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	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>WITNESSES FOR</u>				
<u>THE STATE:</u>				
Denise Provos	3	12		
John McCauliffe	17	31		
Richard Rowhart	45			
John Wright	56	82		

	<u>Ident.</u>	<u>Evid.</u>
<u>EXHIBITS</u>		
S302 - file for Mr. Scharf	6	
S241 - survey		49
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1 THE COURT: Ladies and gentlemen of the jury,  
2 you may be seated. Madam clerk, roll call.

3 (PAUSE IN TAPE)

4 (COURT CLERK DOING JURY ROLL CALL - ALL PRESENT)

5 THE COURT: Is the State ready to proceed?

6 MR. MELLO: Ready, Judge.

7 THE COURT: Call your next witness.

8 MR. MELLO: Thank you, sir. Denise --.

9 COURT OFFICER: What's her name?

10 MR. MELLO: Denise --.

11 THE COURT: Please step up here. Face the  
12 court clerk.

13 COURT CLERK: Raise your right hand.

14 D E N I S E P R O V O S, WITNESS, SWORN.

15 COURT CLERK: State your name for the record.

16 THE WITNESS: Denise Provos (phonetic).

17 THE COURT: Please have a seat. You may  
18 begin.

19 MR. MELLO: Thank you, sir.

20 DIRECT EXAMINATION BY MR. MELLO:

21 Q Good morning.

22 A Good morning.

23 Q If you would, would you please tell us by  
24 whom you are employed.

25 A I am employed by the State of New Jersey

1 Department of the Treasury.

2 Q And what capacity are you employed by the  
3 State of New Jersey in the Department of Treasury?

4 A I supervise the claims section of the unclaimed  
5 property unit.

6 Q I'm going to ask you, if you would can you  
7 keep your voice up so that the ladies and gentlemen of  
8 the jury and all parties concerned can hear the answers  
9 to your questions -- answers to our questions; all  
10 right?

11 A Yes.

12 Q Okay. Now, can you -- can you discuss with  
13 us that which you have just referred to, the unclaimed  
14 property trust fund?

15 A The unclaimed property trust fund is a trust that  
16 is set up for owners or apparent owners of abandoned  
17 property. Money is placed in the trust fund that --  
18 which is reported by holders incorporated in the State  
19 of New Jersey. It's held in a fiduciary capacity until  
20 a claim is paid.

21 Q Can you discuss with us with respect to  
22 holders of property deemed to have been abandoned; can  
23 you tell us the reporting -- requirements that pertain  
24 to insurance carriers and life insurance policies if  
25 you would?

1 A Life insurance carriers are responsible to report  
2 money representing unclaimed insurance policies after  
3 -- well, currently it's three years from the time and  
4 policy has matured and it cannot make contact or did  
5 not pay the beneficiary of the policy.

6 Q Now, with respect to your procedure regarding  
7 funds that you have received from either insurance  
8 carriers or other holders; can you tell us how  
9 notifications are made to prospective claimants?

10 A Yes. We do advertise in all local newspapers. We  
11 place the names of the apparent owners on our internet  
12 and we do perform outreach initiatives throughout the  
13 year.

14 Q With respect to distribution of funds held by  
15 the unclaimed property trust fund; can you tell us  
16 generally how funds are distributed? How is  
17 distribution generally effected by the fund following  
18 such notification that you've testified to?

19 A Ultimately a check would be issued to the owner  
20 with interest paid to the owner, and that would be  
21 after the owner has established identity as well as  
22 ownership to the unclaimed property funds.

23 Q And with respect to distribution of funds  
24 held by the unclaimed property trust fund; is any  
25 independent investigation made by the fund prior to

1 distribution?

2 A No.

3 Q Now, I'm going to ask you a series of  
4 questions that pertain to an account relative to one  
5 Stephen Scharf; understood?

6 A Yes.

7 Q Have you been designated by the unclaimed  
8 property trust fund as the custodian of records  
9 regarding this particular account?

10 A Yes.

11 Q Do you have your file with you today?

12 A Yes, I do.

13 Q And just for purposes of identification, I'm  
14 going to have that marked S302; counsel?

15 MR. BILINKAS: No objection.

16 MR. MELLO: Thank you, sir. And for the  
17 record counsel I'm simply going to mark that for  
18 identification and then examine on certain documents  
19 that are contained therein; all right?

20 MR. BILINKAS: Okay.

21 MR. MELLO: Thank you.

22 BY MR. MELLO:

23 Q And could you identify that which has now  
24 been marked as S302?

25 A Yes. This is the unclaimed property file for Mr.

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Scharf.

Q And is that the file that has been kept in the ordinary course of records within the unclaimed property trust fund?

A Yes.

Q All right. I'm going to show you what's been marked S157. I don't believe there's an objection to this being received in evidence, if so I'll --.

MR. BILINKAS: No objection.

THE COURT: In evidence.

MR. MELLO: Thank you, sir.

Q I'm going to show you what's been marked S157 and I'm going to ask you first if you would examine that particular exhibit? Do you recognize that exhibit?

A Yes, I do.

Q Tell us what that exhibit represents.

A This is a copy of the unclaimed property report that was filed by USAA Life Insurance Company.

Q Okay. Can you tell us the particular account name?

A Stephen F. Scharf.

Q And address, please?

A 27 Knobhill Road in Hackettstown, New Jersey.

Q Can you tell us the kind of benefit that

1 account represents?

2 A Yes. According to the life insurance company it  
3 represents a death claim.

4 Q Can you tell us the amount received by the  
5 unclaimed property trust fund from USAA?

6 A \$730,154.27.

7 Q And can you tell us the date that that was  
8 received?

9 A April 30<sup>th</sup>, 2001.

10 Q Can you tell us the reporting year of the  
11 receipt of that amount of money?

12 A 2000.

13 Q Now, can you tell us with respect to this  
14 particular account after receiving the amount of  
15 \$730,154.27; can you tell us what if anything the fund  
16 did regarding this particular receipt of monies by  
17 USAA?

18 A Yes. It earned interest.

19 Q Okay. Can you tell us what if any kinds of  
20 notifications may have been made?

21 A I'm sorry. Can you repeat the end of that  
22 question?

23 Q Sure. Can you tell us if you made any  
24 notifications to any perspective claimant?

25 A Yes.

1 Q Tell us about that procedure, please.

2 A As part of an outreach initiative a letter was  
3 sent to Mr. Scharf at the reported address. I --  
4 making him aware that there was unclaimed property  
5 being held in his name.

6 Q So, to be clear the first contact was made by  
7 the fund to Mr. Scharf?

8 A Yes, it was.

9 Q I'm going to show you what's been marked S294  
10 -- be no objection into evidence?

11 MR. BILINKAS: No objection.

12 Q Do you recognize that exhibit?

13 A Yes, I do.

14 Q What is that exhibit?

15 A This is an unclaimed property claim packet that  
16 was sent to Mr. Scharf on September 13<sup>th</sup> of 2002.

17 Q Now, with respect to the notification to Mr.  
18 Scharf in the manner that you have testified to,  
19 ultimately did you receive a response from Mr. Scharf?

20 A Yes, we did.

21 Q I'm going to show you what's been marked  
22 S156, there being no objection in evidence, Your Honor?

23 MR. BILINKAS: No objection.

24 THE COURT: In evidence.

25 Q Have you reviewed that exhibit?

1 A Yes, I have.

2 Q And if you would, can you begin to discuss  
3 with the jury the exhibit that is before you regarding  
4 the processing of this particular matter?

5 A Yes. I'm having trouble looking at the stamp  
6 date. Give me one minute. On April 16<sup>th</sup>, 2003 this  
7 packet was returned completed by Mr. Scharf.

8 Q Okay. What happened next?

9 A The documentation that he submitted was -- was  
10 reviewed. The claim was satisfied and payment was  
11 made.

12 Q All right. Now, with respect to the making  
13 of any payment, what needs to be done for the fund to  
14 turn over monies to a claimant?

15 A The claimant must identify themselves through  
16 certain documentation. We -- we require certain proofs  
17 to establish ownership as well as identity and we also  
18 require the claimant to sign certain claim -- certain  
19 forms and have those forms notarized.

20 Q And was such done in this particular matter?

21 A Yes.

22 Q And did you receive the appropriate forms  
23 from Mr. Scharf as you've testified to?

24 A Yes.

25 Q Were those forms then reviewed and reviewed

1 by supervisors within your department?

2 A Due to the dollar amount these forms were -- were  
3 reviewed by four -- levels of -- of supervisors. Yes.

4 Q And once again in terms of review, is any  
5 independent investigation made regarding the underlying  
6 situation that the funds represent?

7 A No.

8 Q Now, can you tell us regarding payment; when  
9 was payment made?

10 A A check was issued on April 24<sup>th</sup>, 2003.

11 Q Can you tell us to whom that check was made  
12 payable?

13 A Stephen F. Scharf.

14 Q Can you tell us at what address that check  
15 was made payable to?

16 A 27 Knobhill Hacketstown, New Jersey.

17 Q Can you tell us the amount of the check that  
18 was made payable to Stephen F. Scharf at 27 Knobhill  
19 Road Hacketstown, New Jersey?

20 A \$770,650.83.

21 Q And fair to say that that amount includes an  
22 interest with respect to principle?

23 A Yes.

24 MR. BILINKAS: No objection.

25 MR. MELLO: Thank you.

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THE COURT: In evidence.

MR. BILINKAS: Counsel, what's the number for  
the record?

MR. MELLO: Yea. 155.

Q For the record, I show you what's been marked  
155 in evidence. Do you recognize that exhibit?

A Yes, I do.

Q What do you recognize that exhibit to be?

A This is a front and back copy of the canceled  
check to Mr. Scharf.

Q And the amount of that check again is?

A \$770,650.83.

Q Thank you.

THE COURT: Anything further?

MR. MELLO: No, sir.

THE COURT: Cross examination.

CROSS EXAMINATION BY MR. BILINKAS:

Q Ms. when was the first time your department  
made contact with Stephen Scharf?

A The exact date is not determined in this claim  
file.

Q Well, is there a file other than the one  
that's before you?

A No, there isn't.

Q Does the file that's before you contain each

1 and every correspondence that your department had with  
2 my client?

3 A No.

4 Q Are there any records that would indicate all  
5 of the contact your department has had with my client?

6 A No.

7 Q Is there a record that would indicate all the  
8 contacts your department would have with the Bergen  
9 County Prosecutors Office?

10 A With regard to this claim?

11 Q Yes.

12 A I believe this is everything that we would provide  
13 the Bergen County Prosecutors Office.

14 Q No, no. I'm asking you specifically, you've  
15 indicated that your department doesn't keep a record of  
16 how many times your department communicated with my  
17 client; correct?

18 A There is no physical record of -- of a  
19 communication that we attempted to make with your  
20 client.

21 Q Now, when is the first time that your  
22 department sent a letter to Stephen Scharf?

23 A The first time would have been any -- between  
24 September of 2003 and April of -- I'm sorry, September  
25 of 2001 and April of 2003.

1 Q You're sure of that fact?

2 A Yes.

3 Q I show you what has been marked D31 in  
4 evidence and ask you if you recognize this letter from  
5 the State of New Jersey Department of Treasury  
6 Unclaimed Property Office to Stephen Scharf; do you  
7 recognize this letter?

8 A Yes, I do.

9 Q And is this letter contained in your file?

10 A No.

11 Q Do you have any idea why this specific letter  
12 is not contained in the official file for unclaimed  
13 funds?

14 A Yes. That record isn't -- in any file.

15 Q Okay.

16 A During that particular time frame.

17 Q Have things changed since this --?

18 A Things have changed since 2005. Yes.

19 MR. MELLO: Can I have -- I'm sorry, counsel.  
20 Did you ask the date of the letter?

21 MR. BILINKAS: I will now.

22 MR. MELLO: Okay. Thank you.

23 Q Isn't it a fact that this letter to my client  
24 from your department is dated February 8<sup>th</sup>, 2002?

25 A Yes.

1 Q And -- and so, when you just testified that  
2 the first contact was in when?

3 A I said the first contact would have been anywhere  
4 between September of 2001 and April of 2003.

5 Q And as you sit here today, you can't testify  
6 to the number of times that your department contacted  
7 Stephen Scharf prior to him submitting that packet to  
8 you?

9 A I can only testify as to what our process was at  
10 that time.

11 Q Which doesn't include the number of times  
12 that you contacted Stephen Scharf; correct?

13 A Correct. But, we do have a process to how many  
14 times we would attempt to make contact.

15 Q And -- and how many times would your process  
16 be, as far as your attempts?

17 A During the outreach initiative we would have sent  
18 one letter regular mail to the reported address. If  
19 that letter was not responded to, we would have sent a  
20 follow up certified mailing of the same letter.

21 Q And do you know what letter this February  
22 8<sup>th</sup>, 2002 represents?

23 A No, I do not.

24 MR. BILINKAS: Nothing further.

25 THE COURT: Any further questions?

1 MR. MELLO: No re-direct. Thank you.

2 THE COURT: You may step down. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Your next witness?

5 MR. MELLO: Yes, sir. John McCauliffe, sir.

6 THE COURT: Step up here, face the court

7 clerk.

8 COURT CLERK: Raise your right hand.

9 J O H N M C C A U L I F F E, WITNESS, SWORN.

10 COURT CLERK: State your name for the record.

11 THE WITNESS: John McCauliffe.

12 THE COURT: Please have a seat.

13 MR. BILINKAS: Judge, may we be heard sidebar

14 prior to the testimony?

15 (AT SIDEBAR)

16 MR. BILINKAS: -- of -- regards to the  
17 various statements that were made to -- to him by his  
18 lawyer -- and in retrospect I'd like to know when those  
19 statements or when in light of the requirement may be  
20 made somewhere close in time to -- the --.

