

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 19, 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

A P P E A R A N C E S:

WAYNE L. MELLO, ESQ. -and-
DANIELLE R. GROOTENBOER, ESQ.
Bergen County Prosecutor's Office
Attorneys for the State

EDWARD J. BILINKAS, ESQ. -and-
SARA SENCER McARDLE, ESQ.
Law Office of Edward J. Bilinkas
Attorneys for the Defendant, Stephen Scharf

AudioEdge Transcription, LLC
425 Eagle Rock Avenue - Suite 201
Roseland, New Jersey 07068
(973) 618-2310
www.audioedgetranscription.com

I N D E X

<u>WITNESS FOR</u> <u>THE DEFENSE</u> <u>Recross</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	
Cyril H. Wecht	15	52	90	
			<u>Direct</u>	<u>Cross</u>
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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 - all present)

6 THE COURT: Mr. Bilinkas, is the State ready
7 to proceed?

8 MR. BILINKAS: The defense is ready, Judge.
9 The State has already proceeded.

10 THE COURT: Defense, your next witness?

11 MR. BILINKAS: My pleasure to call Dr. Cyril
12 Harrison Wecht to the stand.

13 THE COURT: Watch your step up here. Please
14 step up and face the Court Clerk.

15 C Y R I L H W E C H T, DEFENSE WITNESS, SWORN

16 COURT CLERK: Please state your name for the
17 record?

18 DR. WECHT: Cyril H. Wecht.

19 THE COURT: Please sit. Please have a seat.
20 You may begin.

21 MR. BILINKAS: Thank you, Judge.

22 VOIR DIRE EXAMINATION BY MR. BILINKAS:

23 Q Dr. Wecht, where do you currently reside?

24 A Pittsburgh, Pennsylvania.

25 Q Are you employed?

1 A Self-employed.

2 Q And -- and can you explain to the jury what
3 you do for a living?

4 A I'm a pathologist -- Anatomic, Clinical and
5 Forensic Pathologist. I -- perform autopsies for
6 coroners and district attorneys in five counties in
7 Southwestern Pennsylvania. I consult with attorneys,
8 agencies, organizations in a variety of civil and
9 criminal matters. I do some teaching and I do some
10 writing. So, those are the things that I do for a
11 living.

12 Q And -- and how long have you been doing those
13 types of things?

14 A I finished all my pathology training in the summer
15 of 1962, so on an active basis -- post education and
16 graduate training that would make it 49 years, less a
17 couple of months.

18 Q Do you mind telling us how old you are?

19 A 80.

20 A Now, I -- I would like you to give the jury a
21 little bit of your background. First, I'd like to talk
22 about your education. Can you give us a brief
23 background concerning your education?

24 A I graduated from the University of Pittsburgh,
25 1952. I graduated from the University from Pittsburgh

1 School of Medicine in 1956. I did a one year
2 internship at St. Francis General Hospital and
3 Rehabilitation Institute in Pittsburgh, '56 - '57.

4 As soon as I finished that I started a
5 residency, specialty training in Anatomic and Clinical
6 Pathology at the University Veterans Administration
7 Hospital in Pittsburgh. I was there for two years and
8 then I was called into the Service.

9 I served as a Captain in the United States
10 Air Force and was an Assistant Pathologist at Maxwell
11 Air Force Base Hospital, Montgomery, Alabama for two
12 years - '59 to '61.

13 As soon as I got out of the Service I went
14 directly to Baltimore where I spent one year as an
15 Assistant Pathologist and Research Fellow in Forensic
16 Pathology in the Office of the Chief Medical Examiner
17 of Maryland. I finished that program in the summer of
18 '62. Went back to Pittsburgh and have been practicing
19 in Southwestern Pennsylvania for many, many years as a
20 Hospital Pathologist, Director -- Chairman of
21 Department of Pathology at a hospital and -- and other
22 hospitals before and during.

23 And governmental work as a -- a -- a Chief
24 Forensic Pathologist and then Coroner of Allegheny
25 County and then all of this work that I referred to

1 before for coroners in surrounding counties. And then
2 teaching and writing and consulting with attorneys and
3 organizations on cases.

4 Q Doctor, other than your medical degrees that
5 you've just outlined, do you hold any other degrees?

6 A Yes. I have a law degree. When I decided that
7 eventually I wanted to go into Forensic Pathology, I
8 felt that it would be good to learn as much as I could
9 about the law -- wasn't required to -- to get a law
10 degree, but I thought it would be interesting and
11 helpful. So, I went to the University of Pittsburgh
12 School for Law for 2 years -- '57 - '59.

13 That was interrupted by the Air Force stint
14 and then I then I finished my last year of law school
15 at the University of Maryland, School of Law, when I
16 was there '61 to '62.

17 Q So, for the record, you have both a medical
18 license and a law degree. A license to practice law?

19 A Yeah. I -- I -- yeah, a law degree and a law
20 license too. I -- I don't practice law and I have
21 never really practiced law.

22 There was a law firm for a while, my wife and
23 my son and -- and I would just do the medical aspects
24 of -- of some cases, but that law firm hasn't existed
25 for -- for many years. My -- my son went on to become

1 a judge and so anyway there's really not any -- any law
2 firm now.

3 Q Okay. I -- I see from your 21-page
4 curriculum vitae that you received nine Academic
5 Education Awards. Can you point one or two that you
6 feel are important to you?

7 A Well, I -- I guess the ones that mean the most to
8 me, I was the first Gold Medal recipient, as they call
9 it, of The American College of Legal Medicine. I am a
10 past President of that organization and they started
11 sometime, I think the early '70s, to give this award
12 and I was the first Gold Medal recipient of the
13 American College of Legal Medicine.

14 And the other one, let's name another one,
15 last year I received the Distinguished Forensic Science
16 Award from Dr. Henry C. Lee's -- Henry Lee's Institute
17 of Forensic Science. The prestigious institute in New
18 Haven, Connecticut -- headed up by Dr Lee.

19 Q Can you describe your -- your professional
20 experience, as far as what positions you've held?

21 A Well, I -- I had always done hospital work and I
22 also had a private pathology laboratory too, for many
23 years. I was a Pathologist at some different hospitals
24 and then for about 25 years or so, 26 -- 1974 to around
25 2000, I was Chairman of the Department of Pathology at

1 St. Francis Central Hospital in Pittsburgh.

2 Q And -- and have you done any teaching?

3 A Well -- well, you, you, you asked me about
4 professional. I'm sorry, is that all you wanted to
5 know about that hospital work? I'm sorry, you -- you
6 --

7 Q Is there something else you'd like to --

8 A Well. No, no, no -- I was going to --
9 professional work I was going to say that I -- I have
10 been Chief Forensic Pathologist for four years in the
11 Allegheny County Coroner's Office. That's Pittsburgh
12 and surrounding communities. And then I was Coroner
13 for 10 years - 1970 to 1980, and then I came back again
14 as Coroner for another 10 year stint from 1996 to 2006.
15 I've always done some -- I sorry, I'll -- I'll stop
16 there. That's the answer to your question. Go ahead.

17 Q Okay. And have you done any teaching?

18 A Yes. I've always had a faculty position. When I
19 started my residency at the University VA Hospital all
20 the residents had a faculty -- that was something we
21 were called instructors, it's the lowest level. And
22 then when I came back, I finished with my training.
23 Since '62 I've had faculty positions.

24 At the present time I am Clinical Professor
25 of Pathology at the University of Pittsburgh School of

1 Medicine. I'm an Adjunct Professor of Epidemiology in
2 the Graduate School of Public Health at Pitt. At
3 Duquesne University, I'm an Adjunct Professor in the
4 Graduate School of Health Sciences, the same title in
5 the school pharmacy, and the same title in the School
6 of Law. And Carlow University I'm a distinguished
7 professor of Anatomy and Pathology.

8 Q I see from your -- your resume that you've
9 been a special guest lecturer more than 500 times. Is
10 that correct?

11 A Gee, I don't know. I've never counted. I don't
12 know where you've got that number. I -- but I mean
13 I've had the --

14 Q For the record I did count them doctor.

15 A -- pleasure and opportunity many times, but I -- I
16 don't know the number.

17 Q And -- and -- and have you taught at such
18 pristine colleges as Harvard, Yale, the University of
19 Texas?

20 A You said pristine or prestigious?

21 Q Prestigious?

22 A Prestigious. Yes. I -- I have been a guest
23 lecturer at Harvard Law School and Yale Medical School.

24 Q Have you worked for any governmental agencies
25 within the United States?

1 A Well, as an employee I only had the governmental
2 positions that I referred to as an elected coroner.
3 I've -- I've been consulted by the government, but not
4 as an employee.

