

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

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

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

Date: May 18, 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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I N D E XWITNESSES FOR

<u>THE DEFENSE</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>Re-Redirect</u>				

Robert Hernest		7	10	14/15
14				
Stephen M. Schorr		21	50	55

	<u>Direct</u>	<u>Cross</u>
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EXHIBIT

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1 [TRANSCRIBER'S NOTE: Court is experiencing technical
2 difficulties with recording at 9:33:44. See
3 transcriber's certification at end for details.]

4 (Bench conference)

5 THE COURT: Okay.

6 MR. MELLO: Sorry, Judge. I didn't mean to
7 be talking.

8 THE COURT: How many other witnesses are
9 there?

10 MR. BILINKAS: Judge, I have a -- Mr.
11 Hernest, which I expect to be less than five minutes.

12 THE COURT: Uh-huh.

13 MR. BILINKAS: And I don't believe the cross
14 will be long, and then I'm putting on my one experts
15 [sic], which I expect to be somewhere between a half
16 hour and 45 minutes.

17 THE COURT: Okay. And what does that leave
18 for tomorrow?

19 MR. BILINKAS: My expert, Cyril Wecht. I
20 think from that --

21 THE COURT: Okay. And that should take most
22 of the day?

23 MR. BILINKAS: A large part of the morning.

24 MR. MELLO: No, morning. In the morning, but
25 then we have -- try to review the evidence, and we have

1 the charge conference.

2 THE COURT: Uh-huh. Uh-huh. Uh-huh.

3 MR. MELLO: So, that would take the day.

4 Could we take him before he puts on --

5 MR. BILINKAS: Schorr?

6 MR. MELLO: Schorr, about the drink?

7 MR. BILINKAS: Sure.

8 THE COURT: Okay.

9 MR. BILINKAS: If it -- if it's --

10 MR. MELLO: If it's okay with you?

11 THE COURT: All right. Well, it -- it's --
12 you've been very helpful, so I've allowed you a little
13 more leeway than I normally would.

14 MR. MELLO: You've been very, very --

15 MR. BILINKAS: And I -- I understand that and
16 we appreciate that. Just don't give me too much room.

17 THE COURT: The -- so this -- this is a
18 charging conference.

19 MR. MELLO: Yes.

20 THE COURT: If you have a general idea of
21 what you need and you can supplement this at the
22 charging conference, but I'd -- I'd like to be in a
23 position on Tuesday --

24 MR. MELLO: To go ahead.

25 THE COURT: -- that we flow right from the --

1 MR. MELLO: Right.

2 THE COURT: -- closing arguments --

3 MR. MELLO: Right.

4 THE COURT: -- into the jury charges.

5 MR. BILINKAS: Absolutely.

6 THE COURT: And have jury deliberating --

7 MR. MELLO: Right.

8 THE COURT: -- by the afternoon.

9 MR. MELLO: We're going to -- we're going to
10 talk --

11 FEMALE SPEAKER: We've -- we've already
12 started it.

13 MR. MELLO: -- talked about -- we -- we've
14 talked about the -- the -- the charges.

15 THE COURT: Right.

16 MR. MELLO: It's really the same charge.

17 THE COURT: You know --

18 MR. MELLO: But if we're going to exchange
19 information --

20 THE COURT: And -- and suggest charges to my
21 law clerk. You can have that prepared, so we can cut
22 down on the time the charging covers.

23 FEMALE SPEAKER: Uh-huh. Uh-huh.

24 MR. MELLO: All right. I think -- I think it
25 would be --

1 THE COURT: Including an instruction as to
2 those witnesses that you've called regarding state of
3 mind, all right?

4 MR. MELLO: State of mind charges in there.
5 Okay.

6 MR. BILINKAS: And -- and when are you going
7 to have -- are you -- you -- Judge, we have to talk
8 about this.

9 MR. MELLO: With -- with Daniel, we'll send
10 it over to --

11 MR. BILINKAS: Today?

12 MR. MELLO: -- to -- to Sara?

13 FEMALE SPEAKER: Great.

14 MR. BILINKAS: Today?

15 MR. MELLO: This afternoon.

16 FEMALE SPEAKER: Yes.

17 MR. BILINKAS: Okay. Perfect. All right?

18 FEMALE SPEAKER: And -- and I'll have it --
19 try to have it ready for you in the morning, Judge.

20 THE COURT: Okay. Thank you.

21 MR. BILINKAS: We'll -- we'll give it to your
22 Law Clerk, first thing.

23 (Sidebar ends)

24 THE COURT: All right. Call your next
25 witness.

1 MR. BILINKAS: Bergen County Detective
2 Hernest.

3 MR. MELLO: Who is Bergen County Detective
4 Hernest?

5 THE COURT: I'm not sure if everybody heard
6 you.

7 MR. MELLO: My point.

8 MR. BILINKAS: It's not too often as a
9 defense attorney, I get to say that, Judge.

10 THE COURT: Please step up.

11 MR. MELLO: But he can always be heard,
12 Judge.

13 COURT CLERK: Raise your right hand.

14 R O B E R T H E R N E S T, DEFENSE WITNESS, SWORN

15 COURT CLERK: State your name for the record.

16 MR. HERNEST: Robert Hernest.

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

19 MR. BILINKAS: Thank you, Judge.

20 DIRECT EXAMINATION BY MR. BILINKAS:

21 Q Detective, can -- can you tell the jury where
22 you're employed?

23 A First of all, counselor, I'm not a detective. I
24 was an investigator.

25 Q Okay.

1 A Okay. I --

2 Q I stand corrected.

3 A Thank you.

4 Q And -- and where were you a [sic]
5 investigator?

6 A At the Bergen County Prosecutor's Office.

7 Q And how long were you employed by the Bergen
8 County Prosecutor's Office?

9 A From 1977 to 1999.

10 Q Now, were you involved in the investigation
11 of the death of Jody Scharf while you were employed by
12 the Bergen County Prosecutor's Office?

13 A Yes, I was.

14 Q I'm going to draw your attention to September
15 22, 1992. You were employed by the Prosecutor's
16 Office. Correct?

17 A That's correct.

18 Q Did you participate in the consent search of
19 my client's residence on that day?

20 A Yes, I did.

21 Q And who did you go to the residence with?

22 A I was with Investigator Alvers and Detective Lyman
23 (phonetic) from the Palisades Interstate Park Police.

24 Q And was there a local law enforcement agency
25 also present?

1 A Yes. It was the local Washington Township -- I
2 believe that's in Morris County -- sent a
3 representative or representatives there.

4 Q And -- and do you recall how long this search
5 of my client's house took?

6 A It could have been anywhere from a half a hour to
7 two hours. I don't remember the exact time.

8 Q Now, as an investigator participating in the
9 search of a [sic] individual's home, did you generate a
10 report?

11 A No, sir.

12 Q Why not?

13 A Because I was assisting Investigator Alvers, who
14 was -- was the lead detective, who I was assisting. He
15 was the one responsible, basically, for leading and
16 preparing the consent search.

17 Q Now, during the search, at some point in
18 time, did you have a conversation with Stephen Scharf?

19 A Yes.

20 Q And during -- strike that. Were you aware of
21 the fact that he had given a statement to Alvers hours
22 before this search?

23 A No.

24 Q This conversation that you had with Stephen
25 Scharf, did it have anything to do with a kitchen

1 drawer?