21 MR. MELLO: The statements that -- I -- I  
22 don't know what statements he's talking about. I'm not  
23 having the witness testify to statements per se. He's  
24 going to testify a fear of heights that his sister had.  
25 That is a lifetime of experience that he's going to

1 testify to his observations regarding that.

2 MR. BILINKAS: I have no objection to  
3 observation but, are there any statements?

4 MR. MELLO: Statements such as what?

5 MR. BILINKAS: Like, I'm afraid of heights or  
6 anything?

7 MR. MELLO: Well, I think by the time he  
8 explains that she wouldn't go near a balcony, that she  
9 wouldn't go at any height, that she wouldn't go on the  
10 world trade tower, that she wouldn't fly. I'm not  
11 going to ask him, did she say ten minutes before she  
12 died that she was afraid of heights. But, that's not  
13 the -- testimony --.

14 MR. BILINKAS: Okay. I don't -- to that,  
15 it's just observations.

16 THE COURT: All right.

17 (END SIDEBAR)

18 DIRECT EXAMINATION BY MR. MELLO:

19 Q Sir, before I begin my questions, can you  
20 move the microphone down? Thank you. Are you -- Your  
21 Honor?

22 THE COURT: You may begin.

23 MR. MELLO: Thank you.

24 Q Mr. McCauliffe, can you tell us where you  
25 live?

1 A Fairfield, California.

2 Q Can you tell us the general geographic area  
3 of that particular location?

4 A Right in the middle, between Sacramento and San  
5 Francisco, forty two miles approximately each way.

6 Q Can you tell us who you live with, sir?

7 A I beg your pardon?

8 Q Can you tell us who you live with?

9 A My wife and my two grown daughters are now  
10 married. So, it's just my wife and -- myself.

11 Q Okay. You are the brother of Jody Ann  
12 Scharf; are you not?

13 A Yes.

14 Q What I'd like to discuss with you pertains to  
15 your relationship with your sister, Jody Ann. If you  
16 would can you begin to discuss with the jury how you  
17 and Jody Ann grew up?

18 A Jody was born in Washington, D.C. and I was born  
19 at Fort Jackson, South Carolina. We were both Army  
20 brats; an expression that military dependents call  
21 themselves as kids. We traveled all across the country  
22 every one to two to three years, from South Carolina we  
23 -- we left to Washington state, where we got on a -- a  
24 ship and went to Japan, lived there for two, two and a  
25 half years in Yokohama in Tokyo. Then, back when we

1 left Japan on a ship, we went back to Washington state  
2 to Fort Lewis, Washington. Where we were there for  
3 approximately two years and then the North Carolina we  
4 traveled across country on a train for that. In North  
5 Carolina, Virginia --

6 Q Do you need some water, sir? Have you  
7 finished your answer at this point?

8 A Then from Virginia we went up to Fort Hamilton in  
9 New York here where we awaited to go to Germany and we  
10 spent two years in Germany, where we went there on a  
11 boat, landed in Bremerhaven and then took a train down  
12 to Frankfurt. And then, back to Bremerhaven after two  
13 years and -- and took a boat back to New York at Fort  
14 Hamilton and then to Columbus, Georgia Fort Benning  
15 where we ended up where Jody graduated from high school  
16 and where I graduated from high school. We were --

17 Q Can you --

18 A I'm sorry.

19 Q -- tell us something of your relationship  
20 with your sister?

21 A It's -- being an Army brat your -- traveling so  
22 much your -- you become just more than brother and  
23 sister. She's your best friend.

24 Q And --

25 A Because you have to make friends quick. And so

1 you always can rely on your brother or your sister.  
2 So, it was Jody who taught me how to do my  
3 multiplication tables going across the country on a  
4 train. I taught Jody how to drive a car. When she  
5 graduated from high school she went to college and she  
6 came back to teach at the high school I was at. So,  
7 her first year of teaching was my senior year. Yea, I  
8 mean our relationship was close and as close as it  
9 could possibly be being separated by three thousand  
10 miles, from California to New Jersey.

11 Q Now, with respect to your relationship as you  
12 described it with Jody; did you throughout your life  
13 have occasion to observe any particular fear that she  
14 had?

15 A My sister, her entire life every time we were  
16 together was petrified of heights.

17 Q Can you help the jury understand that by way  
18 of giving some examples of observations you made of  
19 that fear of heights that your sister had?

20 A Like my mom went to great lengths to ensure that  
21 Jody was never scared. That's why we traveled on  
22 trains, buses when -- when my -- my dad got orders  
23 going back and forth across the country and -- and to  
24 Japan and Germany. She was -- she was petrified to go  
25 -- to fly. If she did fly, she got sick or she was

1 just -- had to sleep the entire time. When we were in  
2 Germany, the -- the quarters for the dependents were  
3 large apartments and the lowest floor my mother could  
4 get was the third floor and Jody never sat on the  
5 balcony. Never stepped on the balcony the entire time  
6 we were there. When Jody came to visit us in San  
7 Francisco with the family, my wife had unintentionally  
8 had made arrangements for us to eat in San Francisco  
9 and Jody freaked out because she told me, I don't want  
10 to go across the Golden Gate Bridge. So, we made a  
11 special arrangement in Sausalito which is at the base  
12 of the bridge so you -- she didn't have to go across  
13 it.

14 County fairs, it was -- if we'd ever go to  
15 the fairs or anything, the ferris wheels, roller  
16 coasters, I'd usually stand with -- by her and we'd  
17 take pictures so she wouldn't get embarrassed about it.  
18 But, she -- she did not like heights. In fact, she  
19 avoided it at all possible.

20 Q Can you comment further on the balcony or  
21 balconies in Germany that you testified to with respect  
22 to that fear of heights?

23 A It was a typical -- well, it was an old converted  
24 World War II officers quarters for German soldiers.  
25 The balcony was probably four feet by ten. We had

1 chairs on it. We had a little table. It had a sliding  
2 glass door and then a window with a curtain. We -- I  
3 went off -- I went out all the time. I was eleven and  
4 twelve. Jody never did.

5 Q Now, with respect to your reference to your  
6 mother and making Jody feel safe regarding heights, did  
7 your mother do anything at that particular location?

8 A Well, the door just stayed -- stayed closed and  
9 the curtains stayed closed.

10 Q Now, apart from the observations that you've  
11 described thus far, does any other observation come to  
12 mind reflecting Jody's fear of heights?

13 A We came out to here New Jersey, my wife, my two  
14 daughters; I think it was Easter 1989, and there were  
15 arrangements made to go to the World Trade Center for  
16 the family. Well, I told my wife Linda and my  
17 daughters to go with Steve and I'd stay home with Jody  
18 because she just was not going to go. So, we stayed  
19 back. And --

20 Q You have referred to Steve. Do you see that  
21 person in court?

22 A Yes.

23 Q Point him out please.

24 MR. BILINKAS: Stipulate he's identified my  
25 client.

1 THE COURT: The record will identify the  
2 defendant.

3 Q Can you tell us when you first met Mr.  
4 Scharf?

5 A He was doing, I think reserve duty at Fort  
6 Benning, Georgia. I don't specifically know the date  
7 but, Jody had called me earlier that she had met him  
8 and she wanted me to meet him, that she really thought  
9 that he was the guy. So, it was sometime back then I  
10 had already joined the Army so I was on active duty.  
11 But, I can't -- I can't -- I can't recall the specific  
12 date but, it was before they were married.

13 Q Fair enough and thereafter of course, they  
14 were married?

15 A Yes.

16 Q Now, can you tell us the last contact you had  
17 with your sister?

18 A She had called me ten days maybe seven days before  
19 her death. She'd already told me previously --

20 MR. BILINKAS: Objection. To what she told  
21 him.

22 MR. MELLO: I'd like to be heard Judge.

23 (AT SIDEBAR)

24 MR. MELLO: Judge -- the already --

25 testimonies of the conversation which is obviously

1 approximate to her death regarding state of the  
2 marriage and his testimony will be and I will --  
3 generally speaking that during these conversations he  
4 was already aware that the marriage was over and she  
5 had just recently served him with divorce papers. So  
6 much as -- married -- case.

7 MR. BILINKAS: I have an objection to him  
8 leading and -- and brining to the --.

9 (END SIDEBAR)

10 MR. BILINKAS: I'll withdraw my objection.

11 MR. MELLO: Thank you.

12 BY MR. MELLO:

13 Q You -- you were going to discuss with us that  
14 last conversation you had with your sister.

15 A She had reiterated about the divorce and told me  
16 it definitely was over and that she had met another guy  
17 and that she wanted to come out to California to have  
18 me meet him. And she also wanted to bring Jonathan and  
19 asked would it be okay to stay. I said as long as you  
20 want.

21 Q Did she in this conversation in any way  
22 discuss with you a possible reconciliation with Stephen  
23 Scharf?

24 A No. She said it was over. And that that was  
25 pretty obvious with her telling me that she wanted me

1 to meet this gentlemen but, I never -- never got his  
2 name.

3 Q Can you tell us how you found out your sister  
4 had died?

5 A I got a call from Steve.

6 Q When was that?

7 A My recollection is it was either a Monday or a  
8 Tuesday. I can't recall the exact day but I -- I knew  
9 I had to call into work.

10 Q Can you tell us that conversation?

11 A It was just short. He just said your sisters  
12 dead. That she committed suicide.

13 MR. BILINKAS: Judge, may I be heard at  
14 sidebar?

15 (AT SIDEBAR)

16 MR. BILINKAS: Judge, I specifically had  
17 asked that statements with regards to what Jody said be  
18 entitled to a 104 hearing. This is total complete  
19 surprise. It's not contained in -- in any report and  
20 again, I -- I think it's highly prejudicial. It  
21 should've been excluded and -- and again but for not  
22 knowing that it would come it -- address this issue  
23 ahead of time.

24 MR. MELLO: I did not anticipate -- the  
25 witness would -- and I told Mr. Bilinkas this morning

1 -- I expect him to testify --, which was that she  
2 slipped and fell. So -- never intended to elicit this  
3 testimony and you know that I didn't because I told you  
4 this morning that --. So, at this point that's all I  
5 can say.

6 MR. BILINKAS: -- Judge --

7 THE COURT: --?

8 (INAUDIBLE)

9 THE COURT: What about the last remark?

10 MR. MELLO: And with respect to that remark  
11 what I'd like to do is just move forward so the can --  
12 and continue the testimony on the basis that I expect  
13 him to do.

14 MR. BILINKAS: Again, with regards to that  
15 exact statement -- report.

16 MR. MELLO: If you want I'll lead --

17 MR. BILINKAS: I have no objection to you  
18 leading on that.

19 MR. MELLO: Then -- then I will lead and I --  
20 I have no objection to that.

21 UNIDENTIFIED FEMALE: Can I speak with --

22 THE COURT: You want to excuse the jury?

23 UNIDENTIFIED FEMALE: We're surprised.

24 MR. MELLO: I don't think there's a need to  
25 if -- if we're going to continue --.



1 (END SIDEBAR)

2 THE COURT: We're going to take a ten minute  
3 break.

4 (BREAK IN HEARING)

5 MR. BILINKAS: -- not to mention anything  
6 other than what he's previously mentioned regarding any  
7 proposed conversation he had with my client. He's  
8 indicated that I will ask him specifically with regard  
9 to that term suicide whether or not he told the Police  
10 -- show him the report and I could get into that one  
11 specific area and he's been specifically instructed  
12 that that is the only area that he is -- testify about  
13 and not specifically bring up anything else that he may  
14 recall now nineteen years later.

15 MR. MELLO: I agree with that. But, I also  
16 understand that the cross on this particular issue --  
17 limited -- that this is not contained in the report.

18 MR. BILINKAS: Correct.

19 MR. MELLO: Because if there's any further  
20 cross examination --

21 MR. BILINKAS: Well, there's two reports.  
22 There's report with the --

23 MR. MELLO: Yea. It's not mentioned either.

24 THE COURT: But, it should -- it should be  
25 limited, otherwise it may open the door --

1 MR. BILINKAS: Understood.

2 THE COURT: -- for further questioning.

3 MR. MELLO: In fact, I -- I think probably  
4 what I'll do is -- is I -- I may just ask him that to  
5 end the matter.

6 MR. BILINKAS: Well, yea I -- I want -- ask  
7 --.

8 MR. MELLO: Okay. But, you can also do that.

9 THE COURT: Ready?

10 MR. MELLO: But, that's what we're limiting  
11 it to; right?

12 MR. BILINKAS: Yes.

13 THE COURT: Bring out the jury. Please have  
14 a seat. Do you need water?

15 THE WITNESS: I'm all right.

16 (JURY ENTERS)

17 THE COURT: Welcome back ladies and gentlemen  
18 of the jury. You may be seated. You may proceed.

19 MR. MELLO: Thank you, sir.

20 DIRECT EXAMINATION BY MR. MELLO:

21 Q Now, with respect to the conversation that  
22 you had with Mr. Scharf, did you have that conversation  
23 and report to Police authorities that Mr. Scharf  
24 indicated to you that he and Jody had stopped at a  
25 place he referred to as the cliffs; did you report that

1 to the Police?

2 A That -- I can't remember the exact wording but, I  
3 would imagine something to that effect. I'm not -- I'd  
4 have to see the report again. I've never --

5 Q I'm going to show you what's been marked S160  
6 for purposes of that particular reference. Just take a  
7 -- and --. Have you referred to that?

8 A Yes, sir.

9 Q Okay. Does that refresh your recollection?

10 A Yes.

11 Q Okay. Did you in fact report to Police that  
12 he and Jody according to Mr. Scharf had stopped at the  
13 cliffs?

14 A Yes.

15 Q That they were having drinks?

16 A Yes.

17 Q And that Jody slipped?

18 A Yes.

19 Q And by the way, in any conversation that you  
20 may have had at any time did Jody in any way refer to  
21 an area known as the cliffs or the Palisades?

