes, sir.

11 Q Can you tell us what events are happening at
12 this time?

13 A Once I was sure of where I was gonna set up my
14 repel lines and everything else, I --

15 Q Why -- why don't you do that, let's tell --
16 tell the jury how you set up your lines.

17 A Okay. First, I cleared the area out, I -- I have
18 no personnel walking around or anything else.
19 Basically, for my own safety, because I -- I'm tying my
20 lines on the trees, around the trees to -- as an anchor
21 point. From that anchor point, I would tie my repel
22 line to. And that repel line would eventually be
23 hooked up to my harness. I'm still awaiting for the
24 response from Englewood Cliffs, which was pretty quick.
25 And I had Mike Chiaffi (phonetic), who is a -- a -- a

1 volunteer fireman, he's also a police officer for the
2 Englewood Cliffs Police Department at thee time.

3 Q Is he going to join you in the rescue effort?

4 A Yes. We, again --

5 Q So tell us what you two did.

6 A Exactly. We exchanged information. I told him
7 exactly what we -- where we're gonna go. He hooks up
8 his lines to different anchor points.

9 Q Okay. Now what happens?

10 A Okay. At -- at that point, after the lines were
11 secured and everything else, I had Officer Abbott, I
12 told him, you stand right here where my lines are. I
13 don't want nobody to touch them.

14 Q All right. What artificial lighting is
15 there?

16 A Well, there -- there was no artificial lighting.
17 At first, we were just going by moonlight until the
18 fire department starts setting up some lighting from --

19 Q Okay.

20 A -- the top.

21 Q Tell us about the lighting that's set up by
22 the -- by the fire department.

23 A I'm not quite sure what it's called, but they --
24 they try to shine down with the lighting, there's --
25 since it's a cliff, you can only get so close. So

1 looking down on a -- on an angle, you don't get a -- I
2 mean, a clear lighting up and down. We use our own
3 flashlights as we repel to illuminate the area.

4 Q And what flashlight or flashlights did you
5 have that you used for illumination?

6 A I use a Kel-light. It's a metal flashlight, holds
7 three D batteries.

8 Q Do you recall if Officer Chiaffi had similar
9 equipment?

10 A I do believe he had the fire light there, which is
11 a -- I -- I forget what -- I don't know what they call
12 it, but he had a different light than I did.

13 Q Can you tell us now, I'd like you to discuss
14 with the jury, how you begin your descent, and I'd like
15 you to refer to both your activities and Officer
16 Chiaffi's.

17 A Okay. At first, after hooking up, double
18 checking, hooking up, I would check Officer Chiaffi's
19 red gear, that's the outfit that we wear, he checks
20 mine to make sure we're locked in properly. We take
21 the repel line, we use two carabiners facing the
22 opposite way to tie to the anchor point. Bringing the
23 repel line -- the repel line has a bowing on it, that's
24 the way we hook it up to that point. It's just a
25 terminology of a knot that does not come loose, it's

1 one of the safest knots that I use.

2 That would be attached to a figure eight, that's a
3 metal piece, and it looks like a numeral eight.
4 Smaller on the top, larger on the bottom. You bring
5 the line through and then you hook it up with your
6 carabiner to your harness. Again, using two
7 carabiners, one hooking one way, the other one hooking
8 the other way. And then locking carabiners, you turn
9 it and you lock it in.

10 Then I back off, we go off backwards, and you kind
11 of walk off the cliff. You put the pressure, and you
12 take a few steps down, and you're on your way down.

13 Q Can you tell us approximately what time you
14 begin your descent?

15 A Not without looking at any notes. No, I don't
16 recall. It was -- it was after 8 o'clock, that's for
17 sure.

18 Q Can you tell us in terms of positioning, as
19 you and Chiaffi begin your descent, can you tell us if
20 Chiaffi is to your north or to your south?

21 A Yes, I -- I hooked up -- since I hooked up first,
22 I was to the south end and Michael was to my right,
23 which is the north end.

24 Q So as you are facing the cliff, beginning
25 your descent, you are south of Chiaffi, which puts

1 Chiaffi to your right.
2 A That's correct, sir.
3 (Record remains on, no colloquy)
4 Q Let me show you what's been marked S-253 in
5 evidence. If you'll examine that photograph.
6 A Yes, sir. This is the -- the edge of the cliff
7 where they went off.
8 Q That's the rock that you described in your
9 testimony.
10 A That's the flat rock, yes, sir.
11 Q S-251 in evidence. Can you tell us if you
12 recognize that photograph?
13 A Yes, this is the flat rock, again, this is the
14 fence, the cable fence, Hudson River, and New York.
15 Q Can you tell us on that photo if you can show
16 us where your rope began its descent?
17 A In this vicinity.
18 Q Can you tell us the location of the rope of
19 Chiaffi's descent?
20 A He would be in this vicinity, to the north.
21 (Record remains on, no colloquy)
22 Q Now, I would like you slowly and step-by-step
23 to tell us what occurs as you and Chiaffi now begin
24 your descent.
25 A Okay. As we begin our -- our -- we began our

1 descents, we couldn't keep looking up, because the
2 lighting that the fire department have is facing down
3 and it's blinding towards the eyes. So I -- I -- I
4 want to mention the fact which the way you repel and I
5 said I walked off, there is a very consistent with the
6 rope. I use my right hand, towards my small back, and
7 if I pull it over, I would stop. My left hand is
8 usually is -- has the flashlight, and I -- I also use
9 it as a guide with the line that's coming down, so I
10 don't sway to the left or to the right.
11 Q Now, as you are coming down, are you looking
12 back?
13 A Yes, sir. I'm flashing around in front of me,
14 just below me, because I -- I like to know where my
15 next footing's going to be, between my legs, trying to
16 shine down lower to see what else is coming up, because
17 there is some brush coming out of the cliff's edge.
18 Q Now, at that time, there's a full foliage in
19 September.
20 A Yes, sir.
21 Q In addition to what you're looking for at
22 this time, you're now attempting to effect a rescue,
23 correct?
24 A Yes, sir, still.
25 Q What else are you looking for as you are

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1 beginning your descent down?

2 A I'm looking for any path that the individual might
3 have -- who have fallen, would lead me to follow it.
4 For instance, by the path, I mean any broken branches,
5 rock slides, any -- any -- any -- anything that would
6 indicate that somebody has gone through the -- the
7 specific area.

8 Q Now, as you begin your descent, what is the
9 first thing that occurs?

10 A I descended down about ten feet and there's a
11 shelf. I -- I call it a shelf, but it's a -- an area
12 of about six feet wide and three feet in -- excuse me,
13 six feet long and about three feet wide. And on that
14 shelf there's a pocketbook and the contents of the
15 pocketbook were spilled throughout the area.

16 Q Can you tell us what happens at this time?

17 A At this time, I -- since it's an area where I can
18 stand, I got down to my knees there and I started to
19 pick up the items, whatever I can reach in my vicinity,
20 and put it back in the pocketbook. As far as the
21 pocketbook, I radio to the -- Officer Abbott who's
22 watching my stuff on the top, tell him I got the
23 pocketbook, I was gonna toss it up to you. And once I
24 got an okay, that's what I did. With my left hand, I
25 tossed up the pocketbook.

1 I further look around the area to see if there's
2 other -- any other disturbance or what have you, and if
3 there was any clothing, blood, or anything else, and I
4 didn't find anything.

5 Q S-254 in evidence. I'm going to show you
6 this photograph, ask you if you recognize that
7 photograph.

8 A Can I just turn it a little?

9 Q Sure.

10 A Thank you, sir. (Witness reviews exhibit.) Yes,
11 sir.

12 Q Okay. Can you tell us if you can identify
13 the ledge -- strike that. The edge of the cliff where
14 you began your descent.

15 A That would be up here.

16 Q Can you --

17 A Right about --

18 Q -- tell us where or if that photograph
19 depicts the ledge or shelf that you referred to.

20 A Excuse me. Yes, it does.

21 Q Can you point that out to us?

22 A That would be approximately in this area here.

23 Q Now, I'm going to show you this photograph,
24 this is S-292. S-292.

25 A (Witness reviews exhibit.) Yes.

1 Q Okay. Can you tell us the edge where you
2 began your descent?
3 A Up here.
4 Q Okay. And can you tell us if this photograph
5 shows you the ledge that you referred to?
6 A Yes, it does, from a different angle. And the
7 ledge is around here.
8 Q Can you tell us if you can approximate the
9 location of where you saw the pocketbook that you
10 referred to in your testimony?
11 A It was within this vicinity here.
12 MR. MELLO: Everybody see it.
13 (Record remains on, no colloquy)
14 Q S-263. Recognize that photograph.
15 A Yes, sir.
16 Q What do you recognize that photograph to
17 show?
18 A This is looking down from the cliff's edge.
19 Q Okay. Can you show the cliff edge?
20 A Right here.
21 Q Can you show us the ledge?
22 A The ledge, let's see. (Witness reviews exhibit.)
23 It's right down here, sir.
24 Q Can you show us where the pocketbook was
25 located?

1 A Again, with this photo, the way it is, it's within
2 this vicinity.
3 MR. MELLO: Everybody see it.
4 (Record remains on, no colloquy)
5 BY MR. MELLO:
6 Q Okay. Following the recovery of the
7 pocketbook, as you've described, do you continue your
8 descent?
9 A Yes, both Mike and I continue our descent.
10 Q As you continue your descent, can you find
11 any path?
12 A None whatsoever.
13 Q Can you describe the foliage as you begin
14 your descent?
15 A There was very heavy, very hazardous. In fact,
16 Mike Chiaffi's line got tangled up in some of the
17 branches and trees and stuff like that that was coming
18 out from the cliffs. It took us quite a bit of time to
19 repel down and to push our way through.
20 Q Can you tell us, as you continued down your
21 descent, if you saw any pathway?
22 A No, I did not.
23 Q Any debris path of any kind?
24 A None whatsoever.
25 Q Tell us what happens now.

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1 A Well, we made our descent, we got to the base of
2 the cliff.
3 Q Okay. And by base of the cliff, what do you
4 mean by that?
5 A Well, it -- it's still a slide, but it -- it's an
6 area where I can stand on my two feet, without using a
7 rope.
8 Q Did you find a person there?
9 A No, not there.
10 Q Can you tell us if you began to search that
11 area for a person?
12 A Yes. We began to do -- it's basically called a
13 grid search. We just check a square area, move to the
14 next one, we check that area. We -- and we were doing
15 this with the flashlight and kind of walking forward,
16 just to the -- about 30 feet, north of our repel lines,
17 we found the victim.
18 Q Tell us what you observed at this time?
19 A The victim was wedged between a tree and a rock.
20 Q What other observation did you make about the
21 victim's person?
22 A Well, first I -- I checked -- I immediately
23 checked for vitals signs.
24 Q Were there any?
25 A No, there were not.

1 Q Can you tell us what injuries you observed?
2 A Well, there's massive injuries. The body was
3 twisted. There was -- tried to move her to turn her
4 around a little bit, there was a strong odor of an
5 alcoholic beverage emitting from her body.
6 Q Did you observe the position of her head?
7 A Yes, sir.
8 Q Can you tell us that?
9 A At the original, her head was face down, top of
10 her head facing the Hudson River, which would be east.
11
12 Q In addition to the observations that you've
13 described, did you make any other observations at that
14 time, at that scene?
15 A Yes, sir. We started to look around to see if
16 there was any debris or what have you that had fallen
17 with her. Like, if there was a roll or what have you.
18 We didn't see that. Except for our own debris as we
19 were walking towards the body. The tree, itself, about
20 six to eight feet high, I see where there was an
21 impact. There was blood, skin, brain tissue on that
22 tree. I stood up and I reached up to it so I could get
23 an approximation of the distance, and I looked at my
24 hands, and you see the blood and everything.
25 Q What happens next?

1 A At that time, I -- I -- again, I'm on the radio,
2 Officer Chiaffi is looking around the area, whatever he
3 was doing, but I'm on the radio. I -- I have to
4 calling headquarters to notify them about that we did
5 find the body, that we needed to have the prosecutor's
6 office advised, to bring the rescue equipment down
7 below. There's a road below. I needed a stokes basket
8 to put the victim in, to carry her down.

9 So I'm -- basically, what I'm doing is
10 communicating on radio, giving commands to my desk, and
11 them making phone calls. I wanted the -- our detective
12 to come in. Notify my chief of police, which is all
13 protocol.

