

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
BERGEN COUNTY
INDICTMENT NO.: 09-08-1485
APP. DIV. # _____

STATE OF NEW JERSEY, : TRANSCRIPT
 :
 vs. :
 :
STEPHEN SCHARF, :
 :
 Defendant. :

Place: Bergen County Justice Center
 10 Main Street
 Hackensack, N.J. 07601

Date: May 11, 2011

B E F O R E:

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

TRANSCRIPT ORDERED BY:

STEPHEN MARTINEZ, Paralegal
Office of the Public Defender, Appellate
Section

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1 (Jury enters Courtroom)

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

5 (Jury roll call taken)

6 THE COURT: Prosecutor, are you ready?

7 MR. MELLO: Thank you, Judge. Yes, I am.

8 THE COURT: Call your next witness.

9 MR. MELLO: The next witness will be Dr.
10 Maryann Clayton. But the before Dr. Clayton is called,
11 the parties have agreed on a stipulation of fact. The
12 stipulation of fact will be as follows:

13 That at post mortem examination, certain
14 clippings and scrapings were taken from the fingernails
15 of the deceased, Jody Ann Scharf, were transmitted to a
16 New Jersey State Police Laboratory for examination.
17 The result of that examination is that no foreign
18 tissue was found in those specimens.

19 The second part of the stipulation is that
20 with respect to the subject hammer that has been
21 received into evidence in this case retrieved from the
22 car of Mr. Scharf on September 21, 1992, that has been
23 submitted to the New Jersey State Police Laboratory for
24 analysis for the presence of blood. That test proved
25 negative. Agreed?

1 MR. BILINKAS: Agreed.

2 MR. MELLO: With that, we'll be ready to call
3 our witness.

4 THE COURT: All right. The witness may step
5 forward.

6 (Pause in proceedings)

7 THE COURT: Good morning.

8 DR. CLAYTON: Good morning, Judge

9 THE COURT: Please step up. Face the Court
10 Clerk.

11 COURT CLERK: Raise your right hand.

12 M A R Y A N N C L A Y T O N, STATE'S WITNESS, SWORN

13 COURT CLERK: State your name for the record.

14 DR. CLAYTON: Maryann Clayton.

15 THE COURT: Please have a seat. You may
16 begin.

17 MR. MELLO: Thank you, sir.

18 VOIR DIRE EXAMINATION BY MR. MELLO:

19 Q Good morning, Doctor.

20 A Good morning, Mr. Mello.

21 Q In a moment I'm going to ask you to provide
22 the jury with the background of your curriculum vitae.
23 But before I do that, let's just ask you, at this
24 point, how are you presently employed?

25 A I work for the County of Bergen at the Medical

1 Examiner's Office.

2 Q If you would, let's reflect back on your
3 career and begin with your educational background.

4 Would you please note that for the jury?

5 A Yes. I graduated in 1977 from Upsala College in
6 East Orange with a Bachelor of Science degree in
7 Biology.

8 After graduation, I was accepted to Rutgers
9 Medical School in Piscataway and I received my MD
10 degree in 1981. After medical -- or during the course
11 of my medical school time, I had decided to choose
12 pathology as my area of medical specialty, and I did my
13 internship and residency at Saint Barnabas Medical
14 Center in Livingston.

15 I spent five years there, from 1981 to 1986,
16 studied anatomic and clinical pathology, and during the
17 course of my internship and residency, I had made a
18 decision that I wanted to further my training and
19 become a little bit more specialized in the field of
20 forensic pathology.

21 So, in 1986, when I completed my training at
22 Saint Barnabas, I then obtained a fellowship position
23 at the Office of the Chief Medical Examiner of the
24 State of Rhode Island, and I spent two years there as a
25 Fellow in Forensic Pathology.

1 So, in 1988, after having accumulated all
2 this training, I then applied for and was accepted for
3 a job at the New Jersey State Medical Examiner's
4 Office, which at that time was located in Newark, and I
5 worked as an Assistant State Medical Examiner, here in
6 New Jersey, from 1988 until 1992.

7 And in 1992 there was a job opening at the
8 Bergen County Medical Examiner's Office. I applied for
9 that. And since April of 1992, I've been employed by
10 the County of Bergen at the Medical Examiner's Office.

11 Initially, in 1992, I was hired as Deputy
12 Medical Examiner, and in 2006, my boss, Doctor Singh,
13 retired and then I was then given the position of
14 County Medical Examiner, which I have had since April -
15 - oh, excuse me, -- since May of 2006.

16 Q Can you discuss with us your licensures and
17 certifications?

18 A At the present time, I'm licensed to practice
19 medicine in the State of New Jersey. I did previously
20 have a license to practice medicine in Rhode Island,
21 but I have not renewed that, so currently I'm only
22 licensed in New Jersey, and I have experience in
23 Forensic Pathology.

24 Q And with respect to Forensic Pathology, can
25 you tell us, if you can, an approximate number of post

1 mortem examinations -- autopsies -- that you have
2 performed during the course of your career as a
3 Forensic Medical Examiner?

4 A Yes. In the twenty-five years that I've been
5 working as a Medical Examiner, I've performed in the
6 neighborhood of 2,500 autopsies.

7 Q And, if you would, can you tell whether you
8 have been qualified in Courts of law in this State in
9 the field of Forensic Pathology?

10 A Yes, I have.

11 Q Can you tell us approximately how many times
12 you have so testified as an expert in the area of
13 Forensic Pathology?

14 A In my career, I've actually been qualified as an
15 expert in several States and for a total of -- between
16 75 and 100 times I've been qualified as an expert in
17 courts in New Jersey, New York, Rhode Island and
18 Massachusetts.

19 Q Thank you.

20 MR. MELLO: Sir, at this time, I would
21 proffer the witness in the field -- as an expert in the
22 field of Forensic Pathology.

23 THE COURT: Any objection?

24 MR. BILINKAS: No, Judge.

25 THE COURT: All right. Pursuant to Rule 702,

1 the witness will be qualified as an expert in the
2 subject matter.

3 MR. MELLO: Okay. Thank you, sir.

4 DIRECT EXAMINATION BY MR. MELLO:

5 Q Dr. Clayton, I'm going to direct your
6 attention to September 20, 1992, and I'm going to ask
7 if on that date you had the occasion to begin your
8 involvement into the investigation of the death of one,
9 Jody Ann Scharf?

10 A Yes, I did.

11 Q And with respect to that particular date, can
12 you tell us what your involvement was on September 20,
13 1992, relative to the death of Jody Ann Scharf on that
14 date?

15 A Yes. On September 20th of 1992, I was the on-call
16 Medical Examiner. And one of our office Investigators
17 was dispatched to the Palisades Interstate Parkway area
18 to participate in an investigation of a death that
19 occurred in that location.

20 I did receive a phone call from him at a
21 point late in that evening telling me that he was
22 indeed at this location, and they had recovered a
23 deceased individual. And he reviewed with me some of
24 the injuries that he was seeing in his preliminary
25 examination of Mrs. Scharf's body, and at that point,

1 what he conveyed to me was the serious head injury that
2 was so severe that there was skull fragments and brain
3 tissue exposed, and he also indicated to me, verbally,
4 that there was a large injury on her chest wall.

5 He explained these injuries to me, and in
6 reviewing them with me, he asked me to declare her
7 deceased over the telephone by virtue of his
8 description of the body, and I did so at 11:40 p.m. on
9 the night of September 20, 1992.

10 Q And for the record, who was that Officer that
11 -- to whom you referred?

12 A It was County Police Officer John DeSimone
13 (phonetic), who -- who in addition to his County Police
14 duties, was one of the group of County Police Officers
15 that works with the Medical Examiner's Office and
16 actually goes out to the scene investigations that are
17 going to be handled by the Medical Examiner,
18 subsequently.

19 Q Following pronouncement, on that particular
20 evening, did you respond to the scene?

21 A No, I did not.

22 Q Would that be unusual or not?

23 A No. I don't respond to every death scene. Our
24 investigator is at a death scene and conveys
25 information to me. Most often I just begin my direct

1 involvement with the deceased the next day.

2 Q And for purposes of clarity, is it fair to
3 say that the death scene was the location of the
4 Rockefeller Lookout, Englewood Cliffs, New Jersey?

5 A That's correct.

6 Q Now, following the events that you've just
7 described, can you tell us your next involvement in
8 this matter?

9 A Yes. It occurred the next day, which was
10 September 21st of 1992. I was the responsible
11 pathologist for examining Mrs. Scharf. So, on that
12 morning, I and my partner, Mr. John McVeigh (phonetic),
13 began our examination of Mrs. Scharf, which first
14 consisted of having several x-rays taken, and then the
15 actual external examination and autopsy were performed
16 on September 21st, 1992. I began the examination
17 approximately 10:15 in the morning and I concluded the
18 autopsy about 12:30 that day.

19 Q Did you file a report with respect to the
20 post mortem examination to which you've refer?

21 A Yes.

22 Q I'm going to show you what's been marked S-
23 12.

24 MR. BILINKAS: No objection.

25 MR. MELLO: Thank you.

1 BY MR. MELLO:

2 Q All right. Can you examine that?

3 (Pause in proceedings)

4 MR. MELLO: Now, there being no objection,
5 Your Honor, that would be moved into evidence. I
6 believe it is S-12.

7 THE COURT: No objection?

8 MR. BILINKAS: No objection.

9 MR. MELLO: Thank you, counselor.

10 THE COURT: The exhibit will be received into
11 evidence.

12 (S-12 admitted into evidence)

13 DR. CLAYTON: I finished examining the
14 document.

15 BY MR. MELLO:

16 Q And, for the record, can you identify the
17 document?

18 A That is the -- a -- a copy of the Autopsy Report
19 that I prepared regarding Mrs. Scharf.

20 Q If you can, would you briefly discuss with
21 the jury the post mortem examination and how such an
22 examination proceeds?

23 A Yes. When I first began my examination of Mrs.
24 Scharf she was on the autopsy table. She was clothed,
25 so I -- some preliminary photographs were taken as she

1 was received by me.

2 Prior to that, actually, she had been weighed
3 on our body scale. I -- I should say, that was first,
4 then the x-rays were taken, and then she was
5 transferred to the autopsy examining table, at which
6 time her clothing was removed and her height was taken.
7 And then I began a systematic examination of the
8 external surfaces of her body, as I do in every autopsy
9 examination.

10 My particular style, or practice, is to begin
11 at the head and I usually make notes about the hair
12 color, length of hair, eye color, if a person has his
13 or her own teeth. Do they have dentures? Do they have
14 earrings on? You know, just descriptive things like
15 that.

16 Then I proceed to the neck area. Then I
17 proceed to the chest and abdominal area, legs and feet,
18 and arms and hands.

19 Then, typically, my partner will assist me by
20 rolling the body so I can look at the back surfaces of
21 the body, the back surface of the head, the torso and
22 the legs also. And that is usually how the external
23 examination portion of the autopsy is done.

24 That always precedes the internal
25 examination. So, after I have examined the external

1 surfaces of the body, made notations about injuries and
2 other observations -- scars, tattoos -- you know,
3 generally descriptive things like that, then the
4 actually autopsy -- the internal examination, what
5 you're probably more familiar with the term autopsy, is
6 conducted.

7 To conduct the autopsy, it's typically done
8 with a Y -- what they call a Y-shaped incision and the
9 initial area that's examined is the chest and the
10 abdominal cavity. The Y incision goes from each
11 shoulder to the center of the chest and then down to
12 the pelvic area.

13 That incision is opened up, by myself, using
14 a scalpel and then that allows me to look at the rib
15 cage. After I make observations and notations about
16 the status of the rib cage, then the ribs are,
17 actually, cut up with a special tool that we have and
18 the rib cage is removed from the body.

19 At that point in time, I can look at all of
20 the internal organs of the chest cavity -- that would
21 be the lungs and the heart. I can see the diaphragm,
22 which is the muscle that separates the chest organs
23 from the abdominal organs, and then also I'm able to
24 see all the organs within the abdominal cavity.

25 So, again, I -- I make some observations and

1 notations. And, typically, before any of the organs
2 are removed, we would take a toxicology sample.
3 That's, again, a routine part of an autopsy
4 examination.

5 So, before proceeding any further, there's a
6 -- a large gauge needle that we use and we usually
7 puncture one of the large blood vessels that comes out
8 of the heart. That usually gives us the opportunity to
9 recover a -- a blood sample, and then we also look to
10 the urinary bladder to see if there's any urine present
11 and we take a sample of that.

12 The blood and the urine samples are put in
13 special containers, and back in 1992, as far -- as part
14 of our toxicology submission, we actually submitted a
15 number of tissues to the laboratory as well.

16 So, I had the blood and the urine sample. I
17 had a sample of brain tissue and some liver tissue.
18 And I'm just referring to my report to tell you
19 precisely what specimens I was recovering for
20 toxicology testing.

21 I also took the bile out of the gallbladder.
22 I took the eye fluid out of the eyes. I took a sample
23 of the material that was in Mrs. Scharf's stomach, as
24 well as segments of the liver, brain, spleen and
25 kidney.

1 All those specimens were put in special
2 containers and put aside. Then the remainder of the
3 autopsy will progress. And the way an autopsy is
4 conducted, is each organ is removed from the body, it's
5 weighed, and then it returns to me for actual fine
6 dissection, at which time I look for pathologic changes
7 in the organs or injuries.

8 The purpose of all of this examination is to
9 -- is for me to be able to gather information so that I
10 may be able to render an opinion about what caused the
11 death of the individual that I'm examining.

12 In some cases, I find injuries that are the
13 problem that are severe enough to explain the cause of
14 an individual's death. Sometimes when I'm examining
15 some of the internal organs, I may find pathologic
16 processes, such as coronary artery disease. I may find
17 a ruptured brain aneurysm.

18 That's the purpose of the autopsy. To
19 examine each and every organ of the body to see if it
20 has any disease processes or to see if it's been
21 injured in any way and then to -- to gather all that
22 information to formulate an opinion regarding the cause
23 of death.

24 So, again, as we were discussing, the first
25 part of the autopsy is examination of the chest cavity,

1 and the abdominal cavity, and its organs.

2 The second part is examining the head. So,
3 usually, an incision is made in the scalp, and the
4 scalp is pulled forward and pulled backward to expose
5 the skull, and sometimes a saw is necessary to be used
6 around the bone of the skull to remove the skullcap to
7 allow me access to the brain.

8 So, again, it's important to examine the
9 brain for any pathologic processes or injuries, and
10 just like any other organ, the brain is removed,
11 weighed, and returned to me for fine dissection on the
12 dissecting table, at which time I'm looking for
13 pathologic changes.

14 Then the final part of a routine autopsy is
15 examination of the neck structures. Now, remember
16 early on, I explained to you the Y incision. It's like
17 the V-shape here. And we don't make an incision into
18 the skin of the neck because that would be a problem
19 for the Funeral Director and the family who want to see
20 the body after the examination is performed.

21 So, as a pathologist, I'm trained to go under
22 the skin and I'm able to remove the organs without
23 there being any damage to the skin of the neck. What
24 that allows me to do, it allows me to examine the
25 tongue. It allows me to examine the voice box area to

1 be sure there are no cancers there, that there was no
2 choking event, there's not a piece of food lodged in
3 the airway. I also examine the thyroid gland. And I
4 also examine the blood vessels in the neck and that
5 allows me to visually examine the bones of the -- of --
6 of the neck -- the -- the cervical spine area.

7 And, again, that area -- that dissection --
8 those structures are removed, and then they are further
9 examined on the dissecting table. And the -- that
10 information that's gathered by examining the neck
11 structures also factors into my determination.

12 So, I'm examining, chest, abdomen, head and
13 neck, and gathering all that information, putting it
14 together in the form of an Autopsy Report, so that I
15 may render an opinion about the cause of -- in this
16 case -- Mrs. Scharf's death.

17 Q Thank you. If you would, can we now begin to
18 discuss the specific post mortem examination that you
19 made on the body of Jody Ann Scharf on September 21st,
20 1992?

21 A Yes.

22 Q And I would ask you to begin with your
23 external examination beginning with how the body is
24 attired at autopsy and continue through external
25 examination first.

1 A Yes. Mrs. Scharf had on a striped jacket, and she
2 had on a white crocheted kind of sweater vest, and then
3 she had on a blue sleeveless -- like, tank top. She
4 had on striped shorts that matched the jacket. She had
5 on white panties and she had on pantyhose. She did not
6 have shoes when I examined her.

7 She also had four items of jewelry. She had
8 a watch on her left wrist and she had three rings. One
9 was a band ring, one was a -- a yellow metal ring, and
10 one had a red stone, and one, I think, -- I'm just
11 reviewing on my report here -- one had a red stone and
12 one had a black stone.

13 So, she had three rings and a watch on, and
14 all of those items, as well as her clothing were
15 removed initially. Then that allowed me to proceed
16 with the -- the external examination of all the
17 surfaces of her -- of her body.

18 As I mentioned earlier, I usually begin on
19 the head. In Mrs. Scharf's case, there was a very
20 serious injury of her head.

21 I'm going to describe three types of injuries
22 to you: laceration, contusion, and abrasion.

23 A laceration is a tear or a rip in the skin
24 or the organ of the body. That's a laceration.

25 A contusion is a bruise, or more commonly

1 referred to as a black and blue mark, and that can be
2 on the skin surface and it can also affect the internal
3 organs.

4 The third type of injury that I'm going to
5 describe to you is what we call an abrasion, and an
6 abrasion is a scrape. And it usually will show on the
7 skin surfaces of the body when they contact a rough
8 surface. That will cause an abrasion.

9 If the skin contacts a smooth surface with
10 significant force -- force enough to cause an injury,
11 that will be a bruise, and then a laceration is -- is
12 an actual physical tearing of either the skin or some
13 of the internal structures. So, those are the three
14 types of injuries I'll be describing to you.

15 In Mrs. Scharf's case, she had a laceration
16 on her scalp and it was quite a large one. It went
17 across the top of her head. It -- I described it,
18 actually, as a laceration/avulsion.

19 And what that means to me is typically a
20 laceration is just thought to be in a single plane, if
21 you will. So, a laceration tends to be straight or
22 sometimes can have an angle on it where it flaps.

23 When you add an avulsion to that, that
24 implies forceful tearing of the tissues, so that in the
25 case of the scalp, there's not just a tear in the

1 scalp, but the scalp tissues are actually being pulled
2 or have been forced away from the skull.

3 Normally, the scalp is very tightly anchored
4 to the skull. And, again, with a laceration/avulsion,
5 the force that was -- affected Mrs. Scharf's head was
6 of such magnitude that the scalp was not only torn, it
7 was actually pulled away from the skull. That's the
8 first thing I observed.

9 And that laceration allowed me to look
10 directly at Mrs. Scharf's skull. So, without having to
11 use the scalpel at all, Mrs. -- part of Mrs. Scharf's
12 skull was visible to me and I observed, particularly on
13 the right side of her head, a series of intersecting
14 skull fractures that seemed to be most serious on the
15 right side.

16 I -- I labeled it as the right frontal,
17 parietal, and temporal areas. So this particular area
18 that I'm designating to you on -- on her -- the right
19 side of her head was the area that, right off the bat,
20 showed to me a very complex pattern of skull fracture.

21 There was, in addition, a straight -- a -- a
22 kind -- what we call a linear, or a line-like fracture
23 across the top of her head. That was -- as I say --
24 visible to me just on the external examination. And I
25 also observed some brain tissue exposed.

1 Mrs. Scharf's face had a number of injuries,
2 mostly abrasions. There were a number of scrapes on
3 her face on both sides, and she also had on her right
4 eye -- when I felt around the orbit, or the eye socket,
5 on Mrs. Scharf's right eye, I could feel that the bones
6 were fractured. It wasn't smooth like it should be.
7 There was a -- a sharp irregularity there.

8 When I looked at Mrs. Scharf's right eyeball,
9 her eyeball was actually torn, so well --it didn't have
10 it nice round contour. There was actually a tear in
11 her eyeball -- a laceration of her right eye.

12 I could also feel her nose. Her nose was
13 fractured. I could feel that in palpation. She had
14 blood in her nose, as well. And when I looked inside
15 her -- in her mouth -- on the left side of her lower
16 lip, inside the mouth, the -- that tissue -- the mucosa
17 -- the tissue inside the mouth was torn on her left
18 side. She also had, what I was able to detect as
19 fractures in her cheek area as well.

20 So, we have skull fracture, cheek fracture,
21 eye socket fracture, nose fracture and a number of
22 scrapes on her face.

23 The area of particular interest to me on the
24 external examination was in the upper chest area.
25 Again, without doing any dissection, there was -- when

1 I first examined Mrs. Scharf -- a fairly large
2 laceration on the right upper part of her chest.

3 It measured nine inches long and four inches
4 wide. It was a big gaping opening on her chest wall.
5 It extended from the area of the armpit, down and all
6 the way across to her left breast. Nine inches in
7 about this location -- nine inches long and four inches
8 wide -- gaping wide open.

9 On the top of -- the skin on the top of that
10 laceration was abraded or scraped. I noticed that
11 there was abrasion and scraping around the border of
12 this gaping wound, but most noticeably on the upper
13 portion of it.

14 I was able to palpate the rib cage, which I
15 do routinely during every autopsy examination. It was
16 quite apparent that Mrs. Scharf sustained a number of
17 rib fractures, which I would be able to discern during
18 the course of the internal examination.

19 She had some other scrapes on her torso. She
20 had a number of scrapes on her extremities -- her arms
21 and legs -- and she had a few bruises on her lower legs
22 and on her hand. And when I felt her right shoulder
23 joint, it wasn't tight. It was very loose. It moved -
24 - it moved too easily.

25 I felt her humerus, or her upper bone. Her

1 upper bone was intact, but her shoulder area -- she had
2 a dislocation or a fracture in her shoulder. It was
3 moving much too easily and much too irregularly.

4 Then, as I mentioned, my partner will turn
5 her over so I may look at the back surfaces of her body
6 and on the back of her -- her -- her back -- her upper
7 and lower back, I didn't observe any injuries. And I
8 always look in the anal region and I didn't observe any
9 staining in that area either.

10 So, the basis, or the most significant
11 findings on the external examination, were a serious
12 head injury that seemed to be more prominent on the
13 right side and a very large injury on her right upper
14 chest wall. Again, a predominance right -- two right-
15 sided -- clearly, right-sided injuries that were
16 visible on the external examination.

17 Q Thank you. What is the next step in your
18 examination and evaluation of this post mortem
19 examination?

20 A Then the internal examination is performed. So,
21 as I described to you earlier, the Y incision is made.
22 So now, I'm -- I'm using the information that I've
23 gathered from the external examination and seeing how -
24 - how that translates to injuries inside of her body.

25 As I mentioned to you, the first structure

1 that we encounter once the skin is opened is the -- is
2 the chest plate, or the rib cage. And I did observe on
3 Mrs. Scharf a -- a number of rib fractures.

4 In fact, every rib that she has on both sides
5 of her body was fractured in the front and her ribs are
6 also fractured in the back. In between the rib cage
7 there's the breastbone, or the sternum. The sternum
8 was fractured as well. And here, the collarbones --
9 both collarbones were fractured on the side. That was
10 the first observation I made.