5 Q And did --

6 A I don't -- I wasn't paid, but there have been
7 three National Commissions that I was a member of. I
8 guess they took care of travel expenses.

9 The first one was back in the early '70s
10 having to do with medical malpractice.

11 Then around '76 - '77, the infamous Swine
12 Flu, American Legionnaires Disease phenomenon. They
13 thought it was one in the same. In fact, the Swine Flu
14 business started right here at Fort Dix, New Jersey,
15 and then these people attending the American
16 Legionnaires Convention in Philadelphia and some of
17 them died and they thought it was the same thing. But,
18 anyway, so there was a commission set up on that and I
19 was a member of that. I think there were nine of us
20 and eventually it came to be identified as Legionnaires
21 Disease.

22 And then the third one was, gee almost the
23 same time, a little bit later. I was a member of the
24 Forensic Pathology Panel of the House Select Committee
25 on Assassinations, set up by the United States Congress

1 to re-investigate -- review the deaths of President
2 Kennedy and Dr. Martin Luther King.

3 Q Can you give the jury a -- a -- a list of
4 some brief cases or -- or cases that you've been
5 consulted on that had some notoriety that they may
6 recognize?

7 A The John F. Kennedy assassination; Senator Robert
8 F. Kennedy assassination; the Mary Jo Kopechne case --
9 the case involving Senator Ted Kennedy; Captain Jeffrey
10 MacDonald, the Green Beret Captain physician; Sunny Von
11 Bulow; Tammy Wynette; Elvis Presley; Waco Branch
12 Davidian fire cases in Texas. I did repeat autopsies
13 on David Koresh and his two top lieutenants; Jean
14 Harris, Dr. Herman Tarnower case over in New York. And
15 then Ron Brown, Secretary of Commerce; Vincent
16 Forrester; Jon Benét Ramsey; and, Nicole Smith, her son
17 Daniel Smith, I did a second autopsy on.

18 Q Okay. Enough, enough -- I don't want you to
19 keep bragging.

20 A No. But, I'm not, I'm not -- you asked me so I'm
21 just.

22 Q I'm just kidding. I'm kidding, Doctor. Are
23 you Board certified?

24 A Yes. I'm certified by the American Board of
25 Pathology in Anatomic, Clinical, and Forensic

1 Pathology. And I'm certified by American Board of
2 Legal Medicine in Legal Medicine. And I am certified
3 by the American Board of Disaster Medicine in Disaster
4 Medicine.

5 Q Now, can you tell the jury what the Cyril
6 Wecht Institute of Forensic Science and Law is?

7 A In the year 2000, Duquesne University established
8 this Institute of Forensic Science and Law and honored
9 me by naming it after me. It is a program, what is
10 established in conjunction with a 5-year entry level
11 Forensic Science Program that leads to a Masters Degree
12 in Forensic Science.

13 We have annual conferences and we have a 38-
14 week Saturday certificate program for Forensic Science
15 -- a variety of people take that. And then we do other
16 courses, a couple of years ago we started one called
17 Forensic Fridays. Every afternoon, once a month we
18 present a program of interest to attorneys, law
19 enforcement officers, and others. A week and a half
20 ago we did one, DNA Database, for example. So, these
21 are the things that the Institute of Forensic Science
22 and Law does at Duquesne University.

23 Q And doctor I do not want you to take the time
24 and -- and mention all of these, but you're also a
25 member of 30-40 different legal, medical societies --

1 different institutes with regards to your profession.

2 Correct?

3 A Yes. Yes. I -- I am and the ones that are
4 involved are forensic science and forensic pathology.
5 I'm past President of the American Academy of Forensic
6 Sciences and I'm a Honorary Life Fellow of about 5 or 6
7 Medical Legal Forensic Science Societies of foreign
8 countries in Europe and a -- and a -- and a -- South
9 America.

10 Q Okay. Have you authored any books?

11 A I am the editor or co-editor, author or co-author,
12 I think of about 44 or 45 books and there are six or
13 seven books for the general public. The 44 that I
14 refer to are textbook type things for people in
15 forensic science and legal medicine. And then these
16 other six books I'm the lead author with -- with --
17 with co-authors. These are books talking about some of
18 my cases. But among the 44 or 45 books that I'm editor
19 or co-editor, author or co-author, there's a five
20 volume set entitled "Forensic Sciences".

21 Q Okay. Now, how many autopsies have you
22 performed in your career?

23 A Going back to 1957, the first year of my residency
24 to the present time, 54 years, about 17,000 autopsies
25 that I have done and about 36,000 or so that -- others

1 that I have reviewed, supervised or signed off on.

2 Q Now. Doctor, you're 80-years-old. Do you
3 still do autopsies?

4 A Yes.

5 Q How long ago did?

6 A The last one I did was -- was less than 24 hours
7 ago and I -- I did 15 last week. It was a big week.

8 Q Have you ever been qualified as an expert in
9 a Court of law?

10 A Yes.

11 Q How many times?

12 A Oh, gee. I don't know. Collectively hundreds of
13 times, Pennsylvania - a couple dozen thirty of our 67
14 counties, 24 to 30 states and three or four foreign
15 countries.

16 Q And does it include --

17 A Including -- including New Jersey.

18 Q Thank you. The most important one.

19 Now, at this point, Judge, I respectfully
20 would ask that he be qualified as an expert.

21 THE COURT: All right. Any objections?

22 MR. MELLO: Thank you, Judge.

23 VOIR DIRE EXAMINATION BY MR. MELLO:

24 Q Good morning, Doctor.

25 A Good morning, sir.

1 Q My compliments on a distinguished career as
2 both as a lawyer and a pathologist.

3 A Well, I'm not sure how much of a lawyer, but thank
4 you, sir.

5 MR. MELLO: And with that I have no
6 objection, of course. Though we may disagree, Doctor,
7 I have no objection to Dr. Wecht offering his opinions
8 as -- you know, as he provides.

9 THE COURT: Pursuant to Rule 702, the Doctor
10 will be qualified as an expert.

11 MR. BILINKAS: Thank you, Judge.

12 DIRECT EXAMINATION BY MR. BILINKAS:

13 Q Dr. Wecht, were you retained by the defense
14 in this case back in 2010?

15 A Yes, sir.

16 Q Now, this case obviously involves someone
17 who fell from a cliff. Have you personally been
18 involved in cases involving persons who have fallen
19 from high places?

20 A Yes.

21 Q Building?

22 A Yes -- well, yeah, on one of the tall buildings at
23 World Trade Center. I did one -- one autopsy there.
24 But, obviously, not very many of that size. But sure,
25 several from building, every now and then, you know,

1 somebody jumps from a tall building, falls from a
2 building accidentally. So, yes, from buildings and the
3 from, you know, other structures of bridges and
4 mountains and -- and airplanes and things like that.

5 Q Okay. Can you tell the jury what you were
6 hired to do in this particular case?

7 A Well, you contacted me and told me a little bit
8 about the case and I was consulted to review and
9 analyze all the documents and records that you had --
10 that you determined were relevant to me as a forensic
11 pathology consultant. And then also as part of this
12 review and analysis and understanding of case, you
13 asked me to come to New Jersey and go the scene where
14 this incident had occurred. I did that and went there
15 with you and your assistant.

16 Q Now, for the record, did you review all the
17 documents provided by the Prosecutor, the police
18 reports, the photographs, the Medical Examiner's
19 complete file?

20 A Yes, sir. The various police reports, subsequent
21 investigative reports, the autopsy report, some Grand
22 Jury testimony by an expert for the prosecution, and --
23 and reports by different people, including an
24 engineering report -- I think the gentleman's name is
25 Schorr -- and a video demonstrating police officers

1 hurling bags from this ledge and -- oh, and a -- and a
2 huge number of photographs.

3 Q Doctor, I'm going to show you S-12, which is
4 the Medical Examiner's autopsy report. Is this one of
5 the documents that you reviewed with regards to your
6 evaluation of this case?