14 Q Would the victim be pronounced dead at the
15 scene?

16 A The victim was brought down and was pronounced
17 dead on the road.

18 (Record remains on, no colloquy)

19 Q I'm going to show you S-273. Do you
20 recognize that exhibit?

21 A Excuse me, sir, I've got to get my glasses.
22 (Witness reviews exhibit.) Yes, sir. This is the --
23 basically, the path that we -- we came down on the
24 repel.

25 Q Does that show the area of the base of the

1 cliff where you --

2 A Yes, this --

3 Q -- located the body?

4 A -- this is what I referred to as the base of the
5 cliff, right here.

6 Q Is that the area that's disturbed?

7 A Yes, sir.

8 Q I'm showing you what's been marked S-272. Do
9 you recognize that photograph?

10 A Yes, sir.

11 Q All right. Let me just turn it so the jury
12 can see it.

13 A Oh, sorry.

14 Q Can you -- can you tell us what that
15 photograph shows you?

16 A Again, this is where we came down.

17 Q Okay.

18 A And --

19 Q Where's the area that you searched?

20 A Originally, the search started here, and we -- we
21 worked our way to approximately -- this is the -- the
22 tree, where the victim struck.

23 Q Okay. Now, with respect to the tree that
24 you've referred to, do you see the yellow marker on the
25 tree?

1 A Yes, sir.
2 Q That was not present at the time that you
3 discovered the body.
4 A No, it was not.
5 Q And it was placed there later.
6 A Yes, sir.
7 Q And did you mark that tree?
8 A I'm the one who put that mark there.
9 (Record remains on, no colloquy)
10 UNIDENTIFIED SPEAKER: Ninety-four? No.
11 MR. MELLO: Yes, it was.
12 (Record remains on, no colloquy)
13 MR. MELLO: That's '04.
14 MR. BILINKAS: 2004.
15 MR. MELLO: Yes.
16 (Record remains on, no colloquy)
17 BY MR. MELLO:
18 Q Now, with respect to the marking of the tree,
19 I'm going to direct your attention to December of 1994,
20 12/21/94, did you, in fact, respond to that location
21 and mark that tree for law enforcement and engineering
22 personnel?
23 A Yes, sir.
24 Q Now --
25 (Record remains on, no colloquy)

1 Q I'm going to show you what's been marked S-
2 237. And ask if you recognize that photograph.
3 A (Witness reviews exhibit.) Okay. This is the
4 Palisades Interstate Parkway going northbound, this one
5 here is going southbound. There's the median. This is
6 the Rockefeller lookout. Extreme north end parking
7 area. This is -- the white that you see here, is that
8 -- where that rock ledge is where the victim fell.
9 This here would be where the victim landed in the tree.
10 Q Now, what is that object, that white object?
11 A Those are -- those are the balloons we used,
12 they're -- we blew up balloons and then I was in a
13 helicopter, we flew over and I pointed it out to the
14 pilot, where to go, and they took photos.
15 Q That's these photos.
16 A Yes, sir.
17 Q Another view, S-239.
18 A Okay. This is a closer view and this white sheet
19 here is, again, where the -- the victim fell, had gone
20 off. This other white on the bottom is, again, pointed
21 at the tree, but it's just a close up.
22 Q And that's the balloon, right?
23 A Yes.
24 Q And S -- S-238.
25 A Okay. This is, again, the -- basically, the same,

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1 but showing the -- the parking area on the north end of
2 the parking lot. This would be the path that they
3 would walk down, walk around, and go to that edge of
4 the cliff. And these are the balloons, again, where
5 the tree was marked.

6 (Record remains on, no colloquy)

7 Q I'm going to show you what's been marked S-
8 78.

9 MR. BILINKAS: No objection to that being
10 introduced into evidence.

11 THE COURT: In evidence.

12 MR. MELLO: Thank you, Mr. Bilinkas.

13 BY MR. MELLO:

14 Q It's in evidence, tell the jury what it is.
15 A This is a sketch that I made the night of the
16 incident, indicating the fence, indicating the trail,
17 the cliff's edge, the -- the ledge where the pocketbook
18 was found, in the general area. And I have here
19 approximately ten feet. And I have here that it's 50
20 feet north of the lookout on the trail.

21 (Record remains on, no colloquy)

22 Q I'm going to show you what's been marked S-
23 265.

24 A Yes, sir.

25 Q Can you tell us what that photograph shows?

1 A This photographs depicts, again, the point where
2 the victim went off. Down here, this white is the
3 three where the victim struck.

4 Q S-266.

5 A Basically, it's showing the same things; the cliff
6 where the victim went off, the tree where the victim
7 hit about six feet, eight feet high.

8 Q S-268.

9 A Okay. It, again, shows the same basic location,
10 this is where the cliff's edge is, where the victim
11 fell, or went off. This is, basically, pointing out
12 the tree that the victim struck about six feet, seven
13 feet high.

14 MR. BILINKAS: Counsel, for the record, can
15 we have the date of those pictures, again?

16 MR. MELLO: Yes, I'll give you that in one
17 minute, as soon as I finish.

18 BY MR. MELLO:

19 Q S-267.

20 A Again, where the victim had went off the cliff,
21 the bottom on here shows where the tree, and the victim
22 struck about six, seven feet high.

23 Q Now, with respect to this death scene, have
24 you been to that scene on more than one occasion?

25 A Yes, sir, I have.

1 Q Can you give the jury a sense of how many
2 times you've been to this location?
3 A Quite a few times, 30 times, possibly even more.
4 MR. MELLO: And we'll publish to the jury,
5 diagram S-78.
6 (Record remains on, no colloquy)
7 MR. MELLO: And while that's being passed
8 down, S-265, 266, 267, 268 to the jury.
9 MR. BILINKAS: Are those the aerial
10 photographs?
11 MR. MELLO: They are.
12 MR. BILINKAS: Can we have a date for them?
13 MR. MELLO: Yes. This is '04.
14 (Record remains on, no colloquy)
15 MR. BILINKAS: Ready, Judge.
16 CROSS-EXAMINATION BY MR. BILINKAS:
17 Q Sir, prior to your testimony today, have you
18 had an opportunity to review your police reports?
19 A Yes, sir.
20 Q And -- and would you agree with me that with
21 regards to your investigation and your involvement in
22 this case, you authored only two reports, correct?
23 A Correct.
24 Q Now, is there anything inaccurate in the
25 reports that you authored regarding this investigation?

1 A Yes.
2 Q Did you ever notify the prosecutor that there
3 were inaccurate information in the reports that you had
4 submitted in this official homicide investigation?
5 A Yes.
6 Q When did you tell the prosecutor that your
7 reports contained inaccurate information?
8 A I don't recall when, sir.
9 Q Do you realize that your reports have been
10 submitted to the state's experts and used with respect
11 to their evaluation and their opinions?
12 A No, I didn't realize that.
13 Q As you sit here today, is it your testimony
14 you can't recall when you told someone from the
15 prosecutor's office that your report that you submitted
16 in this case is inaccurate?
17 A That's correct.
18 Q Now, on the day in question, September 20th,
19 1992, someone comes into police headquarters and
20 reports an incident to you, correct?
21 A That is correct, sir.
22 Q And can you describe that individual?
23 A It was a white male, very excitable, just
24 wandering around, telling me this is what occurred,
25 that somebody flagged him down with a flashlight, and

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1 that the individual that approached him stated to him
2 that his wife fell off the cliff.
3 Q Can you describe the physical characteristics
4 of that individual? Height, weight, hair color,
5 complexion.
6 A It was a white male.
7 Q Is that it?
8 A Yes, sir.
9 Q Now, did you get that person's name and
10 contact information?
11 A No, sir, I was getting -- radioing the information
12 to everybody else and he left. I did not get it.
13 Q Before he left, did he tell you that he had
14 spoken to the husband of the woman who had fallen off
15 the cliff?
16 A I believe his words were, I was flagged down by an
17 individual on the highway and he told me that his wife
18 fell off the cliff.
19 Q And by that, at that time, did you
20 understand, based on what he told you, that he had
21 spoken and actually seen that person immediately prior
22 to this incident?
23 MR. MELLO: Objection to the form of the
24 question. We don't know when that person saw that --
25 THE COURT: Sustained.

1 MR. MELLO: -- motorist.
2 THE COURT: Ask another question.
3 BY MR. BILINKAS:
4 Q That person told you that he talked to
5 someone else, correct?
6 A Someone else, he talked to an individual there.
7 Q Talked to an individual.
8 A Yes, sir.
9 Q Okay. And that individual told the person
10 you were talking to that his wife had fallen off the
11 cliff, correct?
12 A Yes, sir.
13 Q And he was excitable, correct?
14 MR. MELLO: Objection. Objection. Who is
15 the he you're referring to?
16 MR. BILINKAS: The motorist that he was
17 talking to was excitable.
18 MR. MELLO: The motorist was excitable.
19 MR. BILINKAS: Yes.
20 THE WITNESS: Yes, the motorist was excitable
21 when he came into headquarters, he was blapping
22 (phonetic) away, I just couldn't understand what he was
23 saying at first.
24 BY MR. BILINKAS:
25 Q Okay. And did he tell you that the person

1 that he talked to was excitable?
2 A No.
3 Q Did you ask him that?
4 A No.
5 Q Now, he did tell you, and you have a specific
6 recollection of him saying that he was flagged down
7 with a flashlight, correct?
8 A I don't recall saying flashlight. With a light.
9 Q Did you ask him if it was a flashlight?
10 A No, sir.
11 Q Did you ever put in your report the word
12 flashlight?
13 A I do not believe so.
14 Q All right. Your recollection is that he
15 flagged that motorist down with a -- a light, correct?
16 A Correct.
17 Q And was the light in his hand?
18 A I have no idea, sir.
19 Q Because you never asked, correct?
20 A That's correct.
21 Q But -- but you have a specific recollection
22 that a light was used to flash that person down,
23 correct?
24 A Correct.
25 Q Now, he also said that he was flagged down in

1 the middle of the parkway, correct?
2 A I -- I don't believe in the middle of the parkway,
3 sir.
4 Q Well, what, specifically, did he tell you as
5 to the position of where that person flagged him down
6 with the light?
7 A He says, by the parkway. By the parkway. In
8 other words, the shoulder.
9 Q Are -- are you assuming it's the shoulder or
10 are you --
11 A Yes, sir, I am assuming, because you're not going
12 to be standing in the middle of a highway.
13 Q But you didn't discern from him exactly where
14 that person flagged him down with the light, correct?
15 A No, I did not, sir.
16 Q Now, would -- would you agree with me that
17 from a police investigative standpoint, that you
18 probably should have gotten the person's name and
19 contact information, as you sit here today?
20 A As I sit here today, I wish he would have stuck
21 around and I would have got that information.
22 Q When -- when --
23 A My -- my first intent was to go out and save a
24 life.
25 Q And when you say you wish he would have stuck

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1 around, is there any doubt in your mind if you just
2 asked him to wait here a second and -- and talk to this
3 person or that person, he would have done that, if
4 directed to do so?
5 A I have no idea what he would do.
6 Q Now, after this person indicates to you that
7 -- that someone told his wife fell off the cliff, you
8 start the rescue operations, correct?
9 A I started immediately, yes, sir.
10 (Record remains on, no colloquy)
11 Q And you arrived at the scene at approximately
12 what time?
13 A I would say 8:15, 8:20.
14 Q And how long did it take you to communicate
15 with Abbott and get to the rock area?
16 A I communicated with Officer Abbott and Tomaio, but
17 first I called the cars, such as J9, you know, waited
18 for him to respond, then I said -- I would say, J11,
19 wait for him to respond, I want both you, J9 and 11, I
20 don't use officers' names over the air, to respond to
21 the Rockefeller lookout. I mentioned to locate the
22 victim, locate any witnesses, --
23 Q Let me stop --
24 A -- to --
25 Q -- you right there.