2 A Yes, it did.

3 Q And do you have a specific recollection of
4 that, even 19 years ago?

5 A Yes, I do, sir.

6 Q And at any time did Stephen Scharf identify a
7 drawer to you, as a member of the Prosecutor's Office,
8 and point it out?

9 A Yes, he did.

10 Q And did you, Alvers, Lyman, or any other law
11 enforcement officer seize that drawer and take it into
12 evidence after Stephen Scharf pointed it out to you?

13 A No, we did not.

14 MR. BILINKAS: No further questions.

15 THE COURT: Cross-examination.

16 MR. MELLO: Thank you.

17 CROSS-EXAMINATION BY MR. MELLO:

18 Q Good morning, sir.

19 A Good morning, sir.

20 Q Okay. September 22, 1992. You're at 27 Knob
21 Hill Road in Hackensack. Correct?

22 A Correct.

23 Q You're there as an assisting officer on a
24 consent search of the premises.

25 A That's correct.

1 Q And if you would, Mr. Bilinkas has asked you
2 about a conversation that you had with Mr. Scharf. Can
3 you tell us if you recall -- and by the way, you said
4 you have a very specific recollection of this?

5 A Yes.

6 Q Okay. Can you tell us first, in describing
7 that specific recollection of this event, can you tell
8 us where the conversation began. Just tell us where,
9 right now.

10 A In the kitchen of his home. Mr. Scharf's home.

11 Q Now, can you tell us how the conversation
12 that you had with Mr. Scharf, in the kitchen of Mr.
13 Scharf's home, on September 22, '92, how did it begin?

14 A Mr. Scharf was the one who initiated the
15 conversation.

16 Q Okay. Mr. Scharf -- Mr. Scharf, who
17 approached you, right, and had the conversation?

18 A He -- if -- if I recall, sir, he didn't really
19 approach me. I recall sitting at a -- a table in the
20 kitchen --

21 Q Okay.

22 A -- and Mr. Scharf was standing on the cabinets,
23 leaning on the cabinets, and next to -- to this -- this
24 drawer that we're talking about.

25 Q Okay.

1 A That's how I remember it.

2 Q Now, is the first this that you had -- the
3 first thing that you discussed with Mr. Scharf, did it
4 have anything to do with the drawer, or is the first
5 thing something else?

6 A I really don't recall the order of conversations
7 that we had. We don't -- we basically only -- what I
8 recall, we only had two conversations.

9 Q Okay. With respect --

10 A That I recall.

11 Q All right. With respect to your recollection
12 of the conversations that you had, did you have a
13 conversation with him, for example, about military
14 background?

15 A Yes.

16 Q And can you tell us something about that
17 small conversation?

18 A Something was common, or I saw something, or
19 something brought to my attention Mr. Scharf being in
20 the military. I don't know what it was and I -- we --
21 I -- I would assume that I initiated the conversation,
22 just to make conversation about being in the military.
23 We both acknowledged that we were both in the military,
24 and that was the end of the conversation. Very short,
25 very short conversation.

1 Q Okay. Now, tell us how the rest of the
2 conversation evolves.

3 A During the course of Investigator Alvers
4 conducting his search, I'm -- was sitting in the
5 kitchen and Mr. Scharf was there. I don't know if it
6 was continually or intermittently. I don't remember.
7 But he was standing next to this drawer, and he made it
8 a point to point out this drawer to me and had a -- we
9 had a brief conversation about that. Basically, the
10 words effect of something that, "This is the drawer
11 that was broken" or "This is the drawer that I fixed."
12 Some -- something to words to that effect.

13 Q Now, did he tell you how the drawer was
14 broken?

15 A No.

16 Q Did he tell you how he fixed the drawer that
17 he said was broken?

18 A No.

19 Q Did you look at the drawer that he said he
20 fixed because it was broken?

21 A Yes, I did.

22 Q When you looked at the drawer that he said he
23 fixed because it was broken, what did the drawer look
24 like to you?

25 A When I observed this drawer, I didn't see anything

1 that -- that indicated that there was anything broken
2 or had been fixed. It looked -- it looked normal to
3 me. So --

4 Q And the drawer was not taken.

5 A Correct.

6 Q Okay.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION BY MR. BILINKAS:

9 Q With -- with regards to Mr. Mello's questions
10 concerning -- did he tell you how the drawer was
11 broken?

12 A (No verbal response)

13 Q Did you ask him how the drawer was broken?

14 A No.

15 Q And did you give this drawer a careful
16 examination when he pointed it out to you?

17 A No, sir. The drawer meant nothing to me at that
18 time.

19 Q Did -- did you pull it out and -- and look at
20 the top, the bottom, the sides, to see whether or not
21 it had been fixed or previously broken?

22 A No. I did not.

23 MR. BILINKAS: Nothing further.

24 RECROSS EXAMINATION BY MR. MELLO:

25 Q If the drawer -- if -- if -- if the drawer

1 had been broken, you wouldn't know when it was broken.

2 Would you?

3 A No idea.

4 Q And if -- if the drawer was fixed by Mr.
5 Scharf, if -- you wouldn't know when he fixed it. Did
6 you?

7 A That's correct.

8 Q And if -- if he fixed the drawer that was
9 broken at some unknown time, you wouldn't know how he
10 fixed it. Would you?

11 A That's also correct.

12 RE-REDIRECT EXAMINATION BY MR. BILINKAS:

13 Q If -- if you had seized the drawer and taken
14 it into evidence, and submitted it to a forensic
15 person, might he have determined those questions asked
16 by the Prosecutor?

17 MR. MELLO: How is he going to answer that
18 question?

19 MR. BILINKAS: I'll withdraw the question.
20 Withdraw. Withdrawn.

21 MR. MELLO: He's not a forensic expert. You
22 can't tell -- you can't tell --

23 THE COURT: Thank you gentlemen.

24 MR. MELLO: Then I have nothing further, Your
25 Honor.

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

2 MR. HERNEST: Thank you, sir.

3 (Pause in proceedings)

4 THE COURT: Next witness.

5 MR. BILINKAS: I believe Mr. Mello wanted a
6 break, sir.

7 THE COURT: Ten minute break.

8 (Break)

9 (Off the record. On the record.)

10 (Jury enters Courtroom)

11 THE COURT: All right. Welcome back, ladies
12 and gentlemen of the jury. Please be seated.

13 Call your next witness.

14 MR. BILINKAS: Stephen M. Schorr.

15 (Pause in proceedings)

16 COURT CLERK: Raise your right hand.

17 S T E P H E N M S C H O R R, DEFENSE WITNESS, SWORN

18 COURT CLERK: State your name for the record.

19 MR. SCHORR: My name is Stephen Schorr, S-c-
20 h-o-r-r.

21 THE COURT: Please have a seat.

22 MR. SCHORR: Thank you, Your Honor.

23 THE COURT: You may begin.

24 VOIR DIRE EXAMINATION BY MR. BILINKAS:

25 Q Mr. Schorr, where are you employed?

1 A I'm employed at a firm called DJS Associates, and
2 that's located in Abbington, Pennsylvania, just north
3 of Philadelphia.

4 Q And -- and what type of business is this?

5 A Well, DJS Associates is a forensic consulting
6 firm, and what we do is we have engineers, scientists
7 in different areas of expertise that deal with
8 different matters that potentially or are in
9 litigation.