7 A Yes. This is the -- looks like the exact same
8 thing as -- that I have here.

9 Q And -- and did you also review all of the --
10 all of the autopsy photographs that went along with the
11 Medical Examiner's report?

12 A Yes. Among the many photographs that were sent to
13 me there were photographs of the body, photographs of
14 the scene. Yes, they were included.

15 Q And after reviewing all of these documents
16 you indicated that you went to the scene with myself
17 and my associate. Can you tell the jury why you went
18 to the scene?

19 A I went to the scene because as we talked I came to
20 the conclusion, which you -- you strongly agree with,
21 that it would be helpful to me to actually visualize
22 where this happened. To see the -- the geographic
23 site, the -- the -- the actual physical local to get a
24 better understanding of how this tragic matter had
25 occurred.

1 Q Now, you indicated that you reviewed the
2 Medical Examiner's report and various expert reports
3 that were done for the Prosecutor. In this particular
4 case were you analyzing the issue of whether or not all
5 of Mrs. Scharf's injuries were caused by a single
6 impact when her body hit the tree at the base of the
7 cliff?

8 A Yes. That was a very important aspect of my
9 overall review and analysis of the case.

10 Q And -- and with regards to that opinion. Do
11 you agree or disagree that all of the injuries were
12 caused by a single impact when the body hit the tree at
13 the base of the cliff?

14 A I disagree.

15 Q Now, you indicated that you went to the
16 scene. I am going to show you D-129 in evidence. I'm
17 going to ask you to look at this Elmo. Does this
18 photograph accurately depict the top portion -- the
19 flat rock of the scene that you reviewed on that day?

20 A Yes.

21 Q D-129 in evidence. Does this photograph
22 accurately depict the side view of that flat rock area
23 that you reviewed on the day in question?

24 A Yes. I can see that it's a little bit behind that
25 fence and then from the side.

1 Q Okay. And does this photograph also depict a
2 [sic] area that wraps around the large rock in the
3 middle that connects to the ledge, which is directly
4 beneath the portion of the top of the flat rock?

5 A Yes.

6 Q Now, when you went to the flat rock, did you
7 look over the edge on the day you visited the scene?

8 A Yes.

9 Q And did you look down and see the ledge
10 that's depicted in the photograph on the Elmo?

11 A Yes.

12 Q I put D-154 in evidence. Now, yesterday the
13 engineer testified that the ledge is 13 feet below the
14 top of the flat rock. Okay? When you saw that ledge
15 did you believe there was any significance in the ledge
16 with regards to this investigation?

17 A Yes.

18 Q And -- and what significance did you
19 attribute to it?

20 A I felt that the ledge was a very likely distinct
21 possibility, in fact, for an intermediary --
22 geographical, geological projection upon which Mrs.
23 Scharf's body might have impacted before then hurtling
24 off farther down the cliff side to where it impacted,
25 where she impacted against the tree.

1 Q Now, did you review any reports that
2 indicated that Mrs. Scharf's perch [sic] was -- purse
3 found on that same ledge?

4 A Yes. I was aware of that from a report.

5 Q Okay. Was there any significance to that
6 information with regards to this ledge in your mind
7 from a forensic standpoint?

8 A Well, yes, it fitted in. It was consistent with
9 what I just said. If the purse could fall to that
10 point, the body could fall to that point.

11 Q Now, when you looked over the edge does D-155
12 in evidence accurately depict what you saw when you
13 looked over the ledge?

14 A Yes. I see those -- those rocks kind of just a
15 little bit to the right of the middle of this
16 particular slide, and the -- over then the larger rocks
17 coming back and toward the -- the ledge on the left
18 side of the picture that you are projecting.

19 Q And when you looked over that ledge, Doctor,
20 and you saw these rocks that you've identified in the
21 middle of this photograph, did they indicate anything
22 to you from a forensic standpoint?

23 A Well, looking at those rocks, they suggested, upon
24 my initial visualization, points of impact that Mrs.
25 Scharf's body might have struck as -- as she fell from

1 the flat rock, some 12 - 13 feet above.

2 Q I am showing you what has been marked and is
3 already in evidence, B-167. Is this a close-up of
4 those four rocks that you saw when you peered over the
5 flat rock and looked onto that ledge?

6 A Yes. Those specific rocks are the ones that I
7 then came to focus my attention on at that time and in
8 the subsequent review of the photos that had been sent
9 to me.

10 Q I show you 1 -- strike that. I show you D-
11 165. Is this a close-up of the four rocks? One, two,
12 three, four?

13 A Yes.

14 Q And -- and I will then say as opposed to
15 numbers, I will refer to them by letters. I'm going to
16 call this rock number A -- just to our right. This
17 rock immediately to the left -- rock number B. The
18 rock to left of B, C, and the rock to the left of C, D.

19 MR. BILINKAS: May I approach?

20 THE COURT: You may.

21 BY MR. BILINKAS:

22 Q So the jury can understand what rocks you
23 will be referring to, can we label as we just
24 described?

25 A Where -- where do you -- where do you want me to

1 write this?

2 Q Just write on the rock A. A --

3 A This is -- this one -- this one is A. Where --
4 but I mean at what -- what point?

5 Q Right -- right on the document.

6 A But I mean, I don't want to obscure anything.

7 I'll put it here A.

8 Q Correct, A.

9 A All right. This one --

10 Q And B down -- down here.

11 A Where you want me to put it? Down here?

12 Q Yes.

13 A B. Okay.

14 Q And C.

15 A And this one would be C. In here, is that okay?

16 Q C.

17 A And this one down here, D?

18 Q D.

19 A Okay. Yeah.

20 Q Prosecutor, do you have any objection to my
21 associate making these marks in ballpoint in black
22 marks?

23 MR. MELLO: Not at all.

24 BY MR. BILINKAS:

25 Q Well, while my associate is doing that

1 Doctor. When you saw these four sharp rocks
2 immediately below the flat rock on -- on top, what, if
3 anything, did you do when you were at the scene?

4 A Well, one of the things was I -- I measured the
5 crest of Rock B, which was about nine inches. And I
6 found that extremely interesting and I felt highly
7 relevant, because that was the exact measurement that
8 the pathologist who did the autopsy made of the
9 horizontal length of the open wound on Mrs. Scharf's
10 right chest.

11 Q Now --

12 A It -- it -- it was a -- I mean, well, that -- my
13 measurement was nine inches and the measurement that
14 the pathologist had made was nine inches.

15 Q Now, doctor, you indicated that you measured
16 these flat rocks on the ledge. How did you possibly
17 measure those rocks on that day?

18 A I walked down there and we had a tape measure and
19 I measured it.

20 Q Now, for the record, did I tell you you were
21 crazy to go out on that ledge?

22 A I don't what words you used. I -- no, I don't
23 think you told me I was crazy. I think you just told
24 me to be careful, and -- and I -- I didn't need your
25 admonition to be careful. It's a -- it's a, you know,

1 a great view, but, you know, I -- I -- I'd rather go to
2 the beach, you know?

3 Q So, doctor, at -- at -- at your age you
4 walked from the flat rock around and literally out onto
5 the ledge to the very tip with a tape measure and
6 measured rocks A, B, C and D. Is that your testimony?

7 A Well, yeah, you're making that -- I mean, it's not
8 such a big deal, my age. I mean, I'm not decrepit yet,
9 you know? Yeah, I -- yeah, I -- I walked there. I
10 mean, it's no, you know, no great accomplishment.

11 Q And you indicated that the rock B was nine
12 inches.

13 A The -- the -- the -- the crest of it. Yes.

14 Q Nine inches which is the exact dimensions the
15 Medical Examiner measured for the right chest wound.
16 Correct?

17 A Yes. The -- the length of the right chest wound
18 was nine inches.

19 Q D-290 in evidence. Is this a picture of the
20 chest wound described by the Medical Examiner and
21 photographed during the autopsy?

22 A Yes. This is a wound that begins, pretty much we
23 call the anterior axillary line. In other words, if
24 you -- if you draw a line down from the inner aspect of
25 your armpit -- axilla, armpit -- and then you come on

1 over across Mrs. Scharf's right upper chest above her
2 right breast and just crossing over to the midline, a
3 little bit to the -- slightly to the top of the left
4 breast. That was measured by the pathologist as nine
5 inches in length, and -- and she measured the widest
6 gaping point at four inches.