11 I also observed that as I was -- or -- or
12 pulling back -- or cutting back, if you will, the skin
13 and its tissues that are associated with it in order to
14 examine the rib cage, I saw bleeding into the tissues
15 under the skin in that area on the chest wall. Okay?

16 Then, as I mentioned to you before, the chest
17 plate is removed, and that comes off in one piece, and
18 in Mrs. Scharf's case, it was very floppy because the
19 sternum, or the breastbone, was fractured and all the
20 ribs were fractured. So, I removed that and set that
21 aside and looked at Mrs. Scharf's body cavities,
22 particularly, in this part of the examination, her
23 chest and abdomen.

24 I observed that the sac around the heart was
25 torn. The sac -- the -- the heart normally has a thin

1 sac that covers it. In Mrs. Scharf's case, that sac
2 was torn.

3 I also observed that her lungs were bruised.
4 There were many bruises on her lungs, both sides, and
5 also, on the left lung -- the left lung has two lobes -
6 - an upper and a lower lobe. On her upper lobe there
7 was a large laceration or, again, a tearing of the
8 tissue, like we discussed earlier. So, a laceration of
9 the left upper lobe of the lung and numerous bruises in
10 the lung tissue on both sides of the chest.

11 Also, in the chest -- in the examination of
12 the chest cavity, there is a large artery that comes
13 directly out of the heart. It's called the aorta.
14 It's the largest artery in the body. It comes directly
15 out of the heart. It comes up and back in the body and
16 actually is along the spine.

17 In Mrs. Scharf's case, that wasn't a
18 continuous tube like it's supposed to be. It was
19 actually torn. So, there was a laceration -- a tearing
20 -- of her aorta, which is the large artery, at -- at a
21 location in -- roughly the middle of her chest cavity.

22 The diaphragms, or the muscles that separate
23 the chest and abdominal organs, were both okay. In her
24 abdominal examination, on the right side of her abdomen
25 is where the liver is and I observed some superficial

1 lacerations, or tearing, of the liver tissue on the
2 right side of the organ. Then on the left side of the
3 abdomen is where the spleen is and I observed, also, in
4 the spleen a laceration, or a tearing, of the spleen.

5 So, again, as the -- as the internal
6 examination is being conducted, I'm noting a number of
7 injuries in her internal organs involving the heart,
8 the lungs, the aorta, the ribs, the sternum, the
9 clavicles, the liver and the spleen.

10 I didn't observe any injury to her stomach or
11 intestines. I didn't palpate any fractures of her
12 pelvic bones. I didn't see any tears or disruptions of
13 her urinary bladder, or her kidneys, or her adrenal
14 glands. So, those organs were fine and the other ones
15 were injured, as I mentioned.

16 Then, the autopsy proceeds by examining the
17 head and, as I mentioned to you, I had already
18 visualized these -- this extensive fracture pattern,
19 most notably on the right side of her skull with an --
20 an extension across the top.

21 And then, I looked at the brain, and the
22 brain on the surface had bleeding across the top of it.
23 Then, as I mentioned, the brain is removed, and I
24 observed on the undersurface of the brain, that there
25 was some disruptions, or tears, of the brain tissue.

1 Then, after the brain was removed, I was able
2 to look at the base of the skull. Now, the base of the
3 skull sits about here, and the brain sits on top of it,
4 and then you have the skullcap. Also, in Mrs. Scharf's
5 case, there were a number of fractures at the base of
6 her skull.

7 The base of the skull is divided into three
8 sections -- anterior, middle and posterior. In Mrs.
9 Scharf's case, she had extensive fracturing of the two
10 anterior and the two middle compartments of the base of
11 her skull, in addition to the fractures that I had seen
12 earlier on the skullcap.

13 Finally, the neck organs were examined, and
14 in addition to those structures that I spoke to you
15 earlier about -- the voice box area, and the thyroid
16 gland. There's several layers of muscle on the surface
17 of the structures of the neck, and what we do as
18 pathologists is we -- we remove them layer -- layer-by-
19 layer.

20 In the first two layers of Mrs. Scharf's neck
21 muscles, there was also some hemorrhages, as well. The
22 voice box was fine. I didn't find any evidence of
23 choking. I found no problems with her thyroid gland.

24 And then, I was able to look at the complete
25 spine. Her neck -- the part of the spine in her neck

1 was fine. There was a fracture in the middle of her
2 chest portion of the spine. That has twelve different
3 vertebral bodies and the sixth one was fractured in
4 Mrs. Scharf's case.

5 I also was able, since all the organs were
6 now removed, to look at the back surfaces of the rib,
7 and just as I had seen on the front, all the ribs were
8 fractured, the same on the back surfaces.

9 And interestingly, on the right side of the
10 back ribs, the rib -- the fractured ends, which the --
11 you can have a fracture and the ribs -- the ends will
12 stay together, but sometimes they'll actually displace.
13 So, there was displacement of the fractured bone
14 fragments on the ribs on the right side of Mrs.
15 Scharf's back.

16 Q Did you during the course of this examination
17 examine the contents of the stomach of Mrs. Scharf?

18 A Yes.

19 Q Can you discuss that aspect of the
20 examination --

21 A Yes.

22 Q -- with the jury?

23 A I'm just going to refer to my report.

24 (Pause in proceedings)

25 DR. CLAYTON: I know it's here somewhere.

1 Oh, here it is. Okay. In the stomach I found 50cc of
2 tan fluid and within that fluid I was able to see
3 little green leafy -- pieces of green, leafy material,
4 which looked like parsley to me. I didn't find any
5 pills and I didn't find any other solid food that I
6 could recognize. Just tan fluid with pieces of green,
7 leafy material that looked like parsley.

8 Q And can you give the jury a different way of
9 understanding of the term 50ccs?

10 A Yes, 50cc would roughly be around a quarter of a
11 cup.

12 Q Can you discuss with the jury from the
13 perspective of stomach content, the digestive process
14 of the human being?

15 A Well, if -- if someone -- if when -- when I'm
16 examining someone, I always examine their stomach
17 contents. That's just part of a forensic examination.
18 And if a person dies within a short period of time --
19 an hour or two after they have eaten -- then there's
20 usually not any changes that occur to the food and I'm
21 able to actually recognize it. I can see hamburger. I
22 can -- I can recognize chicken. I can recognize
23 vegetables or fruits, because not a lot of digestion
24 has -- has progressed in the first hour or so.

25 As the digestive process proceeds, then the

1 chemicals begin to act on the contents of the stomach
2 and break it down to a point where it's not perceivable
3 to me what the -- what the objects were that were
4 eaten.

5 So, as I say, in Mrs. Scharf's case, I don't
6 know whether -- what she had to eat. I can only say
7 that I recognized tan fluid and leafy material that
8 looked -- green, leafy material that looked similar to
9 parsley to me.

10 Q Do you, in your report, summarize your
11 findings with respect to injury?

12 A Yes.

13 Q Would you please detail that for the jury?

14 A The -- I usually -- I have a page on my report
15 that's called "Findings" where I try to extract all the
16 information from the paragraph form of the autopsy and
17 -- and tabulate it, in -- in effect, to make it easier
18 to follow. So, I had a number of findings in Mrs.
19 Scharf's case.

20 First, was the laceration/avulsion of the
21 scalp, which I described to you.

22 Second, was multiple skull fractures, and I
23 noted that the fractures where on the skullcap, as well
24 as at the base of the skull.

25 I noted that there were tear -- lacerations

1 or tears of the brain and hemorrhage on the surface of
2 the brain.

3 I also noted that there were multiple
4 fractures of her facial bones, including the right
5 orbital cavity and a laceration, or tear, of the right
6 eyeball.

7 I also listed a gaping -- what I described as
8 a gaping laceration and abrasion of the chest wall that
9 I described to you earlier.

10 The next one was multiple rib fractures.

11 Next, was fractures of the clavicles.

12 Next was a -- what I described as a
13 compression fracture of the T6 vertebral body. Again,
14 that's in the middle of the chest. There are twelve
15 thoracic vertebrae. The sixth one was fractured.

16 I described, also, a laceration, or a tear,
17 of the sac around her heart.

18 I also noted, and I didn't mention to -- this
19 to you earlier, but I did describe to you that after
20 each organ is removed and weighed, then I finally
21 dissected it on the dissecting table.

22 During the course of my dissection of Mrs.
23 Scharf's heart, on the internal surface of her heart, I
24 observed lacerations, in several chambers of her heart,
25 actually.

1 So, that's what's called endocardial
2 lacerations of the heart. Meaning that when I looked
3 at the heart, first off, I didn't see any disturbances
4 to the heart itself on the external side, but when I
5 began my dissection, and looked at the inner surface of
6 her heart, that's where I saw some tearing.

7 I also described a laceration of her aorta,
8 which, as I mentioned to you before, was -- is the
9 largest artery that comes right out of the heart.

10 She also had some blood accumulated in her
11 chest cavities.

12 Oh, I forgot to mention, also, in examination
13 of the lungs, I described to you before, bruising and a
14 laceration on the one side.

15 She also had the -- there's actually -- the
16 way the air gets to the lungs, is it goes through the
17 trachea, which is a tube in the center of your neck,
18 and then it sends a branch to each lung.

19 In Mrs. Scharf's right bronchus, which is the
20 branch that -- the branch for the air transfer that
21 goes to her right lung, the bronchus, or the air tube,
22 was actually ruptured. So, that was listed.

23 As I mentioned to you earlier, she had many
24 hemorrhages, or contusions, in her lungs. She had a
25 laceration on the left lung. She had lacerations or

1 tears, of -- in the rib cage there's not only the
2 bones, but there's a membrane that is on the -- applied
3 to the surface of the ribs that helps to make a smooth
4 surface for the lung tissue to be able to move around.
5 That membrane that covered her ribs that covered her
6 ribs was also torn in places, as well.

7 She had lacerations of the liver. She had a
8 laceration of the spleen. And she had, what I grouped
9 together as, contusions, lacerations and abrasions of
10 her face, her trunk, and her extremities.

11 So, that was my tabulation of the injuries
12 that I had listed during the course of the autopsy
13 examination.

14 Q Thank you. Following the post mortem -- the
15 post mortem examination, were you able to determine to
16 a reasonable degree of medical certainty the cause of
17 the death of Mrs. Scharf?

18 A Yes.

19 Q What was that?

20 A The cause of Mrs. Scharf's death was -- was
21 multiple fractures and injuries.

22 Q At this time, were you able to determine to a
23 reasonable degree of medical certainty the manner of
24 death?

25 A At the time of the autopsy? No.

1 Q Was a death certificate issued?

2 A Yes. It's required after I do the examination
3 that I must complete the death certificate for the
4 individual. I'm expected to fill out cause of death
5 and manner of death.

6 I was perfectly comfortable with my
7 observations during the course of my autopsy that the
8 cause of her death was the injuries that she suffered.

9 The manner of death, meaning how she acquired
10 those injuries, was still under investigation. So, I
11 did not render an opinion at the time that I completed
12 the death certificate. I listed "pending
13 investigation" as the manner of death when I filled out
14 the death certificate for Mrs. Scharf and that was on
15 September 21st of 1992.

16 MR. MELLO: All right.

17 MR. BILINKAS: No objection.

18 MR. MELLO: S-14 in evidence.

19 (Pause in proceedings)

20 BY MR. MELLO:

21 Q Have you examined that exhibit?

22 A Yes, I have.

23 Q What is S-14 in evidence, please?

24 A S-14 is a copy of Mrs. Scharf's death certificate.

25 Q Listing the manner of death at that time as?

1 A Pending investigation.

2 Q Now, on the 21st of September, 1992, in
3 addition to the post mortem examination, did you have
4 occasion to visit the situs of the Rockefeller Lookout,
5 Englewood Cliffs, Bergen County, New Jersey?

6 A Yes, I did. I did so in the afternoon at
7 approximately 2:00 p.m.

8 Q And did you do so in the company of any law
9 enforcement officers?

10 A Yes, I did.

11 Q And do you recall who that was?

12 A Yes. I visited the scene on September 21st, 1992,
13 with Detective Jim Lyman (phonetic) from the Palisades
14 Interstate Parkway Police and with two investigators
15 from the Prosecutor's Office. It was Investigator
16 Alver (phonetic) and Investigator Hernest. The four of
17 us went to the Rockefeller Lookout location.

18 Q And with respect to your examination of the
19 scene to which you have referred, can you describe for
20 the jury the view of that scene as you recall it to be
21 today?

22 A I recall walking from the parking lot down -- it
23 looked like a well worn path. I recall there being a
24 fence to one side and it had rope or cable in it. And
25 then we crossed over -- over the fence area and we were

1 -- we went to a flat rock ledge where the incident was
2 reportedly to -- was reported to have taken place the
3 night before.

4 Q Okay. I'm going to show you what's been
5 marked S-252.

6 MR. BILINKAS: No objection.

7 MR. MELLO: In evidence.

8 DR. CLAYTON: Yes.

9 BY MR. MELLO:

10 Q Can you describe for the jury that which you
11 see before you as S-252 in evidence?

12 A Yes. This is the rock ledge that I was
13 describing. I recall it have it having two -- in -- in
14 other words almost like a step effect. There was an
15 upper level and a step down to a lower level, and then
16 it looked out over the cliffs, and there was a canopy
17 of trees and branches.

18 Q Did you, at this time, have occasion to view
19 that which lies directly beneath this depiction?

20 A Only from that perspective.

21 Q Okay, and what did you see?

22 A I saw a canopy of tree limbs, --

23 Q And --

24 A -- and I was -- I -- I -- I -- that's pretty much
25 what I recall.

1 Q Okay. Now, at the time -- and the time I'm
2 referring to is September 21, 1992 -- that you were at
3 the Rockefeller Lookout, and had viewed the scene as
4 you've described it. At that time, did you view the
5 scene of the finding of the body on the cliffs?

6 A No.

7 Q I'm going to show you what's been marked S-
8 297. In evidence. And I'm going to ask you, if you
9 would, -- and I think perhaps for these questions --
10 perhaps you can just step down to the railing to give
11 the jury the most complete look.

12 (Pause in proceedings)

13 BY MR. MELLO:

14 Q S-297, if you would, can you describe that
15 photograph for the jury?

16 A Yes. This is a picture taken at the Medical
17 Examiner's Office. You can see our Medical Examiner
18 label on the bottom. And this is the picture of a
19 portion of the body of Jody Ann Scharf as she presented
20 to me on that day, September 21, 1992.

21 This is her neck area and this is the area of
22 her chest. This is the injury that I described to you
23 earlier. You can see dirt, and leaves, and so forth.

24 This is the portion of the striped jacket
25 that I mentioned to you. This is her blue tank top and

1 this crocheted kind of sweater vest that she was
2 wearing when I first began my examination of her.

3 Q S-298.

4 A Again, a picture taken by me at the Medical
5 Examiner's Office, tag in the corner here, and after we
6 unclothed Mrs. Scharf, it gave me an opportunity to
7 look more directly at the injuries.

8 This is -- you can see it more clearly -- her
9 face here and this is a portion of the
10 laceration/avulsion that I described to you earlier.
11 This is the tearing of the scalp and you can see it's
12 folding down over the ear here.

13 You can see some bruises of her face and you
14 can even see there's an irregularity of her nose there.
15 That's the fracture site. And you can see some bruises
16 on her shoulder here, some scrapes, and most
17 importantly, this very large injury that I observed.

18 This was nine inches long and four inches
19 wide. This was a tear of the skin of her chest wall,
20 and bleeding underneath. And as I mentioned to you
21 earlier, there were some scrapes around the rim of that
22 laceration and they were most notable on the upper
23 border of the laceration. Those are the scrapes --
24 those reddish-orange structures there.

25 MR. MELLO: 297, 298, for the jury.

1 (Pause in proceedings)

2 BY MR. MELLO:

3 Q Doctor, you have described for us injuries
4 that you observed on the body of Mrs. Scharf. Did you
5 take note of or attach significance to an absence of
6 certain injuries?

7 A Yes.

8 Q Would you discuss that with the jury, please?

9 A There were no visible injuries on the back of Mrs.
10 Scharf's body. There were no breaks in her arm bones -
11 - either upper arm or lower arm. There were no pelvic
12 fractures. The pelvic bones were intact and her leg
13 bones were intact.

14 BY MR. MELLO:

15 Q Let me show you what's been marked S-299.
16 Would you discuss S-299 in evidence?

17 A Yes. As I mentioned the body, when rolled over,
18 shows no indication of abrasions, lacerations, or
19 contusions on the back surface of Mrs. Scharf's body.
20 This is a little blood that's dripping down there, so
21 don't mistake that for an injury. There's no injury
22 there at all. That's -- that's just a little bit of
23 blood dripping.

24 MR. MELLO: 299, for the jury.

25 (Pause in proceedings)

1 BY MR. MELLO:

2 Q All right. S-296. Please discuss S-29 -- 96
3 in evidence for the jury.

4 A This picture was taken at the scene in Englewood
5 Cliffs and this was taken by Officer John DeSimone, the
6 Medical Investigator on behalf of the Medical
7 Examiner's Office because that's his photo
8 identification tag.

9 Mrs. Scharf is laying on the stretcher. You
10 can see her clothing a little bit better here. You can
11 see her pantyhose torn and you can see some scrapes on
12 her legs. You can see two of her rings there. And
13 that's a bloodstain on her jacket.

14 Q You referred in your testimony earlier to a
15 watch on the body of Mrs. Scharf. Do you see that
16 there?

17 A Oh, yes. Her -- the way she's situated is her
18 left arm is over her body and you -- this is her left
19 arm here, and that's her watch there.

20 MR. MELLO: S-296.

21 (Pause in proceedings)

22 BY MR. MELLO:

23 Q I'm going to show you two photographs, S-300
24 and S-301 in evidence. I'm going to ask you to discuss
25 each in turn. The first is S-300 in evidence.

1 A This is a picture taken at the Medical Examiner's
2 Office. Again, the Medical Examiner tag to identify
3 that. This is the autopsy table that I described to
4 you earlier. And this picture focuses on Mrs. Scharf's
5 legs with the pantyhose still in place. You see a
6 number of areas of tearing of the pantyhose and some
7 bruising of the skin associated with that.

8 Q No breaking of any leg bones?

9 A No.

10 Q No breaking of any bones of the foot?

11 A No.

12 Q S-301.

13 A This is a similar picture after the pantyhose is
14 removed and it's managed to show the injuries to her
15 knees, scrapes on her leg, a bruise here on the inner
16 side of her ankle, and some bruises and scrapes on the
17 back surface of her right foot, and an injury here on
18 her left foot.

19 MR. MELLO: S-300, 301, for the jury.

20 (Pause in proceedings)

21 BY MR. MELLO:

22 Q And the last, S-295 in evidence.

23 A This is a picture taken in the autopsy room. On
24 the autopsy room floor, we put a sheet down and Mrs.
25 Scharf's items of clothing were placed on the sheet for

1 photography.

2 This is the striped shorts, the striped
3 jacket -- kind of a -- a match -- a matching set. This
4 is the tank top. This is the crocheted vest, and this
5 is the panties, and the pantyhose.

6 Q Thank you. You may be seated.

7 MR. MELLO: S-295, for the jury.

8 (Pause in proceedings)

9 BY MR. MELLO:

10 Q In your testimony, you have referred to the
11 taking of certain specimens for purposes of
12 toxicological review.

13 MR. MELLO: What I'd like to do is show you
14 what would be marked S-8 into evidence, Your Honor,
15 without objection?

16 MR. BILINKAS: No objection.

17 THE COURT: In evidence.

18 (S-8 admitted into evidence)

19 BY MR. MELLO:

20 Q Do you recognize that document?

21 A Yes, I do.

22 Q What do you recognize that document to be?

23 A This document is a copy of the Toxicology Report
24 that I received on -- on the case of Mrs. Scharf, a --
25 in relation to the specimens that I took at the time of

1 autopsy and submitted to the laboratory for drug and
2 alcohol analysis. My name is listed as the person who
3 performed the autopsy and I was required to ask the
4 laboratory to perform a [sic] analysis of her blood and
5 other samples.

6 Q Can you tell us the results of the
7 toxicological examination performed in this case?

8 A Yes. The laboratory was able to detect alcohol --
9 ethanol -- in Mrs. Scharf's system. The blood sample
10 was positive for ethanol, the brain tissue was positive
11 for ethanol, and the stomach content was positive for
12 ethanol.

13 Q And does the report indicate the level of
14 such alcohol in --

15 A Yes.

16 Q -- in her system?

17 A Yes. The laboratory gives the specimen that
18 they've analyzed as a -- and notes that they detect --
19 detected alcohol and it does report a level of alcohol
20 in the blood, the brain, and the stomach content.

21 Q Okay. And what is the level in the blood and
22 brain, please?

23 A The blood and brain alcohol level is .120 percent
24 in the blood and .121 percent in the brain tissue.

25 Q And the result of the Toxicological Report

1 respecting the stomach content?

2 A The stomach content alcohol was reported as .384
3 percent.

4 Q So, following the events that you've just
5 described, or discussed with the jury, did you continue
6 to review this particular manner -- matter?

7 A Yes.

8 Q And, specifically, what I'd like you to do
9 is, first, give the jury an understanding of your
10 perspective of the term forensic pathology?

11 A Well, as a -- I'm a forensic pathologist and my
12 job is Medical Examiner and my responsibility is to
13 participate in certain death investigations that occur
14 here in Bergen County.

15 My specific role in those death
16 investigations is the examination of the deceased for
17 the purpose, as I mentioned to you -- to you before, of
18 doing an examination and determining the cause and
19 manner of an individual's death. That's my direct
20 responsibility in a death investigation.

21 As forensic pathologist, however, I work with
22 a number of other people who participate in death
23 investigation with me. In suspicious death, or
24 homicide investigations, we -- I work directly with the
25 investigating Police Department, as well as certain

1 County agencies, specifically, the Prosecutor's Office
2 and the Sheriff's Department.

3 Forensic pathology is a collaborative
4 specialty, meaning that, as Medical Examiner my
5 responsibility is the examination of the deceased, but
6 the conclusions that I make are based on my direct
7 observations of the deceased person, as well as
8 information that I gather and evaluate from other
9 sources that assist me in making a final determination
10 in many cases.

11 Q And with respect to your review, did you,
12 after September 1992, amend the death certificate
13 pertaining to Jody Ann Scharf?

14 A Yes, I did.

15 Q Do you recall when you did so?

16 A Yes. I amended the death certificate because
17 appending a case that has -- a death certificate --
18 excuse me -- that has pending investigation on it
19 cannot be left open. It needs to be completed.

20 So, in January of 1993, I amended Mrs.
21 Scharf's death certificate to reflect that the manner
22 of death was unable to be determined, or specifically
23 on the death certificate it lists the choice of could
24 not be determined.

25 So, initially, when I filled out the death

1 certificate at the -- right after the autopsy
2 examination was done, the manner was listed as pending
3 investigation, and in January of 1993, I issued a
4 separate form that said the manner of death was -- was
5 unable to be determined.