10 Q Can you give the jury a -- a brief synopsis
11 of your educational background?

12 A Certainly. I have an undergraduate degree in
13 civil engineering from Villanova University. There is
14 many different branches of civil engineering. I chose
15 to specialize in the branch of highway engineering,
16 accident reconstruction.

17 I have a Masters degree in civil engineering
18 from Northwestern University. Again, the emphasis in
19 my Masters degree is in the area of highway safety, in
20 the area of engineering mechanics and movement of
21 objects from place to place. I have post-graduate
22 courses in the area of engineering mechanics and
23 accident reconstruction, and I've been taking post-
24 graduate courses for as long as I've been out of
25 graduate school, which is '83.

1 Q And -- and after graduate school, did you
2 continue your education with various seminars or other
3 schooling?

4 A Yes. I mean, as -- as a -- I'm a Professional
5 Engineer, and as a registered Professional Engineer,
6 you need to keep up credits. So, you have to have
7 continuing education credits. So every year, I have to
8 get a certain number of credits by taking lectures,
9 taking seminars, taking courses, or giving lectures,
10 seminars, and courses, and I've been doing that for
11 twenty-some years now, twenty-eight years.

12 Q And do you hold any licenses or certificates?

13 A Yeah. I'm a Registered Professional Engineer in
14 the State of New Jersey, Pennsylvania, and about eight
15 or nine other states.

16 To become a Registered Professional Engineer,
17 you have to first have an engineering degree, then you
18 have to take a eight-hour exam called the Engineering
19 in Training Exam. It's now called the Fundamentals of
20 Engineering Exam. If you pass that, then four years
21 later you can sit for a Professional Engineering exam
22 in a specific area, and if you pass that, then you have
23 a Registered Professional Engineering license.

24 Q Are -- are you a member of any professional
25 organizations?

1 A I'm a member of the National Society of
2 Professional Engineers, the National Academy of
3 Forensic Engineers. I'm a diplomate in that. The
4 International Institute of Forensic Engineering
5 Sciences. I'm a diplomate in that. The American
6 Academy of Forensic Sciences. I'm a diplomate in that.
7 Society of Automotive Engineers, Institute
8 Transportation Engineers, and other -- other
9 organizations, as well.

10 Q Have you authored articles or had any papers
11 published?

12 A Yes. As a regular course, I probably lecture 20
13 times a year, across the United States, and abroad in
14 the area of accident reconstruction, in applied
15 mechanics to vehicular accidents in other areas. And I
16 also write papers for magazines and -- and journals in
17 my area of expertise. And the papers can be for
18 lawyers, they can be for adjusters, they can be for
19 engineers. It depends on whoever is interested in
20 accident investigation and reconstruction.

21 Q What -- what's your specific area of
22 expertise?

23 A Well, the area of expertise I have is the
24 application of engineering mechanics to vehicular --
25 vehicles, pedestrians, and other objects. And it's --

1 and -- and -- when I describe it, I -- I say it's
2 simple engineering, and it is. It's how forces act on
3 objects. And probably most of what I do is vehicular
4 accidents of vehicles, pedestrians, things like that.

5 MR. BILINKAS: Judge, at this time I would
6 ask that Mr. Schorr be qualified as an expert.

7 THE COURT: An expert in the field of?

8 MR. BILINKAS: Civil engineering.

9 THE COURT: All right. Without objection?

10 CROSS-EXAMINATION BY MR. MELLO:

11 Q Yes. Mr. Schorr?

12 A Certainly.

13 Q I -- I note in your -- your most accomplished
14 resume, you taught a course on directing and cross-
15 examination of an accident reconstruction expert.

16 Correct?

17 A I'm not sure I taught a course. I may have
18 lectured in a seminar where that was the question --
19 about -- because what I do, obviously, is
20 communication. And I'm sure that not only in that
21 course, but other courses I've talked about as an
22 engineer, how to communicate, trying to bring concepts
23 that might be up here to a -- a level that people can
24 understand.

25 Q All right. Perhaps I should have taken that

1 course with Mr. Bilinkas, but let's hear your
2 testimony.

3 A Okay.

4 MR. MELLO: Thank you very much. I have no
5 objection.

6 MR. SCHORR: Thank you.

7 THE COURT: All right. Pursuant to Rule 702,
8 the witness will be qualified as an expert in the field
9 of civil engineering.

10 DIRECT EXAMINATION BY MR. BILINKAS:

11 Q Can you tell the jury how many times you've
12 testified as an expert?

13 A I -- I've been doing this 28 years. I've probably
14 done over 8,000 cases, and testified probably 300
15 times, plus or minus. I -- I -- I'm sure there's a --
16 a list, a full list, someplace, but I really don't keep
17 count. I -- as I get older, I try not to keep count.

18 Q And have you been qualified in states other
19 than New Jersey?

20 A Yes. I've lectured -- or -- excuse me -- I've
21 testified in New Jersey, Pennsylvania, Delaware, New
22 York. Most of the work I do is on the East coast,
23 although I've been out as far as Texas and -- and
24 Nevada, and -- and Missouri, but I would say about 85
25 percent is up and down the East coast.

1 Q Now, have you testified as an expert for both
2 sides, so to speak? Both the prosecution and the
3 defense?

4 A Yes. We -- we check it every so often because we
5 get asked questions like that a lot. Do you do more
6 defense work, or more plaintiff's work? And -- and
7 it's about 50/50. Now, from our perspective, it's an
8 engineering analysis, and the numbers are the numbers,
9 and that's what we hope to get across.

10 Q Can you define civil engineering to the jury,
11 so we can understand it?

12 A Sure. Sure. Well, civil engineering is the
13 branch of engineering that deals with -- specifically
14 with the forces as applied to roadways, vehicles,
15 buildings. Civil engineers build roadways. They build
16 bridges. They build buildings.

17 So, they're looking are the forces that are
18 involved in keeping a building up, or what happens if
19 something falls. Things like a street light, a -- a
20 traffic signal. The wind, what does the wind do? So
21 you're looking at how those forces are applied to those
22 objects.

23 Q And -- and how does physics play a role in
24 your profession, in your area of expertise?

25 A Well -- well, physics is -- is the foundation of

1 our -- of, basically, of the universe. Physics is how
2 matter moves through space and time. So, you know, the
3 -- the way we -- the light comes in here, that's
4 physics. The way we hear, that's physics. If I take
5 this and push this off, that's physics. So, physics
6 encompasses basically the whole universe of -- of
7 everything that we do.

8 In the context of what we're talking about,
9 or what I'm talking about today, that's engineering
10 mechanics. That's a small portion of physics, and
11 that's something that civil engineers have training in,
12 mechanical engineers, aeronautical engineers. How an
13 object moves from Point A to Point B. How -- how does
14 the vehicle go from A to B?

15 If Derek Jeeter hits a baseball, physics,
16 engineering mechanics will tell you how much force is
17 required to take that baseball over the -- the left
18 field fence, things like that.

19 Q Now, are -- are you a pathologist?

20 A No.

21 Q Now, can you describe to the jury how your
22 area of expertise, civil engineering and engineering
23 mechanics, play a role in your analysis in this case?