1 A Yes, sir.
2 Q Is it your specific recollection that you
3 told someone within your department who was at the
4 Rockefeller lookout to locate any potential witnesses?
5 A Yes, sir, it's on my report.
6 Q And -- and which officer did you tell to do
7 that?
8 A I told both officers.
9 Q By name, what are their names?
10 A Officer Abbott, Officer Tomaio. This is all part
11 of one conversation, --
12 Q Okay. And you have --
13 A -- one -- one command.
14 Q -- a specific recollection of telling them to
15 attempt to locate any potential witnesses, correct?
16 A Yes, sir.
17 Q And did they indicate to you that when they
18 arrived, that there were approximately 15 vehicles in
19 the area?
20 A No, sir.
21 Q How many vehicles were in the area when you
22 arrived?
23 A When I arrived, I think there were only three, and
24 I was at the -- at the entrance. Meanwhile, there's --
25 I had three patrol cars there, with their lights on and

1 everything. People left.
2 Q Do you --
3 A They see --
4 Q -- believe or did you direct any officer on
5 the scene to clear the area of civilian persons?
6 A I did tell Officer Seri to go up to the entrance,
7 there was about three cars there, I told him to have
8 them leave, block off the entrance so the emergency
9 vehicles could come in.
10 Q Was that before or after you told Tomaio and
11 Abbott to locate any potential witnesses?
12 A No, the -- the time frame on that is when I first
13 mentioned it to them to go to the Rockefeller lookout,
14 to attempt to find the victim, it was all one
15 conversation, before I left headquarters.
16 Q Okay.
17 A Before Officer Seri left headquarters. So now
18 Seri is driving me to the maintenance center to pick up
19 the utility vehicle.
20 Q Okay. So at headquarters, before Abbott and
21 Tomaio leave, they're told, amongst other things, to
22 make sure they locate any potential witnesses, that's
23 your specific recollection on that night, correct?
24 A I don't know if I -- I used the words make sure,
25 but I did say locate, and it was victim, witnesses, and

1 -- or something else, I -- I --
2 Q And -- and you did that, because it's very
3 important from an investigative standpoint, to attempt
4 to locate any possible witnesses who could have seen
5 what had happened, correct?
6 A I -- well, to get any information.
7 Q And possibly seen what had happened, correct?
8 A That's a possibility, yes, sir.
9 Q And -- and, again, there's no doubt in your
10 mind, from an investigative standpoint, as the person
11 in charge of this investigation at this point, that
12 that was something critical, in your mind, for them to
13 do, correct?
14 MR. MELLO: I'm going to object to the form
15 of the question. At this point, it seemed to be an
16 emergency response to what was reported to --
17 THE COURT: Sustained. Ask another --
18 MR. MELLO: -- be a tragic accident.
19 THE COURT: -- question.
20 BY MR. BILINKAS:
21 Q You told them to locate potential witnesses,
22 correct?
23 A I told them to locate the victim, again, to the --
24 any witnesses.
25 Q So your answer is yes to my question,

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1 correct?
2 A Repeat --
3 Q You told them to locate potential witnesses,
4 in addition to other things, --
5 A Yes.
6 Q -- correct?
7 A Yes. That -- okay.
8 Q And that was a direct order from the
9 commander of the investigation --
10 MR. MELLO: Again --
11 BY MR. BILINKAS:
12 Q -- at this point.
13 MR. MELLO: Again, investigation is not what
14 it was at this point.
15 THE COURT: Ask another --
16 MR. MELLO: So I object on --
17 THE COURT: -- question.
18 MR. MELLO: -- the form.
19 BY MR. BILINKAS:
20 Q That was a direct order from the highest
21 ranking member in your department, correct?
22 MR. MELLO: Not the highest ranking member in
23 his department. He's not the chief. He was a
24 sergeant.
25 THE COURT: Let's ask your question.

1 BY MR. BILINKAS:
2 Q That was a direct order from the highest
3 ranking member in your department at that time,
4 correct?
5 A Yes, sir.
6 Q You're the guy in charge, correct?
7 A Yes, sir, I was the tour commander.
8 Q And when you got out to the scene, you were
9 the commander at that point, correct?
10 A I took charge of the scene, yes, sir.
11 Q You made all the tactical decisions from a
12 police standpoint, correct?
13 A Yes, I -- I made all the decisions for the rescue.
14 Q How about police decisions.
15 A I don't quite understand, what police decisions
16 are you speaking of, sir?
17 Q We're going to get to a few of those, but --
18 A Okay.
19 Q -- you -- you were there in a dual capacity,
20 correct?
21 A Yes, sir.
22 Q You were the rescue person, correct?
23 A Yes, sir.
24 Q And -- and you're also a police officer,
25 correct?

1 A Yes, sir.
2 Q Now, when you got to the scene, your
3 recollection is that there were only approximately
4 three cars there, correct?
5 A Yes, sir.
6 Q When you approached Abbott and Tomaio, did
7 you ask them specifically at that point, upon your
8 arrival, whether or not they had located any potential
9 witnesses?
10 A No, sir. I asked to see where the victim had gone
11 off the cliff. To me, I'm there for rescue operation
12 and that, to me, is a primary thing to save a life.
13 Q Understood. So you're pointed to a location
14 where you start to repel, correct?
15 A Yes, I was pointed to the location where the --
16 the victim went off the cliff. Now, I'm giving my
17 commands over the radio to my desk officer and he would
18 make the calls for me; notify the detective, notify the
19 police chief, all the notifications that need be.
20 Notify Englewood Cliffs fire and rescue I need
21 assistance. I -- I -- I couldn't do it by myself.
22 Q Understood. And one of those people or
23 persons that you gave the command to notify was the
24 Bergen County Prosecutor's Office, correct?
25 A Yes, they were also notified, I had Officer

1 Elliott call them also.
2 Q And can you tell me, throughout the entire
3 night, after the Bergen County Prosecutor's Office was
4 contacted, did anybody respond from their office?
5 A Sir, I don't know. I couldn't answer that. I'm
6 -- on the cliffs now, with the rescue, and getting the
7 victim in the basket and bringing her down. Detective
8 Connic (phonetic) is now in charge of the -- of the
9 investigation, since he is the detective. And when it
10 comes to investigating matters, he has priority over
11 me, over the rank.
12 Q At any point in time during that night, do
13 you recall seeing anyone from the Bergen County
14 Prosecutor's Office? Yes or no.
15 A I --
16 Q You personally.
17 A I do not recall.
18 Q Now, you get to the scene.
19 A Yes, sir.
20 Q Before you start to repel, you see my client,
21 correct?
22 A Yeah, I seen him standing by Officer Tomaio's
23 vehicle, yes.
24 Q And isn't it a fact that he appeared dazed,
25 dazed?

1 A He was dazed, but in control.
2 Q Did he appeared dazed to you?
3 A I -- I -- he appeared dazed and in control.
4 Q You noted his demeanor, correct?
5 A That was the only thing I noted.
6 Q And you put that in your official police
7 report of the night in question, correct?
8 A Yes.
9 Q You used the term, dazed, correct?
10 A Yes.
11 Q Now, you're trying to save someone's life.
12 A Absolutely.
13 Q You get to the flat rock. And you order, and
14 correct me if I'm wrong, one of your officers to put
15 Mr. Scharf in his car, correct?
16 A Yes.
17 Q And did you have him put in the car, in at
18 least some respects, because of your observation of him
19 being dazed?
20 A Well, sir, I would have to explain to you the
21 location and the manner where all the vehicles were
22 parked, including my own. The point where the victim
23 fell off is about 30 feet away -- 50 feet from the
24 parking lot. We're in the parking lot, that's where
25 Mr. Scharf was with Officer Tomaio. My vehicle's

1 there. So I'm running back and forth, carrying things
2 from my vehicle to the point where I'm gonna repel. So
3 this is a timely thing, going back and forth, and this
4 is where I noticed him. That's why I had him sit in a
5 car, this way he's not in the way, that's Number 1, for
6 his own health, safety. I don't know what's in back of
7 his mind. Then I had Officer Seri transport him to
8 headquarters.
9 Q Okay. Let me stop you there, if I could.
10 For whatever reason, you have one of your officers put
11 Mr. Scharf in the car, correct?
12 A Yes, sir. To make him comfortable, to sit down.
13 Q And to prohibit him from moving around the
14 area, correct?
15 A Not to prohibit him, to -- I was -- I've been to
16 many rescues and everything else and you see people,
17 family members, or what have you get so excited that
18 they want to climb down themselves.
19 Q You wanted to restrict --
20 A So for his safety.
21 Q Right. You wanted to restrict his movement
22 for whatever reason, --
23 A Yes.
24 Q -- based on your experience, correct?
25 A Yes, sir. Yes, sir.

1 Q And at -- and at some point in time, even
2 more than restricting his movement within the lookout
3 area, you ordered one of your officers -- officers to
4 drive him away from the area to police headquarters,
5 correct?
6 A Yes, sir.
7 Q And was that after you contacted the
8 prosecutor's office?
9 A No, sir, this was prior.
10 Q When was the prosecutor's office contacted?
11 A I don't have the time frame on that.
12 Q How close to the time when you ordered one of
13 your officers to take Mr. Scharf back to police
14 headquarters?
15 A Prior for me repelling down. The prosecutor's
16 office, now that you -- I have to think about things.
17 Q Well, listen, there's not a question here.
18 A Okay.
19 Q Let me ask the questions, if you will. Okay.
20
21 A Go right ahead, sir.
22 Q And -- and I don't mean to be disrespectful,
23 I'm just trying to get through --
24 A No, no, I -- absolutely, --
25 Q -- what I need to ask you

1 A I don't want to be disrespectful.
2 Q Now, you repel down the cliffs at some point,
3 correct?
4 A Yes, sir.
5 Q And would you agree with me, as you
6 indicated, your primary concern is saving a life at
7 this point, correct?
8 A Absolutely.
9 Q And you're trying to move down the cliff face
10 as quickly as possible to try to find the potential
11 victim, correct?
12 A Yes, sir.
13 Q As fast as safety will allow, correct?
14 A Yes, sir.
15 Q And -- and would you agree with me that when
16 you're repelling down, you are hanging from a rope
17 that's above you, correct?
18 A Yes, sir.
19 Q And you're within one or two feet from the
20 actual cliff face, correct?
21 A Yes, sir.
22 Q And -- and when you're repelling down the
23 cliff face, do you recall there being brush or tree
24 limbs that prohibited your descent?
25 A Absolutely, sir. I couldn't bound, I had to walk

1 down.
2 Q Okay. And -- and when you say walk down, if
3 there was a -- a -- brush sticking out or deep ravine
4 going inward, you would move either to the left or to
5 the right as you're repelling down the 200 foot cliff
6 face, correct?
7 A That depends.
8 Q Depends on the terrain, correct?
9 A Correct.
10 Q And as you sit here today, you can't recall
11 how many times you had to move over to the left or to
12 the right during that 200 foot decline when you --
13 where you got to the base, correct?
14 A Now, give me a minute to think about it, sir.
15 Q Sure.
16 A Thank you.
17 Q Take all your (sic) time you need.
18 (Record remains on, no colloquy)
19 A Okay. To the best of my recollection, the path I
20 took, it was pretty straight, except for the brush. I
21 didn't have any deep ravines, and if there was a
22 opening in the rock, all I had to do was -- was split
23 my legs open and I could still walk down. I,
24 basically, did not bound, like I mentioned before,
25 because I couldn't bound due to the trees. So I could

1 not go from left to right.
2 Q Okay. And -- and when you say you couldn't
3 bound from left to right because of the -- the trees,
4 they were up against your back as you're repelling,
5 correct?
6 A Yes, sir.
7 Q And -- and would you agree with me that you
8 couldn't see beyond the tree limbs behind you as you
9 were repelling down, because they were so thick,
10 correct?
11 A I agree with you.
12 Q And would you agree with me that if there --
13 if there were any broken branches or leaves stripped
14 from those branches that were behind you, you never
15 would have seen them because of how thick the brush
16 were, correct?
17 A That's a good possibility, sir.
18 Q When you say it's a good possibility, would
19 you say it's a absolute fact that on your way down, you
20 could not have seen all the foliage and whatever damage
21 there may have been behind you, correct?
22 MR. MELLO: You don't know that --
23 THE WITNESS: No --
24 MR. MELLO: -- there was any damage.
25 BY MR. BILINKAS:

1 Q I'm saying, if --
2 MR. MELLO: Appropriate -- inappropriate
3 question.
4 BY MR. BILINKAS:
5 Q -- if there was.
6 THE COURT: Hold on, there's an objection.
7 Your objection.
8 MR. MELLO: With that amendment, withdrawing
9 the objection.
10 BY MR. BILINKAS:
11 Q Would you agree with me that if there was
12 damage directly behind you, because of how thick the
13 tree lengths and branches were, that you never would
14 have been able to see, correct?
15 A No, but I -- possibly I would not see some. Some
16 other times I would see it. So I couldn't --
17 Q May --
18 A -- say definitely no.
19 Q Maybe you would, maybe you wouldn't, correct?
20
21 A That's a -- I would agree with that.
22 Q Okay. And would you agree that, you know,
23 because there wasn't any great obstructions to impeded
24 your way, as you recall it, going straight down, that
25 you got down to the base relatively quickly.