7 Q Now, doctor, you indicated that you were
8 interested in rock B.

9 MR. BILINKAS: Could you put B up?

10 BY MR. BILINKAS:

11 Q Now, you were attempting to analyze whether
12 or not from a medical standpoint -- all injuries could
13 have been caused by a single impact when Mrs. Scharf
14 hit the tree below at the base. Correct?

15 A Yes.

16 Q And can you tell me why you were looking at
17 this cluster of rocks, and what relevance those rocks
18 had to your analysis?

19 A Well, kind of working backwards, as I looked at
20 the autopsy report, I came to the conclusion that the
21 injuries were not consistent with a single impact
22 occurring against a tree for several reasons. And,
23 therefore, I was lead to the conclusion that there had
24 to have been an intermediary point at which Mrs.
25 Scharf's body struck. And that's why this ledge and

1 then those particular rocks came to be so important, so
2 relevant.

3 Q Now, does rock B that you pointed out? Does
4 that match the exact specific characteristics of the
5 chest wound, in your opinion?

6 A Well, when you say the specific characteristics,
7 the -- number one, the length as we talked about of
8 that crest, the promontory of Rock B -- nine inches.
9 The relative sharpness of it -- it's not sharp like a -
10 - a dagger or a knife, but it comes to a point, a
11 crest, and that fitted in perfectly for me in my
12 understanding of that gaping wound in Mrs. Scharf's
13 chest.

14 It just, you know, is -- is close to a -- a
15 perfect match. And then fitted in because of other
16 characteristics of the wound and the surrounding
17 injuries.

18 Q Now, aside from Rock B, were there any other
19 rocks depicted in this photograph that were of interest
20 to you?

21 A Yes. The -- just the position of rocks C and D,
22 and their configuration were of great interest to me.
23 As I looked at those rocks and I saw the way in which a
24 crevice is formed as the two rocks meet at their base,
25 so to speak, then that presented to me a very, very

1 interesting configuration that I began to think of as
2 a, quite likely, very anatomically plausible
3 explanation for the head wound. The -- the -- the
4 cutting, the tearing, the avulsion of the scalp,
5 bilaterally. That presented a -- a very interesting
6 explanation.

7 Q Now, Dr. Wecht, you testified you went on the
8 ledge. Did you go down to the base of the tree at any
9 point on that day when -- when you were at the scene
10 with myself and my associate?

11 A No. We -- we drove around and came down to the
12 bottom and then you pointed out the tree. It was up
13 some distance. You pointed the tree and so on. I -- I
14 did not go up to the tree. I did not feel there was
15 any particular relevance.

16 I asked you about the approximate diameter of
17 the tree and I knew where the tree was located from the
18 measurements that had been given and obviously this was
19 years later. There was nothing to see at -- at the
20 tree.

21 Q And were you shown numerous photographs of
22 the base area that defense had provided you? Numerous
23 photographs --

24 A Numerous photographs of what?

25 Q -- of the tree and of the area at the base of

1 the cliff --

2 A Yes.

3 Q -- that we provided.

4 A Yes.

5 Q Now, you previously testified that you do not
6 believe that Mrs. Scharf's injuries were consistent
7 with a single blunt force impact caused by hitting the
8 tree at the base of the cliff. With regards to the
9 chest wound, can you describe it to the jury?

10 A The chest wound had resulted in multiple rib
11 fractures, fractures on both sides -- somewhat more so
12 on the right -- both anteriorly in front and
13 posteriorly on the rear, fractures of the clavicles -
14 the collar bones. The exact depth we don't know. That
15 wasn't measured and --

16 Q Well, let me stop you for a second. Should
17 that have been measured in your experience?

18 A Well, it -- it would have been helpful. I can't
19 be terribly critical of that. I -- it's not -- it's
20 not as pertinent as the measuring the depth of the
21 wound to try to determine how long a knife blade might
22 have been or something like that. But, you know, it is
23 something that ordinarily would be done.

24 But -- but, it's okay. I -- I can see then
25 that there were injuries to the -- the lungs as

1 described in the autopsy report and there were some
2 tears on the inner surface of the heart. The
3 endocardium -- that's the inner lining -- endocardium,
4 on the right side of the heart and these things were
5 described by the pathologist.

6 Those injuries of the -- of the chest were --
7 were interesting and relevant for the reasons that I've
8 given: the appearance of it, and the location of the
9 injury, the correlation between its length and the
10 length of the crest of rock B. And then the other very
11 interesting and I thought extremely consistent finding
12 were the abrasions that reached down from the lower
13 right side of Mrs. Scharf's face, just above the
14 mandible below her jaw. Coming on down, down on the
15 right side, moving in vertical, somewhat parallel
16 fashion and then broadening and becoming more intense
17 as they reached the superior margin of this gaping
18 wound, and then the absence, except for two small
19 abrasions beneath the gaping wound.

20 So that fitted in, in my mind and in the
21 opinion that I expressed today with a -- a -- a
22 sliding, a glissando type of -- of injury. The -- the
23 body then coming down, Mrs. Scharf's body coming down
24 and the scrape marks, the abrasions. That's what they
25 are -- are scrape injuries, coming down on the right

1 side, broadening and intensifying and then reaching the
2 top part, and then finally because of the great force
3 that has now accumulated, breaking into her skin and
4 the underlying subcutaneous fat, producing that gaping,
5 nine inch long wound.

6 Q I'm going to show you D-115 in evidence. Can
7 I trouble you to leave the stand and walk to the Elmo,
8 doctor?

9 DR. WECHT: Your Honor?

10 THE COURT: Yes, you may.

11 BY MR. BILINKAS:

12 Q Can you stay over to side, Doctor? And can
13 you describe to the jury those abrasions that you've
14 just testified to?

15 A Well, you are looking at a straight front view,
16 but you can see the abrasions here on the right of the
17 face, coming down along the neck and continuing down
18 and then becoming broader and wider as they move into
19 the actual injury itself.

20 Q And -- and can you tell the jury why appear
21 to become more pronounced right above the gaping chest
22 wound?

23 A Because, I believe, Mrs. Scharf was falling and
24 sliding down.

25 Q Head first? Feet first?

1 A I believe -- I believe that it would have been
2 head first, more or less, facing the cliff. I think
3 that, that is how she got some abrasions on the front
4 of her legs and she's coming down. And sorry, I -- I
5 can't, you know, do a cartwheel here. But -- and --
6 and -- and then she's now sliding down and this is the
7 -- this is the -- the -- the cliff here and the
8 abrasions are occurring like this. And now I'll --
9 I'll make this the -- the -- the crest of rock B and
10 down she comes, like this, and then across like this
11 and there's your nine-inch gaping wound.

12 Q Now. Can a wound, such as this, be caused by
13 a 167 pound woman falling from the top of the flat rock
14 down 13 feet to rock B?

15 A Absolutely.

16 Q Any question in your mind, Doctor?

17 A No. She's a good sized weight, 13 feet. You get
18 some velocity. Force equals one half mass times the
19 velocity squared. You -- you -- you have significant
20 force generated to produce such a wound. These are
21 soft tissues and they would break open.

22 Q Now, I'm going to show you what's already in
23 evidence, D-192 on the Elmo.

24 MR. BILINKAS: Can you light that up for us,
25 please?

1 BY MR. BILINKAS:

2 Q This is a photograph of the tree in question.
3 Can you -- but, did you analyze the texture of the bark
4 on the tree with regard to your analysis?

5 A Sir, I'm not sure what you mean by analyze. I did
6 not do any botany, botanical studies.

7 Q All right.

8 A I don't know what you mean by --

9 Q Understood.

10 A I -- I -- I understand there's a bark.

11 Q Did you -- did you look at the pictures?

12 A There's a bark on the tree. I -- I understand
13 that and I asked questions about it. I -- I did not
14 personally conduct any tests on the bark.

15 Q Nor did I mean to suggest that, but you
16 looked at the photographs. Correct?

17 A Yes.

18 Q Now, are those abrasions consistent with
19 someone becoming impaled on a rock or rubbing up or
20 striking that tree?

21 A No.

22 Q Which one?

23 A Oh, you -- you -- you said the rock. I didn't get
24 that you threw them both in. Sorry about that.

25 Q Didn't mean to throw you off.

1 A We were talking about the tree.

2 Q Yes.

3 A I didn't listen to your question. I -- I do not
4 believe that the injuries on the chest would be
5 consistent with her having strike against the tree.