24 A Well, sure. As -- as I said, I'm not a
25 pathologist. I -- I don't have a background in

1 injuries, or anything like that, but as an engineer,
2 the question that I was asked in this case was, "Could
3 an object, in this case, a body, go from Point A, the
4 top of a cliff, to Point B, the bottom of the cliff,
5 and -- and -- and strike a tree, without striking
6 anything else, unimpeded." And from an engineering
7 standpoint, that's actually a pretty basic analysis.

8 The -- the question becomes, "What is the
9 force required to get the body away from the cliff far
10 enough that it can strike that tree?" So that's a --
11 that's a basic engineering question.

12 Q Now, did you render a [sic] expert report
13 with regards to your analysis and opinions in this
14 case?

15 A Yes.

16 MR. BILINKAS: Okay. Did you see that?

17 MR. MELLO: Sure.

18 BY MR. BILINKAS:

19 Q I'm going to show you what has been marked D-
20 275, and ask you if that is the copy of your report?

21 A Yes, it is.

22 Q What specifically were you asked on behalf of
23 the defense to do regarding this particular case?

24 A Well, we were -- we were asked to evaluate an
25 analysis as to whether or not an object, in this case,

1 the body, could go from the top of the cliff and go
2 away and down from the cliff, and strike the tree where
3 the police indicate it struck, if -- if that was
4 possible, based on engineering mechanics.

5 Q And can you tell the jury what specifically
6 you reviewed?

7 A Yes. And I'm looking at my report because I don't
8 remember everything in detail. But we were provided
9 with police investigation, some statements, and some
10 measurements, a -- a bunch of different measurements.
11 We were provided with some calculations. We were
12 provided with some photographs. And I wasn't here for
13 all these weeks of the trial, but I'm sure a lot of
14 these things you've seen or heard about.

15 But what we were looking for primarily, from
16 an engineering standpoint, is what's the distance
17 between where the object leaves the cliff and where the
18 object strikes the tree. That becomes the most
19 important thing, from an engineering standpoint because
20 if I know that distance, the distance out and the
21 distance down, then I can calculate the speed at which
22 that object body has to leave the cliff. So, when I
23 look through all this data, that's really what I was
24 looking for. Those distances.

25 Q Now, in reviewing those documents, were you

1 asked to analyze whether or not the body could have
2 traveled from point A, the top of the cliff, to the
3 base of the tree unimpeded, without hitting anything?

4 A Yes.

5 Q And after you reviewed all the data that was
6 provided to you by the Prosecutor's Office, though the
7 defense, what did you do?

8 A Well, we can't -- we looked at all the data, and
9 then we went out to the scene. And when we were out at
10 the scene we took our own measurements because we
11 didn't want to -- not -- we're not saying that the
12 police measurements were inaccurate, we didn't know,
13 but we wanted to take our own measurements to see if we
14 could define what the height of the cliff was and where
15 the tree was located.

16 So, we went out to the accident scene and I
17 took a fellow from my office, Terry Meyers (phonetic),
18 with me, and we have what's called a high definition
19 laser scanner. And a high definition laser scanner is
20 simply a -- an object. It's about this big, weighs
21 about 40 pounds or so, and it shoots a beam of light
22 and it collects three-dimensional measurements. So, if
23 I had set that up here, in about five minutes it would
24 shoot a beam of light right across your path, here, and
25 if you stood still, it would give me an accurate

1 location of everything in its path, your positions, to
2 about a quarter of an inch. So, I set the scanner up
3 at the top of the hill, and then we went all the way
4 down to the bottom of the hill, and hiked all the way
5 up to where the tree was located, set the scanner up
6 there, and took three-dimensional measurements.

7 And that allowed me to look at the police
8 measurements to say they make sense or they don't make
9 sense.

10 Q Now, when -- when you say what the police
11 measurements were and what made sense or didn't make
12 sense, were there any differences in the various
13 measurements provided to you that the police and
14 Prosecutor's Office had done?

15 A Yeah. In -- in a different -- in different pieces
16 of information we got, there are different -- and I
17 want -- I want to be careful about measurements. There
18 were different estimates about the distance that the
19 body fell and the distance the body was -- was out from
20 the cliff. For example, one person in there said 200
21 feet down, 30 feet out. There were some measurements
22 that said 119 feet down, 52 feet out.

23 So, it -- it's -- it's not an easy thing to
24 take measurements in this area, so we -- we could
25 understand how somebody might estimate and be off, or

1 whatever, so we just wanted to make sure that we
2 collected our data so we could see if any of those were
3 correct and, if so, we wanted to use the correct one.

4 Q Okay. You indicated you made a -- a visit to
5 the site with this high definition laser scanner.
6 Correct?

7 A Yes, sir.

8 Q So, did you bring the scanner to the top of
9 the cliff?

10 A Yes. And -- and getting a scanner to the top, top
11 of it was easy, because we could park our car and just
12 walk the scanner to the top and set it up and scan.
13 Getting the scanner to the bottom of the cliff wasn't
14 so easy, but --

15 Q I'm going to show you what's been marked --
16 and I -- I believe it will be in evidence, 282. And
17 I'm going to point it -- I'm going to point to a
18 contraption, a tripod in this photograph. Is this the
19 high definition laser scanner that you're referring to?

20 A Yeah. That contraption is the high definition
21 laser scanner and that's up at the top, there. So we
22 set it up on this -- we set it up on that tripod and it
23 spins around 360 degrees as it takes its measurements
24 and -- and basically bounces a beam of light off of
25 everything in its path and collects the data that way.

1 MR. BILINKAS: And D-194 in evidence?

2 MR. MELLO: No objection.

3 THE COURT: All right.

4 (D-194 admitted into evidence)

5 BY MR. BILINKAS:

6 Q Is this a picture of that same device in the
7 middle of this depiction?

8 A Right. That -- and that's the scanner, set up
9 just by the tree where that fellow is leaning against,
10 just by the tree where the -- the police indicate the
11 body struck. And that location, just to give you an --
12 an -- that -- that's about 300 feet above the road that
13 goes along the river. So when we had come down and we
14 -- we -- actually the road was blocked. We had to walk
15 about a -- a mile or so, and then just walk up -- just
16 climb up there and place that scanner there.

17 Q And -- and how did you get this -- how much
18 does this device weigh?

19 A Probably about 40 pounds or so.

20 Q Okay. And how did you get it up that 300
21 feet to the base of the tree?

22 A Well, I was with a buddy, a guy that I've been
23 working with 25 years, who's six foot five. So, I
24 tried to talk him into putting it on his back. But he
25 wasn't in very good shape, so I put it on my back and I

1 actually climbed up the hill with it on my back, very
2 carefully up the hill, until we got up to that
3 location.

4 Q And how much does this machine cost?

5 A About \$150,000 for the machine, and then, there's
6 also things that go with it, meaning the software and
7 everything like that. It's probably close to \$200, or
8 a little over \$200,000, when you get a -- a total.

9 Q And -- and, for the record, did I climb up
10 there with you?

11 A Yes, but not with that strapped to your back. No.

12 Q Although, for the record, I think I probably
13 could have.

14 THE COURT: You never know.

15 BY MR. BILINKAS:

16 Q Now, what specifically does this laser device
17 measure?

18 A It -- it takes measurements. It's -- when you
19 guys, sometimes you're driving along a road and you see
20 people -- work -- workers on the road with their survey
21 equipment and they're -- what they're doing is they're
22 doing exactly the same thing the scanner is doing, but
23 they're doing it one point at a time. They take a -- a
24 survey, they get a point, it comes back, and they
25 record it. That scanner takes the points literally

1 thousands at a time because it goes up and down.