6 MR. MELLO: S-15 in evidence.

7 MR. BILINKAS: No objection.

8 (S-15 admitted into evidence)

9 BY MR. MELLO:

10 Q Let me show what's been marked as S-15 in
11 evidence. Do you recognize that exhibit?

12 A Yes, I do.

13 Q What do you recognize that exhibit to be?

14 A This is the copy of the amendment form that I
15 prepared on January 18, 1993, amending Mrs. Scharf's
16 original death certificate on that particular line item
17 from manner of death, pending investigation to manner
18 of death, could not be determined.

19 Q Now, with respect to the investigation into
20 the death of Jody Ann Scharf, would you have further
21 involvement after the events that you have described
22 thus far?

23 A After 1993, I do not recall having any further
24 involvement for the next several years.

25 Q What is the next involvement that you recall?

1 A I recall in 2004, I was contacted by the
2 Prosecutor's Office and I accompanied two members of
3 the Prosecutor's Office -- two Prosecutor's detectives
4 -- back to the Englewood Cliffs site that I had visited
5 back in 1992 as they were preparing for a reevaluation
6 into the circumstances of Mrs. Scharf's death.

7 Q And can you tell us in particular what
8 activities you undertook with respect to that
9 evaluation -- in 2004?

10 A In 2004, I -- I revisited the scene -- the upper
11 ledge area -- with Detectives Bordino and Bright of the
12 Bergen County Prosecutor's Office and we reviewed the
13 appearance of the location. I had remembered being
14 there many years prior to that and looked -- I --
15 again, was on the ledge looking over at the steepness
16 of the cliffs, and seeing the -- all the trees below,
17 and the rock ledge, and -- and -- you know, the
18 irregularity of the cliff face, and so forth. And I
19 recall them pointing out a -- a tree location down at
20 the bottom of the cliffs -- pointed that out to me as
21 the tree site where the body of Mrs. Scharf had been
22 recovered in proximity to that.

23 Q Now, at that time when you made the
24 observations and undertook the activities you've
25 described thus far, did you go from the bottom of the

1 cliff up to the site where the body was recovered, or
2 not, at that time?

3 A In 2004, my only visit to the scene was from the
4 top of the cliffs at the rock ledge where I had been in
5 1992.

6 Q Can you tell us the next event that you
7 became involved in with respect to the investigation of
8 the death of Jody Ann Scharf?

9 A Yes. In the summer of 2005, I was contacted again
10 by the Prosecutor's Office, and I was also contacted by
11 Dr. Michael Baden because, again, a comprehensive
12 review into the circumstances surrounding Mrs. Scharf's
13 death was being conducted at that time.

14 I was asked to participate in that. And,
15 specifically, in August of 2005, Dr. Michael Baden came
16 to the Medical Examiner's Office. I reviewed with him
17 the Autopsy Report of Mrs. Scharf, as well as I had the
18 opportunity to show him all the photographs that we had
19 in our file from the scene examination, as well as the
20 autopsy of Mrs. Scharf at that time. That was in the
21 morning in August of 2005.

22 I recall in the afternoon, he, I,
23 Investigator John DeSimone -- who had been the
24 representative from the Medical Examiner's Office on
25 September 20th of 1992 -- the three of us then went to

1 the Prosecutor's Office, and sat down with the
2 detectives that were assigned to review the case, and
3 we went over the information that was in the files of
4 the Prosecutor's Office regarding their investigation
5 into the circumstances of Mrs. Scharf's death.

6 Q Now, with respect to the information that you
7 reviewed, was a basis of your review, and part of your
8 review, statements made by the defendant to the police
9 following the death of Mrs. Scharf?

10 A Yes.

11 Q And with respect to those statements, in --
12 in sum, did they reflect the statements by Mr. Scharf
13 that suggested -- that he suggested -- a passive fall
14 from the cliff edge?

15 A Yes. Mr. Scharf's statements indicated that Mrs.
16 Scharf and he were on that ledge area that I had
17 visited, and that Mrs. Scharf fell off the ledge, and
18 fell down the cliffs.

19 Q Can you tell us your next involvement in the
20 investigation into the death of Jody Ann Scharf?

21 A Yes. In January -- it was January 27 of 2006.
22 Again, in consultation with the detectives from the
23 Prosecutor's Office who were involved in the -- in the
24 case review, I went back to the site.

25 This time we revisited the upper level -- the

1 rock ledge -- first off, and then we proceeded to the
2 road at -- at the base of the cliffs, and I -- I walked
3 with them. It was the detective from the Prosecutor's
4 Office, it was Lieutenant Pagan from the Palisades
5 Interstate Park Police, it was Lieutenant Cioffi from
6 Englewood Cliffs Police, and myself.

7 We walked from the roadway, at the base of
8 the cliffs, up the rocky terrain to the site of the
9 tree where Mrs. -- next to which Mrs. Scharf's body had
10 been recovered. So, that was in January -- January 27
11 of 2006, that I actually first visited the location
12 where Mrs. Scharf's body had been recovered.

13 Q Can you discuss with the jury your
14 perspectives of that scene at that time?

15 A Yes. It was a difficult climb, but it was very --
16 for me -- it was very enlightening because the
17 perspective that I had from being at the location of
18 the tree, and being able to look up to the ledge was
19 completely different than anything I was able to gather
20 from my visits to the rock ledge prior.

21 In other words, the three-dimensional
22 component of that whole was scene was much clearer to
23 me when I was standing at the base of the tree, in
24 addition to the fact that it was January of 2006 and
25 there were no leaves on the trees.

1 So, the whole scene, in essence, opened up
2 for me and I was able to really understand the
3 relationships between the rock ledge above me and the
4 tree that I was standing next to where Mrs. Scharf's
5 body had been recovered.

6 I understood -- I could clearly now the
7 distances that had been described to me by persons that
8 had been out there making measurements and so forth. I
9 did never -- I had never appreciated that from the
10 perspective of the rock ledge view, because it's -- it
11 -- there's too much -- you lose depth there.

12 Everything just comes up to your eyes and you -- and I
13 didn't appreciate the three-dimensional nature of that
14 scene. Plus the times that I had visited there was --
15 leaves on the trees, which did obscure some of the
16 view.

17 So, in January of 2006, where there just
18 being bare tree branches, and standing at the base of
19 the tree, I had a perspective of the whole event that I
20 had never been able to experience for myself before,
21 nor had been able to appreciate from people that had
22 tried to describe it to me. It was only when I saw it
23 for myself that I had a -- a -- a better sense of some
24 of the dynamics that may or may not have been involved
25 in the death of Mrs. Scharf.

1 Q I'm going to show you two photographs, S-261
2 in evidence. Do you recognize that photograph?

3 A Yes.

4 Q Okay. Can you describe what this photograph
5 depicts?

6 A This is a picture of the location in Englewood
7 Cliffs along the Palisades Interstate Park cliffs
8 there. It shows some of the sheer nature of the rock
9 formations on the cliff and does a relatively well --
10 show for you the type of perspective that I had in
11 January of 2006, where there being bare tree limbs and
12 opening up the -- the sight of -- the capability of
13 visualizing it.

14 Q And does it show you the top of the cliff
15 edge where Mrs. Scharf is reported to have fallen?

16 A Yes. I believe it's in here.

17 Q I'm going to show you what's been marked S-
18 292. What does that photograph show you?

19 A That's a photograph of the similar location and
20 that's Detective Bordino on the two-tier rock ledge
21 which was reported as the site of the incident, and
22 again, gives you a perspective of the sheerness of the
23 cliffs, as well as their irregularity, and the trees,
24 and so forth, that compose part of that cliff face.

25 Q S-272 in evidence. Can you tell the jury

1 what that photograph shows?

2 A Okay. This is a photograph of the base area of
3 the cliffs. Again, showing the irregularity of the
4 ledge. That's Detective Bordino. There's trees, and
5 branches, and so forth, and large boulders, and rocks,
6 and just a very irregular surface at the base of the
7 cliffs, and again, that you can appreciate the
8 steepness of the cliff face.

9 Q Do you see the tree base that's marked here?

10 A Yes. There's the tree in the -- on the left side
11 of the photograph with paint on it, and that is the
12 location that was shown to me as the area where Mrs.
13 Scharf's body was recovered.

14 Q And with respect to that particular tree,
15 were you given other information which you considered
16 in your evaluation of this case, respecting that tree?

17 A Yes. It's location from the ledge.

18 Q Okay, which was?

19 A A 119 plus feet down from the ledge and 52 plus
20 feet away from the ledge.

21 Q And in addition to those dimensions, were you
22 given information as to any evidence with respect to
23 that tree that was observed?

24 A Yes. Lieutenants Pagan and Cioffi had indicated
25 to me that when they recovered -- they were the two

1 persons who actually recovered Mrs. Scharf's body --
2 and they pointed out to me that on the tree trunk, at a
3 point more than six feet up from the base of the tree,
4 they observed hair, blood and tissue on the tree at a
5 location of more than six feet from the base of it.

6 Q If you would, can I ask you to step down for
7 just a moment? Let me show you what's been marked in
8 evidence, 267. Ask if you recognize this photograph?

9 A Yes, I do.

10 Q Okay. Can you describe the photograph to the
11 jury?

12 A This is a -- a good perspective of the area of the
13 incident. What's demonstrated -- it -- what your
14 seeing is the cliff face. What's demonstrated here is
15 the area where the incident was alleged to have
16 originated.

17 It's a two-step rock ledge with two levels,
18 and that's marked here. This is the tree in question,
19 next to which Mrs. Scharf's body was recovered at the
20 cliff base.

21 Q Now, with respect to the perspectives that
22 you referred to earlier regarding your now observation
23 of this scene, can you discuss your observations and
24 your perspectives using this photograph of the cliff
25 face?

1 A Well, when I stepped -- stood down here at the
2 tree in question and looked up, I then appreciated the
3 depth of this location. I understood better what 52
4 feet out from that site meant. It was farther than I
5 could have appreciated just by hearing the number 52
6 feet.

7 So, it helped me to understand that the tree
8 was indeed farther out from the origin -- originating
9 site, if you will, then I was able to really appreciate
10 just by hearing people talk about it or by looking at
11 it from the top of the cliffs.

12 When I stood up there, I didn't have that --
13 I -- I couldn't appreciate that as readily as I could
14 at the base, and also it helped me that all the leaves
15 that had been in the way when I had been at the top of
16 the cliffs were now gone. So, as I mentioned, it
17 opened up the whole area for me to really visualize in
18 three dimensions.

19 Q Right. And with respect to three dimension,
20 would you discuss with the jury your now perspectives
21 of the cliff face itself?

22 A Well, the cliff face itself is extremely
23 irregular. I mean it's very sheer that there are a lot
24 of irregularities -- a tremendous irregular contour to
25 the -- to the cliff's surface. Many crevices and

1 channels in the rock formation over the years. So, it
2 is interesting to me to notice this to help me
3 understand the injury pattern that I observed in Mrs.
4 Scharf's body.

5 Q Thank you. You may return.

6 (Pause in proceedings)

7 BY MR. MELLO:

8 Q Now, following the events as you have just
9 described them -- the observations and perspectives
10 that you gained -- did you continue your review of this
11 matter -- the death of Jody Ann Scharf?

12 A Yes, I did.

13 Q Can you tell us in what manner that review
14 evolved for you?

15 A For me, it was reviewing all the findings that I
16 had gathered at the time of my initial examination back
17 in 1992. Reviewing my autopsy report, reviewing
18 additional information that the Prosecutor's Office had
19 been working on as they were reviewing this case.

20 So, I was incorporating my particular portion
21 of this death investigation, which was the autopsy, and
22 evaluating it in reference to the additional
23 information that had been provided and gathered by the
24 Prosecutor's Office over the years.

25 Q Would you, in your testimony, now discuss

1 with the jury, the injuries that you observed in that
2 post mortem examination and how they now relate to the
3 perspective that you have given the jury in the course
4 of your testimony thus far?

5 A Yes. Again, now we're talking about 2006-2007. I
6 have been at the Bergen County Medical Examiner's
7 Office now for fourteen to fifteen years. At the time
8 of the incident I was only in the office five months.
9 This was, actually, Mrs. Scharf was the first person
10 that I ever examined whose death was connected in any
11 to the cliffs.

12 By 2006-2007, I have had the opportunity to
13 examine any number of patients, and the office has
14 examined any number of people, who have died as a
15 result of an event on the cliffs.

16 So, with that perspective now in 2006-2007
17 that I did not have in 1992, I had a different
18 appreciate -- or a different understanding of the
19 injuries that Mrs. Scharf had sustained.

20 Mrs. Scharf's injuries after -- on my review
21 now in 2006-2007 spoke to me that Mrs. Scharf sustained
22 those injuries by a forceful contact with a fixed
23 object, such as the tree.

24 The injuries that she has are -- as I
25 mentioned -- the serious ones are head and chest. They

1 are localized to the upper portion of her body and
2 they're -- they very clearly show a right-sided
3 predominance.

4 This was a pattern that I did not appreciate
5 in 1992. I, now, in this -- in my review of it, noted
6 -- saw something in those injuries that I had not
7 appreciated before.

8 The localization and the severity of the
9 force of those injuries was something that was unique,
10 in my opinion and my perspective now, to Mrs. Scharf's
11 case. Meaning that, in considering other people who
12 have died in a cliff-related incident, their pattern of
13 injury is completely different from what Mrs. Scharf
14 showed me, and I was only able to truly understand that
15 after having examined other people whose death was
16 related to the cliff.

17 Mrs. Scharf's injuries are extremely
18 localized to the right upper portion of her body. She
19 has no injuries on the back surface of her body. She
20 has no fractures of her extremity bones. This pattern
21 of injury that she had suggests to me a forceful
22 contact in a localized area with a fixed object that is
23 causing the dissipation of force into her body,
24 specifically, in her head and chest area, causing those
25 numerous injuries that I recounted to you earlier in my

1 testimony.

2 Q Can you describe how that forceful contact
3 created the injuries that you described?

4 A Yes. The -- the pattern of skull fracture, as I
5 had indicated to you earlier, was very severe. She had
6 a number of fractures on the right side of her skull on
7 the -- on the skull cap part, as well as continuing
8 over to the left, in addition to fractures in four of
9 the six compartments of the base of her skull. This
10 is, from my evaluation and understanding of injury --
11 how injuries occur -- this is a forceful contact that
12 causes that degree of injury.

13 The same applies to the laceration of her
14 chest. That injury is very unusual in a person who --
15 whose death is connected with the cliffs -- who --
16 someone who falls off the cliffs. That huge laceration
17 that I observed on her chest wall is not something that
18 I've seen in any of the other patients that I've
19 examined that have fallen off the cliffs.

20 What that indicates to me is in order for the
21 -- for the skin of the chest to actually rip to that
22 point, there has to be a severe force that causes the
23 body to compress on itself.

24 The pattern of injury, or the distribution of
25 force in Mrs. Scharf's -- Scharf's chest was so extreme

1 that it caused the chest wall to compress, fracturing
2 her breastbone, fracturing all of her ribs in multiple
3 areas, causing the laceration of her aorta, the
4 fracture of her thoracic vertebral body, and also
5 causing those fine tears on the inner surface of her
6 heart that I had reported to you earlier.

7 This is the type of injury that occurred --
8 the lacerations on the inner surface of the heart --
9 are -- are an injury that occurs from a severe, short,
10 compressive force to the chest. Very commonly seen in
11 motor vehicle drivers who are traveling at a fair rate
12 of speed and strike a pole. They have a sudden
13 compression of their chest -- that causes those kind of
14 tears in -- on the inner surface of her heart.

15 So, to me, the injuries in -- in my secondary
16 evaluation of them in 2006-2007 are not consistent with
17 a patient that passively rolls down the cliffs to the
18 bottom and meets their demise. I had a -- as I say --
19 occasion to examine many of those patients since Mrs.
20 Scharf, and none of them show that localization of
21 injury pattern and the severity of force that are
22 represented by Mrs. Scharf's injuries.

23 Q Based on your review, as you have described
24 it throughout your testimony, following the events of
25 2006 in your observations, are -- were able to

1 determine the manner of the death of Jody Ann Scharf to
2 a reasonable degree of medical certainty?

3 A Yes.

4 Q Can you tell us your conclusion?

5 A Yes. After reevaluating Mrs. Scharf's injuries in
6 the context of other experiences on the -- on cliff-
7 related deaths, and also recollecting my experience
8 being at the tree and looking up at the ledge -- the
9 rock ledge -- where the incident reportedly occurred,
10 it became clear to me that Mrs. Scharf's injuries are
11 perfectly consistent with her impacting that tree at a
12 significant rate of speed to cause that severity and
13 localization of injuries.

14 I recalled that Lieutenants Cioffi and Pagan
15 had indicated that there was blood, hair, and tissue on
16 the tree. That type of dynamic -- that force is what -
17 - is understandable to me as the type of force and the
18 impact that would cause the injuries that I observed on
19 Mrs. Scharf.

20 Also, again, recollecting that that location
21 of the tree is significantly out from the base of the
22 cliff and looking at the -- the rock ledge, it became
23 clear to me that in order for Mrs. Scharf to get to
24 that tree, and establish contact with it at a height
25 six or more feet above the base, there had to be a

1 propulsive force. She had to be propelled out to be
2 able to reach that tree, contact that tree, sustained
3 those injuries and drop next to the tree.

4 Q Are any of your findings consistent with a
5 passive decent from the cliff edge as you know it be?

6 A The distribution of Mrs. Scharf's injuries, in my
7 opinion, and the severity and localization of the head
8 and chest injuries are not consistent with someone that
9 tumbles down the cliff face from the -- from the top.

10 Q Subsequent, and following your determination
11 that the manner of the death of Jody Ann Scharf was
12 homicide, did you amend the subject death certificate?

13 A Yes, I did.

14 MR. MELLO: Okay. S-16 in evidence, please?

15 MR. BILINKAS: No objection.

16 THE COURT: In evidence.

17 (S-16 admitted into evidence)

18 BY MR. MELLO:

19 Q Do you recognize that exhibit?

20 A Yes, I do.

21 Q What do you recognize that exhibit to be?

22 A That is a copy of the amendment that I prepared to
23 Mrs. Scharf's death certificate on January 4, 2007,
24 specifically referencing line item 29 on the death
25 certificate, where I have amended the manner of death

1 from "could not be determined" to "homicide".

2 Q And in connection, therewith, did you file in
3 the subject matter an addendum to your report which you
4 have previously identified and is in evidence?

5 A Yes, I did.

6 MR. MELLO: S-7, without objection?

7 MR. BILINKAS: No objection.

8 (S-7 admitted into evidence)

9 BY MR. MELLO:

10 Q Do you recognize that exhibit?

11 A Yes, I do.

12 Q And what do you recognize that exhibit to be?

13 A It's a copy of the Addendum Report that I prepared
14 to be included with the Autopsy Report of Mrs. Scharf
15 and it's dated January 4, 2007.

16 Q The subject report amends the manner of death
17 to homicide?

18 A Yes.

19 Q Thank you for your time, Doctor.

20 MR. MELLO: Judge, I think this would be an
21 appropriate place.

22 THE COURT: All right. Let's take a ten
23 minute break.

24 (Break)

25 (Proceeding resumes)

1 THE COURT: Please be seated.

2 (Jury enters Courtroom)

3 THE COURT: Welcome back, ladies and
4 gentlemen of the jury. You may be seated.

5 Ready -- ready to proceed?

6 MR. BILINSKI: Yes, Judge.

7 CROSS-EXAMINATION BY MR. BILINKAS:

8 Q Dr. Clayton, is it your testimony that the
9 injuries that you observed on Jody Scharf's body are
10 consistent with a single blunt force injury?

11 A My testimony is that the injuries of the head and
12 chest are consistent with a forceful contact with a
13 fixed object.

14 Q Are all the injuries, in addition to the
15 chest and the head, consistent with a single blunt
16 force injury?

17 A The totality of injuries from head-to-toe?

18 Q Yes.

19 A No.

20 Q What is inconsistent with a single blunt
21 force injury?

22 A I'm not sure I under -- understand your question.
23 What my testimony is, is that the serious injury of the
24 head and chest is consistent with a severe localized
25 impact with a fixed object, such as a tree. There are,

1 in addition, scrapes and bruises, and some cuts on
2 other areas of her body, such as her limbs, that don't
3 factor into that particular contact that I'm saying is
4 affecting the head and chest.

5 Q Okay. Is it fair to say that your -- your
6 opinion is that all the major injuries, other than the
7 scrapes and a few bruises on her body, were caused by
8 her impact with that tree?

9 A Yes.

10 Q Do you realize that your opinion is the exact
11 same opinion that's been rendered by Michael Baden?

12 A Yes.

13 Q Now, -- (pause) -- in your curriculum vitae,
14 you list all your certifications, correct?

15 A I list my training and experience.

16 Q Okay. Are you Board Certified?

17 A No, sir.

18 Q Now, can you explain to the jury what that
19 is?

20 A Yes. Board Certification in pathology is the
21 result of taking and passing an examination
22 administered by the American Board of Pathology.

23 There are several different levels of
24 examination. The American Board issues an examination
25 in anatomic, clinical, and, in my case, forensic

1 pathology.

2 I specialize in forensic pathology and in
3 order to take the forensic pathology portion of the
4 American Board of Pathology Examination, I had to take
5 anatomic pathology, in addition. So, when I sat for
6 the Boards in 1988, when I finished my fellowship, I
7 sat for Anatomic and Forensic Pathology Board.

8 I passed the forensic pathology portion of
9 the Boards, which is my area of specialty. I did not
10 pass the anatomic portion of the Boards, and therefore,
11 they will not certify me.

12 So, I'm not Board Certified, not because I
13 didn't pass the examination in forensics. I did. I
14 did not pass the examination in anatomic pathology.
15 And Board Certification is not required to practice
16 forensic pathology in the State of New Jersey.

17 Q Since 1988, have you ever retaken that test
18 to become Board certified?

19 A Yes.

20 Q And -- and how did you do on that?

21 A I took the anatomic portion of the test three
22 times, which is what you're allowed to take it, and I
23 did not pass it. I -- the reason is because anatomic
24 pathology is the portion of pathology -- at least on
25 the examination -- it mostly concerns the area of

1 pathology that I was trained in, in the hospital
2 setting.

3 As I mentioned, I specialized in forensic
4 pathology. I passed the forensic portion of the Board
5 Examination, but did not pass the portion of the
6 examination that concerns, mostly, the hospital type of
7 pathology that I had previously trained in.

8 Q What does anatomic pathology have to do with?

9 A Pardon me?

10 Q What does anatomic pathology have to do with?

11 A Anatomic pathology has to do with the practice of
12 pathology mostly in the hospital setting. I mean --
13 the examination is fairly comprehensive, but most of it
14 concerns examination of tissues under the microscope to
15 diagnose cancer or other -- you know, disease
16 processes.

17 Q Okay. And, now, at the time of Jody Scharf's
18 death, you were at the Medical Examiner's Office in
19 Bergen County for how long?

20 A Since April of that year -- April to September.

21 Q And you'd never done a cliff case at that
22 point, correct?

23 A I had never examined a patient whose death was
24 related to the cliffs in any way.

25 Q Now, on the day in question, you were the

1 Medical Examiner on call, correct?

2 A On September 20th, 1992, yes.

3 Q Okay. And did you have an obligation as
4 Medical Examiner to go to the scene?

5 A On September 20th?

6 Q Yes.

7 A No.

8 Q Is it your sworn testimony that there is no
9 statute requiring you to go to the scene on a
10 suspicious death?

11 A On September 20th, 1992, it was not necessarily
12 considered suspicious, and the obligation is for a
13 representative of the Medical Examiner's Office to be
14 at the location of the body and Officer John DeSimone
15 was our office representative.