6 Q Now, for instance, if someone had testified
7 that the body had struck the tree and fell down. Would
8 that cause those vertical, parallel linear abrasions
9 that's depicted on D-115?

10 A No. First of all, vertical is vertical and
11 horizontal is horizontal. Vertical is up and down,
12 which we have on Mrs. Scharf's body from the right side
13 of the face coming down as vertical. And what you just
14 asked me about and showing with the teddy bear across
15 the tree, those would be horizontal abrasions. That's
16 one thing.

17 The other thing is Mrs. Scharf was a -- a
18 good sized lady and she had a substantial sized breast.
19 She was a full-breasted woman. And to impact as you
20 have asked me about in that lateral fashion against the
21 -- the tree with her breast, there would have to be, in
22 my opinion, some contusions of -- of the breasts. The
23 breast tissue contuses easily. And there are no
24 contusions of the breast. Her breasts are intact.

25 Q I show you what's in evidence, D-289. Are

1 Ms. Scharf's breasts depicted in this photograph?

2 A Yes. They are. So, here again are these
3 vertically oriented abrasions coming into the gaping
4 wound and this is Mrs. Scharf's right breast. This is
5 Mrs. Scharf's left breast. You see that -- that she's
6 a -- a full breasted woman, and you see that the
7 breasts are -- are intact.

8 There the slightest suggestion, a slight
9 discoloration here in the breast. The nipples, the
10 areola areas around the nipples, they are intact.

11 Q If Mrs. Scharf's body had fallen 119 feet and
12 hit the tree with her breasts and the right side of her
13 head, what injuries -- what injuries would have been
14 caused to her breasts, in your professional opinion?

15 A There would have been significant impact,
16 compression of the breast, disruption leading to some
17 tears, lacerations, and significant bruising,
18 contusions. Contusion is just another word for bruise.

19 Q In your professional opinion, could those
20 abrasions have been caused by hitting the tree?

21 A No. You've -- you -- you asked me that, sir. In
22 neither fashion as you have depicted, that you've asked
23 me about.

24 Q Can you describe to the jury, what type of
25 object, in your professional opinion, caused these

1 vertical, parallel linear -- linear impressions?

2 A I believe that this was a -- the sliding down of -
3 - of the wrong side of cliff that rock B, I think, is
4 about 2½ meters, so out from the base of the -- of the
5 cliff at that point. And as she comes down, she gets
6 these abrasions on the front of her legs, she gets the
7 abrasions coming down on the right side and then she
8 hits the -- the crest of rock B and finally and that's
9 where the abrasions stop.

10 Q Now, in the photograph with regard to the
11 injury of the breast that I showed you, the clothing
12 were torn. Should the clothing have been examined?

13 A Yes. Unquestionable. What a pathologist does is
14 you remove the clothing. You may make some comments.
15 I don't examine the clothing myself; I'm not a
16 criminalist. And then you submit it to the law
17 enforcement agents who are there: State police, County
18 detectives in my case. And then they take it and they
19 submit it to their forensic science laboratory for
20 examination.

21 Q And -- and --

22 A And then maybe that would be -- it would be quite
23 important and -- and -- and quite relevant because you
24 would want to see what materials are there and -- and
25 so on. You could learn something maybe from the site.

1 You can learn something possibly by the dynamics of the
2 injury. These are the things that -- that the -- a
3 criminalist would look for and then you get back that
4 report as the criminologist and, you know, it's part of
5 what you all put together later on -- the toxicology
6 and -- and -- and other reports.

7 Q Is there anything about the shape of the
8 tree, the curve diameter of the tree that's significant
9 with regards to your opinion as to whether or not that
10 chest injury was caused by impacting the tree?

11 A Well, as we all know, a -- a -- a tree is -- is
12 circular. And so, therefore, it's what we would refer
13 to as curvilinear, curve linear line. It's not a
14 complete curve. It's not a straight line, curvilinear.
15 And as I've already said, I don't believe that
16 impacting Mrs. Scharf's body against the tree in that
17 somewhat horizontal fashion would have resulted in the
18 kinds of injuries that we've been talking about and
19 that you've been showing with your photos.

20 For those reasons, it doesn't fit, it doesn't
21 correlate in terms of the -- the contour of the tree,
22 the injuries of the breast, and as I've already said,
23 the absence of injuries on the breasts themselves. I
24 should say above the breasts which is where it ends,
25 the lacerated nine-inch wound does.

1 Q Was there any evidence described by the
2 medical examiner in her autopsy report that would
3 indicate that there was any transfer of bark, splinters
4 or parts of the tree embedded in the wound that you've
5 described?

6 A No. And that's another very good point. There is
7 no reference whatsoever to piece of wood or splinters.
8 If you -- you strike a -- a wooden object and it's not
9 the firm wood like these chairs or the table. It's --
10 it's -- the bark of a tree doesn't have that same claim
11 of adhesiveness, that same claim of physical strength.
12 And to impact with such velocity from a fall of a -- a
13 great distance and to come down, in addition to
14 everything that we talked about that -- that I won't
15 repeat, then where is some evidence of some wood? Just
16 the splinters?

17 To go against something that is wooden and --
18 and that it is flaky or capable of being flaked upon
19 impact, there are pieces of it that have to break off.
20 And where -- where -- there's -- there's nothing on
21 this body.

22 Q Tell the jury what specifically. What object
23 you believe caused the wound on Mrs. Scharf's chest?

24 A The impact on the crest of what has been now
25 labeled as rock B.

1 Q And is that opinion to a degree of reasonable
2 medical certainty?

3 A Yes.

4 Q Now, approximately how long would it take for
5 Mrs. Scharf to fall head first from the flat rock and
6 become impaled on B as you've described?

7 A I think probably a little bit less than one second
8 for that distance.

9 Q Okay. You could have your seat Doctor.

10 (Pause in proceedings)

11 BY MR. BILINKAS:

12 Q Okay. All right. Doctor -- doctor with
13 regards to the -- the injury to Mrs. Scharf's right
14 tress [sic] you indicated that there were fractures to
15 the collar bone, the -- the ridge. Were there any
16 other injuries that you believe were caused by that
17 injury on rock B?

18 A Yes. I believe that -- that some of the tears in
19 the lungs, the hilar tears as they're referred to.
20 Hilar is where the lungs come together toward the
21 midline of chest. We call that the hilar area, right
22 hilar and left hilar and there were tears of the inside
23 of the heart on the -- in the right ventricle. They
24 are called endocardium. Endocardium is the inner
25 lining. Myocardium is the heart muscle itself and

1 pericardium is the outer layer. So, the pathologist
2 described those injuries of the lungs and heart. I
3 believe that they were caused at that time.

4 Q And -- and can you tell the jury what the
5 consequence from a medical standpoint that those
6 injuries would have on Mrs. Scharf at that point?

7 A There are specialized cells in the heart that we
8 refer to as the conducting mechanism. They are
9 responsible for the beating of the heart. As we sit
10 here today or whatever you do at any time you don't
11 think of your heart. You don't say to your heart I
12 want you to beat or I want you to beat faster or slower
13 or whatever. That's all conducted through the
14 specialized cells. They are on the right side of the
15 heart.

16 Where these injuries occurred on the right
17 side of the heart, very likely, most likely produced
18 some damage, and it doesn't take a great deal to
19 disrupt that conducting mechanism. And when that
20 happens then the heart begins to beat irregularly and
21 goes into fibrillation, which is an -- an ineffective
22 wiggling of the heart, really. Nothing arrhythmic or
23 mechanically productive. And then -- then the heart
24 will soon stop beating.

25 So I think that the presence of those

1 injuries in the heart on the right side were very
2 significant and they were documented by the
3 pathologist.

4 Q And under those circumstances would the blood
5 pressure begin to dramatically fall?

6 A Yes. Once the heart begins to beat erratically,
7 losing its effectiveness, then very, very quickly blood
8 pressure begins to fall.

9 Q I -- I'm going to ask you a very specific
10 question at this point, Doctor. And -- and we'll get
11 into this a bit later, but can you tell the jury if at
12 this point whether or not Mrs. Scharf's aorta was torn
13 as described in the autopsy report?