22 A I never have heard of that location until then.

23 MR. MELLO: Thank you, Mr. McCauliffe.

24 THE COURT: Cross examination.

25 CROSS EXAMINATION BY MR. BILINKAS:

1 Q Mr. McCauliffe, you testified to certain --  
2 of your sister on direct examination. Indicated that  
3 she was afraid of flying; correct?

4 A Yes, sir.

5 Q She did in fact fly to your knowledge;  
6 correct?

7 A Yes, sir.

8 Q For instance she came out for Christmas in --  
9 in 1980 -- 89 or 84, sometime --

10 A 87.

11 Q 87? And how did she get to your place?

12 A They flew.

13 Q Okay. And you testified that my client was  
14 stationed in Georgia; correct?

15 A I think he was doing some type of officer basic  
16 training. I don't recall if he was active reserve or  
17 on active duty, but one of the two.

18 Q Irrespective of what his duties were, are you  
19 aware of the fact that she flew numerous times to see  
20 him down there?

21 A She never mentioned that to me but, if -- if you  
22 say she did I imagine she did.

23 Q Now, with regards to your testimony  
24 concerning your last conversation with her, seven or  
25 ten days before her death; isn't it a fact that you

1 didn't talk to your sister for three years prior to  
2 this incident?

3 A That's not true.

4 Q Did you ever tell anyone from the Bergen  
5 County Prosecutors Office that you hadn't spoken to  
6 your daughter for three years?

7 MR. MELLO: Sister.

8 A It's not my daughter. It's my sister.

9 Q Your sister.

10 A I don't -- I --

11 Q For instance, did you ever tell anyone from  
12 the Bergen County Prosecutors Office that you hadn't  
13 spoken to your sis in three years? Do you recall  
14 saying words to that effect?

15 A I would never refer to my sister as sis and I  
16 don't recall ever saying that statement.

17 Q I'm going to show you what has been marked  
18 D270 and I'm going to ask you to --

19 MR. MELLO: Can I see that, please?

20 Q These are the notes from the Bergen County  
21 detectives who had conversation --

22 MR. MELLO: Judge, I have no problem being  
23 shown to the witness, but it cannot be read to the  
24 witness, it is not his reporting. It's not even the  
25 reporting of the Police Officers.

1 THE COURT: All right. Show it to the  
2 witness.

3 MR. BILINKAS: Judge, I -- I'm identifying  
4 what it is. It's the notes of a Bergen County  
5 detective with regards to an interview with Mr.  
6 McCauliffe.

7 Q I'm going to ask you to look at this specific  
8 statement that I have highlighted and ask you if that  
9 refreshes your recollection as to whether you indicated  
10 to Detective Alver's that you hadn't spoken to your  
11 sister in three years prior to her death. Did you tell  
12 that to the Bergen County Homicide detective when he  
13 interviewed you?

14 A No. My mother passed away in 1990 and I -- I went  
15 to the New Jersey here. I flew out. I mean, I don't  
16 know -- I didn't write the report but, I've never made  
17 that statement because my mother passed away in 90 and  
18 that's not a three year period.

19 Q And did you tell anyone that you had had an  
20 argument with your sister with regards to her drinking?

21 A Never had an argument with her drinking.

22 Q Specifically, and -- and just so I understand  
23 the circumstances, you have talked to the Bergen County  
24 Prosecutors Office many, many times over the years;  
25 correct?

1 A That's not accurate. It's probably less than six.

2 Q Okay. And you've talked to the investigators  
3 from the insurance fund; correct?

4 A They called me once.

5 Q And -- and you spoke to them and they asked  
6 you specific questions with regards to what you knew  
7 about this case; correct?

8 A The conversation was very short.

9 Q Did they ask you specific questions about  
10 what you knew concerning your sisters death?

11 A Only thing I recall is about the insurance policy.  
12 They were asking me questions.

13 Q Okay. And you even talked to her divorce  
14 lawyer; correct?

15 A Yes.

16 Q And isn't it a fact that you indicated to the  
17 divorce lawyer that you and your sister had a falling  
18 out a few years ago over her drinking? Do you recall  
19 telling that to the divorce lawyer?

20 A No.

21 Q Let me show you D269 which are the notes from  
22 the divorce lawyers conversation with you and ask you  
23 whether or not it refreshes your recollection as to  
24 whether you told the divorce lawyer that there was a  
25 falling out with Jody a few years ago over her

1 drinking; did you tell that to the divorce lawyer at or  
2 about the time September 23<sup>rd</sup>, 1992? Is that --

3 A I don't recall saying that. We had -- we had an  
4 argument over my mother; not drinking.

5 Q And do you have any idea where the divorce  
6 lawyer got that your falling out was about drinking?

7 A I didn't write the report, sir. I don't know.

8 Q Did you mention anything about you having a  
9 problem with your sister?

10 A She only drank wine.

11 Q In the a.m. and throughout the day; isn't  
12 that what you told the detective; correct?

13 A I don't recall saying that, sir.

14 Q But, as you testified on direct you have a  
15 specific recollection of having a conversation with  
16 your sister seven or ten days before her death?

17 A Yes.

18 Q And can I assume that you mentioned that to  
19 the Prosecutors detectives when they interviewed you?

20 A Again, I don't -- I'm sure I did but, I don't  
21 recall the specifics.

22 Q Well, you have in front of you the Prosecutor  
23 -- Detective Alver's memo of your interview, S160; can  
24 you take a quick look at this report and see whether or  
25 not there's any reference to you having a conversation

1 with your sister seven or ten days?

2 A There's -- nothing there.

3 Q And would you agree with me that the  
4 interview memo from the insurance investigator doesn't  
5 contain any reference to a conversation that you had  
6 with your sister close in time to her death; correct?

7 A I can't speak to what the reports are. I didn't  
8 write them.

9 Q Okay. But --

10 A Or take the notes.

11 Q Right. And will you agree with me that  
12 Irrespective of you not writing them, there's nothing  
13 contained either in the Prosecutors detectives memo or  
14 the insurance companies detective memo with regards to  
15 you having a conversation with your sister a short time  
16 before her death; correct?

17 A What you showed me. Correct.

18 Q Okay. Now -- now, you indicated that you had  
19 certain conversations with Jody regarding her divorce;  
20 correct?

21 A She called me.

22 Q And isn't it a fact that all the way back to  
23 1989 that you would talk to your sister about getting a  
24 divorce; correct?

25 A I never talked to her about getting a divorce.

1 Q Well, she talked to you about possibly  
2 getting a divorce way back in 19 -- excuse me, 89?

3 A That's not true.

4 Q You recall telling the insurance investigator  
5 that while at Jody and Stephen's home during Easter of  
6 1989 Jody discussed a divorce with her brother in your  
7 presence? Do you recall --

8 A I don't --

9 Q -- you being at their house and them  
10 discussing divorce all the way back in -- at Easter in  
11 1989?

12 A I don't understand --?

13 Q Then -- you're at your sister and Stephen  
14 Scharf's house, Easter, 1989; do you recall telling the  
15 investigator from the insurance company that Stephen  
16 and your sister, in your presence were talking about  
17 divorce back in 1989?

18 A No.

19 Q I show you D270. I'll use the Prosecutors  
20 exhibit number S161 and I'm going to refer you to the  
21 middle of the second paragraph and ask whether or not  
22 that refreshes your recollection as to whether in  
23 January of 93, you told the insurance investigator that  
24 you were present and -- and that Stephen and your  
25 sister discussed a divorce back in Easter of 1989; does

1 that refresh your recollection as to what you told an  
2 investigator from the insurance company?

3 A No.

4 Q Well, were you aware of the fact that Jody  
5 Scharf was setting money aside in a trust fund as early  
6 as 1989?

7 A She never talked about a trust fund. She never  
8 told me that she was setting money aside -- no. Other  
9 than the fact, she was putting money away for  
10 Jonathan's education.

11 Q Do you recall telling the investigator for  
12 the insurance company, investigating your sisters death  
13 that Jody told you that she was setting aside money in  
14 a trust fund for her son Jonathan's future education?  
15 Back in 1989 you were aware of this.

16 A That's -- I just said that. Yes.

17 Q No, no. Did she say that she was setting  
18 money aside in a trust fund?

19 A I don't recall her saying trust fund but, she was  
20 setting money aside for Jonathan's education.

21 Q Let me show you Prosecutors S161, the bottom  
22 of the second paragraph; does that refresh your  
23 recollection as to whether or not you stated that prior  
24 to 1989 Jody told him she was setting aside money in a  
25 trust fund for her son Jonathan's future education?

1 A She never said trust fund but, she said setting  
2 money aside for Jonathan's education.

3 Q Do you recall now telling the investigator  
4 that?

5 A No. I did tell the investigator she was setting  
6 aside money for Jonathan's education.

7 Q And upon your sisters death, do you know what  
8 happened to that money?

9 A No.

10 Q Did you ever tell the Prosecutor about that  
11 money that Jody Scharf was setting aside prior to 1989?

12 A I'm sorry. I don't understand the question.

13 Q Did you ever tell the Prosecutors Office that  
14 you were aware that Jody Scharf was setting money  
15 aside?

16 A I don't recall that but, I mean I might have.

17 Q Now, you indicated that your sister was  
18 afraid of heights; correct?

19 A Yes, sir.

20 Q And you also testified to a number of other  
21 things concerning her childhood; isn't it a fact that  
22 she liked comedy?

23 A When we came out we went to Caroline's in -- that  
24 Easter.

25 Q Okay. With my client?

1 A Yes.

2 Q Caroline's in New York City; correct?

3 A Correct.

4 Q And your sister enjoyed that comedy club;  
5 correct? Based on your recollection of the events.

6 A It was a comedy club. Yea. Yes.

7 Q And do you know who made the reservations on  
8 that particular night?

9 A No.

10 Q Now, would you describe your sister as an  
11 outdoors person?

12 A I don't understand outdoors person? What --

13 Q For instance, someone who likes to hike.

14 A No.

15 Q Camping?

16 A No.

17 Q Fishing, sailing? Things like that.

18 A My sisters first B in high school was in PE and  
19 she cried for days because she couldn't do the run or  
20 the sit ups or the -- or the push ups.

21 Q So, can I assume you -- you wouldn't describe  
22 her as athletic?

23 A No.

24 Q I'm going to show you what's been marked D14  
25 and D14A which are --

1 MR. MELLO: -- please?

2 Q -- which are match maker profiles your sister  
3 filled out and I'm going to ask you refer -- to refer  
4 to the bottom with regards to the checks that she set  
5 down with regards to athletics and outdoors and ask you  
6 if that -- refreshes your recollection as to whether or  
7 not your sister was -- considered herself athletic,  
8 which includes swimming, snow skiing, water skiing,  
9 golf, tennis, racquetball, jogging, biking, weights and  
10 aerobics and outdoor interests, camping, hiking,  
11 fishing and sailing. Does that refresh your  
12 recollection as to whether or not your -- your sister  
13 liked those different things?

14 A She wouldn't have done this.

15 Q She wouldn't have filled out --

16 A She spelled her name J-O-D-Y. She spells it J-O-  
17 D-I or Jo Ann, or Jodi Ann. I -- if my sister did -- I  
18 --

19 Q If your sister did what?

20 A Fill this out --

21 MR. MELLO: Judge? Judge?

22 A She would have spelled her name right.

23 MR. MELLO: Excuse me. I'm sorry. I'm going  
24 to object to the form of the question. The witness --

25 THE COURT: Sustained.

1 MR. MELLO: -- said it didn't refresh his  
2 recollection. He doesn't agree with it. That's the  
3 end of the --.

4 THE COURT: Ask another question.

5 Q How did your sister spell her name?

6 A J-O-D-I.

7 MR. BILINKAS: Judge, I'm going to need a  
8 second.

9 (PAUSE)

10 Q I'm going to show what's been into evidence  
11 by the Prosecutor, S190B, which is the medical  
12 technician form your sister signed; can you tell the  
13 jury how she signed her name?

14 A J-O-D-Y Anne, A-N-N-E.

15 Q I'm going to show you D19 and D18, which are  
16 checks on Jody Ann Scharf's account. Can you tell the  
17 jury how she signed her name?

18 A J-O-D-Y.

19 Q And I'm going to show you a number of cards  
20 D7, D8 and D9 and ask you whether these cards to Steve  
21 refresh to your recollection as to whether or not your  
22 sister signed her name J-O-D-Y? Does that refresh your  
23 recollection?

24 A Doesn't -- excuse me. Doesn't reflect my  
25 recollection. That's how the cards are signed, that's

1 how she was signing her name then, I guess.

2 Q But, your specific recollection and your  
3 testimony with regards to that matchmaker profile was  
4 that she wouldn't have signed or typed her name J-O-D-  
5 Y; correct?

6 A Yes.

7 Q Now --

8 A All the others say Jody Ann.

9 Q And other documents say just Jody; correct?

10 A Yes.

11 Q Now, with regards to this statement that you  
12 made about my client telling you that Jody committed  
13 suicide; will you agree with me and you've reviewed all  
14 the investigative reports concerning your interviews;  
15 correct? I have them right here if you want to take a  
16 look at them again.

17 A Not all -- I don't understand what you mean by all  
18 -- more --

19 Q Every single report written concerning every  
20 interview of you by either the Prosecutors Office or  
21 the insurance company detectives. Will you agree with  
22 me that nowhere, nowhere contained in any of those  
23 reports or notes is there any reference to you saying  
24 that my client told you it was a suicide?

25 A I haven't seen all the reports but, if you say

1 that's what -- it's not -- it's not there then, it's  
2 not there. Again, I didn't write the reports.

3 Q Okay. Do you recall telling members of the  
4 Bergen County Prosecutors Office that shortly after  
5 this incident, that Stephen Scharf told you that your  
6 sisters death was a suicide? Did you tell anyone?