16 When I was notified of the death, which was
17 in the late evening of September 20, 1992, Mrs.
18 Scharf's body had already been taken down to the
19 roadway, so that our Livery Service could pick her up
20 and transfer her to the Medical Examiner's Office.

21 I felt that at that point in time my
22 attendance was not necessary at the scene because my
23 primary involvement was going to be the next day to
24 formally examine Mrs. Scharf at the autopsy.

25 Q Was the person, DeSimone, appointed by the

1 Medical Examiner's Office to respond to scenes?

2 A He is -- he was at that time, in 1992, one of a
3 number of County Police Officers who are -- whose --
4 whose function, in addition to their police function,
5 is to be Medical Legal Death Investigators on behalf of
6 the Medical Examiner's Office. He was one of that core
7 of County Police Officers.

8 Q Okay. Irrespective of -- of being in that
9 core, was he trained from a medical standpoint?

10 A He was trained in Medical Legal death
11 investigation, yes.

12 Q Okay. And would you agree with me that it's
13 the Medical Examiner's obligation to control the scene
14 where the body is found?

15 A The Medical Examiner is in charge of the scene of
16 a dead -- where a dead body is present. That is
17 correct.

18 Q And -- and would you agree with me that if
19 someone moves the body without the Medical Examiner's
20 authorization -- (pause) -- if any person disrupts the
21 body of a person without order from the County Medical
22 Examiner, that he is guilty of a disorderly person's
23 offense?

24 MR. MELLO: Objection.

25 THE COURT: Your objection?

1 MR. MELLO: Not relevant to this witness's
2 testimony, Your Honor, and he's reading from some kind
3 of document.

4 MR. BILINKAS: I'm asking her for her
5 understanding of the law in existence at the time with
6 regards to the removal of the body.

7 THE COURT: I will allow it. Overruled.

8 DR. CLAYTON: Technically, that is correct.
9 However, -- however, there are instances where a body
10 is removed without the direct authorization of the
11 Medical Examiner for safety purposes, or whatever. So,
12 it -- it certainly is something that's in statute. In
13 practice, it is not followed to the T, shall we say.

14 BY MR. BALINKAS:

15 Q Let's talk about practice. You and your
16 representative were notified that the body was found,
17 correct?

18 A The office was notified after hours on that
19 particular day. I was not aware of the case at the
20 time that the initial notification came to pass, but
21 that's very routine. The office is staffed between the
22 hours of 9:00 and 4:30. So, if a call for a death
23 investigation comes in after hours, it's handled by the
24 County Police, and they dispatch accordingly, and then
25 depending on the type of investigation, whether the

1 investigator wants to involve the Medical Examiner is
2 at his or her discretion.

3 Q Did the person dispatched on behalf of the
4 Medical Examiner's Office contact you?

5 A Yes.

6 Q And -- and was that before or after the body
7 was moved?

8 A That was after the body was moved.

9 Q Now, would you agree with me that once you
10 were advised that a body was removed, that either you
11 or your representative should have documented the exact
12 scene where the body had laid?

13 A Would that be ideal? Yes. Would that be
14 practical in this particular situation? No, not at
15 that time of night, in the pitch black darkness on the
16 cliffs of the precarious nature that the photographs
17 show. I think that's impractical and unreasonable.

18 Q Have you ever heard of a camera?

19 A Yes, sir.

20 MR. MELLO: Objection to the form of that
21 question. That's not --

22 BY MR. BILINKAS:

23 Q Back then, did your representative who was in
24 charge with documenting the scene have a camera at his
25 disposal?

1 A Yes, he did. It was a Polaroid camera. Yes.

2 Q With a flash?

3 A Yes, sir.

4 Q When did you become aware of the fact that
5 the body had been removed from the location where it
6 was found?

7 A When Officer DeSimone called me later in that
8 evening.

9 Q So, as of that night, you were aware of the
10 fact that the scene had not been properly documented,
11 correct?

12 A I was aware that evening that the body had been
13 moved from the location in which it was found to a more
14 accessible area for our investigator to examine the
15 body and arrange for our Livery Service to pick Mrs.
16 Scharf up.

17 Q And the next day when you went there with the
18 Prosecutor's Office, correct?

19 A Yes, and --

20 Q At -- at that point --

21 A -- Detective Lyman from the Palisades Interstate
22 Park Police.

23 Q All right. At that point, you were clearly
24 aware that the scene was not properly documented,
25 correct?

1 A If you're talking about the location where the
2 body was found, I don't know what you mean by proper
3 documentation. It was not photographed.

4 Q Let's talk about, first, the scene in
5 question. Will you agree with me that the scene, in
6 this particular instance, has two parts, the top and
7 the bottom, correct?

8 A Yes.

9 Q And would you agree with me that in any
10 investigation where you're trying to determine a cause
11 of death that the scene should be properly documented?

12 A That, again, is the ideal situation. I will tell
13 you that the cliffs are a precarious location and
14 they're not -- that -- that recommendation, or ideal,
15 does not always apply because it's very difficult to
16 get there. And there's no reason to -- to allow an
17 investigator who's not trained to navigate that area to
18 put himself at risk, unless -- I -- I mean, on a
19 routine basis. Let me it answer that way.

20 Q Okay. Aside, from routine basis, you were
21 aware of the fact the Palisades Parkway Police
22 Department has their own Rappelling Team especially
23 trained to -- to navigate these cliffs? You were --
24 you were aware of that back then, correct?

25 A Yes.

1 Q And when you went back there on the next day,
2 isn't it a fact that you were advised that various
3 items from Jody Scharf's purse were missed the night
4 before? Were you apprised of that fact the next day?

5 A I was aware that items from Mrs. Scharf's purse
6 were found on the ledge that night of the incident in
7 question.

8 Q When you went back the next day and you
9 looked over the side, did you see a makeup brush, the
10 makeup kit, and some credit cards?

11 A No, sir.

12 Q Did you even look at that ledge?

13 A I looked at the ledge, yes. I was on the ledge,
14 sir.

15 Q No, the ledge below the flat rock?

16 A No.

17 Q So, you, or to your knowledge, no one from
18 the Medical Examiner's Office ever looked down on the
19 lower ledge -- ledge, which is approximately ten or
20 twelve feet below the flat rock, correct?

21 A On the night in question?

22 Q No. On --

23 A The day after?

24 Q -- the day after because -- can we assume
25 that your person that was your representative never

1 even went to the top on that night, correct?

2 A I don't recall that specifically, sir.

3 Q Well, is there any report that you reviewed
4 to indicate that your representative even went to the
5 top that is easily accessible on the night in question?

6 A I don't remember that.

7 Q And you are clear on this point, correct me
8 if I'm wrong, that he clearly did not go up to the tree
9 where Mrs. Scharf supposedly was that night?

10 A And that's Officer DeSimone?

11 Q Correct.

12 A On the -- on the night of the 20th, did not go to
13 the location of the tree where the body was recovered.
14 That's correct.

15 Q Okay. And were you apprised of the fact that
16 a number of Police Officers -- the Rappeling Officers -
17 - had seen a blood smear as of the day of her --
18 deceased?

19 A On the tree?

20 Q Yes.

21 A I honestly don't remember if I had that
22 information at that point in time. I don't recall
23 that, specifically, on that date.

24 Q Okay. And -- and why did you go to the
25 cliffs -- to the cliffs the next day?

1 A Just to observe the location where the incident
2 had occurred. The Prosecutor's Office was then
3 involved, and after performing the autopsy, I went to
4 the location to see if I could understand what had
5 happened a little bit better.

6 Q Okay. And -- and when you say a little bit
7 better, is it your recollection that going to the top
8 gave you at least a partial perspective of what
9 happened?

10 A Oh, yes, absolutely. The ledge is very dangerous
11 and it's a very steep drop down. So, I did appreciate
12 that on that -- the 21st of September.

13 Q Okay. And is there any reason why you didn't
14 go to the bottom of the cliff on that date to get the
15 unique perspective of both the top and the bottom?

16 A Is there a reason why I did not?

17 Q Yes.

18 A Yes. It didn't seem -- it didn't seem like it was
19 something to do at that time. What happened was, after
20 the autopsy examination, the Prosecutor's Office became
21 involved and was beginning an investigation. So, I --

22 Q It was a criminal investigation, correct?

23 A Yes. Yes.

24 MR. MELLO: Objection to the form.

25 BY MR. BILINKAS:

1 Q What's the objection?

2 THE COURT: There's an objection. Your
3 objection?

4 MR. MELLO: Form.

5 THE COURT: Sustained.

6 BY MR. BILINKAS:

7 Q Isn't it a fact that the day after the
8 incident, the Prosecutor's Office gets involved in what
9 you believe was a criminal investigation?

10 A The Prosecutor's Office became involved because
11 the death was suspicious and the exact circumstances
12 were not clear. The manner of death, at that point in
13 time, was not clear. So, they were proceeding to
14 gather information to help clarify the circumstances of
15 the event, therefore helping to determine a manner of
16 death.

17 Q Were you --

18 A So, it was -- and -- it was -- the Prosecutor's
19 Office is involved to help clarify the circumstances
20 and help to determine what the manner of death is.

21 Q Okay. Whether it was an accident or a
22 homicide, correct?

23 A Correct.

24 Q Then that purpose was communicated to you as
25 the Medical Examiner, correct?

1 A Yes.

2 Q Now, was either Cioffi or Pagan at the cliffs
3 the day after when you were there?

4 A No.

5 Q Now, at some point in time you were made
6 aware of the fact that there was a blood smear on the
7 tree, correct?

8 A Yes.

9 Q And is there any document that would indicate
10 when you became aware of that fact?

11 A No.

12 Q When you did become aware of that fact, was
13 that something as the Medical Examiner that you would
14 have liked to have documented with regards with to
15 making a determination concerning your investigation?

16 A Yes.

17 Q That documentation of that blood smear is --
18 is an obvious mistake on behalf of law enforcement in
19 your mind, correct?

20 MR. MELLO: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. MELLO: There's been testimony that it
23 has been documented.

24 THE COURT: Sustained.

25 BY MR. BILINKAS:

1 Q To your knowledge, that bloodstain was never
2 documented by either you or the Bergen County
3 Prosecutor's Office?

4 MR. MELLO: Objection.

5 THE COURT: Your objection?

6 MR. MELLO: The form of the question. That's
7 not accurate. That is not --

8 MR. BILINKAS: I'll --

9 THE COURT: Sustained.

10 MR. MELLO: It's documented many ways.
11 There's a different question he may ask.

12 MR. BILINKAS: I'll -- I'll ask another
13 question.

14 BY MR. BILINIKAS:

15 Q Did anyone take a sample -- the Prosecutor's
16 Office or the medical examination -- of that blood
17 smear before it was destroyed by the weather?

18 A No.

19 Q Did anybody describe that blood smear before
20 it was destroyed by the weather?

21 MR. MELLO: Objection. How would she know
22 when it was --

23 MR. BILINKAS: Based on the reports --

24 THE COURT: Hold on.

25 MR. MELLO: But --

1 THE COURT: There's an objection.

2 MR. MELLO: -- there's -- there's a report
3 that day and the time that it took to destroy the blood
4 that --

5 THE COURT: Okay. Your objection is
6 sustained.

7 MR. MELLO: -- was on the tree is unknown.

8 THE COURT: Sustained. Ask another question.

9 BY MR. BILINKAS:

10 Q You've reviewed Cioffi and Pagan's reports
11 regarding their rappeling and what they saw, correct?

12 A Yes.

13 Q And would you agree with me that in those
14 initial reports all they described was a blood smear,
15 correct?

16 A On the tree?

17 Q Yes, in the reports that you reviewed prior
18 to your epiphany back in 2007.

19 MR. MELLO: May I object to the word --

20 THE COURT: Sustained.

21 MR. MELLO: -- epiphany. It's not really
22 helpful.

23 BY MR. BILINKAS:

24 Q Do you agree with me that in Cioffi and
25 Pagan's report, that you reviewed and -- and can I

1 assume that you relied on to some extent with regards
2 to your opinion -- isn't it a fact that in those
3 reports all they mentioned was a blood smear, correct?

4 A Sir, I don't recall that specifically. I recall
5 in 2006, when I went to the location at the tree with
6 Lieutenants Pagan and Cioffi, we discussed blood, hair
7 and tissue on the tree. That's what I recall, sir.

8 Q You recall discussing hair with Cioffi?
9 Specifically, you recall that?

10 A Yes.

11 Q And -- and do you recall discussing hair with
12 Pagan?

13 A I recall that a bunch of us were there -- there
14 was a group of there. I recall that as being part of
15 the conversation on that day, in 2006, when I did visit
16 the tree location.

17 Q Are you saying you don't know who mentioned
18 hair, specifically?

19 A Correct.

20 Q Did you put in your report that both Cioffi
21 and Pagan -- your addendum --

22 A Yes.

23 Q -- had described hair?

24 A (No verbal response given)

25 Q In your addendum?

1 A Yes. Yes.

2 Q And as you sit here today, you can't recall
3 whether or not both Cioffi and Pagan specifically told
4 you about hair?

5 A I recall that we were all together at the time
6 discussing the scene and recollections. Those
7 recollections I took from the two people who were there
8 at the time. It says it right there. I don't recall
9 specifically whether they both said it, whether one
10 said it.

11 Q Well, do you recall putting in your addendum
12 in January of 2007, Lieutenant Pagan and Cioffi
13 recalled observing blood, hair, and tissue on the trunk
14 of the tree several feet above the ground? Is that in
15 your official addendum where you change the death
16 certificate?

17 A That is, but it doesn't say that Lieutenants Pagan
18 and Cioffi each recalled observing. It says that they
19 recalled -- the -- the two of them recalled observing
20 three things. It doesn't specify that one said one and
21 one said the other. It's -- it's a way to describe
22 that, sir.

23 Q So, when you say Lieutenants Pagan and Cioffi
24 recalled observing blood, hair and tissue on the trunk,
25 that doesn't mean that both of them did, correct?

1 A It means that between the two of them three types
2 of items were recalled as being on the tree.

3 Q Now, are you aware of the fact that both
4 Cioffi and Pagan testified to this jury that they never
5 told you that they saw hair on the tree?

6 A I'm not aware of that, sir.

7 Q But you have a specific recollection of at
8 least one -- one of those people, who have testified
9 before this jury, specifically told you hair, correct?

10 A I wouldn't have put it in my report if I didn't
11 recollect that, sir.

12 Q Okay. Now, if there's hair on the tree, that
13 kind of supports your position that the head hit the
14 trunk of the tree, correct?

15 A It helps, yeah.

16 Q It helps a lot, correct?

17 A Hair and blood -- tissue and blood are fine.

18 Q Okay. Was there brain matter -- white brain
19 matter on the tree trunk?

20 MR. MELLO: Objection.

21 MR. BILINKAS: Your objection?

22 MR. MELLO: He hasn't established that she
23 has been at the subject tree trunk at the time of the
24 observations that have been testified to so far.

25 THE COURT: Sustained. Ask another question.

1 BY MR. BILINKAS:

2 Q Has anyone, particularly, Cioffi or Pagan,
3 specifically told you that they observed white brain
4 matter on the tree?

5 A That I don't recall.

6 Q And would you agree with me that if he had
7 something like that you probably would have put it in
8 your report?

9 A If I remembered that specifically?

10 Q Yes.

11 A Yeah.

12 Q If -- if, for instance, Pagan said that he
13 reached his hand up, and touched the blood smear, and
14 he -- he looked at it with the light with white brain
15 matter on his hands, that would be something you
16 probably would remember, correct?

17 A Yes.

18 Q Now, would you agree with me that when you
19 examined the brain, the white brain matter was intact?

20 A No.

21 Q You wouldn't agree?

22 A No, sir.

23 Q Okay. Now, what is the dura?

24 A The dura is the membrane that covers the brain.

25 Q It covers the entire brain, correct?

1 A Yes.

2 Q And will you agree with me that the dura, the
3 membrane that covered the brain, was intact?

4 A My report says the dura was intact.

5 Q Okay. And would you agree with me that if
6 the membrane around the brain was intact, that the
7 white brain matter could not have been on the tree
8 trunk?

9 A You asked me the question was the brain -- you
10 asked me a different question before.

11 Q I'm asking you this question now. Would you
12 agree with me, as you said in your Autopsy Report, that
13 the dura -- the membrane around the brain -- was
14 intact. Would you agree with me that there is no way
15 for white brain matter -- which is below the grey
16 matter -- brain matter, correct?

17 A (No response)

18 Q Correct?

19 A Yes.

20 Q Could be left on the tree, correct?

21 A Sir, grey and white matter doesn't usually have a
22 distinction unless you're a trained observer looking at
23 it. So, even though it's described as grey matter, it
24 could look white.

25 Q Well, isn't the grey matter surrounded by the

1 membrane also?

2 A Yes.

3 Q And will you agree with me that if the
4 membrane around the brain is intact there's no way that
5 either the grey or the white brain matter would be on
6 the tree?

7 A Yes.

8 Q So, if someone took the stand and testified
9 that they had white brain matter on their hand, that
10 would be an impossible fact based on your autopsy.

11 Correct?

12 A Correct, but perhaps the observer was not aware of
13 what the tissue exactly was.

14 Q And would you agree with me that a trained
15 Medical Examiner -- if they had gone and looked at the
16 tree and saw the blood smear, and whatever else was in
17 there, and taken a sample, that that person, in
18 particular, you, could have determined exactly whether
19 or not, number one, there was tissue along with the
20 blood, correct?

21 A Yes.

22 Q And, number two, exactly where that tissue
23 came from, correct?

24 A Yes.

25 Q And -- and -- and even though that has to do

1 with examining tissues under slides, it's something
2 that either you or someone else could have clearly,
3 without question, have shown to this jury exactly what
4 portion of Jody Scharf's body had hit the tree in
5 question, correct?

6 A That additional documentation would have been very
7 beneficial for the jury to be able to see a photograph
8 of it or to have someone definitively -- definitively
9 recognize it, yes.

10 Q Now, with regards to your autopsy, you
11 described the clothing to the jury, correct?

12 A Yes.

13 Q And the Prosecutor even introduced a picture,
14 correct?

15 A Yes.

16 Q Tell the jury where all the tears and rips
17 were on the clothing.

18 A That was documented by the representative from the
19 Prosecutor's Office in his report.

20 Q Is -- is it your recollection that Detective
21 Alver -- that's who your talking about, correct?

22 A Yes.

23 Q Is he documenting the specific location of
24 each and every tear on Jody Scharf's clothing?

25 A I know that Investigator Alver documented tears in

1 the clothing in his report, yes.

2 Q Did he document that he saw tears, in
3 general, or did he identify the specific location of
4 each and every tear?

5 A I don't know if he had documented each and every
6 tear.

7 Q Well, would you agree with me that tearing on
8 clothing with regards to a homicide investigation is an
9 important thing to look at?

10 A Yes.

11 Q And as the Medical Examiner, did you look at
12 the specific tearing and match it up with various
13 injuries you found on the body?

14 A When I removed Jody Scharf's clothing, I saw that
15 the blue tank top right strap was torn in a similar
16 location to the injury that I described earlier.

17 Q That's it? That's -- that's all you recall
18 about the tears in her clothing?

19 A I recall that the pantyhose was ripped in numerous
20 -- in numerous places.

21 Q Did you observe green vegetation marks along
22 each and every tear that was in her clothing?

23 A That -- that is documented in the photographs,
24 and, yes, I did observe that.

25 Q And tell the jury what could have possibly

1 caused those green marks at the locations where the
2 clothing had been torn?

3 A The green deposit was probably from the leaves
4 that she fell -- fell through.

5 Q Leaves on branches, correct?

6 A Yes.

7 Q And -- and as you sit here today, you have no
8 specific recollection of where each and every tear was
9 on the clothing, correct?

10 A Today, in 2011? No, I do not, sir.

11 Q And you didn't document that in your Autopsy
12 Report, correct?

13 A It is not documented in the Autopsy Report.

14 Q And -- and -- and can you tell me what --
15 what's the relevance to your forensic description of
16 the clothing, you know, striped jacket, crocheted vest.
17 Does that have any -- any forensic significance?

18 A No, sir.

19 Q Would -- would you agree with me that a
20 specific description of the tears in the clothing would
21 be appropriate at that portion of your autopsy?

22 A Sir, I would agree with you in 2011, that I would
23 have documented these findings in a much different way
24 than I did in 1992. So, your point is well taken.

25 Q Thank you.

1 A You're welcome.

2 Q And -- and would you agree with me that with
3 regards to the tears in the clothing, that from a
4 forensic standpoint, a forensic pathologist could
5 determine exactly what caused those tears? For
6 instance, branches versus sharp rocks. Is that
7 correct?

8 A (No response given)

9 Q The way the clothing is torn?

10 A I think -- I -- I think the way to answer your
11 question is a -- a thorough examination of the clothing
12 could give some indication as to what might have caused
13 the tears.

14 Q And -- and would you agree with me, just like
15 the green vegetation that was observed by you at the
16 portions of the clothing that have been torn, if Mrs.
17 Scharf had hit a rock, for instance, that there may be
18 trace evidence of that substance on the clothing?

19 A Sir, that particular information was documented by
20 Investigator Alver about the green stain being at the
21 locations that it was.

22 Q Okay. I'm past the green stain. I'm talking
23 about, isn't it a fact that when clothing comes in
24 contact with an object, for instance, rocks, that there
25 could be trace evidence left on the clothing from the

1 rock?

2 A It's possible.

3 Q And can you tell the ladies and gentlemen in
4 the jury what you did back in 1992 with Jody Scharf's
5 clothing after you photographed it on a white sheet?

6 A Jody Scharf's clothing was released to the funeral
7 home in 1992. Typically, again, in 2011 in an -- in an
8 investigation of this type, the clothing would have
9 been turned over to the Prosecutor's Office.

10 In 1992, at that point in time when the
11 autopsy was done, the investigation was not to the
12 level of that concern and the Prosecutor's Office
13 didn't ask for the clothing to be retained and I
14 released it to the funeral home, as I do with anyone
15 else's personal effects.

16 Q And the blood smear and whatever was in the
17 blood has been destroyed, correct?

18 A The elements have taken it away.

19 Q But irrespective of what took it away, that
20 potential piece of evidence has been destroyed.
21 Correct?

22 A It's no longer anything that can be documented.
23 Correct.

24 Q And -- and would you agree -- and I'll use
25 your terms -- that the clothing, which could have had

1 trace evidence on it to determine exactly what she hit
2 has also -- is also not available at this point.

3 Correct?

4 A Yes.

5 Q Now, with -- with regards to Detective
6 Alver's --

7 (Pause in proceedings)

8 MR. BILINKAS: Do you have his report? I'm
9 just show her Detective Alver's report.

10 (Pause in proceedings)

11 BY MR. BILINKAS:

12 Q I'm just going to show you Detective Alver's
13 reports with regards to his documentation of the ripped
14 clothing. Specifically, the second page, "At the point
15 where the clothing was ripped, green-colored scrape
16 marks were observed, apparently caused by the victim
17 hitting tree limbs." He says "limbs," correct?