14 A The aorta was torn. Is that -- is that what
15 you're asking? Was it torn? Well, yes.

16 Q Was it torn? No.

17 A The pathologist describes it as being torn.

18 Q Okay. It was torn. My specific question is
19 was it torn as a result of the chest wound injury by
20 becoming impaled on rock B?

21 A No.

22 Q Now, you're aware of the fact that Mrs. Scarf
23 has a -- a -- a very serious head wound. Correct?

24 A Yes.

25 Q Can you describe that to the jury?

1 A This head wound was a kind of a bilateral, almost
2 bilaterally symmetrical -- a cutting, kind of a tearing
3 away, an avulsion of the scalp from the top of the
4 skull, which we call the calvarium. You can see that
5 in some of the photos, very, very dramatic.

6 Q Now, did the head wound occur at the exact
7 time that the chest wound had occurred?

8 A I think that the head wound occurred within a -- a
9 -- a fraction of a second. Not at the exact time,
10 because I don't think that the head wound was produced
11 by rock B. I think that the head wound was produced
12 when the head came to be impinged, caught in the
13 crevice between rocks C and D. That compression fits
14 perfectly with a tearing away, a clean cut, a clean
15 avulsion of the scalp, moving in bilateral fashion, the
16 right and left sides. And explains too some other
17 findings in the absence of findings, perhaps more
18 specifically in -- in the head.

19 So, I think that after Mrs. Scharf fell and
20 this impact occurred on the upper part of her right
21 chest on the crest of rock B, I think that the body
22 then, just a matter of several inches, a slight twist
23 and she's coming down and the head then swings into the
24 crevice between rocks C and D.

25 That would explain the multiple fractures of

1 the skull as it is being compressed as her head goes
2 in, and that kind of a clean, so to speak, cutting
3 wound, explains the absence of abrasions and
4 contusions; explains the absence of a hemorrhage on the
5 inner lining of the galea, as we call it, beneath the
6 bony skull on top of the brain; and, also explains the
7 absence of any injury to the brain itself.

8 Q Can you step down off the stand for us,
9 Doctor?

10 DR. WECHT: Your Honor?

11 THE COURT: You may.

12 BY MR. BILINKAS:

13 Q Doctor please stand on this side, okay? For
14 the jury, can you just give us a brief demonstration as
15 to how you believe Mrs. Scarf fell head first from the
16 top of the cliff, became impaled on B and then went
17 through C and D?

18 A I believe that Mrs. Scharf sitting up here, then
19 attempting to stand, loses her balance and then falls
20 down. So she falls down, thusly, the legs come down,
21 had some abrasions and she's slipping and down she
22 comes on the right side of the face onto the upper
23 right chest, impaling her upper right chest on the
24 crest of rock B. She moves, her body goes over and --
25 and slightly then with that force the head is

1 compressed between the rocks C and D in the crevice,
2 and it goes as it moves down in that crevice it is
3 subjected to increasing compression.

4 Obviously, the rocks aren't going to move.
5 What -- what gives are the bones in the skull. So they
6 give and they fracture and -- and then she goes out and
7 the legs flip out and she then is catapulted into the
8 air as the body disengages and as the weight and the
9 force of the movement of the rest of the body pulls the
10 head out from the crevice between rock C and D and
11 comes out and that give an additional centrifugal, not
12 centrifugal, a catapulting kind of force and out goes
13 the body and it hurtles into the air.

14 This is what I think happened to explaining
15 those injuries of the chest and of the head. They just
16 fit -- they're -- very -- very well in a physical sense
17 with these three rocks.

18 Q You can have your seat again, Doctor. Now,
19 Doctor, I'm going to show you D-87 and D-89. First, D-
20 89. Does that wound to the right side, is that wound
21 to the right side of the head consistent with you --
22 the theory and your opinion that you've just testified
23 to?

24 A Yes. You can see -- go to the left side of her
25 right eye, toward the ear, and you can see the --the

1 angle, the -- the end point so to speak of that
2 somewhat V-shaped cutting and avulsed injury.

3 Q I show you D-87, which is a picture of the
4 left side of Mrs. Scharf's head wound, skin flapping
5 over. Is that wound consistent with being pulled
6 through rocks C and D?

7 A Yes. That is the other side. That's almost a
8 mirror image. There you see it by the left ear. Once
9 again, where it comes to that V-shaped configuration,
10 the end point, so to speak, of that tearing away, that
11 avulsion. Avulsion meaning a -- a -- a forcible and
12 very instantaneous tearing, a -- a -- a pulling away
13 but in a clean, cutting fashion.

14 Q Now, yes or no? Is there any way that that
15 head wound could have been caused by Mrs. Scharf
16 falling 119 feet and having her head impact the tree at
17 the base?

18 A No.

19 Q Can you tell the jury in your medical opinion
20 what you believe would have happened to Mrs. Scharf's
21 head, if she had fallen from the top of the cliff,
22 unimpeded, and hit the tree at the base?

23 A That would have been an impact of very substantial
24 force, a 122 feet of a freefalling 167 pound object, in
25 this case Mrs. Scharf, hurtling through space, coming

1 up against the tree. This would be a -- a -- a
2 tremendous impact that would lead to almost a bursting
3 open.

4 And -- and -- and there's no way that you
5 could have that kind of a injury and yet have, as the
6 pathologist noted, refraction of the scalp reveals no
7 distinct areas of subgaleal hemorrhage. Subgaleal
8 that's that tight membrane underneath the scalp and on
9 top of the scalp. That had no hemorrhage.

10 Then the dura mater, when you lift up the top
11 of the skull with an electric saw, we lift it up. And
12 the principle membranous covering of the brain is
13 called dura mater, and that was intact. The dura is
14 intact without discoloration.

15 And then you have the brain itself, was
16 completely intact.

17 To think of head coming up against the tree,
18 a 122 feet, hurling through space, smashing against the
19 tree, no galea hemorrhage, the dura mater is intact,
20 and the brain is intact. I don't believe there's any
21 way in the world that -- that could happen. It's an
22 incredible amount of force. It would -- it would burst
23 open.

24 I -- I don't mean to be -- I -- I -- I won't
25 be crude and -- and analogize, but just think of it as

1 something bursting open, as -- as I believe, would
2 happen if -- if -- if the head had impacted against the
3 tree.

4 Q But, Doctor, didn't the Medical Examiner
5 describe a variety of skull fractures in the autopsy
6 report?

7 A Oh, yes. There are skull fractures and those
8 skull fractures all fit in with the compressive
9 dynamics of the head being impinged between rocks C and
10 D -- fits in. There are multiple fractures.

11 But -- but the -- the brain and the dura
12 mater and -- and the galea as I've now said a couple of
13 times, are -- are intact with no hemorrhage. So, that
14 -- that fits in with the explanation I've given as to
15 the origin, the etiology, the time and place at which
16 the fractures of the skull occurred.

17 Q Okay. And can you explain to the jury what a
18 depressed skull fracture is?

19 A Well, if somebody came in here and whacked me on
20 the head with a ball-peen hammer.

21 Q Or, or if your head struck against a tree
22 after falling 119 feet, would that cause a depressed
23 skull fracture?

24 A Yes.

25 Q Were there any depressed skull fractures

1 found on Joey Scharf's skull on the day in question?

2 A No, sir. None of the fractures was described as a
3 discrete and anatomical presentation of what we would
4 call a depressed skull fracture.

5 Q Now, with -- with regards to the head wound,
6 would Mrs. Scharf be able to scream out for help once
7 that injury had occurred in about a second or less?

8 A You -- you asked me about following that head
9 injury?

10 Q Yes.

11 A No.

12 Q Would she be able to scream for help?

13 A No. That would have led to immediate
14 unconsciousness. And at that point too she had
15 sustained her chest wounds, chest injuries.

16 Q Now, let's finally talk about the other
17 injuries, other than the chest wound and the head
18 wound. Specifically, the tear in the aorta, do you
19 know where those injuries occurred?

20 A Do I know -- give -- for -- for me that -- give
21 your opinion, I mean, that --

22 Q Yes.

23 A -- God knows. I mean, I'm -- I'm giving you my
24 opinion with reasonably medical certainty and the
25 answer is yes. I -- I -- I have an opinion.

1 Q Okay. And tell the jury what your opinion is
2 with regards to the other injuries. In particular, I'd
3 like you focus on the ruptured aorta and the liver and
4 the spleen that were both lacerated as per the Medical
5 Examiner's report.