7 A Yes.

8 Q Who did you tell from the Bergen County  
9 Prosecutors Office?

10 A I don't -- recall the name of the investigator.

11 Q How about Detective Alver's? The guy in the  
12 notes who talked to you; you recall him?

13 A I don't recall the name but, if that was the  
14 individual who said he talked to me then, yes.

15 Q And do you have a specific recollection of  
16 telling Detective Alver's that my client told you that  
17 your sisters death was a suicide?

18 A I called Steve back the next day --

19 Q Irrespective of when you called him, do you  
20 have a specific recollection of telling the Bergen  
21 County detective that my client said, your sisters  
22 death was a suicide?

23 A I may not have used the word suicide but, I --  
24 but, that's -- that's what he said.

25 MR. BILINKAS: Nothing further.

1 THE COURT: Re-direct?

2 MR. MELLO: Not at all. Thank you.

3 THE COURT: You may step down. Thank you.

4 Please step up. Face the court clerk.

5 COURT CLERK: Raise your right hand.

6 R E N E E R I C H A R D R O W H A R T, WITNESS,

7 SWORN.

8 COURT CLERK: State your name for the record.

9 THE WITNESS: Renee Richard Rowhart, Junior.

10 THE COURT: Please have a seat.

11 MR. MELLO: Thank you, sir.

12 DIRECT EXAMINATION BY MR. MELLO:

13 Q Good morning, sir.

14 A Good morning.

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

17 A I am employed by Bergen County in the engineering  
18 -- division of the Department of Public Works and I am  
19 lead technician for the survey division.

20 Q If you would, would you please lower that  
21 microphone and concentrate on keeping your voice up so  
22 that members of the jury and all parties can hear your  
23 testimony; all right?

24 A Okay.

25 Q Can you tell us sir your background within

1 the department that you have just referred to?

2 A I began working for Bergen County in 1979 as an  
3 apprentice and I worked my way up through the early  
4 80's to become lead chief of the party, this -- the  
5 land surveying field party. I've worked under several  
6 land surveyors, licensed land surveyors over the years.  
7 And now, I have worked for Bergen County for thirty two  
8 years and I am now in charge of the survey party.

9 Q Okay. Can you tell us generally some of the  
10 kinds of work that you do in surveying for the past  
11 thirty two years in the department in Bergen County?

12 A Well, as a surveyor, land surveyor I handle all  
13 property, Bergen County property acquisitions, surveys,  
14 drainage problems, normal civil engineering work. I've  
15 also been on loan to the Prosecutors Office in the past  
16 to create court exhibits for criminal investigations  
17 over the years to make the diagrams that are used in  
18 the court.

19 Q Now, I'm specifically going to direct your  
20 attention to December 22<sup>nd</sup>, 1994 and ask if you on that  
21 date received an assignment to perform certain survey  
22 of a certain site?

23 A Yes, I did.

24 Q Okay. Can you tell us first what that site  
25 was?

1 A I was asked to come to Rockefeller Lookout on the  
2 Palisades Interstate Parkway in Englewood Cliffs, New  
3 Jersey.

4 Q And can you tell us with respect to  
5 Rockefeller Lookout the specific site that you were  
6 about to survey?

7 A I was directed to ascertain the -- the height of a  
8 cliff at a certain lookout point off of the parking lot  
9 and they needed to know not only the height but the  
10 distance out to certain objects, the base of the cliff  
11 and a certain tree.

12 Q Okay. S257 -- 252, please examine this  
13 exhibit. Do you recognize that exhibit?

14 A Yes, I do.

15 Q Okay. What does that photograph represent to  
16 you?

17 A That would be the peak of the cliff that I was --  
18 used to reference my diagram to at the top of the -- of  
19 the Palisades.

20 Q I'm going to show you what's been marked  
21 S267. Do you recognize what is depicted in this  
22 photograph?

23 A Yes, I do. This is a photograph of the front of  
24 the area I was supposed to measure. The white mark on  
25 the top being the top of the cliff.

1 Q Just point to that so the jury can see.

2 A Right here. And the white square around said tree  
3 at the bottom, the actual base of the cliff isn't  
4 really denoted but, it's -- it's about right about in  
5 here.

6 Q That about the location?

7 A Yes.

8 Q S272. Can you tell us if you recognize this  
9 area?

10 A Yes, I do.

11 Q Okay.

12 A That would be the base of the cliff in the area of  
13 -- of measurement that I was asked to perform. I don't  
14 know exactly what he's standing on.

15 Q Do you see this tree here?

16 A Yes. Is this the tree --

17 Q Do you recognize that tree?

18 A I could. -- marking it, marks my route --  
19 recollection it is the tree.

20 Q Okay. Do you see the marking on it?

21 A This green mark?

22 Q The green/yellow marking. Yea.

23 A Yes.

24 Q Was that present on the tree when you  
25 surveyed?

1 A I'm sure it was.

2 Q Now, if you would can you tell the jury what  
3 you did at the site that you've just described?

4 A I used the standard surveying technique to measure  
5 such a -- such a cliff, height and dimensions. Using a  
6 digital total station.

7 Q Can you describe what that is for the jury?

8 A It is basically a telescope that has a digital  
9 recorder on it similar to your cameras of today, uses a  
10 magnetic card. It has an infrared laser that will  
11 shoot a beam to somebody holding a reflector at a  
12 specific object and using the speed of light will  
13 compute the distance to the nearest quarter inch in  
14 about six thousand feet. It also records vertical  
15 angles and horizontal angles to the nearest five  
16 seconds of a degree which is a very minute amount. It  
17 was the latest in digital equipment at the time.

18 Q Now, with respect to the examination that you  
19 made on December 22<sup>nd</sup>, 1994, did you prepare a  
20 rendition of that survey?

21 A Yes, I did.

22 MR. MELLO: Judge, I understand there's no  
23 objection -- into evidence, S241.

24 MR. BILINKAS: No objection.

25 THE COURT: In evidence.

1 MR. MELLO: Thank you.

2 Q If you would, would you please step down from  
3 the jury box? Okay. First of all, let's identify that  
4 exhibit that has just been received in evidence.

5 A Yes. I drew this myself with the use of a program  
6 called photopad on a computer system.

7 Q If you would, would you please explain that  
8 exhibit to the ladies and gentlemen of the jury?

9 A My -- what was requested of me was to get a  
10 vertical and horizontal distance of the cliff in  
11 question. I -- I did so using the technique I  
12 explained and I have drawn a representation of the  
13 cliff but, it is not how it appears in real life. My  
14 mission was more to have a perfect vertical distance,  
15 which can be said to be the same as being on top of a  
16 building, a twelve story building looking over the edge  
17 vertically so, it's a vertical distance straight down  
18 and coming to say maybe, the sidewalk of the roadway  
19 going out six feet, maybe forty feet for the road,  
20 another six feet and that would be about a fifty two  
21 foot width, like a road in front of a building and that  
22 would be represented by this bottom number, locating  
23 the tree. And the tree itself and the drawing of the  
24 cliff is just for convention so you know which side  
25 we're looking at.

1 Q Now, with respect to your diagram before you  
2 continue, can you tell us what this line, this hash  
3 mark represents?

4 A That was just my connecting the dots of the --  
5 actual twice that I measured with a straight line to  
6 represent what it looked like just for convention, to  
7 know that the cliff was on this side and it was open on  
8 this side.

9 Q Does it represent the actual slope of the  
10 cliff?

11 A No, not at all. It is just a straight line  
12 diagram. I did not locate the various dents or changes  
13 in the cliff face.

14 Q Now, what I'd like you to do is show the jury  
15 each and every measurement that you took and  
16 specifically explain to them how you took each  
17 measurement.

18 A The measurements were taken by first setting on  
19 top of the cliff behind that fence that's known as the  
20 -- by the hiking trail. I set my -- instrument at the  
21 top of the hill and I wanted -- they wanted to locate  
22 where the fence was and the distance to the peak of the  
23 hill and so next they would need the bottom. So, I  
24 could not get to the edge and shoot straight down so I  
25 had to throw a line out to a road that exists, say four

1 hundred feet away, set a point down there, setting my  
2 transit there and then citing back to the top of the  
3 hill and then measuring back up the slope to the bottom  
4 of the slope to the mark on the tree and recording  
5 these distances and downloading this information into a  
6 computer program that converts that raw data into  
7 perfect horizontal and vertical distances known as  
8 point blocks for use in drawing in my auto cad program.

9 Q Can you tell us specifically the distances  
10 that you arrived at?

11 A To do the -- the raw distance?

12 Q --

13 A Oh, I'm sorry. The distance --

14 Q The finished --.

15 A -- depicted here?

16 Q Hmm mmm.

17 A Okay. From the top of the cliff face, I come down  
18 one hundred and four feet very close to even, to the  
19 base of the cliff and one hundred and nineteen feet  
20 three inches to a mark on the tree that was depicted in  
21 that other photograph. And --

22 Q And approximately how high is the mark that  
23 you're referring to on the tree?

24 A The mark on the tree was six, seven feet high at  
25 least. The rocky slope that I drew as a straight line

1 doesn't really appear that way, it is very irregular  
2 and it depends which side of the tree you measure on.  
3 It could be six on one side, eight on the other. I was  
4 locating the mark more than the slope itself. And the  
5 horizontal distances would be all taken from the peak  
6 of the cliff itself. First one being the twenty nine  
7 and a half feet as straight out to the base of the  
8 sheer rock cliff where it meets the loose rock. And  
9 then another twenty two feet eleven inches more to the  
10 mark on the tree. The total being fifty two and about  
11 a half feet.

12 Q So, with respect to the survey, the vertical  
13 distance from the edge that you measured to that six  
14 foot mark on the tree is what?

15 A One hundred and nineteen feet, two inches.

16 Q What is the horizontal distance from the  
17 cliff to the tree?

18 A Top edge of the cliff to the tree? A total of  
19 fifty two feet, five inches.

20 Q And again, with respect to the hundred and  
21 nineteen plus feet can you give us another way of  
22 expressing that kind of distance?

23 A Well, the numbers you see on this diagram are in  
24 tenths of a foot. That's -- as a surveyor that's what  
25 we use and every eight hundredths would equal one inch

1 and I'm converting them for you while I'm telling you  
2 what the numbers actually say.

3 Q But, can you give us another way of  
4 expressing that kind of distance? You mentioned  
5 something before about a --?

6 A Oh. In regard to the hundred and nineteen feet,  
7 about a hundred and twenty feet -- a twelve story  
8 building would be about ten feet per story, that's  
9 where I'm getting the -- the example of a twelve story  
10 building and the road width of fifty two feet is a  
11 standard I use in surveying. I deal with roads all the  
12 time. So, if you stood out on say, Main Street that's  
13 the width you would be looking at -- up against a  
14 building and the tree would be on the buildings on the  
15 other side of the street.

16 Q So, that would be sidewalk, street, sidewalk?

17 A Right.

18 Q Thank you. You can resume your seat. S241  
19 to the jury please.

20 THE COURT: Ready?

21 MR. MELLO: Thank you. Nothing further.

22 THE COURT: Cross examination.

23 MR. BILINKAS: Judge, my associate Mr.

24 Alterbaum will be doing this cross.

25 MR. ALTERBAUM: No questions for the witness.

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 MR. MELLO: Judge, we're going to need a few  
4 minutes. In light of the cross examination I need a  
5 few minutes to get set up.

6 MR. BILINKAS: His first one, Judge. It'll  
7 go down in history.

8 MR. MELLO: Can't make a mistake with that  
9 cross. If we could have five minutes to get set up for  
10 the next witness? Thank you, Your Honor.

11 (BREAK IN HEARING)

12 THE COURT: Welcome back ladies and gentlemen  
13 of the jury. You may be seated. Prosecutor, call your  
14 next witness.

15 MR. MELLO: -- John Wright.

16 THE COURT: Please step up. Face the court  
17 clerk.

18 COURT CLERK: Raise your right hand.

19 J O H N W R I G H T, WITNESS, SWORN.

20 COURT CLERK: State your name for the record.

21 THE WITNESS: John R. Wright, W-R-I-G-H-T.

22 THE COURT: Please have a seat.

23 THE WITNESS: Thank you, sir.

24 THE COURT: You may begin.

25 MR. MELLO: Thank you, sir.

1 DIRECT EXAMINATION BY MR. MELLO:

2 Q Good afternoon, sir.

3 A Good afternoon, sir.

4 Q If you would, would you please tell the  
5 members of the jury your background in law enforcement?

6 A I started working for the Whitman County Sheriffs  
7 Department while I was attending Washington State  
8 University where I was employed there for two years.  
9 After that, I became a paramedic and at that point I  
10 became involved with teaching the troopers of the  
11 Washington State Patrol their EMT courses and applied  
12 to the Washington State Patrol, I was hired, was  
13 assigned to the auto theft section for the first four  
14 years. I then was put on the road where I worked four  
15 years and then promoted to detective. After I was  
16 promoted to detective I was specialized in crime scene  
17 reconstruction; basically automobile collisions, death  
18 scenes, later -- approximately three or four years  
19 later I joined what we call the crime scene response  
20 team because in the State of Washington we have a lot  
21 of smaller municipalities. The State provides on scene  
22 and follow up investigation for those municipalities.  
23 Part of our responsibility was to come in assist,  
24 photograph, document, reconstruct and testify for those  
25 agencies. One of the things that came out of this was

1 through a survey background after that I had after I  
2 got out of the Marine Corp, we developed a total  
3 station program. It's a survey system that allows us  
4 to measure crime scenes; it was originally adapted for  
5 traffic investigations and later became involved with  
6 the Green River serial killer and other major crimes.  
7 Be a little bragger, the Washington State Patrol was  
8 the first law enforcement agency to use this system.  
9 Currently, almost every law enforcement agency  
10 throughout the country and outside the United States  
11 use the system.