1 A I do believe it took us about 50 some odd minutes
2 to get down, sir. That's quite a bit of time. I can
3 do that same repel, 200 feet, I could get down there in
4 10 minutes, tops.
5 Q Your recollection is that it took you 50
6 minutes to repel down on the night in question.
7 A It took quite awhile and to locate the victim,
8 yes, about 50 minutes, 55 minutes.
9 Q I'm talking about you repelling from the top
10 to the base, is it --
11 A Yes, sir.
12 Q -- your sworn testimony that it took you 50
13 minutes?
14 A No, I couldn't swear to that.
15 Q What can you swear to?
16 A That I got down there.
17 Q Okay. In what time?
18 A I -- again, I could not estimate the time, but it
19 took quite awhile. It's not like what you mentioned,
20 that it was -- got -- I got down there right away.
21 Q Are you talking to -- talk to Coffi (sic)
22 with regards to that night?
23 A To whom?
24 Q Chiaffi.
25 A Chiaffi, yes, we --

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1 Q The guy you repelled -- repelled with.
2 A Yes, we -- we spoke about it.
3 Q And -- and did he talk to you about your
4 report that you submitted?
5 A No, he didn't mention my report.
6 Q Did he talk to you about the events of that
7 night?
8 A Yes, we spoke about the events of that night.
9 Q And did you speak specifically with regards
10 to the time it took you and Coffi (sic) to repel from
11 the top to the base?
12 A We spoke about how difficult it was and how it
13 took us quite a bit of time to get down there.
14 Q Now, did you talk to the -- the news
15 personnel on the night in question?
16 A I believe I spoke to a reporter on the telephone.
17 They gave me the phone.
18 (Record remains on, no colloquy)
19 Q And that was right after this incident,
20 correct?
21 A I -- I don't call -- recall exactly how long after
22 the incident, but I didn't get off duty till about four
23 that morning. So it was somewhere's in there.
24 Q Well, so, immediately after the incident, do
25 you recall telling the person from the news camera that

1 it took you 30 minutes to reach the woman's body?
2 A I don't recall what I said then.
3 (Record remains on, no colloquy)
4 Q I'm going to show you defense exhibit 265.
5 Do you recall telling the news people that very night,
6 right after this incident, that because of the thick
7 foliage and lose rocks, it took 30 minutes to reach the
8 woman's body? Do you recall telling that person that
9 it only took you 30 minutes and not 45 or 50 minutes?
10 A I don't recall saying it. I see it here. I see
11 it here. I -- I read what's on this paper. And if
12 that's what they put down that's, what they put down.
13 Q Do you have any idea where she got 30 minutes
14 as opposed to 45 or 50?
15 A I have no idea. It was 18 and a half years ago.
16 Q And -- and do you recall telling that person
17 right after the fact that, apparently, it was an
18 accidental fall?
19 A Yes, sir, I recall that.
20 Q And -- and you recall saying, after the
21 evening had ended, that it was an accidental fall. Do
22 you recall using the word accidental?
23 A Yes, I -- I recall saying accidental, but this is
24 before -- I -- I have to say one thing --
25 Q I'm just talking to you about that night.

1 A Yes, that --
2 Q Did you say the word --
3 A -- that particular night -- yes, I used the word
4 accidental. As far as the rescue was concerned. I was
5 not involved with the investigation at the time.
6 Q Okay. I'm -- I'm just talking about --
7 A Uh-huh.
8 Q -- your part of the investigation and what
9 you did on that night. Okay.
10 A Yes, sir.
11 Q Did you also tell that person that once we
12 got set up, it was a little rough going because of the
13 terrain and there were no lights? Do you recall
14 telling that person that on the night after you got
15 back to headquarters?
16 A Apparently I did, I don't recall it, though.
17 (Record remains on, no colloquy)
18 Q Now, you indicated that Officer Elliott
19 relieved you at the desk, correct?
20 A That's correct, sir.
21 Q And he was the person you were communicating
22 with, with regards to the various commands throughout
23 the evening, correct?
24 A I would radio in and he would make the calls or
25 notifications.

1 Q And with regards to those commands and those
2 communications, did you, in fact, call in and notify
3 him when you first observed Mrs. Scharf's body?
4 A Yes, sir.
5 Q I show you D-262, refer you to the time
6 that's circled in red, is that the time that you called
7 in and informed Mr. Elliott that you had found the
8 body?
9 A I observed the body and that's 9:23 p.m.
10 Q 9:23, --
11 A p.m.
12 Q -- correct?
13 A Yes, sir.
14 Q And what time did you start repelling down
15 the cliff?
16 A I don't know. It was -- it had to be -- I'm --
17 I'm looking at your notes here --
18 Q Well, first of all, for the record, those
19 aren't my notes, correct?
20 A That's correct. I --
21 Q It's the Palisades --
22 A Yes.
23 Q -- Interstate Parkway Police Special Report
24 regarding the time sequence of that night, correct?
25 A Yes, sir. I'm looking at your exhibit, and I'm

1 just going by this to try to figure this out. If
2 Englewood Cliffs was called at 8:25 --
3 Q 8:25.
4 A -- and they -- it takes them about 10 minutes to
5 respond.
6 Q That's 8:35, correct?
7 A Roughly.
8 Q Roughly.
9 A Uh-huh.
10 Q It took ten minutes, --
11 A That's correct.
12 Q -- 8:35.
13 A Correct.
14 Q And then you talked to Abbott and you had
15 to --
16 A No.
17 Q -- set up your repelling lines.
18 A I already had talked to Abbott prior.
19 Q Okay.
20 A Okay.
21 Q How long did it take you to set up all of the
22 repelling lines, the three different lines that you
23 mentioned?
24 A I -- my three lines, I -- I was set up before Mike
25 Chiaffi showed up.

1 Q Okay. But you waited for Mike Chiaffi to set
2 up his lines --
3 A Correct.
4 Q -- before you started to repel, correct?
5 A Right, but I --
6 Q And how long did it take Chiaffi to set up
7 his repel lines before you and him started the decline
8 down the cliff face?
9 A I -- I couldn't answer that, sir. I don't know.
10 Q Ten minutes, 15 minutes.
11 A I couldn't answer that. He had a group of people
12 with him. I set up my own.
13 Q And so how long did you wait to -- to start
14 repelling after Chiaffi had arrived, which was 8:35?
15 A Another 10, 15 minutes.
16 Q 8:50, correct? Approximately, based on your
17 estimations.
18 A Right.
19 Q And what time was it that you called in and
20 said you observed the body?
21 A It's here at 9:23.
22 Q Well, that's 33 minutes, correct?
23 A Approximately.
24 Q And -- and that -- that's close to the 30
25 minutes that the reporter said you told her on that

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1 night, correct?
2 A Yes.
3 Q And you'll agree with me that you and Chiaffi
4 repelled down that entire cliff face, almost 200 feet,
5 in approximately 30 minutes, correct?
6 A Yes, sir.
7 Q Because you were in a hurry to save a life,
8 correct?
9 A Absolutely.
10 Q You wanted to go as fast as you possibly
11 could to try to find the woman in hopes that she was
12 still alive, correct?
13 A Yes, but I was also trying to find her path of
14 descent, this way it would be quicker to find her.
15 Q Okay. But you didn't have very many
16 obstructions to go straight down, according to your
17 recollection, correct?
18 A Yes, sir.
19 Q Now, the first thing you do, as you start to
20 repel, you go onto this ledge, correct?
21 A Yes, sir.
22 Q Now, this ledge, you said you saw a
23 pocketbook, correct?
24 A I -- a pocketbook was pointed out to me by Officer
25 Abbott.

1 Q Okay.
2 A When I first arrived --
3 Q At some point in time --
4 A -- at the scene.
5 Q At some point in time, you see a pocketbook,
6 correct?
7 A Yes.
8 Q And you felt it was important to draw a
9 diagram depicting the exact location of that
10 pocketbook, --
11 A Well, for --
12 Q -- to the best of your ability.
13 A I -- I -- I drew a sketch, not a diagram, to help
14 me realize where the -- that little shelf was and the
15 -- to help me to -- oh, give me an idea the vicinity
16 where that pocketbook was found.
17 Q Okay. When you say the vicinity, to help
18 you, --
19 A Yes, sir.
20 Q -- this diagram was done soon after the day
21 in question, correct?
22 A Yes, sir, after I was back in headquarters.
23 Q Same night, correct?
24 A Yeah, absolutely.
25 Q When it's fresh in your mind as to where you

1 observed the pocketbook, correct?
2 A Yes, sir.
3 Q And --
4 (Record remains on, no colloquy)
5 Q Will you agree with me that while it was
6 fresh in your mind, before my client has been charged
7 with murder, you put the pocketbook right up against
8 the cliff face, correct?
9 A This diagram is just that it was close to there,
10 you know.
11 Q Do you have any -- do you have any problem
12 saying that you put the pocketbook right up against the
13 cliff face in this diagram?
14 MR. MELLO: Object to the form of the
15 question, it's argumentative.
16 THE COURT: Sustained. Ask another question.
17
18 BY MR. BILINKAS:
19 Q Where is the pocketbook located on the
20 diagram that you drew on the night in question?
21 A On the ledge, ten feet down from the cliff's edge.
22 Q How close to the cliff face?
23 A That I could not give you the exact thing. That's
24 why it's generalized in that area and I just put it in
25 there, that's all.

1 Q When -- when you say you put it in there,
2 where --
3 A I mean, I drew it in.
4 Q -- did you -- where did you draw it in on the
5 diagram that night?
6 A Well, I was trying to put --
7 Q Where did you draw it in?
8 A On the ledge.
9 Q Okay. Where on the ledge?
10 A Somewheres in the middle, it looks like from
11 here.
12 Q In the middle of the ledge, correct?
13 A Somewheres. I -- I --
14 THE COURT: Do you need to step down?
15 THE WITNESS: I -- I can't see that far,
16 that's all.
17 THE COURT: All right. Please step down.
18 THE WITNESS: Thank you.
19 (Witness leaves stand)
20 BY MR. BILINKAS:
21 Q Okay. Can you point out the location of the
22 handbag on the diagram that you drew -- the location of
23 the handbag on the diagram that you made up the night
24 in question?
25 A Right here.

1 Q And would you agree with me that that's
2 approximately in the middle of that ledge, correct?
3 A No, it's more to the side.
4 Q Okay. It's close to the middle. Okay. And
5 how close to the cliff face did you put the location of
6 the handbag?
7 A Oh, there it looks like it's a lot closer to the
8 cliff face.
9 Q Isn't it touching the cliff face on your
10 diagram?
11 A It's only a pencil diagram.
12 Q And when -- when you say it's only pencil
13 diagram, can you tell the ladies and gentlemen of the
14 jury why you memorialized the location of that handbag,
15 in a diagram, on the night in question?
16 A Well, sir, it's because I removed that handbag and
17 I threw it up to my officers. So I wanted to let the
18 people know, as well as myself to remember, it was on
19 that ledge.
20 Q And so are you saying that you did this so it
21 would assist you years later if you were called to
22 remember exactly where the bag was?
23 A Well, not only for years later, to give the
24 information to my detectives that -- who were handling
25 the case.

1 Q So as of the night when you're drawing this
2 diagram, someone is going to be investigating this
3 case, correct?
4 A The chief would assign someone. There's one --
5 one of two detectives.
6 Q Okay. And did you memorialize where the
7 contents had spilled out on this ledge?
8 A No.
9 Q You indicated you picked up the contents,
10 correct?
11 A I picked up some of the contents.
12 Q Well, can you tell the jury why you didn't
13 pick up all of the contents?
14 A Since it was dark and everything, it was unknown
15 to me that this here ledge continues and you can,
16 actually, walk around, comes to another angle, and you
17 see the whole ledge.
18 Q And -- and would you agree with me that you
19 missed a number of the contents, because it was dark on
20 that night?
21 A Yes.
22 Q Okay. Now, that ledge that wraps around,
23 that you've just indicated --
24 (Attorney/attorney discussion)
25 Q I'm going to show you, in evidence, D-151.