2 I -- I think that what you're going to find
3 over the next five or ten years, that the single survey
4 that you see the guys using in the field is going to be
5 replaced by that. It's just technology that's moving
6 ahead.

7 Q Now, the -- the Prosecutor had a [sic]
8 engineer testify that he used a total station device.
9 What's the difference between that device and this high
10 definition scanner?

11 A Yeah. That total station device is the one I just
12 talked about. It, essentially, is doing exactly the
13 same thing. It's shooting a beam of light. It's
14 bouncing that beam of light back off what -- an object,
15 and when -- when it comes back to the transit, it
16 basically records the speed and the angle at which it
17 comes back, and, therefore, it can record that point.
18 So, it will give you the location of the point from the
19 -- the transit and it will give you height of the
20 point. So the -- we like to say that -- that this
21 scanner is a total station on steroids. They're doing
22 the same thing, but it's just collecting a lot more
23 data.

24 Q And does the high definition laser scanner
25 give you a three-dimensional look at what it's

1 measuring?

2 A We -- well, they -- they both actually give three-
3 dimensional points, but because the scanner takes so
4 much data, if you look at just the data, we call it a
5 point cloud, it actually looks like what you're talking
6 about, because you can see the profiles, and things
7 like that. So, it -- it's -- it's interesting, because
8 it -- it takes the data and instead of a photograph,
9 you can actually look at it and say, well, here, I can
10 see the -- the -- the cliff, or I can see the tree,
11 things like that.

12 Q Now, you just used the term, "point cloud."
13 Can you explain to the jury what that is?

14 A Sure. The -- the point cloud is just -- it's not
15 -- nothing fancy, it's just every one of those millions
16 of points it takes, it's the conglomeration of those
17 points. So, when you look at that point cloud,
18 sometimes, depending on how you look at it, you'll be
19 able to view the -- the terrain in this case. You'll
20 be able to see the cliff and the trees, because the
21 point cloud actually builds together and -- with the
22 measurements, and shows you what it looks like.

23 Q I'll show you what has been marked D-276.

24 MR. MELLO: That's in evidence?

25 MR. BILINKAS: In evidence and --

1 MR. MELLO: No objection.

2 THE COURT: Okay.

3 (D-276 marked into evidence)

4 BY MR. BILINKAS:

5 Q And ask you if this is a point cloud that
6 you've just explained to the jury.

7 A Yeah, this is a point cloud, but it's a cross-
8 section of the point cloud. So if you were standing on
9 the side of the cliff, and then the top was here, and
10 the tree were here, you're looking at the side. It's
11 like if somebody took a knife and sliced it through,
12 and it allows you to see the profile of the cliff, as
13 you're looking at it.

14 MR. BILINKAS: For the record, I'm going to
15 publish this to the Jury. D-276.

16 MR. MELLO: No objection, Your Honor.

17 BY MR. BILINKAS:

18 Q Mr. Schorr, can you please step from the
19 stand and --

20 MR. SCHORR: May I, Your Honor?

21 THE COURT: You may.

22 BY MR. BILINKAS:

23 Q For the jury, can you discuss what's depicted
24 in this to the jury box?

25 A Sure. This is the top of the -- as you look over

1 here, as you look at the top right, that's the top of
2 the area. That's the area where the top of the cliff
3 was. Remember that photograph that we showed with the
4 -- the stand set up. This -- the stand was set up, up
5 top here, to get those measurements.

6 This is the tree, at the bottom, where, in
7 that other photograph you saw a fellow leaning against.
8 This is the tree where the body struck, down here. And
9 this shows you the profile of the cliff, but it shows
10 you the profile with everything in the path. There's
11 trees, there's other trees, there's bramble, all the
12 things on the cliff, there. And the most important
13 thing is everything is to scale. So, if you looked at
14 this and you wanted to know the height of this tree,
15 you could actually measure from here to here and get
16 the height of the tree. So it -- it provides you the
17 opportunity to take measurements.

18 Q Does it provide you the opportunity to take
19 measurements from any point on that cliff face?

20 A Of any point that you can see. Sure.

21 Q And -- and I notice there are a number of red
22 lines at the top.

23 A Yes.

24 Q Can you describe to the jury what those lines
25 represent?

1 A Yeah. And -- and I think there's a -- there's --
2 there's another view of this one. This takes the top,
3 basically the top of the cliff. This takes the --
4 there's a -- a sort of a secondary ledge. And this --
5 this is the location of the secondary ledge, and, of
6 course, down here is the tree where Ms. Scharf fell.

7 (Pause in proceedings)

8 MR. MELLO: No objection.

9 (D-278 admitted into evidence)

10 BY MR. BILINKAS:

11 Q I'm going to put on 278 in evidence, and ask
12 you to explain to the jury what's depicted in that
13 photograph.

14 A This is exactly what you saw in the last one,
15 except I sort of cleaned it up. I took off the
16 brambles and things like that, just so you could see
17 the edge of the cliff, to see if you could find it a
18 little bit better. And what it does is it shows you
19 that -- here's the top, right here, and here's that
20 second ledge, right here.

21 So, if you wanted to measure the distance
22 from the top of the cliff to that first ledge, you
23 could actually measure this, right here. If you wanted
24 to measure the distance from the first ledge to any
25 other point, you can measure that distance.

1 So all -- all it does is -- is it takes away
2 some of the -- the excess to allow you to see the slope
3 and the face of the cliff and the location.

4 Q I'm going to show you what has been marked in
5 evidence, S-252. Does this depict the flat rock at the
6 top of the ledge represented by the top line in this
7 point cloud?

8 A Yes. This -- this, right here, is right in this
9 area, up here.

10 Q I show you in evidence D-254, and ask you
11 whether or not the ledge depicted in this photograph is
12 represented by the second line from the top?

13 A Yes, it is.

14 Q I show you D-278 in evidence, and I ask you
15 to describe to the jury exactly what's depicted in this
16 point cloud.

17 A This is -- essentially shows from at the top of
18 the (inaudible - cough drowns out witness) there, down
19 to the bottom of the tree, there. And just -- that
20 these are selected measurements and basically what it
21 does is it -- it shows distances. Now, I put distances
22 on here, but if you look at it closely, there's little
23 squares and things. So, you guys would make them
24 yourself that gives you the general distances. So,
25 that's (inaudible - away from microphone).

1 Q And I show you Defense 279.

2 MR. MELLO: No objection. In evidence.

3 MR. BILINKAS: In evidence.

4 (D-279 admitted into evidence)

5 BY MR. BILINKAS:

6 Q In evidence. And is this what's depicted in
7 the previous point cloud that the jury just saw,
8 without a lot of the trees and -- and bushes?

9 A Yes. And again, what it -- what it shows you is
10 that you've got an approximate distance of 51 feet out
11 from the ledge to an area about six feet off one tree,
12 and then an approximate distance of 126 feet or so
13 down. And again, depending on specifically where I
14 take that measurement and where I touch the tree, that
15 distance might change a little bit, could be a little
16 bit less, could be a little bit more, but it gives the
17 -- the general distance.