12 I later became the lead senior detective for  
13 the State of Washington dealing with the crime scene  
14 response team. I've investigated over three hundred  
15 death scenes and been -- excuse me -- been involved  
16 with most of the major crimes that the patrol dealt  
17 with. I retired five years ago.

18 Q And have you testified as an expert in crime  
19 scene reconstruction?

20 A Many times, sir.

21 Q I'm going to ask you about a particular crime  
22 scene and ask you if in fact you in the past became  
23 involved into the investigation of the death of one  
24 Jody Ann Scharf?

25 A I did, sir.

1 Q And I'm going to specifically direction --  
2 direct your attention to 1995 and ask if in June of  
3 1995 you became involved in the investigation into the  
4 death of one Jody Ann Scharf?

5 A I did, sir.

6 Q And with respect to tat involvement is it  
7 fair to say that you met with representatives of New  
8 Jersey law enforcement, namely representatives of the  
9 Bergen County Prosecutors Office and the Palisade  
10 Interstate Parkway Police?

11 A You are correct.

12 Q And without going into the substance of the  
13 review that you made of this particular case, did you  
14 have occasion not only to meet with representatives of  
15 law enforcement as you have indicated but, also review  
16 the subject case file involving the death of Jody Ann  
17 Scharf as it existed in 1995?

18 A I did.

19 Q Now, with respect to what would become your  
20 role in this investigation, did you have occasion to  
21 visit the crime scene at the Rockefeller Lookout,  
22 Englewood Cliffs, New Jersey?

23 A I did. Several times.

24 Q Now, can you give the jury your perspective  
25 of that scene, generally, as you observed it?

1 A My first time there was down a wooded path that  
2 approached a fenced area; it was a post and cable  
3 fence. It was approximately twenty feet from a lavar  
4 (phonetic) or what I refer to a lavar as a straight  
5 drop. There was a narrow pointed area that the one  
6 could walk or crawl to the edge to look over. It was  
7 quite bushy below from the canopy of the trees; you  
8 couldn't see the ground much more than about thirty  
9 feet out because then you were getting into the  
10 multiple tree canopies. So, there was that one spot  
11 directly out from the path. About twenty feet to the  
12 left of that there was another flat rock area and those  
13 were the only two areas that you could actually see the  
14 tree canopy from. Any other place farther back you  
15 would get maybe just the tips of it but, you wouldn't  
16 see the full canopy unless you got close to the steep  
17 edge to look down over.

18 Q I have a number of photographs to show you  
19 that have been placed in evidence and ask if you  
20 recognize what's been marked S253 in evidence?

21 A I do recognize it, sir.

22 Q What do you recognize that photograph to be?

23 A That is the -- the edge is directly out from the  
24 fence I referred to. It's a flat space, there's a step  
25 down, kind of a V shape here at the bottom of the

1 photograph and another V shape and a tip that I'll  
2 refer to in my testimony at that point.

3 THE COURT: Can all of the jurors see the  
4 exhibit? Yes? Okay.

5 UNIDENTIFIED JUROR: Yes.

6 MR. MELLO: Thank you, Judge.

7 Q S259.

8 A It's another view of the same outcropping. Again,  
9 the tip is located here. There's kind of like a small  
10 seat that this is to the right side of the tip and it's  
11 part of the left side of the tip or the north side,  
12 this would be the south side.

13 Q S252 in evidence.

14 A Again, it's a -- it's another view that's just  
15 taken by moving to the right of this tip area. Again,  
16 this is the seat that sets what would be the south  
17 side, this would be the north side and again the tip  
18 that I refer to is there.

19 Q S254.

20 A If you were standing facing the tip, this  
21 photograph was taken then from the north or from your  
22 left side, back a little bit so that cameras looking  
23 back up to the tip take off area up in this location  
24 which is in the upper right portion of the photograph.

25 Q Now, I want you to focus on both the edge

1 that you referred to and directly beneath it. If you  
2 were on the edge, did you take the view looking down?

3 A If you were on the -- on the edge with the tip --  
4 facing the tip and if you were to get on your hands and  
5 knees and look directly to your left or to the north  
6 and look down you would see a ledge area which is  
7 photographed here.

8 Q S260.

9 A It is a -- another photograph, slightly closer  
10 angle. This is the ledge area that I referred to in  
11 the last photograph and this would be the tip take off  
12 point.

13 Q S292 in evidence.

14 A This is a closer view of that ledge area. The  
15 ledge is located bottom middle of the photograph. I  
16 want to refer to looking over the edge, there is a  
17 individual that is looking over the edge as I described  
18 in the other photographs. So, this would be the north  
19 ledge down to the -- or edge, excuse me, and this is  
20 the ledge area.

21 Q S290.

22 A This would be, from the previous photograph if you  
23 would continue to your left and back the ledge now is  
24 sitting in this area. Here's the take off point or the  
25 flat area that we discussed in the other photographs.

1 Q Sorry. Did you want to add something?

2 A No, sir. That will do it.

3 Q S291.

4 A Again, another photograph. The ledge area is  
5 located here, which would be in the right center of the  
6 photograph. This is the flat dipped area that we  
7 referred to. So, you're moved back and to your left  
8 from the previous photograph.

9 Q S289 in evidence.

10 A The area in the center portion of the photograph  
11 here again, is that ledge. Here's the tip that we  
12 refer to. This would be the north side. In the other  
13 photograph where the individual was looking over that  
14 edge.

15 Q S261 in evidence.

16 A Just a slightly different view of the previous  
17 photograph. The tip area, this would be the north --  
18 north side and the north faced down to the ledge area.

19 Q S263 in evidence.

20 A This is -- if you remember the photograph where  
21 you had the individual that was looking over that north  
22 edge, this is the position he was in. So, if you move  
23 back a little bit and then look down, this is the ledge  
24 area between the crack that would be between kind of a  
25 sitting area and the main flat edge area where the tip

1 would -- it's just outside the photograph, upper left.  
2 But, this was the individuals location in that previous  
3 photograph where they were looking down and this is the  
4 ledge area down there.

5 Q Did you make an examination of the bottom of  
6 the cliff?

7 A I did. I hiked up from the bottom the second day  
8 I was there.

9 Q Can you explain your perspective of that  
10 particular area?

11 A The day I was there it was difficult to see the  
12 top. Again, because in June the canopy from the trees  
13 was quite -- it obscured things. The -- the small  
14 branches and the leaves and everything so to see from  
15 top to bottom or bottom to top was difficult. There  
16 were small areas that you could see through and I did  
17 hike up some so I was able to get up into the tree  
18 canopy on the real steep edge before the cliff itself,  
19 kind of on the slope so I could see through parts of  
20 it. But, to see from top to bottom or bottom to top  
21 was not easy to do.

22 Q I'm going to show you what's been marked S272  
23 in evidence and ask if you recognize that exhibit?

24 A I do, sir.

25 Q What do you recognize that exhibit to be?

1 A This is a different time of year then I was there.  
2 The foliage is gone but, this is the base of the cliff  
3 below that tip take off area. The tree here to the  
4 left edge of this photograph is the victim impact  
5 point. This Officer is standing, you can see the  
6 rather large rocks, kind of jagged rocks with points  
7 down through the bottom part of this and up through the  
8 side of the cliff itself. That gives you some  
9 perspective to the size of these rocks.

10 Q S273 in evidence.

11 A A photograph just looking a little more uphill in  
12 the lower left corner you're able to see the same  
13 Officer at the same rock. There were a lot fo these  
14 rocks that were kind of dipped back into the face of  
15 the cliff and as things would fall they would pack in  
16 behind them and particular the rocks and as they'd  
17 build up then the rocks would come up from around the  
18 larger rocks.

19 Q You can step down for these photographs,  
20 please. S266.

21 A This is an aerial -- aerial photograph of the  
22 cliff base. There are some markers on it. There's a  
23 white marker, that'd be shaped flat area we discussed  
24 before the take off area. This tree down here has been  
25 notated a the victim impact tree. So, you can see that

1 the cliff edge -- there's a -- the shadowing gives you  
2 a pretty good idea of how there are some shoots in  
3 here. It's just not a flat lavar. Its got -- well,  
4 the rocks have broke away so there's a -- kind of a  
5 puddle down through this area here and the take off  
6 from here. The Officer was standing in this section of  
7 rock and then I'm putting at here, in the middle to  
8 center of the photograph.

9 Q S265 in evidence.

10 A Again, another view and unfortunately sometimes  
11 photographs, depends on where you take them gives you a  
12 different perspective, so as you move this one does  
13 help as the shadows become deeper and it gives you a  
14 better idea of this -- area that comes from that take  
15 off point down in this area. Again, this is the victim  
16 impact tree and this white area here is that V shaped  
17 tip that we've been discussing.

18 Q S268 in evidence.

19 A A closer view of the -- the photograph previously.  
20 Again, this is the victim impact tree. It's a little  
21 askew because of the photograph. That would be more of  
22 the up and down. This is the take off, that V point  
23 I've referred to. You can see the deep shoot just to  
24 the north of this area where everything kind of comes  
25 down into this area. And by the shadowing you see how

1 deep it is right there. So, if things come off here  
2 they should follow the shoot and be deposited in this  
3 area.

4 Q S267.

5 A Again, now we've moved in a little closer. The  
6 victim impact tree, the V shaped take off -- and again,  
7 because now we don't have the shadowing the shoot isn't  
8 quite as apparent. If you look at it, if it goes --  
9 anything goes off from the north side it'll travel down  
10 into this area.

11 Q Thank you, sir.

12 A Thank you.

13 Q Now, I'd like to direct your attention  
14 specifically now to the sixteenth of June 1995; all  
15 right?

16 A Yes, sir.

17 Q And if you would, would you discuss with the  
18 jury what you did on June 16, 1995 regarding the  
19 investigation of the death of Jody Ann Scharf?

20 A Yes, sir. We went out to the scene, I discussed  
21 with scene investigator Oliver and the Prosecutor at  
22 that time, some sandbag drops that we wanted to do to  
23 show the way objects, whether it's a sandbag or bowling  
24 ball or a grand piano, once you release them they're  
25 going to free fall at the same speed and in the same

1 direction until they get enough speed that the air is  
2 going to change them. So, I explained what I wanted to  
3 do and where we going to do the tests from that V  
4 shaped point. We then went and got four grass seed  
5 bags, each of them weighed a hundred and sixty seven  
6 pounds. We took the four --

7 Q What did that weight represent?

8 A That was the weight of the deceased, sir.

9 Q Thank you.

10 A We then went back to the scene, took the bags down  
11 to that V shaped platform that was there and three of  
12 the bags were released from that platform in three  
13 different positions and there was a fourth bag that was  
14 dropped from the flat rock position that I mentioned  
15 earlier that was farther north and an elevation change  
16 of sixteen feet lower.

17 The first bag that we released --

18 Q Before you -- before you go into what was  
19 done --

20 A Okay.

21 Q -- with respect to what was done, did you  
22 videotape?

23 A We did. We videotaped it from two different  
24 positions as the sandbags were dropped.

25 Q And with respect to what you're about to

1 testify to before this jury, did you prepare a report  
2 regarding this test?

3 A I did, sir.

4 Q I'm going to show you what's been marked S118  
5 --. -- take it out of that.

6 A It's a five page report that I authored.

7 Q If you would, would you begin your narrative  
8 of the test that you performed?

9 A Hundred and sixty seven pounds was a little heavy.  
10 We had to find a detective that was large enough to  
11 lift a hundred and sixty seven pounds. The first task  
12 if you were -- as the -- this is that V tip that I've  
13 been referring to. There was about two feet of space  
14 before there was brush that came off to the left side  
15 of that or to the south side. So, the first test was  
16 done standing on what would be the right side of the  
17 tip or the south side. The Officer threw the bag in  
18 the direction as best he could, of the tree. That --

19 Q Before you continue, I just want to make sure  
20 everyone understands precisely where the Officer was.  
21 Tell us if this helpful, S253.

22 A Yes. This is helpful. The first test, the  
23 Officer was standing in the location to the right side  
24 of the tip or in the southern direction of this general  
25 area. He held the bag approximately two feet of the --

1 the ground here when it was released.

2 Q Thank you. Now, can you tell us what you  
3 observed?

4 A Well, after the sandbag was dropped it disappeared  
5 into the canopy, within a second or so you heard it  
6 hit, bounce and then you heard additional noise because  
7 of the sandbag had broke open and we'd put smaller  
8 sandbags, about a foot long and approximately six to  
9 eight inches in diameter -- I'm sorry, in -- across,  
10 inside these bags along with loose sand. So, after the  
11 initial thump then you could hear it and then you heard  
12 the sand being released out of the -- the fiber grass  
13 bags.

14 Q Could you see where it struck?

15 A Not from on top, sir.

16 Q Can you tell us now what the next test  
17 involved?

18 A We moved -- if I can use that -- that would be a  
19 good picture.

20 Q S252.

21 A We had moved two feet in this direction from the  
22 tip and released the second bag. Again, in the same  
23 manner, same Officer, same release.

24 Q --.

25 A We moved one foot father from the last test to the

1 right or to the north, getting as close as we could --

2 Q S252.

3 A We moved as far as we could in this direction so  
4 the bag would clear that ledge below any farther two  
5 towards me, the bags would have hit the ledge and  
6 stopped and wouldn't have gone over the embankment or  
7 over the cliff there. So, three feet from the point,  
8 same Officer dropped the bag in the same manner over  
9 the edge. That bag did clip the outward cropping of  
10 the ledge.

11 Q And the fourth test?

12 A The fourth test was conducted because in my  
13 opinion there was no feasible way anybody could have  
14 gone that --

15 MR. BILINKAS: Objection. Objection.

16 Q Just tell us what the -- what the test  
17 involved.

18 A Okay. Test involved moving further north to  
19 another large flat rock area that was approximately  
20 twenty feet north and the elevation change was sixteen  
21 feet, in other words it was sixteen feet lower. So, we  
22 took a bag down there and that bag we rolled off the  
23 rock edge about seven feet from the northern most part  
24 of that rock, we moved to an area that would be in line  
25 with the victim impact tree, and that bag was rolled

1 off.