1 Does that photograph accurately depict the ledge that
2 you're referring to, where you can literally walk
3 around to the point where the pocketbook was located?
4 A Okay. The victim went off around here.
5 Q Right.
6 A Straight down there's that part of the ledge that
7 we just seen, right, where the pocketbook was. And
8 what I mentioned to you, you can walk around and look
9 this way and through here, and you can get there. It's
10 a little dangerous there, so you -- I wasn't gonna walk
11 out there any more. I didn't have that kind of gear
12 on.
13 Q Okay. Irrespective of -- of how dangerous it
14 is, you'll agree with me that you can walk from the
15 top, around the area where she fell, to the point where
16 you located the purse, correct?
17 A No, not to the point where I located the purse.
18 Again, the purse is -- here -- here's where the victim
19 fell. If you drew a straight line down there, the
20 purse is over here. This does not show where the purse
21 was.
22 Q Does --
23 (Attorney/attorney discussion)
24 Q Isn't it a fact that D-154, in evidence,
25 shows you the other edge of the ledge where the purse

1 was found?
2 A The purse was found somewhere in here. In this
3 general area.
4 Q That's connected to the ledge that we just
5 reviewed in the previous photograph, correct?
6 A But it's in a half-circle around.
7 Q Irrespective of whether it's in a half-
8 circle, you'll agree with me that you can get down to
9 the area where the purse was located by going around
10 the ledge, from the direction of that photograph.
11 A From around here. You got -- I guess if you were
12 tied down, you could do that, yes.
13 Q All right. You can have a seat.
14 A Thank you.
15 (Witness resumes stand.)
16 Q Now, you -- I'm sorry.
17 (Record remains on, no colloquy)
18 Q You indicated on direct examination that you
19 had -- you had been to the cliff, this specific area,
20 approximately 30 times, correct?
21 A Approximately.
22 Q Can you tell the jury when was the first time
23 you had been back to the area after September 20th,
24 1992?
25 A Following day.

1 Q You didn't go down to the base on that day,
2 correct?
3 A No, sir.
4 Q Did anyone, specifically, Detective Linam
5 (phonetic) from your department, indicate to you that
6 there were numerous items left on that ledge that you
7 had not seen and picked up the night before?
8 A Yes, I brought Detective Linam to the scene, I
9 showed him where the victim fell, I showed him where
10 the -- the bottom shelf was. And I took him around,
11 now that it's daylight, and I can see the way -- the
12 contour of the cliffs are, and at that point, he says,
13 oh, there's a make-up brush there, there's a make-up
14 kit. And that's what --
15 Q Just so I understand --
16 A -- we photographed that -- that -- took -- that
17 particular morning.
18 Q All right. So let me make sure I understand
19 this point. The next day, you take one of your
20 detectives and show him the flat rock, correct?
21 A Yes, sir.
22 Q And then you go around that circular ledge,
23 to the specific area where the purse was found,
24 correct?
25 MR. MELLO: That's not what he said, he

1 didn't say he went --
2 MR. BILINKAS: I'm asking him what he did.
3 THE WITNESS: Sir, I mentioned to you that
4 the -- we walked around --
5 BY MR. BILINKAS:
6 Q Who walked around? You and Linam.
7 A Myself and Detective Linam.
8 Q Okay. Linam walked down on the ledge.
9 That's your recollection.
10 A No, sir. He walked behind me.
11 Q Down on the ledge, correct?
12 A Linam, like myself, we're afraid of the cliffs.
13 So --
14 Q You're afraid of the cliffs.
15 A Absolutely, yeah.
16 Q Okay. And my question to you is, did Linam
17 walk down, around onto that ledge with you?
18 A He walked down behind me, I pointed out the way it
19 wrapped around. He saw the brush, make-up brush, and
20 there's a -- I believe a round make-up case, and he
21 photographed that. There might have been a -- one or
22 two more items there, I don't know. I -- I just don't
23 remember.
24 Q When -- when you say there may have been one
25 or two more items, you recall a make-up brush, correct?

1 A Yes, sir.
2 Q Do you recall a credit card, correct?
3 A I don't recall it.
4 Q And -- and how about a -- a make-up kit, a
5 round, circular make-up kit.
6 A That I recall.
7 Q Okay. And Linam was on the ledge with you,
8 photographing those items, correct?
9 MR. MELLO: He didn't say he was on the
10 ledge.
11 BY MR. BILINKAS:
12 Q Was he on the ledge?
13 A No, sir, he was behind, around where the trail
14 leads, and he would -- he photographed the area.
15 Q From up above or the ledge behind you.
16 A No, no. You're -- you're confusing the issue, I'm
17 sorry, sir. I beg your --
18 Q Okay. Let me -- let me -- let me --
19 A -- I -- I beg your --
20 Q -- try to make it clear.
21 A -- indulgence -- your --
22 Q Okay. Let me try to make it clear for you.
23 You indicated that you and Linam walk around that
24 circular ledge and you see different items that you
25 missed the night before, correct?

1 A Yes, sir.
2 Q Okay. And Linam, as he's walking behind you,
3 at some point is taking photographs, not from above,
4 but on that ledge, correct?
5 A Not up -- no, he was not on the ledge.
6 Q He never went on the ledge.
7 A Correct.
8 Q Did you go on the ledge?
9 A No, sir.
10 Q Where did you see the make-up brush and the
11 make-up case?
12 A Again, I'm trying to say, everything is like a
13 half-moon.
14 Q The one that we -- we just looked at,
15 correct?
16 MR. BILINKAS: Put that back on the screen,
17 please, Jason.
18 Q Were you on the ledge there when you --
19 A No, sir.
20 Q Where were you?
21 A We're back further. We're back further north.
22 MR. BILINKAS: Would you put on the other
23 one.
24 THE WITNESS: North of that.
25 BY MR. BILINKAS:

1 Q That shows the beginning of the ledge,
2 correct? Correct?
3 A The ledge is down below.
4 Q Right. But it shows the beginning, where you
5 can walk around, correct?
6 A No, sir -- yes, but excuse me, in that photo, you
7 can -- you -- it -- it seems like you can walk there,
8 but we're further north to get down there, to get the
9 angle.
10 Q Okay. So --
11 A So you're -- you're -- I'm back further.
12 Q -- you -- you're -- you and -- you and --
13 A Back further.
14 Q -- you and Linam are to the -- to the left of
15 this large rock formation --
16 A Yes.
17 Q -- in this photograph.
18 A Yes, back further.
19 Q Okay. And from there, he took photographs of
20 the brush and other items, correct?
21 A Yes, sir.
22 Q Now, did he retrieve those items?
23 A No, sir, too dangerous.
24 Q Now, when -- when you say it's too dangerous
25 -- can I assume that at this point, the next day, you

1 had already notified the prosecutor's office, correct?
2 A The next day. No, I --
3 Q The next day.
4 A I had --
5 Q You notified them the night before.
6 A When the victim was located, the time the victim
7 was located, after the body -- there were no vital
8 signs and everything else, that's when I made the radio
9 calls to headquarters and it was Officer Elliott who
10 notified the ME's office, the prosecutor's, --
11 Q Okay.
12 A -- and -- and everything.
13 Q My -- my question is about the prosecutor.
14 A That's --
15 Q The prosecutor was notified the night before,
16 correct?
17 A I -- they --
18 Q Correct?
19 A -- should have been, yes.
20 Q And -- and that was before you and Linam had
21 seen those items that you didn't see on the night in
22 question, correct?
23 A Correct.
24 Q And to your knowledge, did you or Linam
25 retrieve those specific items --

1 A No, I --
2 Q -- that day.
3 A -- I just mentioned to you, no. It was --
4 Q Dangerous, correct?
5 A -- too dangerous, it was a slide there, you step
6 on those leaves or what have you and --
7 Q And -- and could you have gotten your repel
8 lines and retrieved those items? At any point in time
9 during that day.
10 A Possibly.
11 Q When -- when you say possibly, is there any
12 doubt in your mind that if you wanted to, you could
13 have repelled down to that ledge, again, and retrieved
14 those items?
15 A I could always repel down and everything else,
16 but, again -- like I stated before, sir, I rescue
17 people, I just don't go down there picking up items.
18 Q So would you agree with me that either you or
19 Linam were on that specific ledge --
20 A We were not on the ledge.
21 Q Okay. The day after the fact, correct?
22 A We were not on the ledge the day after the fact.
23 Q And as you sit here today, you don't even
24 recall all of the items that were left on the ledge
25 from the night before, correct?

1 A That's correct.
2 Q And you never put the location of those items
3 that you do recall on the diagram that we've gone over,
4 correct?
5 A Diagram was done the night before, it was still
6 dark, we didn't even know about those other areas.
7 Q I'm talking about the next day, when you
8 realized that there were other items left on the ledge,
9 you never put those items in the diagram that you had
10 done the night before, correct?
11 A No, sir. My -- my paperwork was already turned
12 in.
13 Q Could you have done another diagram with the
14 purse and the items?
15 A Okay. Yes, I could have, but there was no need,
16 now we have photos.
17 Q Where was the brush located? Where was the
18 brush located, with the photo, on the ledge? Where was
19 the brush located on the ledge?
20 A Over here, on -- on the north end, around, like I
21 said, the half-moon, not where the pocketbook was
22 found, --
23 Q Can you --
24 A -- which indicates --
25 Q -- can you come down and point to exactly

1 where the brush was found, because we have photographs
2 now and I will even give you S-256, which is the
3 photograph of the brush. Can you go point out to the
4 jury the exact location of where that brush was found
5 on the ledge?

6 (Witness leaves the stand)

7 A This general area, right there.

8 Q And -- and would you agree that was -- if
9 you're looking at the river on top of the flat rock, to
10 the left of the area where you propelled -- repelled
11 down, correct?

12 A Yes, sir. Like I mentioned, we repelled down
13 here.

14 Q And can you tell the jury -- and I'm going to
15 show you S-255 -- before I move on to that one, can you
16 point to the exact location where the brush was found?

17 A Exact.

18 Q Exact location, based on the fact that you --
19 you have a photograph at this point. You can't tell me
20 that, can you?

21 A I cannot point to where the exact location is.

22 Q All right. And can you point to the exact
23 location where the credit card was found?

24 A I didn't know there was a credit card found.

25 Q How about the make-up kit that you said you

1 did --

2 A No.

3 Q -- recall.

4 A I -- I cannot put the exact location on here.
5 This is the general area.

6 Q And would you agree with me that you were the
7 one who actually went on the ledge, as opposed to
8 Chiaffi, to retrieve the purse, correct?

9 A We both were on the ledge.

10 Q Chiaffi was on the ledge with you when you
11 were -- how do --

12 A We -- we both repelled together, --

13 Q All right.

14 A -- I think he was just a little ahead of me.

15 Q And -- and did he walk on that ledge, to your
16 recollection?

17 A I have no idea if he walked on the ledge. I know
18 I did. I know I went on my knees. I picked around, I
19 looked around the area. There's no clothing, there's
20 no blood, there was nothing on that area where the
21 pocketbook was.

22 Q And -- and --

23 A The pocketbook came down with such force that
24 those items that were in the pocketbook went from this
25 part to this part.

1 Q When you say went down with so much force,
2 could the pocketbook have been opened --
3 A Perhaps.
4 Q -- when it was falling from the top and gone
5 all over that ledge?
6 MR. MELLO: Objection to what could have
7 been. What could have been is somebody could have
8 thrown --
9 MR. BILINKAS: I'll withdraw --
10 MR. MELLO: -- it there.
11 MR. BILINKAS: -- the question.
12 THE COURT: Thank you.
13 MR. BILINKAS: And -- and -- and, again, I --
14 I would ask the prosecutor not to --
15 MR. MELLO: Well, then -- then don't --
16 MR. BILINKAS: -- make statements.
17 THE COURT: Well --
18 MR. MELLO: -- then the question like that
19 shouldn't be asked.
20 BY MR. BILINKAS:
21 Q You could have your seat.
22 A Thank you.
23 (Witness resumes stand)
24 Q Now --
25 (Record remains on, no colloquy)

1 Q Now, do you recall, before you threw up the
2 purse to Police Office Abbott, do you recall Chiaffi
3 saying, let's take photographs, don't move it, or words
4 to that effect?
5 A No.
6 Q Do you recall him telling you anything,
7 trying to prevent you from disturbing the contents of
8 the ledge?
9 A No.
10 Q Did he tell you not to disturb the contents
11 on the ledge?
12 A No.
13 Q You're absolutely, 100 percent positive of
14 that fact.
15 A 100 percent positive.
16 (Record remains on, no colloquy)
17 Q Would you agree with me that you should have
18 let the pocketbook remain where it had landed, with its
19 contents, and photographed it on the night in question?
20 A Everything I know now, absolutely right.
21 Q Can you describe the bag which you threw up?
22 A No, I don't recall.
23 Q Now, at some point in time you get to the
24 base of the cliff, correct?
25 A Yes, sir.