6 A And the -- the answer is this. That if the aorta
7 and liver and spleen had all been lacerated at the time
8 of the impact of the body against the tree without
9 having struck anything before, there would have been an
10 outpouring of blood.

11 The aorta is the largest blood vessel in the
12 body -- the principal artery. And when it leaves the
13 heart that is where is the highest degree of pressure.
14 The tear of the aorta was just shortly above its point
15 of origin. It emerges from the top of the fourth
16 chamber of the left ventricle and moves up in the chest
17 wall and that's where the tear was.

18 When we look at the body and read the autopsy
19 report there's only 50 ccs of blood -- that's about an
20 ounce and two-thirds and 30 ccs of blood, about an
21 ounce in the other chest cavity.

22 There's no way in the world that you can have
23 a -- a -- a -- an aorta that tears open and only gives
24 you an ounce and -- and little more than an ounce and a
25 half of blood in the other chest cavity.

1 That tells me that when that injury occurred,
2 Mrs. Scharf was already in the process of dying. That
3 her blood pressure had dropped precipitously and there
4 was very little pressure there. And that would explain
5 the -- the paucity, the small amount of blood.

6 Liver and spleen are both organs that are
7 engorged with blood. In fact, the spleen is -- is
8 hardly nothing more than a reservoir for old red blood
9 cells, and it's extensively torn in this case. And the
10 liver, rich with blood supply, and they're torn and yet
11 we have no bleeding in these areas.

12 If all those impacts occurred abanicio de
13 novo, I mean right then there from the -- the sole
14 primary initial impact against the tree, you've got to
15 have some bleeding.

16 The absence of blood from injuries of that
17 nature, of the aorta in the chest and of the liver and
18 the spleen and the abdomen tells me that this lady
19 already had a very significantly lowered blood
20 pressure. That is the only physiological explanation
21 for the absence or the de minimis amount of -- of
22 blood.

23 Q And could that loss of blood pressure have
24 been caused by both the chest wound and the head wound
25 that she incurred by striking the ledge above?

1 A Well, yes. And, in particular, in conjunction
2 also with the -- with the head wound, remember the
3 chest wound having produced some tears of the lungs,
4 the hilar tears, and more importantly those tears in
5 the right atrium and the right side of the heart there,
6 where that conducting mechanism comes down.

7 Q Now, if the body did strike rock B, flip over
8 and her head went through C and D, and her body was
9 catapulted out as you've described, would that contact
10 with the ledge have propelled her body further away
11 from the cliff base?

12 A Yes. As the head is released from the crevice
13 between the base of rock C and D, by the weight and
14 force of the body with the legs and the torso flipping
15 out, then there is that significant catapulting force
16 added to the force generated by a downward fall. So,
17 that would throw the body out further from that point.

18 Q And --

19 A That's the -- the -- the movement of the body is
20 going to be in that direction.

21 Q In the medical records there's evidence that
22 there were tears and rips in the clothing and green
23 marks, indicating that the body had struck tree
24 branches. Would that also propel her body out away
25 from the cliff, in your professional opinion?

1 A Well, possibly you could get some additional
2 spring-like action. I -- I -- I think in the absence
3 of very large branches you're not to get any more
4 catapulting kind of effect, but could you have an
5 additional little impetus from the body striking a
6 branch here and there? Yes. Certainly that could
7 happen -- could have happened.

8 Q Now, Dr. Wecht, based on your review of all
9 the documentation, your visit to the scene, did you
10 form an opinion to a reasonable degree of medical
11 certainty with regards to the manner of death?

12 A Yes. As a Forensic Pathologist and were I the
13 Coroner or Medical Examiner, yes, that is the opinion
14 that I would express in response to your question. And
15 my answer is I would call this an accidental death.

16 Q Doctor, I know you've only had four hours
17 sleep last night. I appreciate your testimony.

18 THE COURT: Any further questions?

19 MR. BILINKAS: No, Judge.

20 THE COURT: Cross-examination.

21 MR. MELLO: Thank you. Could you put that
22 exhibit up here?

23 ASSISTANT: Put it up?

24 MR. MELLO: Yes, sir.

25 It will just be a moment, Doctor.

1 DR. WECHT: Yes, sir.

2 CROSS-EXAMINATION BY MR. MELLO:

3 Q Ready, sir?

4 A Yes, sir. Yes, sir. Yes.

5 Q Thank you. Doctor, let me start with the
6 point that is made regarding your examination of the
7 scene and ask if I understood your testimony correctly.
8 That you viewed what I will refer to as scene one, the
9 top of the cliff. Correct?

10 A Yes. From the top.

11 Q It is true, is it not, I understood you
12 correctly, that you did not walk up the cliffs, and
13 reached the point at which the body of Mrs. Scharf was
14 found?

15 A That's correct.

16 Q And, therefore, in that regard, you did not
17 have the ability, certainly not from the roadway below,
18 to examine the cliff face as it present to you as your
19 site inspection. Is that correct?

20 A I could see the cliff face, but -- but not closer.
21 That -- that's correct. I -- I mean I saw it from the
22 bottom.

23 Q I understand.

24 A But -- but not -- but not closer up from where I
25 would have seen it from the street.

1 Q You can see the cliffs from a distance?

2 A Yeah. Yeah. Right. Exactly.

3 Q And you can see the cliffs?

4 A From a -- from a -- from a farther distance,
5 right?

6 Q From a far distance?

7 A Yes, sir.

8 Q I understand that. But what you did not do
9 is you did not have the opportunity to view as the
10 phrase goes, "up close and personal," the contours of
11 the cliff face for purposes of your analysis in this
12 case?

13 A That's correct. I did not go upward to the -- to
14 the cliff.

15 Q Now, would it not have been -- strike that.
16 The simple point then is that's a perspective that you
17 did not have. Correct?

18 A Other than through photographs. That's correct.

19 Q Other than through photographs. And I think
20 you will agree with me that failing to have that
21 perspective that in some way may impact on your
22 opinions in this case?

23 A No, sir. I -- I don't say this with disdain or
24 intellectual arrogance, but I don't believe so, because
25 whether I run with the theory that has been advanced,

1 sir, by -- by you and -- and your --

2 Q But, sir, you don't know the theory that's
3 been advanced by me. Please don't do that.

4 A Well, you're -- you're asking. You're -- you're
5 --

6 Q I'm asking you --

7 A Well, sir, I do know that.

8 Q I'm asking you, would you, not agree with me
9 that it would be important for purposes of a complete
10 and comprehensive opinion in this matter to have that
11 view of the point where the body was at rest, that tree
12 and that cliff face. If you answer is no, I accept
13 that as no.

14 A No, sir. My -- my answer is no.

15 Q All right. Now, if I understand your
16 testimony -- correct me if I'm wrong. Would you agree
17 with me that your testimony in sum is that Ms. -- Mrs.
18 Scharf accidentally fell from the rock edge, striking the
19 ledge below, was catapulted outward and ended up at the
20 base of the tree, 52 feet from the cliff base?

21 A Yes, sir, after striking the tree. I do believe
22 that her body did strike the tree.

23 Q Okay. Now, let me, let me again focus that.
24 Your, in effect, reconstruction scenario is she fell
25 accidentally from the flat rock, struck the ledge in the

1 manner that you've described, sustained the injuries in
2 the manner you've described, was catapulted after being
3 impaled on rock B, outward and ultimately came to rest
4 at the point at which she is found?

5 A Yes, sir.

6 Q Correct?

7 A Yes, sir.

8 Q Isn't it true, wouldn't you agree with me
9 that the precise scenario that you have described, that
10 the precise injuries that you have described, that the
11 precise manner of fall that you have described -- all
12 would be the same if she was pushed from that point?

13 A (No verbal response.)

14 Q Isn't it true, Doctor -- isn't it true, the
15 injuries are the injuries? Yes?

16 A That's -- that's -- that's the case.

17 Q Yes. Yes.

18 A The injuries are the injuries.

19 Q The injuries are the injuries?

20 A Yes, sir.

21 Q Yes?

22 A Yes. Yes.

23 Q And -- and, really, what you're saying is no
24 more than what I say, but the fact of the matter is,
25 and you would agree with me, that if she fell

1 accidentally or she was pushed, the injuries that you've
2 described, the manner of fall that you've described
3 would be the same. Yes?