2 Q I'll show you what's been marked S267 in  
3 evidence and ask if you can -- if you can first locate  
4 that area where you dropped bag four?

5 A It is this flat area that you see here. It is to  
6 the north. Like I say, down sixteen feet from the --  
7 the V tip take off area. So, we came down through  
8 here, put the bag here and just rolled it off this edge  
9 seven feet from the edge.

10 MR. MELLO: Thank you. I think this would be  
11 an appropriate time to --.

12 THE COURT: All right. We'll break at this  
13 time and resume at 1:30.

14 (BREAK IN HEARING)

15 THE COURT: Welcome back ladies and gentlemen  
16 of the jury. You may be seated. Madam clerk, roll  
17 call.

18 (COURT CLERK DOING JURY ROLL CALL - ALL PRESENT)

19 THE COURT: All right. The witness may be  
20 seated. You may continue.

21 CONTINUATION OF DIRECT EXAMINATION BY MR. MELLO:

22 Q Please sit.

23 THE COURT: Please be seated.

24 Q I'm going to ask you to step to the -- in a  
25 minute but, just let me ask you a few preparatory

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questions.

A Yes, sir.

Q Earlier in your testimony you indicated that the testing process that you had testified to and will continue to testify to in this matter was videotaped?

A It was. From two locations.

MR. MELLO: Your Honor, with respect to the videotape discs prepared for this case, they've been marked 202 and 203. Those are to be moved in evidence. I understand there's no objection at this time.

THE COURT: Without objection, in evidence.

MR. MELLO: Thank you, sir.

Q Now, with respect to what we are about to see, have you had occasion to review the discs?

A I have, sir.

Q Are they accurate in all respects?

A Yes, sir.

Q If you would, I think it probably will be easiest if you would step from the box to the -- and if you would, I'm going to have you narrate what we are about to see and I'm going to ask you to keep your voice up so that the members of the jury can hear the evidence you're about to give. And with this I'm going to start with S202 for the record and if you can tell us what we are about to see?

1 A The first clip you are going to see is taken from  
2 -- on the V point --

3 Q S253.

4 A The sandbag will dropped off the south side of the  
5 V point at this location. I've asked the Officer to  
6 pick up the hundred and sixty seven pound bag and to  
7 direct it towards the victim impact tree. So, the  
8 video is taken from a location on top here and we'll go  
9 through one, you will notice when it goes off it will  
10 clip the front edge of the cliff edge, not the ledge  
11 but, the cliff edge and will disappear into the canopy.

12 Q All right. If you would, would you please  
13 play that first clip now.

14 (VIDEOTAPE BEING PLAYED)

15 A That's just a quick pan of the area, there's the V  
16 point, that's the location where the Officer will be  
17 standing. You can see there's a lot of vegetation.  
18 That is drop one. That bag, noted on it, it says rye  
19 grass, that is the label that is no that bag.

20 Next clip will be from position two as I  
21 referred to it or test two.

22 Q Show you what's been marked S252 in evidence  
23 and ask you if you would -- refer to that?

24 A I can. This -- will be dropped approximately two  
25 feet from the tip in this direction or in a kind of a

1 northwest direction, same Officer, same style of drop.

2 It will fall off unencumbered into the canopy.

3 Q Now, with respect to that photo before you  
4 play that. Expecting the canopy, this large tree that  
5 you see in the upper left corner, is that the impact  
6 tree?

7 A No, sir. It's not. It is below the face of -- of  
8 what we can see and is now --.

9 (VIDEOTAPE BEING PLAYED)

10 Q This is drop two; correct?

11 A Yes, sir. I'm the one picking up the bag handing  
12 it to the Officer. -- notice that he's going off in  
13 the left side of that point and it goes unencumbered  
14 down through the canopy.

15 Q Would you now tell us what we're about to  
16 see?

17 A The next video clip is sandbag drop three. We  
18 moved if I may?

19 Q Which one is it?

20 A Both of those would be helpful, sir.

21 Q Okay. Which one would you like first?

22 A The one on top.

23 Q This one?

24 A Yes, sir.

25 Q S252.

1 A If you moved three feet from the tip in this  
2 direction it would be the north westerly direction and  
3 that's as far as I could come or the bag could be  
4 thrown without it going down and hitting on a ledge  
5 area and then there was some outcroppings that if it  
6 hit the ledge it would have gone up against them at --  
7 now, over the cliff edge.

8 Q Is that the widest part of the ledge there?

9 A No, sir. Well, it is the widest, what you'd call  
10 the north faced or it's the area to the left of the  
11 tip.

12 Q Okay. S263.

13 A This is looking down. Referring back to 252, this  
14 crease in the rock here on 263 is this crease here.  
15 What I mean, if we had thrown it from this area it  
16 would have landed down here and landed and stayed in  
17 this general area. So, we kept it out towards the tip  
18 -- this rock right here will snag part of the bag as  
19 it's thrown over on test three, so it's going to go  
20 down, you'll watch it strike this --.

21 (VIDEOTAPE BEING PLAYED)

22 A That's the flat rock that you see right there.  
23 Myself, one other Officer are going to pick up the  
24 sandbag and hand it to the Officer that is dropping the  
25 bag. -- when it goes over. That is test number three

1 -- it was redirected back into that shoot that I  
2 earlier discovered -- discussed. It landed in the same  
3 location as test number one. So, test one goes down  
4 hits that shoot, comes to rest you can see in the video  
5 in a minute. Test three hits that little outcropping  
6 that you see there, it goes down, hits that same shoot  
7 and is redirected away from the victim impact tree.  
8 And they both come to rest one on top of the other.  
9 And we'll see that in a minute.

10 Q When you say directed away from that -- that  
11 tree, what direction --?

12 A In a southerly direction or to the right if  
13 you're looking out to the river, away from the victim  
14 impact tree.

15 Q Now, did you tell us what we are going to see  
16 in test four?

17 A This is drop four, like I explained earlier, this  
18 is the flat rock area that is to the north and it's  
19 sixteen feet in elevation lower. Yet as we placed the  
20 sandbag there and I'm going to roll it off, what you'll  
21 notice when you see this, you will see that  
22 approximately ten, twelve feet out until the bag goes  
23 over the edge -- rolls over, it strikes the face and  
24 you're going to see the white dust from the sand, from  
25 the bag partially breaking open and then it will

1 continue down, strike once and then come to a rest down  
2 below and we will see those videos in a minute. --  
3 hitting both video cameras. And there was that strike  
4 I was referring to.

5 Q That concludes test four?

6 A That's the conclusion of test four --.

7 Q Now, with respect to that which has been  
8 marked into evidence as S203, the second disc I'm going  
9 to ask that -- place that in and I'm going to in a  
10 moment ask you to narrate; all right? All right. If  
11 you would tell the jury as they view this video, could  
12 you please narrate what they are viewing.

13 (VIDEOTAPE BEING PLAYED)

14 A This is a view that is down below towards that  
15 ledge area looking back up. It's a little bit aways.  
16 So, you're going to get a view of the four or three of  
17 the tests from here and then the fourth one we'll move  
18 the camera in.

19 This is test number one that you're going to  
20 see where it goes over and it clips just out cropping.  
21 It doesn't hit the ledge area but it's a little bit of  
22 a pointed out cropping right below that V. So, when  
23 the Officer picked it up and released the bag towards  
24 the victim impact tree it just clipped that. Now,  
25 remember test one and test three ended up in the same

1 spot. --.

2           This will be test two. Again, this is moving  
3 around so that you're on the left side of the point and  
4 this will be the same bag that goes unencumbered down  
5 through the canopy. Sandbag number two had a golf ball  
6 and a golf club on it and the word gnome.

7           Third test, the bag has -- blue was the  
8 labeling on it and this is to help us understand where  
9 the bags ended up down below. This is the one that  
10 you're going to see clip just that little bit of ledge  
11 area. And by clipping it, it -- it back in a  
12 southerly direction -- see. This is again down on  
13 that lower edge where we're going to -- I'm going to  
14 roll the bag right off just from another view. That's  
15 looking up to the V take off area. Again, right after  
16 it goes over you can see that puff of dust. We have  
17 now moved down below and hiked up to the base of the  
18 cliff. This tree is the victim impact tree. There  
19 were markers put on it just so that I would remember  
20 which tree it was. You're now looking back up, I'm  
21 standing at the victim impact tree looking back up the  
22 hill. As you can see the canopy it looks much lighter  
23 looking up through it than looking down through it.  
24 It's all branches and the leaves that are -- block your  
25 view. Off the right of the tree now you're going to

1 see this bag is labeled Kentucky; that is the fourth  
2 test. And this is where the bag came to rest at the  
3 end of all the bouncing it did coming down. It  
4 actually hit farther up.

5 I'm going to move up to the second impact  
6 area. Remember again, coming down about ten, twelve  
7 feet where the white dust you saw. The next impact  
8 where it landed almost flat on this rock, you can see  
9 some of the sand that I knocked off with my hand. It's  
10 right there in that location. Part of the bag was torn  
11 there from the sharp rock. Basically, that's where the  
12 bag impacted, in that location and then tumbled on down  
13 to its --. Inside there, like I say were these sausage  
14 type other sandbags and weights -- keep going once the  
15 bag opened up, otherwise you would have just had the  
16 bag open and sand and it wouldn't continue. Again,  
17 that's test four.

18 We are now looking at test number two and  
19 you're going to see three video clips from test two.  
20 The first one right there there are small sausage  
21 sandbags that are broke out from the impact above me  
22 and -- come down, there's a large rock right in front  
23 of me and several -- came that direction. I will move  
24 in the next clip to the other side of that large rock  
25 where the majority of the sandbags came through. Now,

1 I'm going to move just around that rock that's right in  
2 front of me there into that position and when I look  
3 back up -- in this bag, we put a concrete paper -- bag  
4 of concrete, we needed weight for the bags. The  
5 concrete bag got caught up in the crotch of the tree  
6 above there and half the bag stayed in that crotch and  
7 the other part of the concrete bag and the other  
8 sausage type sandbags continued down through that shoot  
9 where I'm standing and on down to where you'll see the  
10 final place of rest, just off camera right there. Now,  
11 that's where the concrete bag and the gnome fabric  
12 grass seed bag came to rest. That it had struck many  
13 or several times in the process of getting there.

14 MR. BILINKAS: For the record, what bag was  
15 that?

16 A This is number two and it is the one that has  
17 the golf club and golf ball in it and the word gnome.  
18 That's the fabric grass seed bag and that is the paper  
19 concrete bag. Again, this is test number two. What  
20 I'm describing there is how the smaller sandbags  
21 continued down that shoot that we've discussed earlier.

22 I had to hike up quite ways to get to the  
23 location of bag number one and bag number three. That  
24 is bag number three -- that's three and it landed  
25 directly over test one. That is the -- green bag and

1 it's lodged behind a large rock I just put my hand on.  
2 It's about five feet in height. And also packed in  
3 behind it there is bag number one. You can see one of  
4 the smaller sausage type sandbags just rolled down the  
5 hill.

6           After the impact above the majority of the  
7 contents of both test one and test three stayed in  
8 behind that large rock. The location of this is about  
9 twenty five feet away from the victim impact tree, and  
10 with an elevation of about twenty feet and it's south  
11 of the victim impact tree. That's it.

12           Q     Did -- during the course of your testing did  
13 any of the dropped bags not hit the cliff base at some  
14 point?

15           A     No. Multiple times, each bag.

16           Q     And if you would, could you step to the jury  
17 and on 267 describe the -- that you have referred to as  
18 one, two and three?

19           A     This is the V point I've referred to. This is the  
20 victim impact tree. The bag that went off and hit this  
21 rock, that's test number three. Hit there, it was re-  
22 directed down the shoot, the same as two and number  
23 one. This is the area they all came, they were  
24 deposited, one and two are here -- I'm sorry, one and  
25 three and two's down through here. So, the three bags

1 that were released from the upper point all came down  
2 the shoot area and were to the south of the victim  
3 impact tree.

4 Q Thank you. You may resume your seat. Thank  
5 you for your time. Nothing further.

6 A Thank you, sir.

7 THE COURT: Cross examination.

8 CROSS EXAMINATION BY MR. BILINKAS:

9 Q Good afternoon, Detective.

10 A Good afternoon, sir.

11 Q Now, detective you talked a little bit about  
12 your experience; would you agree with me that most of  
13 your experience has to do with car accidents?

14 A You're correct.

15 Q And how many cliff reconstruction cases had  
16 you done prior to the work that you did in this  
17 particular case?

18 A Two.

19 Q Now, you decided to use sandbags; correct?

20 A Yes, sir.

21 Q And they do make dummy bodies for this  
22 purpose; correct?

23 A Well, they make dummy bodies I don't know if it's  
24 for this purpose. But, they're extremely expensive.

25 Q Did you discuss using a body in the form of a

1 -- a dummy, in the form of a body with the Prosecutor  
2 as opposed to using sandbags?

3 A Well, it was discussed -- with a sandbag, we  
4 weren't looking to see how the body would articulate  
5 after the initial contact. We were just trying to see  
6 -- would matter if it was a sandbag or a bowling ball.  
7 If you drop it, where it first hits and then where it  
8 re-directs.

9 Q Okay. So, that -- that's all you -- you were  
10 trying to determine with regards to your work in this  
11 case; is that correct?

12 A Yes, sir.

13 Q But, prior to doing this you did in fact  
14 discuss with the Prosecutor that there are dummies that  
15 are in the shape of a body that could be used and would  
16 you agree would be -- would more accurately depict how  
17 a body would react if it hit something?