18 A Yes.

19 Q And he's the person that you put in charge
20 with documenting the rips in the clothing, correct?

21 A I didn't put him in charge of it, no.

22 Q Who put him in charge of it?

23 A The --

24 MR. MELLO: Objection, Your Honor.

25 BY MR. BILINKAS:

1 Q If you know?

2 MR. MELLO: Not relevant.

3 THE COURT: What's your objection?

4 MR. MELLO: Not relevant to this witness's
5 testimony.

6 THE COURT: Sustained.

7 BY MR. BILINKAS:

8 Q Did he document the exact --

9 MR. MELLO: And, by the way, that is not her
10 report. I thought that the purpose was to ask a
11 question relative to recollection, --

12 MR. BILINKAS: Okay.

13 MR. MELLO: -- not what is being done now.

14 MR. BILINKAS: Agreed.

15 MR. MELLO: So, my objection is to that.

16 MR. BILINKAS: A -- a -- agreed.

17 MR. MELLO: Thank you.

18 BY MR. BILINKAS:

19 Q Would you agree -- strike that -- does it
20 refresh your recollection that the person, to your
21 knowledge, who was documenting the rips in the
22 clothing, never specifically identified the exact
23 location? Does this report refresh your recollection
24 that the --

25 A Yes. Yes.

1 Q And -- and would you agree with me that it
2 was never documented -- the specific locations.

3 Correct?

4 A Yes.

5 (Pause in proceedings)

6 BY MR. BILINKAS:

7 Q What's a RIME Report?

8 A Report of Investigation by Medical Examiner.

9 Q Did you do a report in this case?

10 A The investigator filled out the RIME Report.

11 Q Did you, as his boss, as the Medical Examiner
12 in charge of this case, review it for accuracy?

13 A I reviewed his report, yes, and I added to it in
14 the parts that were -- that I'm responsible for.

15 Q Now, were you apprised -- and this report
16 was done on the 20th, correct?

17 A Yes.

18 Q And -- and you signed off on it on the 20th,
19 correct?

20 A Did I sign -- I -- I probably signed off on it on
21 the 21st.

22 Q All right. I'm going to show you your RIME
23 Report, and refer you to the Supplemental Information
24 page, and ask you if this date refreshes your
25 recollection as to the date you signed off on it?

1 A Sir. That date was written by Officer DeSimone
2 because that is the supplemental part of his report.
3 That's his date. I signed my name to it the date that
4 I reviewed it, which would have been the 21st. So,
5 that date is representative of Officer DeSimone's
6 completion of that part of the report.

7 Q Okay. But as of the 21st, the next day, you
8 obviously were aware of all this information in the
9 report, correct?

10 A I read the RIME Report before I proceed with an
11 examination, yes.

12 Q And you were advised the day after, at the
13 latest, that Mr. Scharf and his wife were walking along
14 a dirt path at some point, correct?

15 A Investigator DeSimone provided that information to
16 me that was part of the preliminary information shared
17 with him when he was present at the scene.

18 Q And -- and are you aware of the fact, that at
19 the time the police responded, that there were up to
20 fifteen cars with people in and out of their cars at
21 the time they initially responded?

22 A Yes.

23 Q And would you agree with me, as the Medical
24 Examiner, once your office is called, it's important to
25 a -- to attempt to, number one, control the scene,

1 correct?

2 A Yes.

3 Q And attempt to locate any potential witnesses
4 that may have information with regards to what had
5 happened, correct?

6 A Yes.

7 Q Now, would you agree with me that Simone, on
8 the night in question, received information from
9 someone that Mr. Scharf flagged someone down with a
10 flashlight?

11 A Officer DeSimone did report that, yes.

12 Q Okay. And -- and, again, you have no idea
13 where he got that information, correct?

14 A He got it from other law enforcement who was on
15 the scene prior to his arrival who had begun the
16 investigation.

17 Q Okay. And -- and did DeSimone communicate to
18 you that he smelled alcohol on Jody Scharf's body when
19 he observed her?

20 A He communicated that to me through his report. I
21 don't recall if that was part of our telephone
22 conversation.

23 Q Okay. And -- and you were describing the
24 path leading to the flat rock as a well-traveled dirt
25 path, correct?

1 A Those are my notes, yeah.

2 Q And -- and would you also describe it as easy
3 to get access to?

4 A The dirt path?

5 Q Yes.

6 A It comes right off the parking lot, yes.

7 Q There's no -- there were no big bushes or
8 obstructions that prevented you from going there the
9 next day, correct?

10 A I don't recall that, no.

11 Q And -- and, as a matter of fact, you
12 indicated that it was easy to get access to, correct?

13 A The dirt path, yes.

14 Q Now, you were advised, at some point before
15 you rendered your opinion here today, that my client
16 indicated his wife went over head first, correct?

17 A That was one of the descriptions that was
18 reported, yes.

19 Q And did you measure the angle from the flat
20 rock, down to the ledge below, to see if that was
21 consistent with a passive fall?

22 A No.

23 Q As you sit here today, did you even know what
24 that angle is?

25 A No.

1 (Pause in proceedings)

2 BY MR. BILINKAS:

3 Q Now, on the night in question, it's protocol
4 that the Prosecutor's Office is notified. Correct?

5 A In a matter such as this?

6 Q Yes.

7 A Yes.

8 Q And -- and you're aware of the fact, are you
9 not, that on the night -- the 20th -- the Bergen County
10 Prosecutor's Office was notified of this death.

11 Correct?

12 A Yes.

13 Q And to your knowledge, did anyone from the
14 Bergen County Prosecutor's Office respond to the scene
15 on the night in question?

16 A To my knowledge, no.

17 (Pause in proceedings)

18 BY MR. BILINKAS:

19 Q Now, do you know what the dimensions of the
20 tree were on September 20th, 1992, that you said Ms.
21 Scharf hit?

22 A First of all, sir, I didn't say Ms. Scharf hit. I
23 was told that she did. And I do not know the
24 particular dimensions of the tree in 1992.

25 Q Do you know the particular dimensions of the

1 tree in 2011?

2 A No, sir.

3 Q And -- and would you agree with me that when
4 you're trying to make a determination with regards to
5 specific injuries that a measurement of the object that
6 the body comes into contact with may have some
7 relevance?

8 A Not necessarily. No, sir.

9 Q In some instances it does, correct?

10 A Some instances it may, yeah.

11 Q Okay. For instance, this tree, would you
12 agree with me, had a thick, heavily, rutted bark on it.
13 Correct?

14 A Yes.

15 Q And tell the jury how skin reacts to coming
16 into contact with a textured material -- patterning?

17 A How it reacts?

18 Q Yes.

19 A It depends on the force that's applied to the
20 skin. A fairly light --

21 Q Okay. Be -- before -- before you start, is
22 there any doubt in your mind that the force applied
23 against that tree was extreme? Is that a fair
24 characterization?

25 A In the areas of the severe injuries that I spoke

1 about earlier, that would be correct.

2 Q Okay. So, to save some time, we don't have
3 to talk about the slight impact? Tell the jury what
4 patterning is -- on the skin?

5 A If -- if -- if a -- if the skin strikes an object
6 that has a pattern to it, it may often times reflect
7 that pattern -- the -- by the way it makes contact with
8 that object.

9 Q For instance, the body part that struck the
10 tree may, in fact, have the pattern of that coarse tree
11 bark, correct?

12 A (No response given)

13 Q Correct?

14 A Yes, it could -- it could happen, yes.

15 Q And can I assume that either you or the
16 Prosecutor's Office took a sample of that coarse tree
17 bark -- P-192 in evidence, --

18 (Pause in proceedings)

19 BY MR. BILINKAS:

20 Q -- does this depiction fairly, and
21 accurately, depict the -- the thick, rugged tree bark?

22 A Yes.

23 Q And did you, or did anyone from the
24 Prosecutor's Office, take a sample of that tree bark to
25 make a determination as to whether or not it matches

1 any patterning on the body?

2 A To my knowledge, no.

3 (Pause in proceedings)

4 BY MR. BILINKAS:

5 Q Did you see any patterning from the coarse
6 tree bark on Jody Scharf's body?

7 A On Mrs. Scharf's body, I observed a linear
8 vertical pattern of abrasion in various areas,
9 particularly, her face and above the large laceration
10 on her chest.

11 Q And my question is, did you see any
12 patterning caused by the bark, specifically, on Jody
13 Scharf's injuries?

14 A Sir, remember that her torso was clothed. So I
15 saw an abrasion above the laceration that could be
16 consist -- that is -- in my opinion ---

17 Q Could be?

18 A -- is -- is consistent with --

19 Q Could be?

20 A -- contact with the tree.

21 MR. MELLO: Objection. Objection. Can the
22 witness, please --

23 MR. BILINKAS: I'll --

24 MR. MELLO: -- be allowed to answer?

25 THE COURT: Let the witness finish.

1 MR. BILINKAS: I'm sorry.

2 BY MR. BILINKAS:

3 A I saw --

4 Q Let me ask you another question.

5 MR. MELLO: No -- no -- no.

6 THE COURT: No, that question.

7 MR. BILINKAS: Okay.

8 DR. CLAYTON: I saw injury on Mrs. Scharf's
9 body that had a pattern, and in my opinion, that
10 pattern is consistent with her striking the tree.

11 BY MR. BILINKAS:

12 Q And did you put that in -- in your Autopsy
13 Report or your Addendum, that --

14 A No, sir.

15 Q It's not in there, correct?

16 A It's not written in the report.

17 Q And would you also agree with me that a
18 hammer also makes a pattern?

19 A Yes.

20 Q And -- and that pattern is clearly
21 distinguishable, correct?

22 A Yes.

23 Q And is it safe to say that you didn't put
24 anything in your report, or your Addendum, with regard
25 to that distinctive pattern caused by someone being

1 struck by with a hammer, correct?

2 A I did not observe on Mrs. Scharf's body any
3 injuries that were consistent with a hammer strike.

4 That is correct.

5 Q Now, with regards to these abrasions you're
6 talking about, P-115 in evidence.

7 (Pause in proceedings)

8 BY MR. BILINKAS:

9 Q Can you come down here and point to that?

10 THE COURT: It's getting close to 12:30.

11 Would this be a good time to break?

12 MR. BILINKAS: If I could just finish this
13 one point, Judge?

14 (Pause in proceedings)

15 BY MR. BILINKAS:

16 Q When -- when you're talking about the
17 parallel, linear abrasions, are those these striation
18 marks above the right breast?

19 A Yes, and --

20 Q And --

21 A -- and, let me say, that this is a picture taken
22 after the autopsy and the incisions that I made to
23 examine Mrs. Scharf have already been sewn up. So, may
24 I just point to the jury. That this is the area where
25 that large laceration had previously been located, and

1 those are the abrasions that are -- as you can see --
2 most concentrated on the upper border of that
3 laceration.

4 Q And would you agree with me that these
5 linear, parallel abrasions go up to the neck area?

6 A Yes.

7 Q And even up to the chin area, correct?

8 A Yes. Yes. On the -- on the right side of the
9 face, in particular, there were parallel linear
10 abrasions.

11 Q And would you agree with me that they stop
12 right above the wound in question that was -- you found
13 in the chest, correct?

14 A Did they stop? Yes, they -- of course they would,
15 because there's a defect in the skin there.

16 Q And do you agree with me that this striations
17 had to be made with head coming down and the object
18 hitting, first, her face to some extent, then her neck,
19 and then severely at the chest, correct?

20 A I would not agree with that, no.

21 Q Well, they're not coming from her feet, up,
22 correct?

23 A Correct.

24 Q Okay. So, --

25 MR. BILINKAS: Can you get me that -- seven,

1 please?

2 (Pause in proceedings)

3 BY MR. BILINKAS:

4 Q I'm going to have -- you want to come here?

5 A Over here?

6 Q Yes. I'm going to have Mr. Alterbaum act as
7 the tree and -- and I'm going to use my teddy bear,
8 okay? And I want you to describe to the jury how Mrs.
9 Scharf's body fell from the cliff and got the wound to
10 the chest -- from the tree? You could bend it or do
11 anything you want to do.

12 A Okay. So, he's the tree?

13 Q He's the tree.

14 A All right. Again, when there's a severe force,
15 the body is going to conform somewhat to the contour of
16 the tree. So, the bear is able to bend a little, but
17 as -- as she strikes the tree with severe force, --

18 Q Now, you're doing it on the side of the tree.

19 A Well, I'm doing it to demonstrate to the jury.

20 Q Here, why don't I just -- his -- his body is
21 the front of the tree. Pretend that this is the blood
22 smear that's been described by the reports.

23 A Sir, the only problem with this reconstruction is
24 that his body contour is flatter than the tree. It
25 needs to be a little more rounded.

1 Q How -- how about if I --

2 A That's why I chose the arm. Correct.

3 Q All right. I'm going to turn him to the
4 side.

5 A Okay.

6 Q All right.

7 A So, if she impacts the tree like that, that puts
8 the right side of her head and face, as well as the
9 upper part of her chest in contact with the tree.
10 She's going to conform to it because of the speed of
11 the impact and so received those injuries, in my
12 opinion.

13 Q Okay, and would you agree with me that these
14 striations marks are going down from the chin, to the
15 neck, to the chest?

16 A They're vertically-oriented. I would agree with
17 you on that, but if you notice, there's also a void in
18 the upper neck area because of the protection of the --
19 the contours of the face.

20 Q And how does she get the laceration on the
21 back of her head that you've described to this jury --

22 A The --

23 Q -- at the same time?

24 A The laceration is to the top of her head.

25 Q Okay. Show -- show the jury how -- how Mrs.

1 Scharf got that injury?

2 A Again, making contact with the tree, here on the
3 right side, and conforming around to the tree trunk,
4 the force is dissipated in that way to cause the
5 laceration above it.

6 Q Did you ever measure the depth of that chest
7 wound?

8 A The depth of the chest wound?

9 Q You measured the length and the width,
10 correct?

11 A Correct.

12 Q Did you ever measure the depth -- how deep
13 that chest wound was?

14 A No.

15 Q And isn't that relevant with regards to a
16 determination regarding how that wound occurred?

17 A No.

18 Q You're sure of that fact?

19 A The depth of the wound?

20 Q Yes. For instance, if she had become impaled
21 on a rock approximately ten feet below on that ledge,
22 and that rock jutted into her chest, --

23 MR. MELLO: If.

24 BY MR. BILINKAS:

25 Q If --

1 MR. MELLO: If -- if.

2 BY MR. BILINKAS:

3 Q -- would the depth of the wound tell you
4 whether or not that was a fact or not a fact?

5 A Sir, a ten foot impact would not cause the injury
6 that I observed.

7 Q Okay.

8 A And the rock would not cause the injury.

9 Q How deep was the wound?

10 A I don't know, sir. I know it made a gaping hole
11 in her chest wall through the skin to the ribs. The
12 skin and muscle that overlie the ribs, that area was
13 disrupted and torn.

14 Q Give me my teddy.

15 MR. BILINKAS: It's a good place to break.

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

18 MR. MELLO: He probably snuggles with that.

19 (Laughter)

20 (Lunch recess)

21 (Proceeding resumes)

22 (Jury enters the Courtroom)

23 THE COURT: Welcome back, ladies and
24 gentlemen of the jury. You may be seated. Madam
25 clerk, roll call.

1 (Jury roll call taken)

2 THE COURT: Mr. Bilinkas, you may continue.

3 MR. BILINKAS: Thank you, Judge.

4 CROSS EXAMINATION BY MR. BILINKAS (CONT.):

5 Q Doctor, when we left, I believe we were
6 talking about these linear abrasions. Would you agree
7 with me that they're vertical -- up and down?

8 A Yes.

9 Q Okay. So, either the body had to be going
10 vertical face down, okay, head first or feet first,
11 correct?

12 A If the object in contact was in a similar plane,
13 yes.

14 Q And with -- with regards to your
15 demonstration with the teddy bear and, again, correct
16 me if I'm wrong, it's your position --

17 MR. BILINKAS: Can you stand up, please?

18 (Pause in proceedings)

19 BY MR. BILINKAS:

20 Q -- it's your position -- and -- and this is
21 the front of the tree -- that Mrs. Scharf's right side
22 of head and her right chest impacted the tree at the
23 same time?

24 A Virtually, yes.

25 Q And when you say virtually, did they impact

1 at the exact same time or could there have been two
2 separate strikes?

3 A The strikes were -- understanding the dynamics --
4 the strikes may not be simultaneous, but might be just
5 a -- a -- a -- a -- a half a second off.

6 Q Okay. And the blood smear described, would
7 that be caused by the wound to the head or to the
8 chest?

9 A Either. Either or.

10 Q As you stand here today, because you've got
11 no sample of that blood or any tissue on the tree, you
12 can't say whether or not it was the head or the chest?

13 A Right. There's a laceration of the head and
14 there's a laceration of the chest, both would bleed and
15 could deposit the blood.

16 Q Okay. And when the body struck the tree
17 from, how high up?

18 A Over 119 feet, assuming the point that was
19 specified initially.

20 Q Okay. And -- and -- and -- and it's your
21 position that there were no indications that it hit
22 anything on the way down of significance, correct?

23 A It's my position that nothing on the cliff face
24 struck Mrs. Scharf prior to her contact with the tree.
25 That does -- that doesn't mean that -- as I say,

1 there's a canopy of branches that were intervening that
2 she presumably struck as well.

3 Q And -- and would you agree with me that that
4 canopy, depending on the thickness of the branch, if
5 she hit those branches, could have propelled her
6 further away from the cliff face?

7 A No.

8 Q All right. Now, after she hit the impact
9 tree without any significant interruption, her head --
10 the right side -- comes in contact after 119 feet,
11 correct?

12 A Again, assuming the -- that the ledge is the
13 initiating point.

14 Q Okay. And how fast would her body be
15 traveling at that point?

16 A It depends on the acceleration that she received
17 initially.

18 Q Okay. If she had slipped and fell, would you
19 agree with me that her body, if she didn't hit anything
20 from the top to the bottom, would be traveling in
21 excess of 60 miles per hour?

22 A I don't know that, sir.

23 Q Did you ever attempt to calculate or have
24 someone calculate that rate of speed?

25 A No, sir.

1 Q Do you think that's relevant with regards to
2 whether or not a head injury can be caused in the
3 manner that you've described?

4 A I think it's additional information. I don't
5 think it discounts my position that the head injury is
6 significant and is consistent with her contacting the
7 tree based on the injury pattern that I saw.

8 Q Okay. When you talk about the injury
9 pattern. The head or the -- and the chest and/or the
10 chest hit at or about the same time according to you,
11 correct?

12 A At or about the same time, yes.

13 Q Okay. And -- and you indicated that there's
14 a -- an avulsion of the right side of her scalp,
15 correct?

16 A There's an avulsion of her scalp.

17 Q Okay. And it started on what side -- the
18 right side?

19 A To me, the more severe component of the head
20 injury is on the right side.

21 Q And -- and -- and would you agree with me
22 that there's an avulsion on the left side?

23 A Yes.

24 Q Okay. And how does the left side of the head
25 get avulsed if it's struck on the right side?

1 A It's a dissipation of force that she sustained at
2 the point of impact that's dissipated through the body.
3 It's the same thing for the chest injury. The force to
4 the chest is an anteriorly, but it's dissipating force
5 into the chest cavity as it's compressing it, causing
6 injury not only to the front structures, but also to
7 the back structures.

8 A And -- and would you agree with me that this
9 injury that you've described -- falling 119 feet from
10 the top of the cliff to the tree without hitting
11 anything -- would be called a blunt force trauma
12 injury?

13 A Yes.

14 Q Okay. Now, with regards to that blunt force
15 trauma injury, would you agree with me that under those
16 circumstances, the skin is tearing?

17 A Yes. The skin of her head and her chest is torn.
18 That's what laceration means.

19 Q Okay. And -- and with regards to that
20 laceration, there's a jagged edge, or rugged edge to
21 it, correct?

22 A Yes. That differentiates a blunt trauma from a
23 sharp force injury.

24 Q Okay. And --

25 A That is correct.

1 Q -- and the blunt force trauma, there would be
2 bruising on either side of where the skin tore,
3 correct?

4 A Not necessarily. It could be bruising. It could
5 be abrasion.

6 Q Okay, --

7 A Or it --

8 Q -- but one or the other, correct?

9 A It depends, again, on the specific surface that's
10 contacted and how the contact is made.

11 Q Okay. And would you agree with me that there
12 would be a -- hemorrhaging on either side of the torn
13 scalp?

14 A There is -- again, it's -- it's -- it depends on
15 the immediacy of the fatal injury.

16 Q Okay. Well, when -- when you say the
17 immediacy of the fatal injury, if she fell from the
18 top, didn't hit anything, and hit the tree, there would
19 be hemorrhaging under those circumstances, correct?

20 A There was hemorrhaging in the chest wound. There
21 was not specific hemorrhaging associated with the scalp
22 wound because of the avulsion of it.

23 Q Now, I'm going to show you --

24 MR. MELLO: Thank you. D-87.

25 MR. BILINKAS: D-87.

1 BY MR. BILINKAS:

2 Q D-87 and we'll put this on the screen.

3 MR. MELLO: In evidence?

4 MR. BILINKAS: In evidence.

5 MR. MELLO: No objection.

6 (D-87 admitted into evidence)

7 BY MR. BILINKAS:

8 Q Now, would you agree with me that -- I'm
9 pointing to the left side of her head, correct?

10 A Yes.

11 Q And would you agree with me that this scalp
12 tear is not irregular or rugged?

13 A No.

14 Q That you wouldn't agree or it's not?

15 A No, I wouldn't agree.

16 Q Is there any hemorrhaging showing in the
17 scalp?

18 A No.

19 Q Now, when she struck the tree, and you
20 indicated it was a blunt force injury. Correct?

21 A Yes.

22 Q You testified to various fractures that she
23 had in her skull, correct?

24 A Yes.

25 Q Now, with regards to the fractures, were --

1 were any of them crushed inward towards the brain?

2 A Not that I recall -- except -- with the exception,
3 perhaps, of the basilar fractures which disrupted and
4 did lacerate, or tear, the basilar surface of the
5 brain.

6 Q And when you say the basilar, you're talking
7 about the bottom of the neck going up, correct?

8 A No. I'm talking about the base of the brain,
9 which sits at approximately this location and is
10 subjected to the forces that caused the fracturing of
11 the base of the skull.

12 Q Okay. And -- and did you put in your Autopsy
13 Report that the skull was a depressed fracture?

14 A I don't believe so.

15 Q And -- and can you explain to the jury what a
16 depressed fracture is?

17 A A depressed fracture means that if you have a -- a
18 skull, and depending on which area of the skull, a
19 depression would be that the fracture fragments would
20 be noted to come into the wound, say.

21 Q Okay. When -- when you say the wound, so,
22 according to you, she falls 119 feet, her head hits the
23 tree, and -- and the force of that impact does not
24 crush the skull into the brain, correct?