1 Q And, again, you'll agree with me, it took you
2 approximately 30 minutes to do so, correct? Based on
3 the review of these reports, correct?
4 A So it seems.
5 Q And when you got there, how long did it take
6 you to actually see Mrs. Scharf's body?
7 A Well, again -- excuse me, Judge, I -- I want to
8 get the whole picture back in my mind.
9 We repelled down, at the base of the cliff, I'm
10 standing there. Looked around, there was no body
11 there. We looked a few past it and through all my
12 years and experience --
13 Q No, I'm not asking you about your experience.
14
15 MR. MELLO: Objection. May -- may --
16 BY MR. BILINKAS:
17 Q How long did --
18 MR. MELLO: -- he finish --
19 THE COURT: Let him finish --
20 MR. MELLO: -- finish his answer, please?
21 THE COURT: -- his response.
22 MR. BILINKAS: I'll -- I'll withdraw --
23 THE COURT: Let him finish --
24 MR. BILINKAS: -- the question.
25 MR. MELLO: No, I don't want to --

1 THE COURT: -- his response.
2 MR. MELLO: -- withdraw it. I want him to be
3 able to answer the question.
4 BY MR. BILINKAS:
5 Q I asked you --
6 THE COURT: Finish your response.
7 BY MR. MELLO:
8 Q -- to be responsive.
9 A Through all my years and experience, I've never --
10 in recovering people who have fallen, victims, bodies,
11 no one has ever gone that far. So we searched the
12 immediate area. After searching that immediate area
13 and finding nothing, we continue our search. And then
14 as we start using our flashlights, and we kept moving
15 over, grid by grid, it was more to the north end,
16 that's when we seen this white stuff by the tree, and
17 that's where the victim laid -- lied.
18 Q Now, could you answer my question, how long
19 did it take you, from when you hit the base, to find
20 the body?
21 A Another 15 minutes or so.
22 Q Would you agree with me that when you called
23 in to Elliott that you had found the body, that that
24 was 15 minutes after you had repelled from the top,
25 which would indicate that it only took you 15 to repel

1 to the actual bottom of the cliff?
2 A I -- again, when I radio Officer Elliott, is after
3 we scanned the area and located the tree. Now, I have
4 not reached the victim yet. It's from where --
5 Q Could you --
6 A -- I'm standing --
7 Q Well, it's when you found the body, you saw
8 the body.
9 A I saw a body.
10 Q And you -- you just testified it took you 15
11 minutes once you hit the base to find the body,
12 correct?
13 A Approximately 15 minutes in my mind.
14 Q And -- and would you agree with me that if
15 you subtract that 15 minutes that it took to find the
16 body, that it would only have taken you 15 to repel
17 down from the top to the bottom?
18 A It took longer to repel than 15 minutes from the
19 top to the bottom.
20 Q Now, Mrs. Scharf's body was found
21 approximately 30 feet from where you repelled down,
22 correct?
23 A That is correct, sir.
24 Q And if you're looking at the river, you were
25 to the right of Coffi (sic).

1 A Chiaffi.
2 Q Chiaffi. Correct?
3 A Yes, sir.
4 MR. MELLO: I'm sorry, could I -- could --
5 could I have that question, again?
6 BY MR. BILINKAS:
7 Q If you're facing the river, the tree with
8 Mrs. Scharf's body is to the left of you, correct?
9 A Correct.
10 Q And --
11 MR. MELLO: Okay.
12 BY MR. BILINKAS:
13 Q -- Chiaffi was also to the left of you,
14 correct?
15 A Yes, sir.
16 Q He was closer to the tree and the body than
17 you were, correct?
18 A Yes, sir.
19 Q And -- and you estimate that distance as 30
20 feet, correct?
21 A Yes, sir.
22 Q Not 40 feet, correct?
23 A Yes, sir.
24 Q And did you or Chiaffi measure that distance?
25 A No, sir.

1 Q And -- and would you agree that it was pitch
2 black at the bottom of that cliff base at that time?
3 A It was nightfall.
4 Q And would you agree with me that that base is
5 extremely steep, even at the base at that point?
6 A Yes, you have a slide.
7 Q Okay.
8 A Which I --
9 Q And -- and it's --
10 A -- call a slide.
11 Q -- difficult to even stand upright, because
12 of the slope downward, correct?
13 A It's difficult, but I did it.
14 Q I'm -- I'm not saying that you -- you didn't,
15 but it -- it -- it -- it's difficult, correct?
16 A Yes, sir.
17 Q And -- and every time you moved, you know,
18 leaves, rocks would go down to the -- towards the --
19 the -- the road, correct?
20 A Absolutely, correct, sir.
21 Q Okay. So every time you and -- how do you
22 pronounce his name, Coffi (sic).
23 A Chiaffi.
24 Q Chiaffi. Every time you and Chiaffi,
25 searching the area, you were disturbing that steep

1 slope area, correct?
2 A Yes, sir.
3 Q And -- and at some point in time you see the
4 body, you go over to the body, and would you agree with
5 me that when you -- when you got close to the body,
6 there was no doubt in your mind that this woman was
7 dead?
8 A After I checked her vital signs.
9 Q And -- and -- and that was done immediately
10 upon your reaching her, correct?
11 A Yes, sir.
12 Q And now, at that point, this is not a rescue
13 operation any more, correct?
14 A Correct, now it's a recovery.
15 Q And -- and there's no need to hurry up and
16 save time, correct?
17 A Yes, sir.
18 Q You never photographed the body before you
19 moved it, did you?
20 A No, sir.
21 Q And -- and would you agree with me that that
22 was a mistake on your part?
23 A If I had a camera with me, I would have taken all
24 the photos. I did not have a camera.
25 Q When you say, if I had a camera, --

1 A Yes, sir.
2 Q -- you had a radio, correct?
3 A Yes, sir.
4 Q And I assume that someone up on top of the
5 cliff had access to a camera.
6 A I have no idea, sir.
7 Q Does your department, the Palisades
8 Interstate Police Department have any photography
9 equipment at its disposal?
10 A Yes, sir.
11 Q Does the Bergen County Prosecutor's Office,
12 who was notified at this point, have access to camera
13 equipment?
14 MR. MELLO: No testimony that the prosecutor
15 was notified, but with that exception, I have no
16 problem with the question. Thank you.
17 BY MR. BILINKAS:
18 Q Any doubt in your mind that the prosecutor's
19 office has access to cameras, helicopters, or planes or
20 all sorts of equipment to document a potential crime
21 scene.
22 A I would imagine they do.
23 Q And as a matter of fact, you had to call up
24 to get the basket sent down to remove the body,
25 correct?

1 A We radio -- excuse me. Mike Chiaffi radioed up to
2 his crew, they happened to have the stokes basket.
3 Q Did Chiaffi tell you or say anything about
4 trying to document, photograph the scene at the base?
5 A At the base? Where -- oh, where the victim lied?
6 Q Where the victim was lied (sic), after she
7 was obviously dead.
8 A Uh-huh. Again, like I mentioned, I had no camera.
9 The -- what -- what is protocol is that, which I've
10 done, was to call, notify the detective, it was the
11 detective's call --
12 Q Who -- whose detective --
13 A That was the --
14 Q -- whose call was it at that point?
15 A Again, once the body was down there, and it was a
16 -- determined that it was a -- a deceased, it's up to
17 the detective, he -- his investigation, he takes over.
18 Q Okay. And -- and you contacted that
19 detective, correct?
20 A Well, I contacted headquarters to have him come
21 in.
22 Q Okay. And --
23 A I did not --
24 Q -- before --
25 A -- speak with the detective.

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1 Q Before you moved the body -- before you moved
2 the body, did you receive any instructions from the
3 detective that would be handling the investigation as
4 to what you were to do at the scene?
5 A No, sir.
6 Q Did you ask for any direct -- directions?
7 A No, sir.
8 Q You removed the body, correct?
9 A Yes, sir.
10 Q The body that was wedged between the large
11 tree and a rock, correct?
12 A The head was there, yes, sir.
13 Q It was wedged.
14 A Yes, sir.
15 Q It was touching the rock and the tree,
16 correct?
17 A You're absolutely correct, sir.
18 Q And there's no doubt in your mind that, based
19 on your specific recollection of the evening --
20 evening, that Mrs. Scharf's head was wedged between the
21 tree and a large rock.
22 A No doubt in my mind.
23 Q And would you agree with me that Mrs.
24 Scharf's head was covered with blood at that point?
25 A Absolutely.

1 Q And did any of that blood get on the rock?
2 A Yes, sir.
3 Q And when you removed her body from being
4 wedged, did you see blood on the rock?
5 A Okay. What -- I did not remove the body from that
6 rock, I removed the rock out and I -- I rolled it down
7 the cliffs so I can move the body. The -- the rock had
8 to be moved first.
9 Q You're sure of that.
10 A Yes, sir.
11 Q You're sure the body wasn't removed from the
12 tree and the rock so the basket can be put right
13 alongside of her, to have her carried down?
14 A That's also absolutely true. It was two things,
15 but you have to move the rock, otherwise I could not
16 move the head. It's wedged.
17 Q Wedged, tight, --
18 A Tight.
19 Q -- up against the rock, correct?
20 A Yes, sir.
21 Q And can you tell me, if anywhere in any of
22 the reports that you did regarding this case, that you
23 mentioned ever moving this rock?
24 A No.
25 Q Did the prosecutor show you photographs of

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1 the base of the tree, clearly indicating that there was
2 no rock on the tree that you had marked?
3 A That's correct.
4 Q So he showed you that, correct?
5 A Yes, sir. I -- I showed him the tree, I have -- I
6 moved the rock. I --
7 Q When did you tell him you moved the rock?
8 A Oh, God. We went back down there, maybe in --
9 let's see, this occurred in '92, maybe '94. I don't
10 know. Somewheres along the line. When we all went
11 down there, I repelled back down, I recreated the
12 scene. I -- the -- the rock was there and I said, we
13 moved it -- I moved it. It's rock about so big. Took
14 it and I moved it off the cliff and it rolled down. I
15 mean, it was -- I don't know if you're familiar with
16 the area, but it's steep.
17 Q I -- I've -- I've been up there many times.
18 A Okay. So you know what I'm speaking of.
19 Q And back when you went there in '90 -- '90 --
20 A Four.
21 Q -- four, did -- did you do a report?
22 A Yes, I did a supplemental report. Yeah, I
23 remember.
24 Q And would you agree with me that in that
25 supplemental report, you make no mention of moving a

1 rock?
2 A No, I did not mention it.
3 Q And who did you tell from the Bergen County
4 Prosecutor's Office that you moved a rock that the body
5 had been wedged between?
6 A Oh, that's a good question. I had so many
7 officers come down and so many people. I -- I do not
8 recall which individual I told.
9 Q Okay. Was he taking notes, did he do a
10 report?
11 A I have no idea. I -- I -- it's a different
12 department, they have a different method of doing
13 things.
14 Q So not only did you move the body before it
15 was photographed, your recollection is that you moved
16 this large rock.
17 A I had to move the rock before I could move the
18 body.
19 Q And did Chiaffi help you move the rock?
20 A No, I moved the rock.
21 Q You're sure of that.
22 A Yes, sir. He was -- I -- I do believe that
23 Chiaffi, at the time, is directing his people, bringing
24 down a stokes basket. And -- and that was getting
25 stuck in the trees and everything else.

1 Q The stokes basket didn't come right down?
2 A No, we had an individual repel down with the
3 basket.
4 Q And the rock that had the blood from Mrs.
5 Scharf's head, you just rolled down the mountain.
6 A Yes, sir.
7 Q Did the prosecutor, when you told him you did
8 that, did he attempt to locate that rock when you
9 talked to about it at the base of the cliff, years
10 later?
11 A Two years later, to locate that one rock.
12 Q Correct.
13 A No, sir. You'll -- you'll never locate it.
14 Q Because once things fall down onto the base
15 and roll, --
16 A You have --
17 Q -- they disappear into the --
18 A It becomes part of the earth and everything else
19 and you still have erosion, you have other rocks coming
20 down, and storms and everything else.
21 Q Like -- like shoes and things like that.
22 A Yeah.
23 Q How about -- did you see a -- a washing
24 machine in the area?
25 MR. MELLO: Objection to --

1 BY MR. BILINKAS:
2 Q On the night in question.
3 THE COURT: Your objection.
4 MR. MELLO: Judge, objection to the
5 relevancy, again, of the --
6 THE COURT: I'll allow it, overruled.
7 BY MR. BILINKAS:
8 Q On the specific night --
9 MR. MELLO: -- washing machine.
10 BY MR. BILINKAS:
11 Q -- in question, did you see a washing machine
12 in the immediate area of where the body was found?
13 A No, sir.
14 (Record remains on, no colloquy)
15 Q Now, at some point in time, Mrs. Scharf's
16 body is lowered down to the road that goes along the
17 river, correct?
18 A Yes, sir.
19 Q And -- and would you agree with me that
20 that's approximately 300 feet from where the body was
21 located, correct?
22 A I would -- I would go along with that, yes,
23 that's --
24 Q And would you agree with --
25 A -- a good estimate.