18 Q And -- and can you point out the ledge
19 beneath the flat rock in this point cloud?

20 A Right here.

21 Q I show you 280. In evidence.

22 MR. MELLO: No objection.

23 (D-280 admitted into evidence)

24 BY MR. BILINKAS:

25 Q Can you describe to the jury what's in this

1 point cloud?

2 A This is a -- a close-up of that ledge that you
3 were just talking about. Here's the top of the cliff,
4 and you can see, you know, all it does is it picks up
5 everything in it's path. So, you're seeing bushes
6 behind it, bushes in front of it. The cliff is right
7 here and the ledge is right down here.

8 Q That's perfect. 281.

9 MR. MELLO: No objection.

10 (D-281 admitted into evidence)

11 BY MR. BILINKAS:

12 Q And is the following exhibit, 281, the same
13 depiction of the close-up on the ledge in question
14 without the trees and bushes?

15 A Yes. It shows again, the edge of that cliff, down
16 to the first ledge. There's a little over 13 feet from
17 the -- the point status on the cliff.

18 Q Now, I notice on this particular point cloud,
19 that there's some dark area between the top flat rock
20 and the ledge below.

21 A In this area, right here. Yes.

22 Q And -- and can you describe to the jury what
23 that is?

24 A Sure. I -- remember, you're actually looking at
25 it like this. So anything in its -- in the way here is

1 going to show up. So, this is actually a -- a rock
2 outcrop that's actually out here, but it looks like
3 it's right against here, but that's just because of the
4 slice of the cut.

5 Q Okay. I'm going to show you D-151, in
6 evidence.

7 A Yeah, this is different.

8 Q Does this depict that shading of the area
9 that you just testified to?

10 A Yeah. That shading is here. The ledge that
11 you're talking about is actually -- like -- you get --
12 it's right down behind this. So that dark that you're
13 seeing is just that area (inaudible - away from
14 microphone). That's it.

15 Q You can have a seat.

16 (Pause in proceedings)

17 BY MR. BILINKAS:

18 Q Now, Mr. Schorr, you indicated that when you
19 reviewed all the discovery, there were -- there were
20 differences in a -- a number of the police and
21 prosecutor's estimates. Correct?

22 A Yes.

23 Q And were your measurements fairly consistent
24 with those measurements?

25 A Actually, the -- the -- the measurements that the

1 Prosecutor's took, they were pretty good, compared to
2 what we have there. They had 52 feet out and 119 feet
3 down. And as you saw, we had about 51 feet out and a
4 little over 120 feet down. So I thought, especially
5 for as difficult an area that that is to measure, I
6 thought having those measurements that close were --
7 were pretty good.

8 So when I did my analysis, I actually just
9 used the Prosecutor's numbers because, you know, so I
10 could agree with them as much as I could when I did my
11 analysis.

12 Q Okay. So, when you talk about you analyzing
13 the case from a [sic] engineering physics standpoint,
14 is it your testimony that you used the Prosecutor's own
15 numbers to do your analysis?

16 A Yeah. The -- and -- and it's not like there were
17 a lot of numbers. I used the fact that the body went
18 52 feet out and 119 feet down. That's the numbers they
19 used. I used the same numbers.

20 Q So, with regards to your analysis, in using
21 the Prosecutor's numbers, you used the number of 119,
22 and -- and correct me if I'm wrong, which represented
23 the distance between the flat rock and six feet from
24 the base of the tree. Correct?

25 A Yes.

1 Q And the Prosecutor's number of 52 feet, which
2 was the distance out from the flat rock, straight down
3 to six feet from the base of the tree. Correct?

4 A Right. The body -- the body had to be projected
5 out 52 feet in order to strike the tree 119 feet down.

6 Q Now, with regard to those two numbers, can
7 you tell the jury why those two numbers are important
8 to you regarding your analysis?

9 A Well, the numbers are important because the laws
10 of physics or engineering mechanics dictate that in
11 order for the object to go 52 feet away from the cliff,
12 it's got to have some speed when it leaves the cliff --
13 a force when it leaves the cliff. If a body just steps
14 off a cliff, it's going to go straight down, unless
15 it's hit -- it hits something and then projected out.

16 But the first calculation we did was
17 basically what happens to a body if it's unimpeded,
18 doesn't strike anything. How fast does it have to
19 leave the cliff in order to be projected out 52 feet?
20 That's the calculation I did.

21 Q Okay. As -- as the engineer, can you
22 calculate what force would be required to project
23 unimpeded a 167 pound woman 52 feet away from the
24 cliff?

25 A Yes. Yes, I can.

1 Q Can you do that for the jury?

2 A I can do that for the jury. Well, and -- well,
3 the calculation is that in order for the -- the -- the
4 body to be projected out 52 feet, it's got to leave the
5 cliff at about 13 miles an hour. So, if it leaves the
6 cliff at less than 13 miles an hour, it's not getting
7 out 52 feet. So, the -- the slower it's going, again,
8 unimpeded, the slower it's going, the closer it ends up
9 to the cliff. The faster it's going, the further away.
10 So, the calculation is very clear that a body needs to
11 leave that cliff at about 13 miles an hour in order to
12 strike the tree.

13 Thirteen miles an hour, I guess -- here's a
14 couple of analogies. The fastest man in the world runs
15 about 22 miles an hour, that's the -- the fastest
16 sprinter in the world. The fastest NFL football
17 combine, with a -- with a 40-yard dash, runs about 18
18 or 19 miles an hour. So, this body has got to be
19 running off at a very high sprint speed to get out
20 there 52 feet and -- then the question is, in that top
21 of the grade, even if they were running, can you ever
22 accelerate to 13 miles an hour, because the top of that
23 cliff is not very long.

24 So, from an engineering standpoint, I can't
25 figure out any manner with a -- that a body can get

1 accelerated to 13 miles an hour and be projected out
2 unimpeded to hit that tree. I -- I -- there -- I can't
3 come up with anything.

4 Q And -- and is this true? Even if that body
5 was pushed, thrown, or slung around and hurled off the
6 cliff?

7 A The answer is yes. I mean -- think about a push.
8 I'm not the biggest guy in the world, but, you know, if
9 I was going to push something, it's really the extent -
10 - extent of my arms. So that would mean that -- that I
11 or even somebody, even without longer arms, would have
12 to take a body at rest and push and accelerate in that
13 length of their arm, accelerate the body to 13 miles an
14 hour. That -- that -- that's not going to happen.

15 Now, with regard to the swinging around, I
16 didn't do any testing with regard to swinging around.
17 I -- I reviewed the police -- they did some videos with
18 some sandbags -- and -- and quite honestly, their --
19 their sandbag videos show how difficult it is to
20 project a body out, because in every one of those
21 sandbag videos, the body never made it to the tree.
22 The body either hit -- hit something, either at the top
23 or further down, but never made it out 52 feet to the
24 tree.

25 So, and -- and the last thing is that -- let

1 -- let's assume that that analogy that maybe you're --
2 you're swinging the body around. You have your
3 momentum, if you let go. So the -- the question
4 becomes -- I know the guy's throwing the sandbags over
5 were all harnessed and everything like that. You have
6 to be careful that your own momentum is not going to
7 take you over.

8 So, from an -- from a practical engineering
9 standpoint, I can't figure out how a body can be
10 accelerated to 13 miles an hour, to go unimpeded to the
11 tree. I just can't figure it out.