25 A Sir, I didn't say 119 feet.

1 Q Okay.

2 A You're assuming that if the point that's specified
3 at the top of the cliffs is indeed the launch point --
4 if you wish to call it that -- I don't know that for a
5 fact.

6 Q Okay. And --

7 A I'm saying that she fell a significant distance
8 and she was propelled out from the cliff edge, at which
9 time she acquired velocity, and she came through the
10 air and her first, and primary contact, was to the
11 tree. That's what I'm saying.

12 Q Okay. And irrespective of the distance,
13 wherever she fell from, her velocity when she hit the
14 tree at the base of the cliff did not cause the skull
15 to depress inward into the brain?

16 A I am saying, if you recall my testimony earlier,
17 that my examination of the skull caused a complex
18 fracture pattern involving the right frontal, parietal,
19 and temporal bones. I didn't indicate any depression.
20 I described it as a complex fracture pattern.

21 Q So, your answer to my question is that the
22 skull didn't break inwards into the brain, correct?

23 A Not that I recall and as -- is -- is not specified
24 in the Autopsy Report.

25 Q Well, and, can we assume that if you noticed

1 that during the autopsy you would, in fact, put that in
2 your report?

3 A Possibly.

4 Q Then, would you agree with me that there was
5 no intercerebral hemorrhaging?

6 A Yes. There was no hemorrhage found within the
7 substance of the brain tissue. The hemorrhage was on
8 the surface of the brain.

9 Q And -- and would you agree with me that there
10 was no injury of the midbrain, the pons, or the
11 medulla?

12 A That is correct, because those structures are in
13 the posterior components of the base of the skull,
14 which were not fractured.

15 Q Now, with regards to this blunt force -- force
16 injury, what's a -- the galea?

17 A The galea is the tissues under the scalp.

18 Q Okay. And so, directly under the scalp
19 there's tissues that's called galea, correct?

20 A Yes. It's -- it's soft tissues under the scalp
21 and on the surface of the skull.

22 Q Okay. And would you agree with me that there
23 was no sub-galea hemorrhaging of that tissue?

24 A That's what's listed in the Autopsy Report. Yes,
25 that's correct.

1 Q So, she falls from whatever height, she hits
2 head first into the tree, there's no sub-galea
3 hemorrhaging -- the tissue surrounding the -- beneath
4 the scalp, correct?

5 A Yes.

6 MR. MELLO: Objection. There's no testimony
7 she hit head first.

8 THE COURT: Sustained. Ask another question.

9 BY MR. BILINKAS:

10 Q Isn't it a fact, that according to you, the
11 body hit head or almost at the same time as the chest?

12 A It's my position -- yeah -- it was my testimony
13 that the head struck the tree with a significant force.

14 Q Now, she had a blood alcohol content of 1.2,
15 correct?

16 A No. She had a blood alcohol content of --

17 Q .12.

18 A -- .12 percent.

19 Q .12. How -- how many drinks was that?

20 A It depends on the nature of the alcoholic
21 beverage, but as a general answer to your question, and
22 it's only an estimate because it depends on how much
23 time the drinking took place over. If we assume that
24 the -- that the consumption of alcohol took place over
25 a relatively short period of time, such as an hour or

1 two, a blood alcohol level of .12 percent would be
2 equivalent to approximately four average size drinks --
3 wine, or beer, or something like that.

4 Q And -- and -- and how about if she was
5 drinking at Schooley's Mountain with one of her friends
6 there hours before?

7 A But it --

8 Q How would that affect the .12?

9 A The .12 percent that's recorded by the laboratory
10 is the indication of the alcohol level in Mrs. Scharf's
11 body at the time of her death.

12 And if she was drinking hours prior to that a
13 -- my point is, that interpreting a blood alcohol level
14 on a deceased person only reflects what occurred at
15 that time of her death. I can't really comment on what
16 could have been her blood alcohol at another point in
17 time.

18 Q Okay. And would you agree with me that that
19 .12 is enough to effect her balance?

20 A I don't make any determinations of that, sir,
21 because every individual handles alcohol in a different
22 way. So, I make no estimate of how her behavior would
23 be with a .12 blood alcohol.

24 I can only report to you and to the jury that
25 that was the level of alcohol detected in her system by

1 our laboratory and the sample I submitted that I
2 recovered during the autopsy examination.

3 Q Isn't it a fact that an alcohol level of that
4 amount would affect someone's perceptions?

5 A Sir, I don't comment on that. The only thing I
6 will comment regarding her blood alcohol is, present
7 day, a blood alcohol level of .08 percent is indicative
8 of driving while intoxicated.

9 So, if you use that as a baseline, Mrs.
10 Scharf's blood alcohol is above what is the legal limit
11 for driving while intoxicated at the present time.

12 (Pause in proceedings)

13 MR. BILINKAS: D-99 in evidence.

14 MR. MELLO: No objection.

15 (D-99 admitted into evidence)

16 BY MR. BILINKAS:

17 Q The abrasions below her right knee and on top
18 of her left knee, are they consistent with someone
19 scraping her knees on a rock?

20 A Those are -- the legs are -- the injuries of the
21 legs that are pointed out there are abrasions, and that
22 is a scraping type of injury, and depending on the
23 surface, it's usually a rough surface that would cause
24 an abrasion or scraping of the -- of the skin.

25 Q Would a rock ledge cause those types of

1 abrasions?

2 A It depends on the configuration of the rock ledge.

3 A smooth edge may not cause an abrasion. It may cause
4 a contusion if the impact is significant.

5 Q Now, how many times have you talked to Dr.
6 Baden?

7 A Conversationally or in reference to this case?

8 Q Let's start with this case first.

9 A I met with Dr. Baden in August of 2005 when he
10 came to the Medical Examiner's Office. I reviewed with
11 him the file that I have for Mrs. Scharf and as well as
12 the photographs. I showed him all the photographs that
13 were in our file at the Medical Examiner's Office.

14 Then he and I did participate in a -- another
15 -- in another meeting at the Prosecutor's Office on
16 that afternoon in August of 2005.

17 And as far as this case -- discussing the
18 particulars of this case -- I don't recall speaking to
19 Dr. Baden again about that.

20 Q Okay. Now, when the body hit the tree, it
21 fell to the ground and became wedged between the tree
22 and a rock, correct?

23 A As was reported to me by the persons who recovered
24 the body, yes.

25 Q Okay. And -- and do you know the exact

1 position of the body?

2 A I recall that -- I believe it was Lieutenant
3 Pagan's report that said she was face down.

4 Q Okay. And what part of her body was wedged
5 between the rock and the tree?

6 A I believe her head.

7 Q And did any of the injuries that you
8 described, were they caused by her body becoming wedged
9 between that rock?

10 A Perhaps some of her facial injuries could have
11 been caused at that point in time and the same with the
12 other injuries -- the minor scrapes that are on -- for
13 -- her legs, for instance, could have been caused when
14 she made contact with the ground.

15 Q Well, can you describe the -- the rock?

16 A No.

17 Q When you went up there -- how many years
18 later?

19 A I went up there in January of 2006 -- fourteen
20 years later.

21 Q And when did -- would you agree with me there
22 was no rock at that time?

23 A I don't recall seeing the rock, sir, to be honest
24 with you. I recall reviewing the tree, and reviewing
25 the ledge, and the positions of both of those

1 structures.

2 Q Would it have been improper for anyone
3 associated with either law enforcement or the Medical
4 Examiner's Office to remove the rock that the body was
5 wedged between?

6 MR. MELLO: Object to the form of the
7 question.

8 THE COURT: Sustained.

9 BY MR. BILINKAS:

10 Q To your knowledge, as you sit here today,
11 were you ever told that the rock that the body was
12 wedged between had, in fact, been moved?

13 A No.

14 Q Was there blood on the rock that you could
15 see?

16 A I don't know.

17 Q You indicated that Mrs. Scharf's feet were
18 clean, correct?

19 A Yes.

20 Q And -- and would that be indicative of
21 someone who was wearing shoes?

22 A I would think that would be one possibility, yes.

23 Q And -- and would you agree with me that when
24 a body falls from a -- a point and strikes another
25 object, it's not unusual for the shoes to come off?

1 A That's absolutely correct, yes.

2 Q And -- and would you agree with me that with
3 regards to your analysis, it would have been important
4 to -- to determine what type of shoe she was wearing?

5 A Possibly.

6 Q For instance, different shoes have better
7 traction, correct?

8 A Yes.

9 Q Higher heels -- someone may have less
10 balance, correct?

11 A Yes.

12 Q And -- and no one ever found the shoes,
13 correct?

14 A Correct. To my knowledge, no.

15 Q And did you or anybody from your department
16 ask that someone go out and try to search for those
17 shoes that had fallen off the body?

18 A No, sir.

19 Q Is that important enough to do in your mind?

20 A Again, you're asking me a question, sir, in 2011
21 for a response from 1992. If you ask me today, yes,
22 that would have been a very nice piece of information
23 to have because I could have answered your questions
24 more directly. This was 1992, sir. I had no way to
25 anticipate what questions you were going to ask me in

1 2011.

2 Q Well, you did know when she was brought to
3 the Medical Examiner's Office that she had no shoes,
4 correct?

5 A That is correct, and that happens to many of the
6 patients that I examine, that the shoes may not be
7 present during my examination.

8 For instance, as you indicated, in motor
9 vehicle accidents that often times the victim,
10 particularly, a pedestrian, may not come to me with
11 shoes on. The same thing with a driver. If there's a
12 severe motor vehicle collision involving a driver that
13 becomes injured, fatally, often times the shoes may
14 still remain in the vehicle and they are not present
15 during my autopsy examination.

16 Q Now, with regards to her wrist, there were no
17 injuries to her wrist, correct?

18 A Yes. You mean, cuts or anything like that?

19 Q Cuts.

20 A I didn't notice any cuts on her wrists, no.

21 Q Any -- any indication that she was bound or
22 immobilized?

23 A No.

24 Q Would indicate her hands were free to
25 struggle should she be in a position where she felt she

1 needed to, correct?

2 A I had no physical evidence in examining her body
3 that her wrists were in -- impaired in any way.

4 Q Now, with regards to your death certificate,
5 you originally testified that soon after the event, you
6 put that the case was under investigation -- pending
7 investigation, correct?

8 A On the death certificate that was signed by me
9 after the performance of the autopsy, the manner of
10 death was listed as pending investigation.

11 Q Okay. The manner of death, pending
12 investigation. And can I assume before you put down
13 could not be determined that you completed a thorough
14 and competent investigation before you changed that
15 official document?

16 A You can infer from that, sir, that I that I was a
17 participant at that time, 1992, in the death
18 investigation of Mrs. Scharf.

19 At the point in time that I signed the
20 pending death certificate I did not have the results of
21 the toxicology test, which were of interest to me, and
22 as part of my routine examination. The Prosecutor's
23 Office had just been involved in the death and was
24 beginning to do their part of the investigation.

25 So, you may infer from that there needed to

1 be time for investigative details to come to light that
2 would hopefully impact my final determination at the
3 cause of death -- of the manner of death -- excuse me.

4 Q Well, did anyone force you to amend the death
5 certificate to "could not be determined" at the point
6 in time when you did it?

7 A No, only that the State Medical Examiner's Office
8 likes to have cases be completed. So, as the new year
9 approached in 1993, this case was still open on my
10 registration of the manner of death. And I believe I
11 might have conferred with the Prosecutor's Office to
12 see if there were any additional details that were
13 available at that time that would impact my
14 determination.

15 As a matter of fact, there were not, and we
16 were not satisfied with the information that we had to
17 render a -- a definitive opinion. And that's why in
18 January of 1993 I listed that the manner of death was
19 not able to be determined at that time because I and
20 the other people connected with the investigation felt
21 that --

22 Q You and who?

23 A The Prosecutor's Office, in particular, felt that
24 more information was necessary to be more definitive in
25 the determination.

1 Q So, with regard to the determination that the
2 manner of death, homicide, could not be determined, you
3 consulted with the Prosecutor's Office and they played
4 a part in that decision, according to your testimony.
5 Correct?

6 A That would be absolutely correct and that's the
7 appropriate procedure for a Medical Examiner to follow.
8 I'm not the only one involved in this investigation,
9 nor am I the primary investigative agent in this
10 particular situation.

11 My purpose is the direct examination of the
12 body and to -- trying to derive from that information
13 that can be beneficial, or useful, to the other
14 investigators who are all part of a collaborative team.

15 A medical legal death investigation is
16 properly done with the utilization of any and all tools
17 and information sources that are available.

18 My particular responsibility is to be the one
19 to put my hand to the death certificate document, and
20 by reviewing all the information that is gathered by
21 other sources, as well as my participation in examining
22 the victim, to try to come to a determination to a
23 reasonable degree of medical certainty what items
24 should be placed on the death certificate that I have
25 to put my hand to.

1 Q And -- and in '94, did that collaborative
2 opinion stay the same?

3 A Sir, after 1993 --

4 Q Okay.

5 A -- my particular part of the case was completed at
6 that time. That case remained dormant until the 2000s
7 when the Prosecutor's Office initiated a cold case
8 review and that's what resurrected the case.

9 So, over those subsequent years, as far as
10 I'm aware, there was no additional information that was
11 reflected to me to impact my opinion regarding the way
12 the case had been handled initially.

13 Q And with regards to all the investigative
14 things that your office did, for instance, the
15 toxicology report that was of interest to you, and
16 other things, nothing, at that point, caused you to
17 change your mind to amend the death certificate,
18 correct?

19 A What time frame are we thinking of now?

20 Q '93 -- '94 -- and I'm talking just with
21 regards to your office's investigation.

22 A There was nothing additional that was brought to
23 my attention in those intervening years that prompted
24 me to re-amend the death certificate.

25 Q And at some point in time, you're contacted

1 by the Prosecutor's Office again. Correct?

2 A Yes.

3 Q The same people that you collaborated with,
4 with regards to amending the death certificate the
5 first time it could not be determined?

6 A The same office. There were new people looking at
7 the case.

8 Q Okay. And when did Michael Baden get
9 involved?

10 A Dr. Baden, I believe, was involved in 2005. That
11 was, at least, my first contact with him in August of
12 that year.

13 Q Okay. And -- and you meet with him and he
14 goes over the case with you, correct?

15 A Dr. Baden came to our office, reviewed my files,
16 and I sat with Dr. Baden, and in those days, in 1992,
17 we took Kodachrome slides of the autopsy.

18 I put all the slides in the carousel
19 projector and I projected them up on the board in our
20 conference room and allowed Dr. Baden to see,
21 basically, the information that I had collected in our
22 Medical Examiner's Office regarding Mrs. Scharf's
23 death.

24 So, he and I reviewed that information
25 together. I'm the -- I was the pathologist that

1 examined her. Dr. Baden was called in on consultation
2 and I was sharing the information that I had available,
3 and sharing it with him, as is appropriate for any
4 consultant, or anyone that wants to review any of my --
5 my work.

6 Q But aren't you normally the expert that the
7 Bergen County Prosecutor uses on --

8 MR. MELLO: Objection, Your Honor.

9 MR. BILINKAS: What?

10 THE COURT: Sustained. Ask another question.

11 BY MR. BILINKAS:

12 Q After you meet with Baden, you meet with more
13 Prosecutors. Correct?

14 A We went back to the Prosecutor's Office and
15 certain representatives of the Prosecutor's Office were
16 there, Officer John DeSimone was there, and Doctor
17 Baden was there, and myself.

18 Q Okay. Did they convince you at that point to
19 go to the base of the cliff?

20 A I believe at that particular meeting, Dr. Baden
21 had indicated to me that he had been there. He had
22 been to the base of the cliff. And it was suggested to
23 me that -- that might be an angle or perspective that I
24 would like to experience, and it was suggested that
25 perhaps I would take the hike as well. And I thought

1 in view of the fact that this was now a cold case
2 review, that that was, again, something additional that
3 could be brought to the table for processing and
4 formulation.

5 Q And that was Baden and the Prosecutor's
6 suggestion, correct?

7 A I remember Dr. Baden -- have -- having learned
8 that Dr. Baden had made the climb. I don't recall if
9 Dr. Baden suggested it to me. I spoke to the
10 Prosecutor's people about it because they were going to
11 be the ones to take me to the location --

12 Q And you --

13 A -- and we had to also arrange the time when we
14 would all be available and the weather would be
15 appropriate to allow us to make the climb and view the
16 site.

17 A Okay. And would you agree with me that, you
18 probably should have done that soon after the event?

19 A Sir, honestly, after all these questions that
20 you've asked me, aren't you familiar? I mean,
21 hindsight is always 20/20 and I wish I knew then what I
22 know now. I mean, I have become -- I think -- I -- I
23 was certainly a more experienced pathologist over the
24 years. And as I indicated to you earlier when you
25 asked me a similar question, if Jody Ann Scharf's death

1 occurred today, I would handle it in a much different
2 manner that I did in 1992, but I also do not apologize
3 for my inexperience in 1992.

4 To me, that's what we live for and that's the
5 way life is. You learn from every experience. As a
6 Medical Examiner I have learned over the course of my
7 career from every patient that I've examined. Every
8 patient has taught me something.

9 So, yes, in 2011, I think I'm a better
10 pathologist than I was in 1992, if that's your
11 question. That's my answer.

12 Q Okay. That -- that wasn't my question, but
13 was Doctor Baden available back in '92 or '93?

14 A Yes. Dr. Baden's been around for a long time
15 practicing forensic pathology.

16 Q And you'll -- you'll agree with me that with
17 regards to your amending of the manner of death, there
18 is virtually nothing that was not available to you and
19 to the Prosecutor's Office back in '92 and '93?

20 A Except for the fact that I had more -- I had more
21 experience as I was participating in the cold case
22 review. So, I approached my analysis of the event and
23 the injuries from a more experienced perspective at the
24 time of the cold case review than I had in 1992. I'll
25 be perfectly willing to admit that, sir.

1 My -- the way I analyze cases today is very
2 much different than that because of the experiences
3 that I've had. When I first began in forensic
4 pathology, I didn't understand -- or I -- I was more
5 under -- thinking that my role was to just tabulate
6 injuries and make a determination.

7 I have learned over the course of the years
8 working with many know -- knowledgeable people, that my
9 role as Medical Examiner is not just to list injuries,
10 but to understand causation of injury and to apply
11 dynamics to injury causation and formation.

12 So, yes, I have changed my approach to
13 pathology, but I think that's part of learning.

14 Q Are you trying to say that you're learning
15 from your mistakes from this case?

16 A I'm learning from the experiences that I've
17 accumulated over the years.

18 Q Did you make --

19 A You may call them mistakes, sir. I did the best I
20 could in 1992 documenting what I had observed with Mrs.
21 Scharf, and some of the things that you've already
22 pointed out would not be done today.

23 I can't change that, sir. That's what
24 occurred in 1992. I was not the pathologist then that
25 I am now. I don't know how many times you have to ask

1 me that question.

2 Q Okay. Let -- let me ask you another
3 question.

4 A Okay. Thank you.

5 Q This -- this amendment that the Prosecutor
6 introduced into evidence, you made a number of drafts
7 before that official document, correct?

8 A The addendum?

9 Q The addendum.

10 A Yes.

11 Q And -- and would you agree with me that the
12 first draft that you wrote in November of 2006 doesn't
13 mention anything about tissue or hair like your more
14 recent one does?

15 A I don't know. I don't -- I'm not familiar with
16 that document.

17 Q I'm showing you what's been marked D-273. Is
18 this a rough draft that you wrote back in November of
19 2006, before the one you submitted --

20 A That's my handwriting.

21 Q -- in January of 2007? And in the 2007, the
22 one that was introduced by the Prosecutor, you talk
23 about Pagan and Coffey [sic] observing blood, hair and
24 tissue, correct? In the most recent one, correct?

25 A Yes.

1 Q And would you agree with me that there's no
2 mention in the first draft of the addendum that's in
3 your hand, with regards to any blood, tissue or, in
4 particular, hair?

5 A Yes. That's correct.

6 Q Did anyone in -- did anyone influence you to
7 change your original draft to include tissue and hair?

8 A Sir, that's why a rough draft is a rough draft. I
9 make rough drafts all the time and I redo my -- word --
10 word product before I submit a final form.

11 Q And with regards to that specific issue, you
12 obviously never saw the tree in question on the day.
13 Correct?

14 A On the day of the event, I did not see the tree in
15 question.

16 Q And the only people that saw that tree to
17 describe anything to you were Coffey [sic] and Pagan,
18 correct?

19 A It's Lieutenants Pagan and Cioffi, yes.

20 Q Cioffi. And your report and opinion is based
21 on their observations, correct?

22 A My report and opinion incorporated their
23 observations, correct.

24 Q For instance, if Jody Scharf did hit the
25 ledge, and there was tissue and blood on the ledge, and

1 Cioffi and Pagan missed that fact, that would change
2 your opinion with regards to Mrs. Scharf striking the
3 tree first without hitting it, correct? If -- if -- if
4 they missed things, correct?

5 A No, sir, because my opinion is based on more than
6 that.

7 Q Well, if Mrs. Scharf -- Scharf struck any
8 portion of the cliff, would you agree that that would
9 have propelled her further away from the cliff?

10 A No, sir. I answered that question before. No, I
11 do not agree with that assessment.

12 (Pause in proceedings)

13 MR. BILINKAS: I believe I'm done. I just
14 want to check my notes. Thank you, Judge.

15 (Pause in proceedings)

16 MR. BILINKAS: Nothing further, Judge.

17 THE COURT: Redirect.

18 MR. MELLO: Thank you for your time, Doctor.

19 THE COURT: Thank you, Doctor.

20 DR. CLAYTON: Thank you.

21 THE COURT: You may step down. Are we ready
22 to call the next witness?

23 MR. MELLO: Yes, sir.

24 (Pause in proceedings)

25 MR. MELLO: Thank you, Judge. Appreciate it.

1 Michael Baden.

2 (Pause in proceedings)

3 THE COURT: Please step up. Face the Court
4 Clerk.

5 M I C H A E L B A D E N, STATE'S WITNESS, SWORN

6 COURT CLERK: Please state your name and
7 spell your last name.

8 DR. BADEN: Michael Baden, B-a-d-e-n.

9 THE COURT: You can just have a seat.

10 DR. BADEN: Thank you.

11 THE COURT: You may begin.

12 MR. MELLO: Thank you, sir.

13 VOIR DIRE EXAMINATION BY MR. MELLO:

14 Q Good afternoon, Doctor.

15 A Good afternoon, Mr. Mello.

16 Q Doctor, what I'd like to do is introduce you
17 to the jury by way of discussing with you your
18 education, background and training, with particular
19 emphasis on the field of forensic pathology. And in
20 that regard, I suppose a good place to start would be
21 to have you tell the jury your educational background.

22 A Yes. I received a Bachelor of Sciences Degree in
23 1955 from the City College of New York in New York
24 City. I then received a Medical Degree -- M.D. degree
25 in 1959 from NYU -- New York University School of

1 Medicine. I then was intern, a resident, and Chief
2 Resident, then Fellow at Bellevue Hospital Medical
3 Center in Manhattan, first, in internal medicine and
4 then in pathology.