1 Q I didn't mean to cut you off.
2 Would you agree with me that to get down, it was
3 very difficult, because of the steepness of that slope,
4 correct?
5 A Yes, sir.
6 Q Many rocks.
7 A Huge boulders.
8 Q But at some point in time you get her to the
9 -- to the roadway, correct?
10 A Yes, sir.
11 Q And -- and the body is pronounced -- the
12 person is pronounced dead, correct?
13 A Yes, sir.
14 Q And -- and who did that?
15 A It was done with the -- between -- well, Dr. Mary
16 Ann Clayton is the one who pronounced her.
17 Q All right. You mean the medical examiner,
18 correct?
19 A Yes, sir.
20 Q Can you tell the jury whether or not on the
21 night in question, the medical examiner even showed up
22 to the scene, Ms. Clayton?
23 A No, I don't think she was at the scene.
24 Q Did it by phone, correct?
25 A Correct.

1 Q Never even saw the body, correct?
2 A Not -- not there at that particular road, as far
3 as my knowledge. I don't know what happened after
4 that.
5 Q You -- you never saw her go up to the base
6 that you repelled down and found the body on the night
7 in question, --
8 A No.
9 Q -- correct?
10 A No.
11 Q Now, you indicated that when you found the
12 body and you looked up, you saw blood on the tree,
13 correct?
14 A Yes, sir.
15 Q And how far was that up from the base?
16 A From the base of the tree?
17 Q Base of the tree.
18 A Okay. I stood up, put my hand up, so I figured
19 about six to seven feet. My hand was wet with blood.
20 Tissues and everything else.
21 Q You actually touched --
22 A Yes, I --
23 Q -- you actually touched --
24 A Yes.
25 Q -- the blood that was on the tree, left from

1 the body.
2 A Yes, sir.
3 Q What did you do with that blood?
4 A I took the flashlight, I looked at my hand to make
5 sure it was blood, what have you, I wiped myself down,
6 I took out -- you know, first on the ground and
7 everything. A branch and stuff, and I cleaned myself
8 off.
9 Q And did you save that blood and give it to
10 the prosecutor's office?
11 A No, sir.
12 Q How about the tissue.
13 A No, sir.
14 Q Now, in your official report made on the
15 night in question, --
16 A Uh-huh.
17 Q -- did you ever put that the blood was six
18 feet above the base of the tree?
19 A Possibly. I don't have my report, I don't know.
20 MR. BILINKAS: Do you have the report?
21 Q I'm going to show you S-75. I ask you to
22 refer to the second page.
23 A This is the second page. Yeah, Page 2.
24 Q This is the second page.
25 A Okay. (Witness reviews exhibit.) I have six feet

1 high, slid down, indicating the victim's spinal impact
2 before striking the ground.
3 Q All right. Now, you didn't say anything
4 about actually touching the blood, correct?
5 A No.
6 Q And when refer to the blood coming down, can
7 you tell the jury whether you ever mentioned the term
8 tissue?
9 A No. I did not.
10 Q Now, have you been told that it's the
11 prosecutor's position that the body fell from the top
12 of the --
13 MR. MELLO: Objection. I'm -- I'm going to
14 object to --
15 MR. BILINKAS: I'm asking what he's being --
16 whether he's --
17 MR. MELLO: No.
18 MR. BILINKAS: -- been told certain things.
19 MR. MELLO: I'm going to object to him
20 discussing what he's been told from the perspective of
21 what my position is.
22 THE COURT: Ask another question.
23 BY MR. BILINKAS:
24 Q On the night in question, you never mention
25 the word tissue, correct?

1 A Yes, sir.
2 Q And -- and on direct examination, you said
3 brain matter, correct?
4 A Yes, sir, that's tissue.
5 Q Are you, as you sit here today, absolutely
6 positive that it was brain matter on the tree?
7 A Well, sir, it was white, it was squirmy like a --
8 like -- like a worm, it had skin tissue, which is like
9 skin, I mean, you could peel it off or what have you,
10 and it had blood.
11 Q And that's everything --
12 A That -- that to me is tissue.
13 Q Well, again, --
14 A According to me. I'm not a --
15 Q You -- you said --
16 A -- doctor.
17 Q Okay. But you said brain tissue, correct?
18 A If I said that, yes, that's what I said.
19 Q Did you say brain tissue?
20 A I forgot.
21 Q You forgot what you said on direct. Is that
22 your testimony?
23 A Yes, but I mean, if I said that, that's correct.
24 Q Okay. And would you agree with me that in
25 your report, you never mention tissue or more in

1 particular, the specific type of tissue, brain matter?
2 A Yes, sir.
3 Q Now, is that all you recall about that blood
4 smear?
5 A That it was about six feet high and later on I
6 recalled that it smeared down about almost three feet.
7 Q Is -- is that all that you recall? Anything
8 else specific about that blood sample?
9 A No, it was a lot, I think that's all I know.
10 Q A lot --
11 A I -- I mean, blood there and everything else,
12 because it started at one spot and it dripped down on
13 the tree.
14 Q Okay. And that --
15 A And to me that -- that means there's a lot of
16 spillage of blood for it to --
17 Q Okay.
18 A -- come down.
19 Q Fair enough, fair enough. And you didn't see
20 any hair on the tree, correct?
21 A I didn't get that close, the hair, tissue, and
22 what have you.
23 Q What -- when -- when you say didn't get that
24 close, you actually, physically touched --
25 A Yes, I touched --

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1 Q -- and got the blood and the tissue on your
2 hand, correct?
3 A Correct.
4 Q And then you looked at it with a flashlight,
5 according to you, correct?
6 A Yes, sir.
7 Q And my question is, at any point in time,
8 when you're looking up or you're examining what you
9 have in your hand, did you see any hair?
10 A No. I don't recall seeing the hair, it could have
11 been up there in the tree, but that's too high for me
12 to see.
13 Q But as you sit here today, you don't recall
14 seeing hair, correct?
15 A Correct.
16 Q Now, at some point in time, you meet with the
17 medical examiner, many, many years after this incident,
18 correct, at the site?
19 A I took her up, I believe, yeah, to the site.
20 Q In January of 2006, correct? Or therabouts.
21 A I don't -- whatever, sir. I don't know what the
22 date is.
23 Q But in 2006.
24 A Yeah, I believe so.
25 Q And can I assume that if you don't remember

1 whether or not hair was in the matter that you
2 examined, that you didn't tell the medical examiner
3 that you saw hair, correct?
4 A I -- I don't recall the conversation between
5 myself and --
6 Q Oh, would you agree with me that --
7 A -- the medical examiner.
8 Q -- if -- would you agree with me that if you
9 didn't see hair, you wouldn't tell the medical examiner
10 that you did see hair, correct? That would be a lie,
11 correct?
12 A I really don't --
13 MR. MELLO: Objection to --
14 THE WITNESS: -- think that I --
15 MR. MELLO: -- the form. Objection to the
16 form.
17 THE COURT: Sustained.
18 MR. BILINKAS: I'll rephrase it.
19 THE WITNESS: Yeah.
20 BY MR. BILINKAS:
21 Q Okay. You told this jury that you don't
22 remember seeing hair when you examined the matter that
23 you examined --
24 A On my --
25 Q -- from the tree.

1 A -- hand, yes.
2 Q Or -- or on the tree, correct?
3 A I couldn't see up the tree.
4 Q And my specific question is, did you tell, at
5 any point in time, the medical examiner that you saw
6 hair?
7 A I don't recall any conversations. I do remember
8 taking her -- the medical examiner to the location
9 where the victim struck the tree.
10 (Record remains on, no colloquy)
11 Q Now, you're the person that put the markings
12 on the tree in the photographs that the prosecutor's
13 introduced, correct?
14 A Yes, sir.
15 Q And you did that approximately two years
16 after this incident, correct?
17 A Yes, sir.
18 Q The first time you marked the tree was over
19 two years after Mrs. Scharf had fallen, correct?
20 A Yes, sir.
21 Q And -- and you repelled down from the top to
22 the base of the cliff where the body was found,
23 correct?
24 A I -- I used the same path that I did, that I --
25 for the incident.

1 Q You're sure of that.
2 A Absolutely sure.
3 Q Absolute --
4 A Absolutely sure, sir.
5 Q Absolutely.
6 A Absolutely.
7 Q Well, let me show you what's been in
8 evidence --
9 (Record remains on, no colloquy)
10 Q Show you what's been in evidence D-198. Can
11 you please step down?
12 A Thank you.
13 (Witness leaves stand)
14 Q As you're coming down, you just testified
15 that you repelled down two years later, at the exact
16 location where you had repelled down two years before,
17 correct?
18 A Yes, sir.
19 Q Okay. And in this diagram, do you see your
20 repel lines? The red and the yellow line.
21 A Yes, sir.
22 Q And would you agree with me that that, as
23 you've testified, is the path that you took on the
24 night in question?
25 A Yes.

1 Q And -- and where's this big tree in
2 relationship to your wire?
3 A It's down further. This is the base.
4 Q Down further. You just pointed to the -- to
5 the right, --
6 A No, no, --
7 Q -- correct?
8 A -- you said coming down --
9 Q You did --
10 A -- I said down.
11 Q Okay. Tell the jury, point, is it to the
12 left or to the right of your repel line?
13 A This way.
14 Q You're -- you're sure of that fact.
15 A Yes, sir.
16 Q Do you see the flat rock?
17 A Yes, sir.
18 Q And -- and -- and am I pointing to it?
19 A That's it.
20 Q And -- and would you agree with me that
21 you're to -- if you're facing the river, you're to the
22 left of the black line, correct?
23 A I'm sorry. The --
24 Q Your repel lines are to the left of the flat
25 rock.

1 A You see, sir, I have to -- I'm sorry.
2 Q Okay.
3 A You're looking at a photograph that's -- that does
4 not show justice to where the line is in comparison to
5 the cliff. It's not a straight on shot.
6 Q If you had a straight on shot, that --
7 A It's -- it's a photograph. That's all it is. And
8 -- and that -- that's the question.
9 Q Okay. And do you see -- do you see your
10 repel lines in this photograph?
11 A (Witness reviews exhibit.) See that red line, to
12 the far right of the photograph?
13 A Yes, I see the line, yes, sir. I'm -- I'm looking
14 above. Okay. I see the line.
15 Q Can you point out to the jury -- and -- and
16 where's the big tree that Ms. Scharf was found?
17 A (Witness reviews exhibit.) Right here. Down
18 here. This is, again, looking at this, this is the
19 base, go ahead 30 feet.
20 (Record remains on, no colloquy)
21 Q You can take your seat.
22 (Witness resumes stand)
23 Q Now, would you agree with me that with
24 regards to you returning to the scene with the
25 prosecutor's office two years later, that you were the

1 one that described the area and pointed out the tree
2 that Mrs. Scharf was found lying next to, correct?
3 A That's correct, sir.
4 Q And that was the first time that you had done
5 that for any member of the Bergen County Prosecutor's
6 Office, correct?
7 A That's correct, sir.
8 Q So for two years no one even asked you to go
9 out to the scene and show them exactly what you saw on
10 the night in question, correct?
11 A Correct, sir.
12 (Record remains on, no colloquy)
13 Q Now, on this day, you did another police
14 report, correct?
15 A Yes, sir.
16 Q And this is the day, and correct me if I'm
17 wrong, that you've indicated you told the prosecutor's
18 office, Number 1, that you rolled the rock down the
19 hill, correct?
20 A Yes, sir.
21 Q And did you tell the prosecutor, when you
22 pointed out the location where you saw the blood smear,
23 that you saw tissue with that blood?
24 A I believe I did.
25 Q And can you look at your report, S-50.