18 A No, I wouldn't agree with that.

19 Q Okay. Well, for whatever reason you decided  
20 to use sandbags; correct?

21 A We did.

22 Q And -- and can you tell the jury why you  
23 picked a hundred sixty seven pounds?

24 A That was the weight of the deceased.

25 Q And -- and why is that relevant?

1 A Well, it's -- when we get to trial like this  
2 somebody's going to ask why I used an eight pound,  
3 twelve pound bowling ball verses a hundred sixty seven  
4 pound sandbag, so we try to get it realistic as we  
5 could to see where the first contact points were.

6 Q And -- and would you agree with me that had  
7 you used a bag with considerably less weight that it  
8 wouldn't have been as accurate with regards to what you  
9 were looking to do?

10 A No, it would've been just as accurate. That's the  
11 nice thing about falling objects. Once it falls,  
12 whether it's a bowling ball or a grand piano, the first  
13 strike is going to be in the same spot.

14 Q Okay. Do you agree with me that a body  
15 reacts differently than a bag filled with sand --

16 A Yes.

17 Q -- with regards to how it reacts when it  
18 strikes an object?

19 A Yes.

20 Q For instance, if a body had struck the cliff  
21 base there's certain recoil and -- and different  
22 reactions that a body would make that are different  
23 than a sandbag; correct?

24 A Yes, sir.

25 Q Now, you testified that you're also well

1 versed with regards to crime scene investigations;  
2 correct?

3 A Yes, sir.

4 Q And -- and would you agree with me just like  
5 you did with regards to your working this case, it's  
6 important to document a potential crime scene; correct?

7 A Yes, sir.

8 Q And is there any question in your mind that  
9 prior to anything moving within that crime scene it  
10 should be accurately documented?

11 A You're correct.

12 Q For instance, a body should not be moved  
13 until it's photographed at the very least; correct?

14 A Yes, sir.

15 Q Any objects that had anything to do with that  
16 body should be documented before they are moved;  
17 correct?

18 A Yes, sir.

19 Q Now, with regards to your working this case  
20 you met with a Detective Alver's from the Bergen County  
21 Prosecutors Office and a Lieutenant Nelson Pagan;  
22 correct?

23 A Yes, sir I did.

24 Q And did they brief with you regards to their  
25 work in this case up to that point?

1 A Well, we spent most of the day discussing case and  
2 going through the case file if that answers your  
3 question.

4 Q For instance, how did you pick the rock area  
5 that you decided to throw these sandbags off of?

6 A Well, the top one was where I was told the  
7 defendant had said that his wife had fallen from.

8 Q Okay. And -- and who told you that?

9 A Investigator Oliver.

10 Q And do you know where he got that  
11 information?

12 A No, sir I don't.

13 Q Did you talk to Lieutenant Pagan?

14 A Well, through the course of the time I was here I  
15 did. Yes.

16 Q Now, did he tell you anything that you took  
17 into consideration with regards to your test on that  
18 day?

19 A I know you're going somewhere but, I don't know  
20 where you're going so I -- I don't specifically  
21 remember anything right now.

22 Q Again, did he -- did he tell you that when he  
23 repelled down over the edge that there was no evidence  
24 of any conduct -- contact on the cliff with the body?

25 A He did, sir.

1 Q And what are parallel linear abrasions in  
2 context of the body?

3 A The best example is if you were to fall off your  
4 bicycle and your knees hit the asphalt, we've all seen  
5 the scratches that are in the direction that you are  
6 sliding with your elbows or your knees. So, they're  
7 going to leave those long strided marks -- on the body  
8 because skin is soft.

9 Q Okay. And that -- that would be when the  
10 body hit a hard object and scraped along --

11 A Yes.

12 Q -- that object; correct?

13 A Yes, sir.

14 Q And -- and did they tell you that there were  
15 no parallel linear abrasions on Jody Scharf's body  
16 prior to your conducting this test?

17 A They did not. I had a discussion with the medical  
18 examiner about that. But, not those two.

19 Q And were there parallel linear abrasions on  
20 Jody Scharf's body based on your discussion?

21 A No.

22 Q And -- and the medical examiner told you  
23 that?

24 A Correct.

25 Q Are you sure of that fact?

1 A Well, as best I can remember to this date, sir.

2 Q Well, if I tell you that the medical examiner  
3 in her autopsy report indicated that there was a --  
4 series of parallel linear abrasions on Mrs. Scharf's  
5 body; does that refresh your recollection as to whether  
6 or not the medical examiner told you there were no  
7 parallel linear abrasions?

8 A It doesn't -- I don't remember, sir. The  
9 discussion whether it was done while we were weighing  
10 the sandbags; I don't remember.

11 Q Okay. And will you agree with me that  
12 parallel linear abrasions are indicative of someone  
13 hitting a hard object; correct?

14 A While in motion. Yes.

15 Q Like a body falling off a cliff; correct?

16 A That would be one way.

17 Q Okay. And with regards to your experiment,  
18 were you told that all the contents of the purse had  
19 landed on the ledge?

20 A I believe I was. Yes.

21 Q And who told you that?

22 A Sitting her today, sir I can't tell you.

23 Q But --

24 A It was information that was passed on.

25 Q Information by either Alver or Pagan;

1 correct?

2 A Yes, sir.

3 Q Now, before you started your test you were  
4 told by someone that there was no evidence of the body  
5 striking the cliff at any point; correct?

6 A No, sir. Oh, before we actually did the first  
7 test, you're correct.

8 Q Okay.

9 A We already started preparing for the test before  
10 we did that.

11 Q And that -- either by the medical examiner or  
12 someone else that there were no parallel linear  
13 abrasions on Scharf's body; correct?

14 A Yes, sir.

15 Q Which would confirm in your mind that the  
16 body didn't hit any part of the cliff on the way down;  
17 correct?

18 MR. MELLO: Objection to the form of that  
19 question.

20 MR. BILINKAS: I'm not sure what you're  
21 objecting to.

22 MR. MELLO: Objection to the form of that  
23 question with respect to what he -- about that.

24 THE COURT: Ask another question.

25 Q Now, the bags that you decided to use, what

1 was inside one, two and three?

2 A Sand. Bag two there was a bag of concrete in a  
3 paper wrap and then there were like I said about foot  
4 -- one foot long sausage type sandbags inside them.

5 Q In all of the bags? One, two and three,  
6 those --

7 A One, two, three --

8 Q -- smaller bags?

9 A -- yes.

10 Q What was in bag three?

11 A Just the sand and the sausage sandbags.

12 Q And did -- did you mark the individual  
13 sausage sandbags in all three bags?

14 A I did not, sir.

15 Q So, with regards to the test that you run and  
16 again, correct me if I'm wrong. You indicated that  
17 bags one and three landed together; correct?

18 A One on top of the other.

19 Q Right. Three on top of one; correct?

20 A Yes, sir.

21 Q And you indicated on direct that there were  
22 various small sandbags at that location; correct?

23 A Yes.

24 Q And you can't identify whether or not those  
25 small sausage sandbags were from either bag one or

1 three because you didn't mark them; correct?

2 A Yes, sir.

3 Q And at that same location there were in fact  
4 or there was in fact a large amount of sand; correct?

5 A Yes.

6 Q And can I assume you also cannot determine  
7 whether or not that sand was from bags one or three?

8 A No, I can't.

9 Q And -- and is there any reason why you didn't  
10 locate and document bag one to make that determination  
11 before you threw bag three?

12 A Yes. It was a long haul down there and a long  
13 haul back up.

14 Q Okay. So, sir expediency you decided to  
15 throw all the bags up top and then document where they  
16 landed --

17 MR. MELLO: Objection.

18 Q -- after all the bags were thrown; correct?

19 MR. MELLO: Objection to the form of the  
20 question. Argumentative.

21 THE COURT: Ask another question.

22 Q Bag one and three according to your testimony  
23 landed at the exact same spot; correct?

24 A Yes, sir.

25 Q And there's no way to determine whether those

1 sausage sandbags that you referred to or the sand that  
2 was left at that location was from bag one or three;  
3 correct?

4 A They were all right there together except when I  
5 stepped up there and kicked that one out, the rest of  
6 them -- all the sand, all the bags from one and three  
7 were in the same spot.

8 Q Every single sausage bag?

9 A As best that I could tell.

10 Q Well, you didn't count the bags, you didn't  
11 document whether or not each and every sausage bag was  
12 at the location; correct?

13 A You're' right.

14 Q Okay. And will you agree with me that bag  
15 number three when you had it thrown over the rock up  
16 top clearly hit the ledge and opened up; correct?

17 A Yes.

18 Q And -- and at that point in time sand was  
19 released from the bag; correct?

20 A Yes.

21 Q Do you know whether or not any of those  
22 sausage bags were released at that point?

23 A Not that I could see on the video.

24 Q And -- and again, when you say the video  
25 you'll agree with me that once it exits that ledge

1 below it goes into heavy foliated area which would make  
2 it impossible for you to determine how much of that  
3 sand had come out; correct?

4 A True. It goes into the tree canopy. I wouldn't  
5 say it's heavy foliage but a canopy and disappears from  
6 sight.

7 Q Okay. And when you're at the bottom there's  
8 no way to tell how much of that sand had exited that  
9 bag that was broken up top, the hundred and so many  
10 feet down to the bottom; correct?

11 A Sand? No. But, there were no other bags in that  
12 fall area. All the bags that I saw, granted there  
13 might have been one or two. But, the bags that I saw  
14 were all together except for one that I kicked off  
15 there was no other below there because as I hiked up I  
16 would have seen it.

17 Q And would you agree with me that from that  
18 location looking up to the top of the mountain through  
19 the foliage it would virtually be impossible for you to  
20 see any of those bags or the sand that may have got  
21 caught up further?

22 A Up to where I could see up, you're correct. But,  
23 as I looked up, it's such a steep area, getting hung up  
24 there would be really tough.

25 Q Now, with regards to the bags that were

1 thrown you said you had to find a big investigator who  
2 was strong enough to hold a bag of this weight;  
3 correct?

4 A Yes.

5 Q And -- and would you agree with me that the  
6 guy depicted in the video was a big, strong guy?

7 A Absolutely.

8 Q And -- and how big was he?

9 A I don't know. You'd have to look -- whatever he  
10 looks like on the video. I don't have his height and  
11 weight.

12 Q Big, strong guy?

13 A True.

14 Q Okay. And would you agree with me that when  
15 he was throwing these bags, he was strapped in a  
16 harness and tied off; correct?

17 A Absolutely.

18 Q And -- and why was that?

19 A We didn't want him to go over.

20 Q Because when you throw an object you tend to  
21 move forward with that object; correct?

22 MR. MELLO: Objection, Your Honor. That  
23 doesn't necessarily happen.

24 MR. BILINKAS: I'm asking him.

25 THE COURT: All right.

1 MR. MELLO: That still doesn't necessarily  
2 happen.

3 THE COURT: Sustain.

4 MR. MELLO: He's asking him to speculate.

5 Q Why did you tether that guy in a harness up  
6 on that ledge and tie him off somewhere beyond the  
7 fence line?

8 A Because when you throw something you throw it and  
9 come back, had he slipped and gone down, he could have  
10 gone off the edge. It isn't we were so much worried  
11 about him throwing the bag and going with it, it's  
12 throwing the bag and then backing out of it, falling on  
13 his keister and then possibly going over the edge. We  
14 just didn't want to hurt anybody. It's just good  
15 safety practices.

16 Q And -- and based on your observations in the  
17 video, was he struggling with that weight to throw it  
18 over?

19 A I don't think he was struggling. He was big  
20 enough that he could hang onto it but, it was at his  
21 waist which is different than putting it up on your  
22 shoulders.

23 Q Okay. And at any point in time did you have  
24 him take that bag and swing it around in a circle and  
25 throw it off the cliff edge?

1

A Why would I do that? No, I didn't.

2

3

Q Have you read Doctor Bodden's (phonetic) report?

4

5

A No, I didn't.

6

MR. MELLO: Objection, Your Honor. Outside the scope. It's outside the scope of his testimony and certainly not within his expertise.

7

8

MR. BILINKAS: I'll withdraw the question.

9

THE COURT: Thank you.

10

11

Q Now, with regards to bag number one, the one that hit the point, some sand was released when that point came into contact with the rock; correct?

12

13

A Yes.

14

15

Q So, with regards to bag three, will you agree with me that it hit the rocks directly below the take off area on the ledge?

16

17

A Yes.

18

19

Q I'm going to show you D136 in evidence. Does this accurately reflect the flat rock that you threw the sandbags from?

20

21

A Yes, sir it does.

22

23

Q Can you mark with an X the location of where you threw bag one, two and three?

24

25

A I'll mark the way the Officer stood.

Q Right.

1 A Which can be verified by the video, so.

2 Q Right. Okay. And just can you put one, two  
3 and three?

4 A Yes, sir.

5 Q I show you P169 in evidence. And does this  
6 photograph accurately depict the rocks on the ledge  
7 that bag three came into contact with?

8 A Yes.

9 Q Okay. And am I pointing to the -- the rock  
10 that bag three hit?

11 A Right. The edge of this rock.

12 Q Okay. And can -- can you make an X there?  
13 And just put bag three. And D167 in evidence.

14 MR. MELLO: Thank you.

15 Q Okay. Would you agree with me that the rock  
16 to the left is the same rock that you've identified has  
17 hit bag three; correct?

18 A -- perspective I'm not familiar with.

19 Q Close up of the rocks that you just  
20 identified as one of the one's hit by three --. Cliff  
21 face is right here.

22 A I understand that, sir. It just -- like I said --  
23 it's on --

24 Q Is this -- is this number three?

25 A That would be this one.

1 Q Okay. Can you mark that --

2 A Is that what you're --

3 Q Right.

4 A That would be there.

5 Q Can you mark that as where bag three hit?

6 And I show you D209 in evidence. Is -- is that person

7 standing in the area where you found bags one and

8 three?