5 While I was a resident doctor at Bellevue, I
6 did moonlighting. I worked part-time as an Assistant
7 Medical Examiner for the City of New York. And when I
8 finished my training at Bellevue, in 1965, I became a
9 full-time Medical Examiner for the City of New York. I
10 remained at that office in various positions -- Deputy
11 Chief Medical Examiner -- Deputy Chief is in charge of
12 one of the five boroughs -- and then I was Chief
13 Medical Examiner of New York City.

14 In 1985, I transferred to the New York State
15 Police as Chief Forensic Pathologist for the New State
16 Police and that's a position I still hold. It's a
17 half-time position, although I'm on call 24/7. And
18 that permits me to do private consultations, as in this
19 matter, that I'm here as a private forensic physician -
20 - forensic pathologist -- not representing the New York
21 State Police.

22 And that's my educational background and
23 where I am. I also -- before becoming Medical Examiner
24 -- I had to take various exams in the field of
25 pathology and I'm Board Certified in three areas of

1 pathology, which is anatomic pathology, clinical
2 pathology and forensic pathology.

3 Q At this point, why don't you explain to the
4 jury the concept of pathology and forensic pathology?

5 A Yes. There are twenty-four specialties in
6 medicine -- surgery, internal medicine, dermatology --
7 and pathology is one of the twenty-four specialties in
8 medicines.

9 Unlike most of the specialties, pathology
10 isn't involved with treating patients. It's involved
11 with diagnosing what's wrong with the patient. So, the
12 pathologist at the hospital, for example, will be an
13 expert in diagnosing the -- the natural diseases for
14 which most people come to hospitals: cancer, heart
15 disease, diabetes, prostate cancer.

16 And the pathologist does that by looking at
17 biopsies under the microscope -- is it cancer, is it
18 not cancer -- by running the laboratory in the
19 hospital, doing blood tests, urine tests, and other
20 chemical tests to find out if there's any abnormalities
21 present.

22 The forensic pathologist goes on to further
23 education in the area of unnatural death -- that is 92
24 percent of people die of natural causes in this
25 country, 8 percent of accident, suicide, homicide, and

1 that's the area where the forensic pathologist has
2 additional training, and also training in injury to
3 living people, as well as to decedents with the idea of
4 making a diagnosis so that the clinical doctors -- the
5 internists, the surgeons -- can then take appropriate
6 treatment action.

7 Q Doctor, with regard to your experience in the
8 field, particularly, of forensic pathology, in addition
9 to your professional positions, can you discuss with us
10 your teaching positions that you have held?

11 A Yes. Pardon me. Yes. I've -- at various times -
12 - been a visiting professor, adjunct professor, at
13 various medical schools -- at the New York University
14 School of Medicine, Albert Einstein School of Medicine,
15 Albany Medical Center, and at New York Law School, John
16 Jay School of Criminal Justice.

17 In each of those positions I would teach
18 about aspects of forensic medicine, forensic pathology,
19 and how it can be important for a physician, or a
20 lawyer, or a law enforcement person, to know what
21 information a forensic pathologist can contribute to
22 treating patients or to an investigation.

23 Q Can you discuss with us any publications you
24 have been responsible for in the field?

25 A I've been author/co-author of some 80 or 90

1 professional articles, chapters in textbooks, relative
2 to forensic pathology, relative -- my -- my areas of
3 research had -- were in the area of drug abuse,
4 alcoholism. So, a lot of my papers and textbooks have
5 to do with those areas.

6 I've also been involved with publishing a --
7 a number of books for the general public on forensic
8 medicine -- how the forensic -- the forensic
9 pathologist -- the Medical Examiner -- arrives at
10 decisions and what can -- he or she can contribute to
11 determining what happened to a given injured
12 individual.

13 Q Can you discuss with us any appointments you
14 have had to various governmental agencies and the work
15 that you did with such agencies?

16 A Yes. When I was in New York City, I served on
17 various mayoral commissions on drug abuse and
18 alcoholism. On a -- a State level, I -- I still serve
19 as the forensic pathology input -- forensic
20 pathologists for gubernatorial commissions that look
21 into provision of healthcare to prisoners throughout
22 the State and that examines every death that occurs in
23 prison in the -- or jails in New York State. And I
24 serve as a similar forensic pathology member of a -- a
25 commission that looks into all mental health deaths and

1 issues of mental health healthcare throughout the State
2 of New York. On --

3 Q Can you give us some examples of work,
4 specific examples of work, that you've done for various
5 governmental appointments?

6 A Yeah. On a -- on a -- on a State level, I've been
7 an expert for various States around the United States.
8 In the State of Mississippi, investigation the death of
9 Medgar Evers who died -- who was shot during the Civil
10 Rights time in 1963 in Mississippi. I was an expert
11 for the State of California in the investigation death
12 of John Belushi.

13 On a Federal level, I was a member of the
14 U.S. Congress Select Committee in Assassinations that
15 was charged with reexamining the deaths of President
16 John F. Kennedy and Dr. Martin Luther King in the 1970s
17 and I was the Chairman of the Forensic Pathology Boards
18 of those commissions.

19 Internationally, I was asked to be the
20 forensic pathologist in -- investigating the -- the
21 deaths of Nicholas, and Alexandria, and Anastasia in
22 the 1970 -- 1920s for the Russian government. The
23 Russian government had found some skeleton remains in
24 -- in Siberia in the Ural Mountains, and asked myself
25 and three other anthropologists and dentists to go to

1 that area, and to identify whether or not the remains
2 were those of the Romanovs and I did that in the late
3 '70s.

4 Q Can you tell us approximately how many
5 autopsies -- post mortem examinations -- you have
6 conducted in your career, Doctor?

7 A I've performed well more than 20,000 medical legal
8 autopsies since starting back in 1960 as a Medical
9 Examiner in New York City.

10 Q And can you tell us an approximate number of
11 times and jurisdictions where you have testified as an
12 expert in the field of forensic pathology?

13 A I've testified many times in most of the States of
14 the United States and a number of countries relative to
15 forensic medicine/forensic pathology and investigating
16 deaths in Canada in many European countries, in Monaco,
17 many of the South American countries, relative to
18 deaths for -- for governments, for human rights groups,
19 for families.

20 Q Okay. Can -- can you give us a sense of
21 approximately how many times you have served as a -- an
22 expert in Courts for -- in the field of forensic
23 pathology?

24 A Well, all totaled, well more than 1,000 times that
25 I've testified in medical legal matters as a forensic

1 pathologist.

2 MR. MELLO: Sir, at this time, I'd offer the
3 witness as an expert --

4 MR. BILINKAS: No objection.

5 MR. MELLO: -- in the field of forensic
6 pathology.

7 THE COURT: All right. Pursuant to Rule 702,
8 the witness will be qualified as an expert in the field
9 of forensic pathology. You may proceed.

10 MR. MELLO: Thank you, sir.

11 DIRECT EXAMINATION BY MR. MELLO:

12 Q Now, Doctor, what I'd like to discuss with
13 you is your involvement into the investigation of the
14 death of one Jody Ann Scharf. And in that regard, I'd
15 like to ask you if it is accurate to state that in
16 November of 2004 you became involved in an
17 investigation into the death of Jody Ann Scharf?

18 A Yes. I was contacted by your office in that
19 regard and in -- in that time -- at that time.

20 Q All right. And with respect to your
21 involvement into the investigation of the death of one
22 Jody Ann Scharf, did you prepare a report of your
23 findings and conclusions?

24 A I did.

25 (Pause in proceedings)

1 BY MR. MELLO:

2 Q If you can take a moment to remove that
3 document from the sleeve.

4 (Pause in proceedings)

5 DR. BADEN: Yes.

6 BY MR. MELLO:

7 Q Now, with respect to the materials that you
8 began to review in this matter, did you have occasion
9 to review certain materials provided by the Office of
10 the Prosecutor?

11 A Yes.

12 Q And would those materials be part of the
13 report and opinions that you ultimately came to in this
14 particular matter?

15 A Yes.

16 Q Now, what I'd like to do first is ask you,
17 among the materials that you reviewed, did you have
18 occasion to review the post mortem examination report
19 filed in this investigation by Dr. Maryann Clayton of
20 the Bergen County Medical Examiner's Office?

21 A Yes, I did.

22 Q I'm going to show you what's been marked in
23 evidence as S-6.

24 (Pause in proceedings)

25 DR. BADEN: Yes, sir.

1 BY MR. MELLO:

2 Q Now, with respect to that report, can you
3 begin to discuss with us the findings at autopsy that
4 formed the basis of your opinions in this case?

5 A Yes.

6 Q All right.

7 A The -- the major findings of -- that caused the
8 death of Mrs. Scharf were blunt force impact injuries
9 of her head and upper chest area where there was a
10 laceration of the upper right part of the chest and
11 fractures of both collarbones -- clavicles.

12 There was extensive -- there were extensive
13 fractures of the skull and facial bones due to that
14 blunt impact, and extensive lacerations of the heart,
15 lungs, liver, -- liver -- yeah -- due to the impact on
16 the chest.

17 So that, I would agree with Doctor -- I would
18 agree with Dr. Clayton's findings, which are expressed,
19 as her findings and the cause of death being multiple
20 fractures and injuries. At the time that she wrote
21 this document -- at the time of the death in September
22 of '04 -- she left the manner of death undetermined.

23 Q Now, let me ask you, when you became involved
24 in this investigation, can you tell us the perspective
25 or task that you had before you in terms of your

1 involvement in this death investigation?

2 A When I had the opportunity to review the Autopsy
3 Report, which was early on, it appear -- it appeared to
4 me, and my opinion was, that the cause of death, as
5 determined from Dr. Clayton, was clear that she died of
6 multiple blunt impact trauma to the upper portion of
7 her -- mostly right side of her face, head, and chest.

8 The manner of death was to be further looked
9 into because there are four man -- five manners of
10 death: natural, accidental, suicide, homicide and
11 undetermined. Dr. Clayton had left it, initially, as
12 undetermined, and my focus was to see if there was
13 information available to determine if it was -- if it
14 was accident, homicide, or suicide.

15 And this is always the case in people who
16 fall from heights, or found drowned in water, or -- you
17 know -- fire -- where the autopsy findings tell you the
18 cause of the death, but the circumstances are necessary
19 to determine the manner of death. You can't determine
20 the manner of death just from an autopsy.

21 Q All right. Can you discuss with us your
22 experience regarding falls from heights?

23 A Well, in New -- when I was in New York City, falls
24 from heights was the second most common means of
25 suicide. They have high buildings and very, very

1 severe gun control. So, where a shooting is the most
2 common mechanism -- means of suicide around the
3 country, in New York City, it's very unusual for
4 gunshots wounds and we have lots of tall buildings.
5 So, we have lots of people who fall out of windows,
6 mostly suicide, but not all.

7 And, so, I would have to investigate a few
8 dozen falls from heights a year in New York City. WHEN
9 I -- now that I work with the New York State Police,
10 I've had to investigate a few dozen falls from
11 mountains and cliffs, which are more common in Upstate
12 New York than in my previous experience.

13 So, I've had experience in investigating
14 deaths and falls from -- from heights in two areas --
15 buildings and mountains.

16 Q And with respect to falls from heights, can
17 you discuss with the jury that which you have found in
18 your experience to be the distance from the vertical
19 point of fall?

20 A The -- the most useful information at the scene in
21 a fall from a height is how far the decedent is from
22 the base of the place that he or she fell from. So
23 that, if a person falls accidentally -- like washing a
24 window or something and falls -- the individual will
25 be, you know, within a couple of feet of the base of

1 the building.

2 If the person commits suicide by jumping or
3 falling out of the window, the person may be three, or
4 four, or -- or five feet away from the build -- from
5 the base. If the person is thrown out of a window,
6 then the distance is much larger.

7 So, the distance from the base -- and this
8 also works with falls from mountains and heights in
9 Upstate New York -- is very significant in sn
10 investigation into what the manner of the death was --
11 the cause of death -- multiple injuries. The manner of
12 death, in large part, depends from an investigation
13 point of view, is how far away the individual has gone
14 from the -- the point of the fall.

15 Q Now, with respect to your work in this case,
16 did you have occasion to meet with Dr. Maryann Clayton?

17 A Yes.

18 Q Did you have occasion to review the file
19 maintained by the Medical Examiner's Office produced by
20 Dr. Maryann Clayton?

21 A Yes. I think sometime around May or so in 2005, I
22 went down to the Bergen County Medical Examiner's
23 Office and met with Dr. Clayton and her staff. And
24 they're very professional and very -- and they
25 permitted me to examine all the materials they had from

1 that -- their investigation: photographs, microscopic
2 slides of all the tissues and organs that were taken at
3 the time of the autopsy -- and to discuss what the
4 findings were. So, I did that -- I was able to do that
5 sometime in 2005.

6 Q Now, after you had an opportunity to review
7 the Medical Examiner's file, did that give you enough
8 information to reach conclusions as to manner or death
9 -- of death, or did you require more information?

10 A I needed more information.

11 Q And with respect to additional information,
12 did you have occasion to view the scene of the death of
13 Jody Ann Scharf?

14 A Yes.

15 Q Now, with respect to that scene, what I'd
16 like to ask you, first, is to concentrate on the cliff
17 edge at the Rockefeller Lookout in Englewood Cliffs,
18 New Jersey. All right?

19 A Yes.

20 Q All right. If you would, can you describe
21 for the jury your recollection and perceptions of the
22 cliff edge where Mrs. Scharf was reported to have
23 fallen?

24 A Yes. When I went to the scene, the first area I
25 went to was where the husband said that Mrs. Scharf had

1 fallen from. And I did go to that Rockefeller Lookout
2 Point, and carefully looked toward the edge, and did
3 examine the point where -- I had read through various
4 statements and all -- that was described as the point
5 where -- where Mrs. Scharf had fallen from.

6 Q Now, you -- in your course of review, you've
7 referred to certain documentation. Among that
8 documentation, did that include a -- a reporting of
9 statements made by Mr. Scharf on the night of his
10 wife's death and thereafter?

11 A Yes.

12 Q Okay. And, if I can, -- if I can, can I ask
13 you would that be an important part of the information
14 base that you had in this matter?

15 A Yes.

16 (Pause in proceedings)

17 BY MR. MELLO:

18 Q I'm going to show you what's been marked into
19 evidence S-251. Do you recognize that photograph?

20 A Yes. The -- this -- this is a photograph at a
21 point where there's a -- a bit of a fence that has to
22 be gone -- gone through in order to get to the edge,
23 which is apparent toward the middle -- lower middle.

24 Q And S-252 in evidence.

25 A Yes. This is -- this is at the edge where the --

1 the -- the -- the husband said that -- from which the
2 husband said that Mrs. Scharf had fallen.

3 Q And it was reported by the husband that she
4 had passively fallen from that fall, correct?

5 A I -- I -- I didn't quite hear you.

6 Q It was reported by the husband that she had
7 passively fallen from that specific point?

8 A Yeah -- yeah -- yeah. There were a number of
9 statements, but all of them meant that she accidentally
10 fell while trying to get up in the dark -- it was kind
11 of dark -- and she -- she fell accidentally.

12 Q Now, did you look beneath the edge of the
13 cliff?

14 A Yes.

15 Q What did you see?

16 A I think about eight feet below the edge was a
17 shelf -- was an outpouching -- a -- a -- a rock --
18 rocky outpouching of the -- the mountain near the --
19 the Palisades, which -- it was about eight feet down
20 and it was about six feet long and three feet wide, and
21 that was the area where her purse was found.

22 Q Okay. S-292 in evidence. Do you recognize
23 that exhibit?

24 A Yes. There's somebody up near twelve o'clock
25 looking over the edge, which is approximately the place

1 where -- at the point where she fell.

2 Q And do you see the place that you referred to
3 -- where the purse was found?

4 A Yes. Yes.

5 Q Would you point it out for us, so the jury
6 could see it?

7 A It was down here someplace.

8 (Pause in proceedings)

9 BY MR. MELLO:

10 Q Now, did -- after making the observations,
11 did you then view another part of the cliffs?

12 A Yes.

13 Q Okay. Why don't you discuss that with the
14 jury?

15 A After I finished looking at the point of -- the
16 upper point of the cliff -- I went down -- I drove down
17 to the base of the Palisade structure and climbed up
18 toward the area where Mrs. Scharf's body had been found
19 and was able to see, and touch, and feel the -- the
20 outcroppings of the -- the rocks, and the brambles, and
21 the growths.

22 There was a lot of vegetative growths of
23 twigs, and roots, and bushes that I had not realized
24 was there when I viewed the Palisades from Manhattan,
25 but it was a -- a -- a lot of vegetation on the surface

1 that I had to climb up.

2 Q Let me show you what's been marked S-272.

3 MR. BILINKAS: Counsel, can I see it?

4 MR. MELLO: Sure.

5 BY MR. MELLO:

6 Q S-272. Do you recognize that photograph?

7 A Yeah. This is a -- a photograph taken from the
8 area that the body was found. I believe this is the
9 tree and that is a mark where there had been some blood
10 or tissue at the time the body was found.

11 Q And can you discuss with the jury the area at
12 the base of cliff if you could?

13 A Yeah. And -- and the -- the base of the cliff had
14 lots of rock outpouchings, trees, bushes that -- that
15 continued up the mountain -- up the face of the
16 Palisades, so there was no smooth area where something
17 that -- where -- what I was concern -- concerned about
18 -- where a body could just roll down from the top to
19 the bottom, which was one of my concerns when I went to
20 the scene.

21 (Pause in proceedings)

22 BY MR. MELLO:

23 Q Doctor, can I have you -- can I ask you to
24 just step forward for just a moment, please?

25 A Hang on. Thank you.

1 Q I'm going to show what's been marked S-267 in
2 evidence and take a moment to look at it and then
3 discuss it with the jury.

4 A Yes.

5 Q Okay. Do you recognize the exhibit?

6 A Yes.

7 Q Okay. Can you tell us if you can locate the
8 point where Mr. Scharf reported that his wife had
9 fallen from?

10 A It was the -- the point from which he said she had
11 fallen was up in this area where there's a white paper
12 on the -- on the ground -- the point that -- from which
13 she had fallen.

14 Q Can you show us the point at which the body
15 was found?

16 A The point is the other white material around six
17 o'clock around the tree from where the body was found.

18 Q Now, can you discuss with us -- using this
19 photograph -- your perspective of the cliff face as you
20 viewed it?

21 A Yeah. The -- the cliff face, from the top of
22 where she may have fallen to the bottom where the body
23 was found, is very jagged, and rugged, and had lots of
24 outpouchings, lots of rocks -- big rocks -- and lots of
25 brambles -- just tough bushes that was present along

1 the way. So that there was no clear path in my
2 evaluation where a body falling from this area at the
3 top of a -- the point where it was indicated could have
4 in it -- fallen down to where the body was found. It
5 could not have rolled, or fallen, in that manner
6 without being stopped by some vegetation or rocks along
7 the way.

8 Q All right. Doctor, you can return to your
9 seat.

10 (Pause in proceedings)

11 BY MR. MELLO:

12 Q Now, with respect to your evaluation as to
13 the cause of death in this manner, have you reached a
14 conclusion as to cause of death to a reasonable degree
15 of medical certainty?

16 A Yes.

17 Q And that would be?

18 A The cause of that -- of death was multiple blunt
19 force impact injuries to the head and chest with
20 internal lacerations of various organs, and that's the
21 cause of death.

22 Q Now, with respect to the injuries that you
23 perceived and have concluded are the cause of death,
24 are the injuries that you have noted consistent with a
25 passive fall down the cliff face as you viewed it and

1 as is shown in photograph 267?

2 A In my opinion, to a reasonable degree of medical
3 certainty, the injuries are not consistent with an
4 innocent fall from the point indicated at that lookout
5 area -- at -- lookout.

6 Q During the course of your review of findings
7 at post mortem examination, did you note the absence of
8 injury to certain areas of the body?

9 A Yes.

10 Q Can you discuss that aspect of your
11 determination with the jury?

12 A Yes. One of the -- one of the findings that I
13 took into consideration was that Mrs. Scharf had no
14 injuries to her back and that -- and she had skimpy
15 clothes on at the time -- a T-shirt and a little vest -
16 - and under -- and shorts.

17 That if she had innocently come down that --
18 the -- the cliff face, she would have had to strike
19 against, and rub against, rocks and vegetation. And if
20 she tumbled down, or if she rolled down, there would
21 have been a great deal of marks from impact injuries on
22 rocks and -- and -- brambles on all parts of her body,
23 not just the one impact site against the tree trunk --
24 the tree.

25 So, it's my opinion that all of her injuries

1 were consistent with a single impact against the tree
2 beneath which she was found and was not -- were not
3 consistent with somebody tumbling down a mountain face.

4 Q In your review, were you informed that the
5 defendant, Mr. Scharf, reported that when his wife fell
6 from the cliff she did not cry out or scream?

7 A Yes. I was so.

8 Q Can you discuss that with the jury in terms
9 of your opinion?

10 A Yeah. In -- in my experience with people falling
11 out of windows -- we do have -- most of the falls in
12 New York City are suicidal, but some are homicidal.
13 And then the homicidal falls -- if the person is alive
14 and conscious when going out of a window will always
15 cry out in some way. And if somebody falls
16 accidentally, or is pushed out of a window will always
17 cry out.

18 Whereas, in -- in this instance, it was
19 reported in the records I reviewed that there was no
20 cry, which would indicate to me that she may not have
21 been conscious at the time she falls -- she falls down
22 the surface of the mountain.

23 Q Now, did you reach a conclusion in this
24 matter regarding the manner of death of Jody Ann Scharf
25 on September 20, 1992?

1 A Yes, I did.

2 Q Is that opinion to a reasonable degree of
3 medical certainty?

4 A Yes.

5 Q Can you tell us what your opinion is as to
6 manner of death of Jody Ann Scharf?

7 A My opinion is that the manner of death is
8 homicide.

9 Q And tell us the bases which underlie the
10 opinion that the manner of death of Jody Ann Scharf was
11 homicide?

12 A Yes. There are a number of bases, 1) was the
13 distance from the lookout peak, which is about fifty-
14 two -- two feet, that an -- in an innocent fall she
15 could not go out that far. That it's my opinion that
16 she had to have been propelled from that point,
17 wherever that point was on the -- on the -- on that --
18 the Palisades outcroppings.

19 And that she would have had to have struck
20 the tree under which she was -- the -- the -- the tree
21 under which she was found -- with sufficient force to
22 create extensive fractures and internal injuries. So
23 that -- and that even if she jumped out, she would --
24 she could not have developed that much propulsion.

25 So, in my opinion, she was propelled and

1 struck the tree under those conditions which in all
2 would make it a homicide.

3 Q Are there any findings, either at post mortem
4 examination or your observation of the scene both at
5 the top and the bottom of the cliffs, that are
6 consistent with a passive fall as reported by Mr.
7 Scharf from the point that he indicated his wife
8 passively fell?

9 A No. In my opinion, again, to a reasonable degree
10 of certainty, the -- if Mrs. Scharf had fallen in the
11 way that Mr. Scharf describes, the body's -- her body
12 would have suffered injuries front and back. The back
13 would not have been clear.

14 She would not have reached the area of the
15 tree. She would have not have struck the tree with the
16 force required to cause the right-sided -- the right
17 side of the face and the right side of the upper chest
18 -- impact injuries that Mrs. Scharf had incurred.