1 MR. BILINKAS: Prosecutor.
2 MR. MELLO: Yes, sure.
3 BY MR. BILINKAS:
4 Q And would you agree with me, that no where in
5 this report you mention anything about tissue, correct?
6 A Yeah, correct, sir.
7 Q And --
8 A Is there another page from this?
9 Q Yeah, Page 2.
10 A Okay. Can I pick it up?
11 Q Yeah.
12 A Thank you.
13 Q Page -- Page 2, first line. Talks about your
14 comments concerning the blood, regarding the meeting
15 with the prosecutor's office. You never mention the
16 word tissue, in this report, two years later, correct?
17 A Yes, sir.
18 Q Yes, sir, you did not, correct?
19 A Yes, sir, I did not.
20 Q Okay. And you never mentioned, in this
21 report, that you removed the rock, correct?
22 A Correct, this is just a verbal conversation.
23 (Record remains on, no colloquy)
24 A And, again --
25 Q There's not a question.

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1 (Record remains on, no colloquy)
2 MR. BILINKAS: I believe I'm done, let me
3 just check my notes.
4 (Record remains on, no colloquy)
5 Q Oh, when you saw Mrs. Scharf's body wedged
6 between the rock and the tree, did you notice specific
7 tears in her clothing?
8 (Record remains on, no colloquy)
9 A I'm gonna have to say no, because her body was
10 twisted. As we picked her up and placed her into the
11 stokes basket, perhaps we ripped her clothing, like
12 lifting her to put her in a basket. That's a
13 possibility. I don't know, but I didn't notice
14 anything prior.
15 Q Did you just testify that you may have
16 ripped --
17 A I might have. I had no idea.
18 Q Before you removed or picked her body, --
19 A Yes, sir.
20 Q -- did -- did you notice any specific tears
21 in her clothing? Any tears in her clothing.
22 A I just finished -- finishing sir, no, because her
23 body was twisted.
24 Q Okay. When it became untwisted, while you
25 were putting her in the basket to take her down to the

1 road, did you notice, specifically, that her clothes
2 were ripped and that there were green colored scrape
3 marks which were apparently caused by her hitting tree
4 limbs? Did you notice any rips with green scrape marks
5 on her clothing?
6 A No, sir.
7 Q You're sure of that.
8 A Yes, sir.
9 (Record remains on, no colloquy)
10 MR. BILINKAS: Judge, I think I'm done.
11 (Record remains on, no colloquy)
12 THE COURT: Prosecutor.
13 MR. BILINKAS: Wait, wait, wait, one -- one
14 more question, Judge.
15 MR. MELLO: I'll give him that chance, Judge.
16 One more. One more.
17 MR. BILINKAS: One more question.
18 MR. MELLO: One more. One more, Judge.
19 Sure.
20 BY MR. BILINKAS:
21 Q I show you D-199 in evidence.
22 A Yeah.
23 Q Please.
24 A Thank you.
25 (Witness leaves stand)

1 Q Would you agree with me that this photograph,
2 in evidence, depicts your repel lines in the direction
3 that you went down the cliff, both two years later and
4 on the night in question?
5 A Yes, sir.
6 Q Would you agree that your repel lines are --
7 again, if you're looking at the river, to the left,
8 towards the middle of the ledge, would you agree that
9 that's where your lines are depicted in this
10 photograph?
11 A In this photograph, it is depicted, but see this
12 line here, the yellow one.
13 Q Okay. You see it slacked on other lines.
14 They look pretty taunt, correct?
15 A That's correct. I don't know what these lines are
16 for. I -- I can't say. You know, when you take
17 something -- I can't do this for years.
18 MR. BILINKAS: I'm going to publish it to --
19 to the jury, Judge, and I'm done at this point.
20 MR. MELLO: And we're done at this point.
21 THE COURT: No further questions.
22 MR. MELLO: No, Judge. Thank you.
23 THE COURT: All right. You may remain
24 standing.
25 THE WITNESS: Okay. Thank you, sir.

1 THE COURT: We're finished with your
2 testimony. Thank you.
3 THE WITNESS: Thank you very much.
4 (Record remains on, no colloquy)
5 THE COURT: All right. The jury has finished
6 looking at the exhibit. We will resume at 1:30. We
7 have 45 minutes for our lunch hour. When you return, I
8 will give you special instructions for the afternoon.
9 All right. So I will see you at 1:30. Enjoy your
10 lunch.
11 (Jury exits courtroom, 12:44 p.m.)
12 (Recess, 12:44 p.m. to 1:53 p.m.)
13 (Off the record, on the record)
14 (Record remains on, no colloquy)
15 COURT OFFICER: Ready, Judge.
16 THE COURT: All right. Place Mr. Scharf
17 under oath.
18 S T E P H E N F. S C H A R F, DEFENDANT, SWORN
19 COURT CLERK: State your name for the record.
20 THE DEFENDANT: Stephen F. Scharf.
21 THE COURT: All right. Out of an abundance
22 of caution, I'm viewing this similar to a situation
23 where a defendant is advised of constitutional rights.
24 Even though at a view, evidence is not taken, there
25 really is no discussion, it's really an aid to the jury

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1 in understanding the area, so that they have a better
2 idea as they go through the testimony and, ultimately,
3 have deliberations.

4 However, it would appear to me that a
5 defendant has constitutional rights at each and every
6 critical proceeding, and one might argue this is a
7 critical proceeding or not. I take the position that
8 the defendant should be able to be there or not be
9 there.

10 However, you have the right, also, to absent
11 yourself from any part of the proceedings. If you were
12 on bail, and if you didn't show up, it would be
13 presumed that you knew that you had to be here because
14 of the trial date, but there's no obligation to have to
15 be here.

16 So likewise, you can go to the view or not go
17 to the view, but as a second part of that, and I really
18 thought about this today, you have the right to have
19 the jury instructed as -- let me finish, as to the fact
20 that either -- you -- you have a constitutional to
21 attend and, therefore, they should not draw any adverse
22 inferences in the event that you do not attend. Do you
23 understand the difference?

24 THE DEFENDANT: I follow you, Your Honor.

25 THE COURT: Basically, you have the right to

1 be there or not to be there, but I don't want any
2 impression left with the jury. So there's an
3 instruction that I could read or not read, depending on
4 what you want to do.

5 Now, the instruction would be something to
6 the effect, it is the constitutional right of a
7 defendant to attend or not to attend any court
8 proceeding. The defendant in this case chose not to
9 attend and, therefore, elected to exercise that right.
10 I charge you that you are not to consider for any
11 purpose or in any manner in arriving at your verdict
12 the fact that the defendant did not attend the jury
13 view. Nor should that fact enter into your
14 deliberations or discussions in any manner or at any
15 time.

16 A defendant is entitled to have a jury
17 consider all of the evidence and he is entitled to the
18 presumption of innocence, whether or not he attends a
19 court proceeding. Therefore, you may not draw any
20 inferences of guilt from the fact that the defendant
21 did not attend the jury view.

22 Then underneath it would be, I want the
23 charge given to the jury or I do not want the charge
24 given to the jury.

25 THE DEFENDANT: I do not want the charge

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1 given to the jury, Your Honor.
2 THE COURT: Okay. Let me hand you this form.
3 What I've done is to take the defendant's not --
4 election not to testify and just revised it for our
5 purposes.
6 THE DEFENDANT: Thank you, Your Honor.
7 (Record remains on, no colloquy)
8 THE COURT: Okay. And with this
9 understanding, after you've gone through this with your
10 attorney, I'm also -- go ahead. Go ahead.
11 (Record remains on, no colloquy)
12 MR. BILINKAS: Judge, for the record, my
13 client has signed the portion where it says he waives
14 his right to have that instruction. He fully
15 understands that we discussed this, I've signed it
16 underneath him. He did put his signature on the -- the
17 other election, Judge, by mistake, he's crossed it out
18 and I had him initial it.
19 THE COURT: Okay.
20 MR. BILINKAS: It's a definite decision,
21 based on -- on discussions, is not to have to that
22 charged read.
23 THE COURT: Thank you. Diane, can you make
24 copies and stamp it, make copies for the attorneys.
25 Also, while you're up here, what I plan to do

1 is when the jury comes in and we give them the
2 instructions, we're going to -- we're not going to come
3 back up into the courtroom, I'll discharge the jury
4 from the parking lot. Basically, I'll tell them that
5 when we finish and we come back to the parking lot,
6 they can adjourn until next Tuesday, May 17th (sic).
7 MR. MELLO: Thank you, Your Honor.
8 MR. BILINKAS: Judge, just one other thing
9 that Mr. Scharf has asked me to discuss with you.
10 Before the trial started, we -- we brought to the
11 Court's attention with regards to trying to get into
12 the law library, have my client go into the law
13 library. We keep sending him briefs and responses and
14 discussing legal issues, and -- and if you recall, you
15 indicated you'd like for us to try to work it out. We
16 have talked to --
17 THE COURT: I -- I thought you had gone to
18 speak to the warden.
19 MR. BILINKAS: I -- we have talked to the
20 representatives in the jail and they, basically, said
21 they would make arrangements. My -- my concern is,
22 those arrangements have not been made and -- and we
23 only have two weeks left and there are -- a --
24 THE COURT: Why don't you --
25 MR. BILINKAS: -- a number --

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1 THE COURT: -- put together an order,
2 basically, indicating that, that, you know, we're in
3 the middle of a trial, it -- it's of paramount
4 importance for him to be able to get into the library
5 to do what he needs to do.
6 I think the fact that he's in a trial and
7 wants to use the library is a little different than
8 prior to trial where it could be several weeks or
9 several months.
10 MR. BILINKAS: Understood, Judge. We'll --
11 we'll --
12 THE COURT: Special consideration be given to
13 the defendant to be able to access the law library.
14 MR. BILINKAS: I'll have an order prepared
15 tomorrow, Judge.
16 THE COURT: Okay.
17 MR. BILINKAS: Thank you.
18 (Attorney/client discussion)
19 MR. BILINKAS: We're ready.
20 THE COURT: Okay. Thank you.
21 (Recess, 2:01 p.m. to 2:05 p.m.)
22 (Off the record, on the record)
23 (Jury enters courtroom, 2:05 p.m.)
24 THE COURT: All right. Welcome back, ladies
25 and gentlemen of the jury. Please be seated. Madam

1 Clerk, roll call.
2 (Roll call taken, all jurors present)
3 THE COURT: Welcome back, ladies and
4 gentlemen of the jury. The Court has concluded and it
5 is ordered that it would be helpful for you to view the
6 scene of the death of Jody Ann Scharf. You will go
7 there with Sheriff's Officers. The view is not
8 evidence in the case, but may be used by you as an aid
9 to better understand the evidence introduced in this
10 case.
11 While you are at the scene, do not ask any
12 questions of the lawyers or the people who may be
13 there. Do not discuss the case with anyone, even your
14 fellow jurors while going to or from the location or at
15 the location, itself.
16 Now, we anticipate that by the time we finish
17 -- well, before I do that. Place the Sheriff's
18 Officers under oath.
19 (Sheriff's Officers, sworn)
20 THE COURT: When we finish and return to the
21 parking lot, you'll be discharged from the parking lot,
22 there'll be no need for you to come back into the
23 courthouse. So when we finish, we'll come back to the
24 parking lot, you'll be discharged, and we will resume
25 next Tuesday, May 17th, at 9 a.m. All right.

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1 COURT CLERK: Judge, (indiscernible).
2 THE COURT: I'm sorry -- I'm sorry, the 10th.
3 You know -- you know, if you look at this --
4 JUROR: That's okay for us.
5 THE COURT: -- calendar long enough.
6 JUROR: No problem.
7 THE COURT: It's May 10th.
8 JUROR: Okay.
9 JUROR: It would be a nice vacation.
10 THE COURT: Okay. The Sheriff's Officers
11 will escort you. There'll be a Sheriff's Officer on
12 board the bus and it should take us about 20, 25
13 minutes to get there. Special arrangements have been
14 made by the Sheriff's Department. All right.
15 Sheriff's Officers.
16 Oh, anything that you need, obviously, treat
17 it as leaving from the parking lot. So if you have
18 something in the jury room that you want to bring with
19 you, please do so.
20 (Unrelated matter discussed)
21 THE COURT: Just to reinforce what I said
22 earlier, be -- just make sure you don't speak with
23 anybody. You can talk to each other about baseball
24 games and things of that nature, but don't talk about
25 anything that has anything to do with this case. All

1 right. Don't -- with anyone. All right. Okay.
2 (Jury exits courtroom, 2:09 p.m.)
3 (Matter in the courtroom concludes, 2:09 p.m.)

CERTIFICATION

I, SUSAN M. CAWLEY, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on May 5, 2011, in the Bergen County Superior Court, Digitally Recorded, Index No. 9:36:30 to 12:44:31; 14:04:54 to 14:09:17, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, to the best of my knowledge and ability.

/s/ Susan M. Cawley

Susan M. Cawley, AD/T #427
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April 30, 2013