9 A I -- I --

10 Q See this -- see this tree right here?

11 A Right now, sitting here sir, I can't say yes or

12 no.

13 Q Okay. We'll get back to -- this one here.

14 I'd like to -- to the jury.

15 MR. MELLO: No objection.

16 Q In particular Detective, I'm pointing to the

17 area where bag three was thrown over; correct?

18 A Yes, sir.

19 Q And bag three hits this rock here that you

20 X'd and labeled as bag three; correct?

21 A Yes.

22 Q And a close up of those rocks that's where

23 bag three hit, you've indicated with an X and written

24 bag three; correct?

25 A Yes.

1 Q I'd like to -- the jury.

2 MR. MELLO: No objection.

3 (PAUSE)

4 Q Detective, I'm going to show you your video  
5 of bags one, two and three and I'm going to ask you  
6 specific questions.

7 A Okay.

8 Q With regards to what's depicted on the screen  
9 now, that's the foliage surrounding the top of the flat  
10 rock; correct?

11 A Just off the outside of it. Yes.

12 Q Okay. And -- and do you agree with me it's  
13 thick and it prevents you or anyone else from seeing  
14 straight down to the impact tree; correct?

15 A You're correct.

16 Q Okay. This is the overview that we talked  
17 about. And this is bag one; correct?

18 A Yes, sir.

19 Q And -- the tip. Now, would you agree with me  
20 that bag -- the bag is broken at this point and it's  
21 dispelling sand; correct?

22 A Yes.

23 Q You will also agree with me that when the bag  
24 hit that tip on the corner of the flat rock that there  
25 was a certain recoil, it bounced off and out; correct?

1 A I wouldn't call it a recoil. It's passing by the  
2 tip and the tip you know, ripped the bag open and the  
3 bag continued in the direction it was traveling. It  
4 didn't take on the whole bag. It just took on a small  
5 edge of it there. So, I don't know --

6 Q Okay. I'm going to play that again --

7 A -- how much bounce you're going to have in it.

8 Q Okay. Let's -- let's take a look at this.

9 A Okay.

10 Q You'll agree with me that the bag is  
11 approximately two feet from the ledge at this point;  
12 correct? Let's take a look. It hit and it rolled  
13 downwards; correct?

14 A Well, it hit and then it hit -- the next rock, so  
15 it was continuing on a straight line and it just  
16 rolling out from tap, hit, going outward. I didn't see  
17 it hit and -- bounce out.

18 Q Okay. So, bag number two. It goes straight  
19 down; correct? Doesn't hit anything; correct?

20 A Not that we can see.

21 Q Okay. Now, bag number three this hits the  
22 rock that you identified in the pictures that the jury  
23 has just reviewed. And would you agree with me that  
24 this guy is heaving the bag laterally?

25 A In this -- in three? Yes. Just enough to get it

1 over the edge there.

2 Q Now, would you agree with me that at this  
3 point when it hits that sharp rock that you've  
4 identified in -- in the pictures that the jury has just  
5 seen, the bag opens up and the sand starts to exit the  
6 bag?

7 A That's true.

8 Q And would you agree with me that because the  
9 bag had opened up, there wasn't as much recoil when it  
10 hit the object as the first bag that hit the tip?

11 A No, I'm not going to because if you go back and  
12 look at that first video, it hit two spots. It didn't  
13 just hit the tip. It then hit a rock underneath and  
14 that first bag was traveling in a straight line, hits  
15 the tip, hits the next little rock that's there and it  
16 just continuing in a straight line. This one continued  
17 in a straight line after it hit the rock. It didn't  
18 hit it and bounce out.

19 Q But, you'll agree with me that at this point  
20 in time, clearly the bag is ripped open, the sand is  
21 coming out of the bag; is there any doubt in your mind  
22 based on this stopped video?

23 A I wasn't arguing that point with you.

24 Q Okay. And in your report did you indicate  
25 that the bag -- it appeared that the bag impacted and

1 broke approximately fifty feet below the release area  
2 and spilled three quarters of its content along the  
3 shoot area to the south of the tree?

4 A Are you referring to bag three?

5 Q Bag three.

6 A That's looking from --

7 Q The base.

8 A -- the base looking upward.

9 Q And you'll agree with me that this rock ledge  
10 is considerably further up than fifty feet as you put  
11 in your report?

12 A You're right. But, I'm referring to the next  
13 impact. Where this bag is going right after its hit  
14 this rock, the next impacts the fifty -- fifty foot  
15 mark I'm talking about. Not this one. But, it's the  
16 next one where it hits.

17 Q And did you mention in your report that this  
18 bag broke on a rock on the ledge directly below the  
19 cliff --?

20 A No, it's on the video.

21 Q And will you agree with me that your report  
22 doesn't mention that the rock broke on the ledge;  
23 correct?

24 A That the rock broke on the ledge?

25 Q Right. Exactly where it is in this frame.

1 You never put that in your report; correct?

2 A Okay. That the bag broke when it hit the rock?

3 No, I didn't.

4 Q Okay. And your report indicates that it  
5 appeared that the bag impacted and broke approximately  
6 fifty feet below the release area; is that what you put  
7 in your report?

8 A I did. Because that's the next impact -- when it  
9 goes through the canopy, that's the fifty foot mark  
10 that I'm talking about.

11 Q Okay. So, it breaks up top on the ledge;  
12 correct?

13 A Yes.

14 Q And -- and do you have any idea how much of  
15 the sand left the bag at this point?

16 A Well, it must have traveled with the bag because  
17 there was a large impact point fifty feet above them  
18 describing there so there was a -- wherever that bag  
19 hit next and I didn't climb up the cliff to mark it and  
20 -- but wherever the next one -- the bag and most of its  
21 contents obviously not all, hit and made a large enough  
22 impression that I called it where the bag separated or  
23 the bag actually came open flat.

24 Q Okay. Did you climb up that fifty feet to  
25 determine whether or not there were any of those

1 sausage bags?

2 A Sir, fifty -- at that fifty foot mark it's like  
3 this, there's -- it's -- there's nothing to catch  
4 anything. There was a large impact area, but there's  
5 nothing that is going to stick to that.

6 Q And -- and can you tell me how you could  
7 distinguish when -- when you were up top and you can't  
8 look down how you could distinguish whether that spot  
9 fifty feet below was bag three or bag one where they  
10 both landed on top of each other?

11 A I can't.

12 Q You can't.

13 A No.

14 Q So, you don't know for a fact that that was  
15 bag three. That could have been bag one; correct? It  
16 followed the exact same plane and landed on top of each  
17 other; correct?

18 A Yes, sir. You're right. No argument.

19 Q And when you say in your report when the bag  
20 broke open and spilled three quarters of its contents  
21 along the shoot area, you don't whether that contents  
22 was from bag one or three; correct?

23 A Okay. Sir, which page are you on? What are you  
24 reading? If I can follow with you.

25 Q Page four, third paragraph where you talk

1 about bag three.

2 A And that three quarters was an estimate based on  
3 everything that I found at the point where bag three  
4 came to rest along with bag one.

5 Q Okay. And -- and did -- when you said three  
6 quarters of its contents spilled after that point fifty  
7 feet below the release area, did you take into account  
8 the percentage of the content that spilled on the ledge  
9 above?

10 A Sir, that three quarters was an estimate. I had  
11 two bags in the same spot. I knew how much both bags  
12 were, there was a tremendous amount of sand, tremendous  
13 amount of the sausage bags and the estimate was -- that  
14 was an estimate. I didn't weigh anything. So --

15 Q Okay.

16 A -- three quarters was --

17 Q Fair enough.

18 A -- standing there looking at it.

19 Q Now, with regards to the videotape that the  
20 Prosecutor showed you on direct with respect to the  
21 finding of the bags at the base of the cliff.

22 A Which bags sir?

23 Q All of the bags.

24 A Okay.

25 Q I'm talking about the video itself.

1 A All right.

2 Q Will you agree with me that in the beginning  
3 of the video the guy taking the photographs or video  
4 basically indicate that he's standing with his back up  
5 against the impact tree?

6 A Yes.

7 Q And will you agree with me that bags one and  
8 three even after they were opened, particularly three  
9 above, fell approximately twenty feet directly in front  
10 of that impact tree?

11 A Bag one and three within twenty feet of the impact  
12 tree. Is that what you're asking?

13 Q Yes. Isn't that what you have in your  
14 report?

15 A Hang on here.

16 Q Page four.

17 A I have twenty -- twenty five feet above and twenty  
18 feet short of the tree. Yes, sir.

19 Q Twenty feet short of the impact tree;  
20 correct?

21 A Yes.

22 Q On direct you said twenty five. It was  
23 twenty feet short of the impact tree; correct?

24 According to your report.

25 A As an estimate? Yes.

1 Q And is there any reason why your estimate  
2 increased from your report that you wrote right after  
3 this experiment?

4 A How'd it increase?

5 Q You said twenty five feet on direct. Your --

6 A No, it's twenty -- it's twenty five feet above and  
7 twenty away.

8 Q Okay. Twenty -- twenty feet away from the  
9 impact tree --

10 A Right. And twenty five feet up elevation wise.

11 Q Okay. And I recall -- I don't recall your  
12 last answer. Do you agree with me that the person  
13 taking the videotape had their back up against the  
14 impact tree and was taping it?

15 A On -- on bag four he was and I believe on part of  
16 bag two. But, then he moved so that he could see to  
17 get bag two, the second spot and the third spot of two  
18 and he wasn't against the tree, he was to the south of  
19 the tree when he videotaped one and two. Or one and  
20 three, excuse me.

21 Q And -- and is that reflected in the  
22 videotape?

23 A Yes. Because after he videotapes one and three he  
24 comes down rotates, goes over and you can see the  
25 victim impact tree off to his right.

1 Q Okay.

2 A So, we know he's south of it when he takes it for  
3 one and three.

4 MR. BILINKAS: Just give me a brief moment,  
5 Judge. Were you -- girlfriend --.

6 Q Will you -- will you agree with me that this  
7 is where you found bags one and three?

8 A No, sir.

9 Q What bag is this?

10 A That's bag two.

11 Q You're -- you're sure of that?

12 A Yes.

13 Q I'm going to ask that the audio be played.

14 A Sure.

15 (VIDEOTAPE BEING PLAYED)

16 A Bag two, sir.

17 Q Bag two? Where did bag three land?

18 A On top of one.

19 Q And -- and where did bag one land?

20 A Off to the --

21 Q -- in relation to this photograph?

22 A It would -- just on the other -- just to the -- be  
23 to the -- well, you know what's bad is the -- the video  
24 camera changes angles so when you look at three the  
25 video cameras actually moved off to what would be the

1 right -- excuse me, the left side of the screen.

2 Q Would you agree with me that if you're -- if  
3 you're looking down from the top of the rock, bag two  
4 was to the left; correct? To the right?

5 A Well, they're all in the same shoot. But, bag two  
6 was in the center of the shoot, one and three were on  
7 the side and re-directed down into that shoot. So, yea  
8 I would agree with that part of it.

9 Q And if you're looking at this video that  
10 would be to the right of where you're standing;  
11 correct?

12 A The right -- looking to the right of the screen,  
13 I'm looking for what? One and three?

14 Q Yes.

15 A Yes.

16 Q Okay.

17 (VIDEOTAPE BEING PLAYED)

18 Q Again, bag two according to you; correct?

19 A Yes, sir.

20 Q Bags one and three are to the right on this  
21 picture; correct? Correct?

22 A Yes.

23 Q And that photograph that's by you, do you see  
24 the tree?

25 A I do. Yes.

1 Q And the roots to the left?

2 A Yes.

3 Q And is this tree that's uprooted with the  
4 roots to the left this tree -- roots that's depicted in  
5 this picture?

6 A Yes. And that shows bag two's position.

7 Q Two and bags one and three are to the right  
8 --

9 A And --

10 Q -- of where you're standing; correct?

11 A Yes.

12 MR. BILINKAS: I'd like to just -- out to the  
13 jury and I'm almost done.

14 Q Now, as you sit here today you don't  
15 recognize that young man in the blue shirt with the  
16 baseball hat on backwards do you?

17 A No.

18 Q That's not one of your guys.

19 A It's what?

20 Q It's not one of your men that were with you  
21 on that day; correct?

22 A No.

23 Q If I tell you that this photograph was taken

24 --

25 MR. MELLO: Objection --.

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MR. BILINKAS: I'm asking him with regards to

--.

MR. MELLO: No, you can't ask a question  
about whether --

Q Is this photograph based on your observations  
of the scene appear to have been taken directly in  
front of the impact tree to that exact location?

A I don't know, sir.

MR. BILINKAS: Nothing further, Judge.

THE COURT: Re-direct.

MR. MELLO: No re-direct. Thank you.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: All right. Can I see the  
attorney's for one moment?

(AT SIDEBAR - INAUDIBLE)

THE COURT: Ladies and gentlemen of the jury,  
at this time I just wanted to give you an idea, we  
appear to be on schedule. We've heard from  
approximately twenty four witnesses so far. Tomorrow  
you're going to hear from the medical examiner and also  
from Doctor --, that should take most of the day.  
Basically, the initial estimate that we gave you seems  
to be holding true. You are to continue tomorrow at  
nine a.m. I would ask once again that you not read

1 media account, don't listen to or watch any media  
2 accounts. Don't have conversations of any nature what  
3 so ever. Don't do any independent research by way of  
4 computer or otherwise. You still have not heard all of  
5 the evidence, the summations of counsel and have had  
6 the benefit of my legal instructions. You're excused  
7 until tomorrow at nine a.m. Good evening and thank  
8 you.

9 (HEARING CONCLUDED)

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Kerry Lang  
Kerry Lang AOC#614

Date 1-23-11

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