12 Q Is there any reasonable engineering analysis
13 that would explain how a body can be accelerated to
14 that speed?

15 A Well, it -- there -- there's none -- there's none
16 to be accelerated to that speed at the top. Certainly,
17 from an engineering standpoint, if the body doesn't go
18 unimpeded, then it can get there. A body could fall,
19 and it could deflect off the edges, and be projected
20 out each time, because there's ledges, there's trees,
21 things like that.

22 So, if you go to the unimpeded, and say can a
23 body fall off, strike something and -- and then be
24 projected out, the answer is yeah. From an engineering
25 standpoint, that can happen. But it can't get out

1 there unimpeded.

2 Q Now, you had indicated that you reviewed all
3 the documents provided by the Prosecutor, the defense
4 docs, and -- and one of the things you just talked
5 about was the sandbag tests.

6 Did you review an engineering's [sic] report
7 -- an engineer's report that was hired by the
8 Prosecutor's Office, back in 1993, by the name of Kurt
9 Becker?

10 A Well, after I did my calculations, I found in the
11 data, an engineering report by Becker. I think it was
12 2003, was the Becker report. But I -- I -- I'm looking
13 for the date right now. Yeah. September 14, 2003, and
14 this is a Kurt Becker, it says was a fellow from
15 Stevens Institute of Technology, which is an
16 engineering school up here.

17 Q Okay. And that was someone that the Bergen
18 County Prosecutor's Office hired --

19 A That's what it --

20 Q -- to analyze this case?

21 A That's what it appears. Yes.

22 Q And did he agree with your analysis?

23 A Yeah. Actually, his analysis and our analysis is
24 essentially the same, basically saying that a body has
25 got to leave there at 12 or 13 miles an hour. You

1 know, you may, you can change some variables, and it's
2 just -- I don't know that he could figure out a
3 scenario where it could happen, either.

4 Q Mr. Schorr, I want to you accept the
5 following, with regards to my next question.

6 A Okay.

7 Q Mrs. Scharf was initially on the top flat
8 rock, at the Rockefeller Lookout.

9 A Okay.

10 Q Mrs. Scharf somehow went from the top of that
11 flat rock, over the cliff, and impacted approximately
12 six feet above the base of the tree that you've put in
13 your point clouds.

14 A Okay.

15 Q Based on those facts, is it scientifically
16 possible that a body could have gotten from the cliff
17 to the base of the tree unimpeded by anything else?

18 A Only if the body leaves the cliff at about 13
19 miles an hour, and I can't figure out a way,
20 scientifically, that the body would do that.

21 Q Have you formulated an opinion as to the
22 validity of the Prosecutor's theory that the body
23 traveled from the top --

24 MR. MELLO: Oh, oh, oh no. That I will
25 object to. He cannot ask him a question as to what my

1 theory of the case is, or any other theory reading into
2 unknown, unattainable documents, opinions, etc. He can
3 ask this witness what scientific evidence he has to
4 give this jury, and that's all, Judge.

5 MR. BILINKAS: Well, Judge, I believe he's
6 allowed to respond specifically --

7 THE COURT: Ask another question.

8 BY MR. BILINKAS:

9 Q Could the body have traveled unimpeded, from
10 a scientific, physics standpoint, from the top of the
11 flat rock to six feet above the base, unimpeded?

12 A Only if it left at 13 miles an hour, and I don't
13 know how scientifically it leaves at 13 miles an hour.
14 I can't -- there's no evidence that you can look at to
15 say that he could have left at 13 miles an hour.

16 Q And -- and is that opinion of yours reached
17 within a degree -- a reasonable degree of engineering
18 certainty?

19 A It is.

20 Q What is your specific opinion regarding the
21 analysis of this case?

22 A Well, any --

23 MR. MELLO: I'm going to object to the form
24 of the question.

25 THE COURT: Sustained.

1 BY MR. BILINKAS:

2 Q Is -- is there a reasonable engineering
3 analysis that can explain how Mrs. Scharf's body could
4 be accelerated to a speed of 13 miles per hour, from
5 her position at the top of the flat rock?

6 A No.

7 Q Now, does that mean that Mrs. Scharf could
8 not have fallen from the cliff at the point,
9 specifically, the flat rock?

10 A No. She could have fallen there, but she had to
11 have hit something on the way down. She can't fall
12 unimpeded. She had to have hit something on the way
13 down, before she got to the tree. Or something or some
14 things.

15 Q Now, assume that the body fell off the flat
16 rock. Assume that it hit that ledge that you've
17 described to the jury --

18 MR. MELLO: Objection.

19 BY MR. BILINKAS:

20 Q -- and traveled --

21 MR. MELLO: There's no fact in evidence that
22 the body hit that ledge.

23 BY MR. BILINKAS:

24 Q It's a hypothetical.

25 MR. MELLO: No, no.

1 BY MR. BILINKAS:

2 Q The hypothetical --

3 MR. MELLO: Hypothetical must be based on
4 facts in evidence. There is no evidence before this
5 jury that that body hit that ledge. None.

6 THE COURT: The objection is sustained.

7 MR. BILINKAS: Judge, for -- for the record,
8 Cyril Wecht will be introducing --

9 THE COURT: Did not testify.

10 MR. BILINKAS: I expect him to testify,
11 Judge, tomorrow, and I think --

12 THE COURT: At this point in time, there has
13 been no evidence adduced. Move on.

14 BY MR. BILINKAS:

15 Q Can -- can you tell the jury what could have
16 propelled Jody Scharf's body the distance in this case,
17 if she had fallen from the flat rock?

18 A Just striking anything on the way down could
19 propel her out further from -- away from the cliff. So
20 whether it's the ledge, whether it's another thing
21 further down, whether it's a tree, anything that she
22 strikes has the opportunity to change her direction and
23 push her further away from the cliff.

24 MR. BILINKAS: Nothing further.

25 THE COURT: Cross-examination.

1 MR. MELLO: Yes. Thank you, Judge.

2 CROSS-EXAMINATION BY MR. MELLO:

3 Q Good morning, Mr. Schorr.

4 A Good morning.

5 Q I just have a few questions for you.

6 A Certainly.

7 Q As I understand it, the task before you was
8 the question whether or not the body of Mrs. Scharf
9 could go from Point A, the ledge, to Point B, the tree,
10 unimpeded.

11 A That was the initial question. Yes, sir.

12 Q And for purposes of illustration, and I'm
13 using S-267.

14 I hope everyone in the jury can see this.

15 Point A is the ledge, Point B is the tree.

16 Right?

17 A I'll accept that. Yes.

18 Q And you, of course, visited the site?

19 A Yes.

20 Q You've seen this rocky premonition [sic]?

21 A Yes.

22 Q And it is, indeed, very rugged terrain here.

23 Correct?

24 A Yes.

25 Q And with respect to your evaluation, I think

1 earlier in your testimony as -- as -- as a student of -
2 - of engineering and physics, I think you used the
3 term, "The numbers are the numbers." Correct?