19 So, I think that the -- the way -- where --
20 the -- the place she was found, the injuries on the
21 body, are not consistent with an innocent, accidental
22 fall.

23 Q Thank you.

24 MR. MELLO: Judge, may we have a break?

25 THE COURT: Five minutes?

1 MR. MELLO: Sure, five minutes.

2 THE COURT: Oh, a short break.

3 FEMALE SPEAKER: Judge, may I approach?

4 (Proceeding in recess)

5 (Proceeding resumes)

6 (Jury enters Courtroom)

7 THE COURT: All right. Welcome back, ladies
8 and gentlemen of the jury. Please be seated. You may
9 continue.

10 MR. BILINKAS: Thank you.

11 CROSS-EXAMINATION BY MR. BILINKAS:

12 Q Good afternoon, Dr. Baden.

13 A Good afternoon, sir.

14 Q Now, Dr. Baden, with regards to your -- your--
15 - your statements on direct, don't you have a couple of
16 TV shows you're associated with?

17 A Yes.

18 Q And aside from those cases you mentioned, one
19 of the cases that you were consulted on was the defense
20 case for O.J. Simpson, too, correct?

21 A Yes.

22 Q Now, your opinion -- and correct me if I'm
23 wrong -- is based at least to some extent on the
24 officers' information that they saw no evidence that
25 the body had contacted any portion of the cliff face

1 prior to hitting the tree, correct?

2 A That's some of the information I utilized. Yes,
3 sir.

4 Q For instance, if -- if the body did strike a
5 portion of the cliff face, that may account for the
6 body being propelled out further away from the cliff,
7 correct?

8 A I don't believe so. No.

9 Q Okay. There are circumstances, based on the
10 topography of that area that you reviewed, that if the
11 body did hit would, in fact, propel the body away from
12 the cliff? For instance, the treetops, the branches,
13 and things like that, correct?

14 A That's possible.

15 Q Now, correct me if I'm wrong, your position
16 is the -- that the body fell unimpeded from the top and
17 hit the tree at the bottom, correct?

18 A (No response given)

19 Q The word unimpeded.

20 A That -- that's -- no, that's -- that's -- it could
21 have happened that way, but my position is it didn't
22 happen the way the husband says it happened. It --
23 that Mrs. Scharf could not have gotten in the position
24 she was in with all the injuries she had of great
25 impact force if she fell accidentally from the top of

1 that -- at the peak and went down the mountain -- or
2 went down the side of the -- the Palisade face -- that
3 would have happened if she had just fallen down.

4 If she struck something under those
5 conditions, that -- that would slow down not speed up
6 her rate -- rate of -- of fall.

7 Q Okay. Now, you mentioned numerous times
8 throughout your report and in your previous Grand Jury
9 testimony that as far as you're concerned all the
10 injuries were caused by a single blunt force injury
11 against the tree, correct?

12 A All of the significant injuries. Yes, sir.

13 Q For instance, the injury to the skull,
14 correct?

15 A Yes.

16 Q And the chest, --

17 A Yes.

18 Q -- correct? And would you agree with me,
19 with regards to the -- let's take the chest first --
20 that injury, irrespective of where it occurred, would
21 have prohibited the victim from crying out, correct?

22 A (No response given)

23 Q That type --

24 A Well, if --

25 Q -- of severe chest injury?

1 A No. The -- the -- the chest injury alone, which
2 caused fractures of the collarbones and injury to the
3 ribs, lung, and heart, would in itself have been a
4 fatal injury, but it would not have prevented her from
5 calling out for a few seconds, you know, while she was
6 traveling and when she struck something she would still
7 call out. It didn't -- it didn't involve her vocal
8 cords.

9 Q No. No. My -- my specific question is, that
10 injury to the chest, would that injury -- for instance,
11 if it happened towards the top of the cliff -- once she
12 receives that injury, wouldn't that incapacitate her as
13 far as her being able to call out?

14 A No, that would not be my opinion.

15 Q Okay. How about the massive head injury --
16 the fractures to the skull -- that would have knocked
17 her out --

18 A Well, she --

19 Q -- and made her unconscious, correct?

20 A Not the fractures, but the underlying lacerations
21 of the brain could have made her lose consciousness
22 very quickly.

23 Q Okay.

24 A Yes.

25 Q And would you agree with me that if she lost

1 consciousness as a result of that injury to the head,
2 she would not be able to cry out, correct?

3 A From the point of impact against the skull. Yes,
4 sir.

5 Q Okay. Now, can you step down here for a
6 second? I'm going to have my associate stand up and--
7 and he's going to be the impact tree and I'm going to
8 give you my teddy bear and -- and we're using his arm
9 as the -- the tree.

10 Can you show the jury how the body impacted
11 the tree? The cliff is up here in line with the
12 impact, all right? You can bend that any which way you
13 want.

14 A The body impacted the tree on the right side of
15 the face and the right side of the chest, so the body
16 would come down and strike the tree in this fashion. I
17 don't know where her legs would be. The legs didn't
18 get much damage. It's this one here.

19 But the right side of the face and the chest
20 are pretty much in a -- in a line and with the cause of
21 any injuries that she has -- if it was enough force
22 behind the impact.

23 Q Okay. And -- and with regards to -- once she
24 strikes the tree -- can you demonstrate one more time?

25 A Yes, sir.

1 Q Okay. And the body falls down to the ground,
2 correct?

3 A Yes.

4 Q Now, do you know the exact position that the
5 body was found?

6 A No, but only that it was at the foot of the tree
7 and that there was the -- the police officers --
8 officers commented -- wrote -- that there was bloody
9 tissue six feet -- about six feet up.

10 Q Okay. Did they say anything about hair?

11 A Not that I recall.

12 Q Now, -- now, was the body found wedged
13 between a large rock and the tree?

14 A There was a statement to that effect in -- in one
15 of the reports, but -- there was such a statement made,
16 but it wasn't documented any other way.

17 Q Okay. And -- and do you know what portion of
18 the body was wedged between the rock and the tree?

19 A I think it mentioned the head was wedged at that
20 point.

21 Q Okay.

22 A Well, --

23 Q You could have a seat.

24 A Yes, sir.

25 Q Thank you.

1 (Pause in proceedings)

2 BY MR. BILINKAS:

3 Q So, Doctor, just so I understand your
4 opinion, according to you the body leaves the top of
5 the cliff, travels down whatever the distance is, and -
6 - and both the head and the chest impact the tree
7 simultaneously?

8 A Well, what I think I testified to is that -- well,
9 what I just demonstrated is the head and the -- right
10 side of the head and including -- that includes the
11 skull and the facial bones are all connected -- and the
12 upper part of the chest at the collarbone level impact
13 the tree with force at the same -- in -- in one impact.

14 Where the body came from, I can't say. What
15 I will say it didn't happen the way Mr. Scharf
16 described.

17 Q Do you know whether or not the feet were
18 facing down or up when she struck the tree?

19 A My opinion would be that the feet were down, but,
20 again, I can't be -- say that with certainty.

21 Q Okay. And -- but your opinion would be that
22 the -- the feet were facing down when she struck the
23 tree at the base, correct?

24 A That would be my opinion, but I -- I don't have
25 enough information to be definite about that. What

1 I'll say is that the right side of the face and the
2 upper chest struck the tree with great force at the
3 same time.

4 Q Okay. And --

5 A And I can't tell much about the rest of the body,
6 except that there was no injury to the back.

7 Q And did you calculate the speed that the body
8 would be traveling from the top to the bottom when it
9 impacted the tree?

10 A No.

11 Q That clearly could be done, could it not?

12 A I'm not sure, but that's above my pay grade.

13 Q Now, would you agree that when investigating
14 any type of death, it's important to document the
15 scene. Correct?

16 A I would agree with that. Yes, sir.

17 Q And -- and would you agree that in every
18 instance the Medical Examiner should go to the scene to
19 view it before rendering an opinion?

20 A No, no. No. And most of the time medical -- the
21 way things are developing in this country -- Medical
22 Examiners don't go to the scene. What I will say, by
23 going to the scene, a great deal of information can be
24 gathered by the Medical Examiner, but it -- it --
25 there's no rule that that has to be done.

1 Q Did -- did the Medical Examiner make any
2 mistakes with regards to how she handled the scene in
3 this case?

4 A I think Dr. Clayton was very professional in how
5 she handled the scene.

6 Q Well, were you ever shown any photographs of
7 the blood smear at the base of the cliff?

8 A On the tree, sir?

9 Q Yes.

10 A No. No.

11 Q And were you aware of the fact that Pagan,
12 the person who found the -- the body -- the person who
13 identified the tree that the body hit -- didn't go back
14 to the base of the tree for almost two years?

15 A I was aware of that. Yes, sir.

16 Q And when you went to the base of the cliff,
17 did you see that large rock that he described the body
18 being wedged between that and the tree?

19 A I did not.

20 Q Was he there with you when --

21 A Yes.

22 Q Did you ask him what happened to that rock?

23 A I don't remembering discussing that at all.

24 Q Now, would you agree with me if Mrs. Scharf
25 fell passively that she would have hit that ledge

1 approximately ten feet below?

2 MR. MELLO: Objection. That assumes that --

3 THE COURT: Your objection?

4 MR. MELLO: Yes, sir. That assumes a certain
5 fact that she fell from the ledge that was indicated.

6 THE COURT: Sustained.

7 BY MR. BILINKAS:

8 Q Well, you're basing your opinion that she
9 fell from the flat rock at the top of the cliff,
10 correct?

11 A No, no. I'm -- I'm basing my opinion on the
12 statements that Mr. Scharf made and that she couldn't
13 have fallen in the way he said. I did not make an
14 opinion of where she fell from or how she -- how she
15 came about to strike the tree because there are a
16 number of possibilities, but it didn't happen the way
17 Mr. Scharf said.

18 Q Okay. With -- with -- with regards to the
19 photographs -- the aerial photographs that the
20 Prosecutor showed you -- the one with the white paper
21 on the top and the white paper at the tree at the
22 bottom. Do you recall those photographs?

23 A Yes, sir.

24 Q Okay. And those locations that have been
25 pointed out to by the Prosecutor represent the distance

1 that you've discussed with regards to you forming your
2 opinion, correct?

3 A Yes, that was part of what I considered in forming
4 my opinion.

5 Q Now, isn't it a fact, in your report that you
6 indicated if she had fallen passively, she would have
7 likewise landed on the ledge? And I'm talking about
8 the ledge about eight -- ten feet below.

9 MR. MELLO: Again, I think it should be asked
10 in the hypothetical form. If she fell from that ledge
11 -- then he can ask the question.

12 THE COURT: Ask another question.

13 BY MR. BILINKAS:

14 Q If she fell from that ledge, passively, would
15 she not have struck the ledge below, approximately,
16 eight to ten feet?

17 A My opinion is -- is that she would most probably
18 have struck the ledge and I think that's the ledge
19 where her purse was found.

20 Q Correct, and --

21 A Yeah. So that, yes, that would be my opinion that
22 she probably would have struck that ledge.

23 Q Okay. And were also not told by various
24 police officers that there was no evidence that they
25 found on that ledge indicating that she had struck the

1 ledge?

2 A I had read that in some of the reports. Yes, sir.

3 Q And -- and you took that information and that
4 is part of what you base your opinion on, correct?

5 A Yes.

6 (Pause in proceedings)

7 BY MR. BILINKAS:

8 Q And would you agree with me that it's
9 important for a Medical Examiner to evaluate the scene
10 of the death in order to be able to properly interpret
11 the injuries found at the autopsy?

12 A That -- that's my opinion, yes, that -- that this
13 -- the investigation of the scene of the death can be
14 very helpful to the Medical Examiner in determining a -
15 - a conclusion as to what happened to a person.

16 Q And -- and are you aware of the fact that Ms.
17 Clayton didn't visit the scene -- the base of the cliff
18 -- until 2006?

19 A Yes.

20 (Pause in proceedings)

21 BY MR. BILINKAS:

22 Q Now, would you agree with me that the blood
23 smear, if samples were taken of that, there would be a
24 definitive interpretation as to whether or not there
25 was tissue contained in that bloodstain, correct?

1 A Yes.

2 Q And -- and would you agree with me that if
3 tissue was found, that tissue could be matched up to a
4 specific area of the body, which would clearly indicate
5 what part of the body had struck the tree. Correct?

6 A Yes.

7 Q Now, you'll agree with me that the tree in
8 question has a very rough bark on it, correct?

9 A Yes.

10 Q Did you see any evidence of -- of patterning
11 from the bark on Mrs. Scharf's body?

12 A Yes.

13 Q And are those the vertical, lineal abrasions?

14 A Yeah. There were vertical, parallel abrasions on
15 the right side -- the right cheek and jaw of Mrs.
16 Scharf's face, yes.

17 Q Okay. And is -- is it your opinion that
18 those abrasions match the pattern of the tree bark in
19 the tree in question?

20 A I think that they look like they could have been
21 produced by the tree bark, yes.

22 Q Well, when you say they could have been
23 produced by the tree bark, did you get a sample -- or
24 did anyone to your knowledge get a sample of that tree
25 bark and compare the exact striations of the tree bark

1 with those abrasions?

2 A No.

3 Q Now, would you agree with me that Mrs.
4 Scharf's clothing had various tears in it?

5 A Yes.

6 Q Did -- okay -- and -- and do you know the
7 exact location of those tears?

8 A Only as seen in the photographs. There were tears
9 on the stock -- on her --

10 Q Pantyhose?

11 A -- pantyhose, thank you. And --

12 Q How about the tears on her clothing?

13 A I didn't examine that very thoroughly. The
14 photographs taken -- there were photographs taken of
15 the clothing.

16 Q And -- and do you agree with me that if you
17 analyze those specific tears, in many instances, you
18 can determine what, in fact, caused the ripping of the
19 clothing? What object?

20 A If -- if -- if those -- if the clothing were
21 examined by a criminalist -- that goes beyond, again,
22 the forensic pathologist -- there might be trace
23 evidence in the clothing that is helpful in
24 reconstructing how the tears occurred. Yes, sir.

25 Q Okay. Now, with -- with regards to the

1 opinion that Mrs. Scharf was forcibly propelled off the
2 top of the mountain, how much force would be required
3 to push her fifty feet out from the ledge? Did you
4 calculate that?

5 A No. I am not basing my opinion on calculations.
6 I'm basing my opinion on the injury patterns compared
7 to prior -- my -- my prior teaching and experience.
8 And if -- in order for Mrs. Scharf to strike the tree
9 with a lot of force to cause the injuries she had,
10 she'd have to be propelled with force.

11 I don't know how much. And I'm not sure, as
12 I say, that -- I'm not assuming that that happened on
13 the lookout peak. That could have happened in another
14 -- from another part -- part of the cliff or something.

15 But I'll say there had to be enough force in
16 the propulsion to get her to impact the tree and if
17 this came from a different part of the cliff, the --
18 the distance might have been much smaller.

19 Q Okay, but you have no evidence to indicate
20 that it did, correct?

21 A That's correct.

22 Q Now, with regards to Mrs. Scharf's blood
23 alcohol content of .12, would you agree that that would
24 have impaired someone's balance?

25 A Yes.

1 Q Would -- would you agree that it would impair
2 their perception to some degree?

3 A Yes.

4 Q Now, did you testify before the Grand Jury
5 that Mrs. Scharf may have been hurled off the cliff
6 face?

7 A I believe that was one of the possibilities. Yes,
8 sir.

9 Q And -- and one of the possibilities you told
10 the Grand Jury is that she was picked up by the arms
11 and legs and swung out over the cliff, correct?

12 A I don't think I said swung out. But I don't
13 recall --

14 Q Did -- did --

15 A -- but I think that I said that she could have
16 been propelled out, whatever way, by somebody.

17 Q And did you talk about someone grabbing her
18 arm and her leg and swinging her out over the cliff's
19 edge?

20 A That's a possibility, although I don't think I
21 said it that way, but yeah, it's a possibility that one
22 can propel somebody by swinging the arm and the leg,
23 but I'm not saying that that's how it happened. I'm
24 saying that's one of the possibilities.

25 Q Okay. With regard to that specific

1 possibility, do you think it's possible for someone on
2 that small ledge to swing someone by the hand and the
3 leg, fifty feet or so out where the impact occurred?

4 A I think that would be very difficult to -- to get
5 out that far.

6 Q But it is one of the possibilities that you
7 discussed with the Grand Jury, correct?

8 A I think what I said to the Grand Jury is that
9 somehow she, Mrs. Scharf, struck that tree with enough
10 force to cause extensive injuries to her body and that
11 type of propulsion is possible, but I -- I'm just
12 speculating on that.

13 Q Okay. And when -- when you talk about the
14 force of the body hitting against the tree, would you
15 agree with me that falling approximately 119 feet would
16 create a sufficient velocity in and of itself to cause
17 those types of injuries?

18 A If -- if somebody fell straight down onto a
19 sidewalk or something, yes, you can get those kind of
20 injuries from that kind of impact force, yes.

21 Q Now, is it your opinion that the head struck
22 the tree first?

23 A No, not necessarily. I think that the head and
24 the chest struck the tree at the same time.

25 (Pause in proceedings)

1 BY MR. BILINKAS:

2 Q Now, do you know what interaction Mrs.
3 Scharf's body had with the treetops and the thick
4 foliage on the way down?

5 A I -- I don't know that, but there's no evidence on
6 the body of scraping -- of -- of -- of tumbling -- of --
7 -- of presenting the back, say, to the foliage.

8 Q And -- but with regards to the front of her
9 body, would you agree with me that if the body hit
10 branches and the branch bends down, the branch could
11 then propel her -- raise her a little bit and propel
12 her further away from the cliff face?

13 A That -- that would be a -- a possibility. Yes,
14 sir.

15 Q And -- and would you agree with me that,
16 based on your review of the scene, there were a lot of
17 trees in the way from the top to the bottom. Correct?

18 A Yes.

19 Q And you'll agree with me that it's virtually
20 impossible for you or anyone else to examine those
21 branches because of the circumstances of the cliff,
22 correct?

23 A Yes.

24 Q And because of that there are endless
25 variations with regards to what may have affected the --

1 body and how it may have been propelled out further.

2 Correct?

3 A Yes.

4 Q And you'll agree with me, when a body is
5 moving downward that it goes 32 feet per second,
6 correct?

7 A Yes.

8 Q And when it strikes something, this would
9 slow it down and propel it a little bit further, so
10 that it would no longer go a distance before hitting
11 the ground?

12 A (No verbal response)

13 Q You'll agree with me that, if it hits the
14 branches, the branches bend -- that the body would be
15 propelled out further away from the cliff face,
16 correct?

17 A Yes.

18 (Pause in proceedings)

19 BY MR. BILINKAS:

20 Q Now, with regards to your opinion, will you
21 agree with me that everything you reviewed existed from
22 the original investigation back in the early 1990s,
23 correct?

24 A I think that's true, yes.

25 (Pause in proceedings)

1 MR. BILINKAS: Just checking my notes, Judge.

2 (Pause in proceedings)

3 BY MR. BILINKAS:

4 Q Thank you, Dr. Baden.

5 A Thank you, sir.

6 THE COURT: All right. Redirect?

7 REDIRECT EXAMINATION BY MR. MELLO:

8 Q Doctor, --

9 MR. MELLO: Very quickly, Judge.

10 BY MR. MELLO:

11 Q Doctor, Mr. Bilinkas asked you if, in fact,
12 an alcohol level of .12 might affect Mrs. Scharf's
13 perception and impair that perception and I think you
14 said that it certainly could, correct?

15 A I said it could.

16 Q Yes. And -- and would it be fair to say that
17 it certainly would impair or affect, possibly, her
18 ability to assess a threatening situation?

19 A It could, yes.

20 Q Thank you.

21 THE COURT: Anything further?

22 (No verbal response given)

23 THE COURT: Thank you, Doctor.

24 DR. BADEN: Thank you, Your Honor.

25 THE COURT: You may step down.

1 DR. BADEN: Thank you, sir.

2 THE COURT: All right. The jury will be in
3 recess until 9:00 a.m. tomorrow.

4 MR. MELLO: Judge --

5 THE COURT: I'm sorry.

6 MR. MELLO: May we approach, Judge?

7 (Sidebar conducted off the record)

8 (Proceeding resumes)

9 THE COURT: Let me revise that forecast, if
10 you will. We've had a number of conversation
11 throughout the trial attempting to work out
12 stipulations. And any of the things that have been
13 worked out by counsel have allowed us to move ahead a -
14 - a little quicker. In fact, on certain days, we've
15 been finished a little earlier.

16 As you can appreciate, many of these
17 witnesses are coming from various distances. They have
18 conflicts. We stayed a little later in order to
19 accommodate the witness. However, the -- the new
20 revised schedule would mean if we would skip over
21 tomorrow, and we would skip over next Tuesday and go to
22 Wednesday, the 18th. Next Wednesday, the 18th.

23 In fact, if I understand correctly, the State
24 has a -- an application to make at this time.

25 MR. MELLO: The State rests its case, pending

1 review of --

2 THE COURT: Subject to the introduction of
3 certain exhibits --

4 MR. MELLO: Evidence.

5 THE COURT: -- the State will rest.

6 MR. MELLO: Thank you, Your Honor.

7 THE COURT: We will resume next Wednesday the
8 18th at 9:00 a.m.

9 Once again, you are not to read, or listen to
10 any media accounts, not to watch any law-related
11 programs, not to have any conversations of any nature
12 whatsoever.

13 I would increase the warning. You can know
14 appreciate that by this time a number of news agencies
15 would be interested in covering this matter.

16 I need to impress upon you not to have any
17 discussions or to watch any of these programs. We
18 don't want anything to intrude upon your thinking, or
19 affect your judgment in any manner. Is that
20 understood?

21 (No verbal response given)

22 THE COURT: Let the record reflect that the
23 jury is nodding in the affirmative. You're in recess
24 until Wednesday, the 18th, at 9:00 a.m. Yes?

25 JUROR: Does this mean -- are we still done

1 on the 19th or does it mean that it will go into the
2 next week?

3 THE COURT: It would -- I would anticipate
4 that we'll have closing arguments Tuesday, the 24th.
5 All testimony will be finished by that date and there
6 would be closing arguments of the attorneys, legal
7 instructions, and you would begin deliberations, all
8 right?

9 Have a good evening. Good night.

10 MR. MELLO: Thank you, Judge.

11 (Proceedings Concluded)

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CERTIFICATION

I, Rebecca Y. Natal, the assigned transcriber, do hereby certify the foregoing transcript of proceedings Digitally Recorded, 9:37:39 to 4:07:26 was prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded to the best of my knowledge, ability and understanding.

S/ Rebecca Y. Natal
Rebecca Y. Natal

557cc
AOC#

AUDIO EDGE TRANSCRIPTION, LLC
Agency Name

February 6, 2012
Date

[TRANSCRIBER'S NOTE: This recording contains static throughout. The audio is completely cut off at multiple points in the the recording. Request was made for the original video which was not provided as of the time of the delivery of this transcript. In addition, the attorneys moved away from the microphone on multiple occasions during the proceedings and the ends of their sentences trailed off on many occasions and could not be heard.]