4 A Yes.

5 Q And the numbers are the numbers insofar as
6 Point A, which is the edge of the cliff. Correct?

7 A Correct.

8 Q The numbers are the numbers, as it pertains
9 to Point B, the tree at the bottom of the cliff.

10 A Correct.

11 Q I believe that you accept the numbers that it
12 is a 119 foot distance down?

13 A Approximately 119 feet. I'll buy that.

14 Q Fifty-two feet out.

15 A Correct.

16 Q And your position that the numbers are the
17 numbers are premised on those two points. Correct?

18 A Correct.

19 Q And as a matter of fact, and -- and I want to
20 be clear here. Your -- your position here is to tell
21 us that you cannot determine a scientifically grounded
22 basis by which the body could move from Point A to
23 Point B unimpeded. Correct?

24 A Unimpeded. Correct.

25 Q However, you will be of the opinion that a

1 body might have its trajectory and distance altered,
2 were it to strike something, such as trees?

3 A Trees. A rock ledge. Whatever's in its path. It
4 -- it -- it could change the trajectory.

5 Q It could possibly do that. Right?

6 A Sure.

7 Q But your task here was having to reconstruct
8 how this happened. Correct?

9 A Yeah. I --

10 Q You are not telling this jury that you are
11 reconstructing how this happened. What you are telling
12 the jury is that one cannot go from Point A to Point B
13 unimpeded. That's the substance of the testimony.

14 A Yeah. I -- I -- and -- but I'm also saying that
15 it also can go from Point A to Point B if it strikes
16 something.

17 Q Yes.

18 A I -- I'm not a pathologist. I can't tell you how
19 it strikes --

20 Q But you are not -- you -- you are -- you are
21 not attempting to reconstruct how this happened?

22 A No. Just -- I'm just telling you that
23 scientifically, it has to hit something to get to where
24 it landed. That's what I'm telling you.

25 Q And -- and as you say, this is for you a

1 numbers analysis. The numbers are the numbers. You
2 and Mr. Becker agree on the point that the acceleration
3 speed to go from Point A to Point B unimpeded would be
4 13 miles per hour?

5 A Correct.

6 Q And you can find no scientific basis for that
7 event. Correct?

8 A Correct.

9 Q And all that you have told us today is
10 premised on the assumption that Point A, the point that
11 Mrs. Scharf fell from, is the ledge that you --

12 A In -- in the general area. It doesn't matter
13 whether she fell to the left of the ledge, or to the
14 right of ledge, but we're talking about --

15 Q In fact --

16 A -- the top of the lookout -- the top of the
17 lookout point there.

18 Q That -- that -- that's it. Right?

19 A I -- I'm -- I'm -- I'm assuming that that's it.
20 Yes. Right up -- you know. We -- I -- I'm sure you've
21 seen photographs. Wherever they were sitting, and were
22 doing. Whatever.

23 Q So, my point is your calculations are
24 premised on Point A being that particular flat rock
25 edge. Correct?

1 A Well, yeah, yeah. The answer is yeah, that
2 general area. I mean, if you're going to tell me, "Oh,
3 she moved three feet to this way or ten feet that way."
4 The answer is the numbers are still going to be the
5 same. It doesn't have to be that exact point, but
6 we're talking about 119 feet, 52 feet. Whether it's
7 130 feet and 40 feet, you're still talking about a high
8 speed.

9 Q From this point?

10 A From that general area.

11 Q This flat rock.

12 A From the area where the police data says they were
13 located before they fell.

14 Q From the data that the defendant says they
15 were located before the fall.

16 A Actually, I'm using Mr. Becker's, you know,
17 numbers. He got all that from the Prosecution. So --

18 Q Though you've read Mr. Scharf's statements.
19 Doesn't he indicate that's where she fell from?

20 A Yeah. Well --

21 Q Did you read them?

22 A Yes. I did. But -- but again, I'm not -- I'm not
23 saying that that area couldn't be a little bit
24 different, but if you're going to tell me that they
25 were 30 feet to the left, or something like that, maybe

1 that changes it a little bit, but I'm looking where
2 everybody else has them.

3 Q Okay. Okay. Thank you for a very
4 interesting presentation.

5 MR. MELLO: Nothing further.

6 THE COURT: Please step down. Thank you.

7 MR. BILINKAS: Judge, I have one question.

8 REDIRECT EXAMINATION BY MR. BILINKAS:

9 Q From a scientific standpoint, you're talking
10 about someone going off that flat rock at approximately
11 13 miles an hour. Is it feasible, based on your
12 experience, for even a world-class sprinter to run in
13 that location, jump over the wire fence, and leap out
14 at 13 miles per hour, to the tree in question?

15 MR. MELLO: I don't think we have anybody
16 leaping over fences, Judge. I don't think that that's
17 what this case is about.

18 THE COURT: The objection --

19 MR. MELLO: So, I object to the form of that
20 question.

21 THE COURT: The objection is sustained. Any
22 further questions?

23 MR. BILINKAS: No, Judge.

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

25 MR. SCHORR: Thank you, Your Honor.

1 (Pause in proceedings)

2 THE COURT: May I see the attorneys?

3 (Sidebar begins)

4 MR. BILINKAS: I left you the work.

5 THE COURT: Uh-huh. Uh-huh.

6 MR. BILINKAS: That's the first on the
7 witness --

8 THE COURT: So, I can tell them there are no
9 further witnesses for today. We'll work on some other
10 matters and tomorrow at 9:00 a.m.

11 MR. BILINKAS: (Inaudible)

12 THE COURT: You think -- okay, you should be
13 concluded then.

14 MR. BILINKAS: I -- I didn't -- I -- you --
15 you maybe want to tell them by lunchtime.

16 THE COURT: Okay. No, I'll just tell them.

17 MR. BILINKAS: Okay.

18 THE COURT: I'll leave it open.

19 MR. BILINKAS: Okay.

20 (Sidebar ends)

21 THE COURT: Ladies and gentlemen of the jury,
22 just to give you some idea of the progress of the
23 trial. We are on schedule. For today, given the fact
24 that we've run out of witnesses, we have an expert for
25 tomorrow. Pretty much there -- we can do some other

1 things, such as going over jury charges, that will
2 assist and streamline the case, but there's no reason
3 for you to be here while we're doing that.

4 The final witness will be called tomorrow.
5 We expect that we might be finished sometime by --
6 possibly by noon. As I said before, the closing
7 arguments will be next Tuesday at 9:00 a.m.

8 So, at -- at this point in time, the jury is
9 in recess until tomorrow at 9:00 a.m. Do not speak
10 with anyone concerning the case. Do not watch any
11 media reports or read any media accounts. Don't have
12 any conversations of any nature with anyone.

13 Understood?

14 Let the record reflect that the jury is
15 nodding in the affirmative. The jury is in recess
16 until tomorrow at 9:00 a.m.

17 (Proceedings Concluded)

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CERTIFICATION

I, Rebecca Y. Natal, the assigned transcriber, do hereby certify the foregoing transcript of proceedings Digitally Recorded, 10:21:16 to 11:42:49 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

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February 6, 2012
Date

[TRANSCRIBER'S NOTE: The morning begins with the Court experiencing technical difficulty at 9:33:44. As per the log, multiple portions of the day's proceedings were missing from the recording supplied. As a result, this transcriber advised and requested original video from the agency. This transcriber was provided with a second CD which she was advised was provided by the Court. Said recording contained the same data as the first. Upon inquiry this transcriber was further advised that that was the only available recording.

In addition, the recording contains static throughout. The audio is completely cut off at multiple points in the the recording. Finally, 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.]