4 A Yes. I -- I would --

5 Q Yes?

6 A Yes, I would -- I would --

7 Q Yes.

8 A I would say yes to that, if she were pushed.

9 Q Yes.

10 A And everything would then follow if she --

11 Q Yes.

12 A -- were pushed.

13 Q Yes.

14 A The -- that's correct. Yes.

15 Q Now, it is correct?

16 A Yes.

17 Q It is correct?

18 A Yes, sir.

19 Q So, what we're left with is the injuries that
20 you've described, the manner of which they occurred,
21 the fall that took place could have been either by
22 accident or by a push?

23 A Yes, sir.

24 Q Can you tell us how it is that you know that
25 she died as a result of an accidental fall in the

1 manner that you've described as opposed to a push?

2 A Uh --

3 Q Tell me scientific basis, Doctor.

4 A Yes. All right. The scientific basis is that
5 Mrs. Scharf had a 0.12 percent alcohol. That is a
6 significant level, sufficient to produce some degree of
7 unsteadiness.

8 It happens in the evening. It's dark. And
9 that ledge is -- the -- the flat -- the flat rock up
10 above is not all that wide. So, that's my tilting
11 factor as I view this from the perspective of a
12 forensic scientist. How -- how might this have
13 happened? That's how I arrived at that opinion.

14 Q Now -- now, let's -- let's talk about what
15 you said. It was dark. Yes?

16 A Yes. I think about 7 o'clock, right.

17 Q Actually it was later according to testimony
18 that --

19 A Oh. Later -- later, I'm sorry. Okay. Whatever
20 time it was there.

21 Q But it was dark?

22 A Yes.

23 Q It was a precarious rock ledge?

24 A Yes.

25 Q She was a .12?

1 A Yes.

2 Q How is it that that cannot be consistent with
3 a push then?

4 A Well --

5 Q How can you say --

6 A I can't rule.

7 Q -- to a reasonable degree of medical
8 certainty that it was an accidental fall and not a
9 push?

10 A Well, I've given you my answer. What -- what
11 moves it into the realm of a reasonable medical
12 certainty, vis-a-vis, accident as opposed to a push is
13 the -- are/or, sir, all the things that you've just
14 pointed out: the alcohol level, the precariousness of
15 the location and -- and the darkness, they all fit in
16 and -- and are very supportive of accidents.

17 And then I must tell you as a forensic
18 pathologist, who must make a determination as to the
19 manner of death every time I do an autopsy, then I -- I
20 start off with the knowledge as a forensic pathologist.
21 I'm not taking law now, as a forensic
22 pathologist that I have natural, accident, suicide,
23 homicide, undetermined, in that descending order of
24 likelihood or probability. And for me to move from
25 accident to homicide, I've got to have something that

1 takes me there.

2 That's a quantum leap and I don't -- I don't
3 go there unless I've got something of a definitive
4 nature that points to homicide.

5 Q Okay. Now, I'm going to ask you again. Tell
6 me the science -- the science that tells you that to a
7 reasonable degree of medical certainty, the injuries
8 that Mrs. Scharf suffered -- the fall that she suffered
9 must be accident. I want you to tell me the scientific
10 basis. Don't tell me it's a .12.

11 MR. BILINKAS: Judge, objection,
12 argumentative.

13 MR. MELLO: Tell me the size of the --

14 MR. BILINKAS: I'm not even -- I'm not even
15 sure what the question is.

16 MR. MELLO: The question is --

17 MR. BILINKAS: Don't tell me.

18 THE COURT: It's cross -- it's cross-
19 examination.

20 MR. MELLO: Right.

21 THE COURT: I will give counsel leeway.

22 Overruled.

23 DR. WECHT: Sir, the -- the -- a
24 toxicological analysis is science. We can't function
25 --

1 BY MR. MELLO:

2 Q I understand that.

3 A We can't function as forensic pathologists without
4 input from our colleagues in forensic toxicology and I
5 -- I didn't use the word must be, sir. That's your
6 word. I don't say must. That would be arrogant to me,
7 and I don't express an opinion ever with absolute
8 certainty.

9 Some of my colleagues do that. I don't do
10 that. I express opinions with reasonable medical
11 certainty or reasonable medical probability. And I've
12 given you the basis, sir, upon which the opinion that I
13 have expressed is predicated.

14 Q And -- and that opinion is based I presume
15 from your answer in part that she was a .12.

16 A Yes, sir. That's part of it.

17 Q Okay. Would you agree with me that Mrs.
18 Scharf had a .12, could have been at a .12, pushed or
19 in some manner propelled by her husband from that flat
20 rock?

21 A Yes.

22 Q Would you agree with me that in that light
23 condition, which is to say it was dark on that flat
24 rock at a .12, that that same person under those same
25 conditions certainly could be pushed?

1 A Yes.

2 Q So, again I will say to you, is it not true
3 that all your findings are absolutely consistent with
4 both accident and/or push?

5 A Yes. Except for the alcohol level. Yes, sir.

6 Q Now, if you would, I'd like to ask you to
7 come back to here.

8 THE COURT: Please step down.

9 MR. MELLO: One second, Judge.

10 (Pause in proceedings)

11 BY MR. MELLO:

12 Q Now, Doctor, as I understand it -- you
13 correct me if I'm wrong -- your opinion is --

14 A Yes.

15 Q -- that Mrs. Scharf, in your opinion, fell
16 accidentally.

17 A Yes, sir.

18 Q Now, we've been through that.

19 A Yes, we have.

20 Q Let's just say that now she falls to the
21 ledge. Isn't it true -- isn't it true that all that
22 you've told us today is premised on your assumption
23 that she fell from that rock ledge and no other place.
24 Isn't that true?

25 A You mean starting at?

1 Q I think that's --

2 A No, no, no. I just want -- I want you to -- sir,
3 I'm just going to ask you to define the rock ledge.
4 The top of the top flat rock or are you talking about
5 the little ledge down here?

6 Q I -- I -- I'll -- I'll -- I'll answer that.
7 What I'm talking about. I think we all know what we're
8 talking about, but just to be clear. I am showing you
9 S-253.

10 MR. MELLO: Jury?

11 BY MR. MELLOW:

12 Q S-253, that's the flat rock.

13 A Yes. You -- you called it a rock ledge before and
14 I was just trying to clarify it, sir.

15 Q Okay.

16 A The flat -- the flat --

17 Q If I -- if I mis-spoke --

18 A Yeah. That's like the wrong picture.

19 Q Do we -- I mean, now it's redacted. Do we
20 now agree?

21 A That's right. The -- yes, and I understand your
22 question and that's right. And I'm -- I am working
23 under the assumption --

24 Q That's right.

25 A -- that the fall was from that flat rock.

1 Q From this one?

2 A Yes, sir.

3 (Pause in proceedings)

4 Q Here's another view, 252. That's your
5 working assumption. She went off there?

6 A Yes. Except, sir, when you say my working
7 assumption. I didn't create that. I'm --

8 Q Oh.

9 A I remember it as -- I -- I am not aware that
10 anybody has suggested ever as I've reviewed all the
11 records --

12 Q Oh, okay.

13 A -- that she fell from somewhere else.

14 Q You know, you read the records. Yes?

15 A Yes, sir.

16 Q Yes? And -- and -- and in reading the
17 records you read Mr. Scharf's statements to the police?

18 A Yes, and the police -- the reconstruction.

19 Q And -- and Mr. -- Mr. -- Mr. Scharf indicated
20 his wife fell from this flat rock?

21 A Yes, sir.

22 Q And -- and that she fell accidentally?

23 A Yes, sir. That's right.

24 Q Mr. Scharf said it and that is the premise
25 that you began your analysis with.

1 A Yes, sir.

2 Q Now, I want you to take us through this as
3 you did with Mr. Bilinkas. I want to make sure I
4 understand. Your first step is she fell accidentally,
5 and I think we've discussed that.

6 A Yes.

7 Q But at this point, suffice it to say, in your
8 opinion she has fallen from that point?

9 A Yes.

10 Q You say she what, slid down here?

11 A Not sliding in post content of it, but -- but fell
12 down the side.

13 Q Can I have that -- can I have that bear?
14 Where's that bear? I get to use it, right?

15 Didn't you do this? She came down this way?

16 A That's right.

17 Q Okay. And -- and you saw some lower leg
18 injuries. Correct?

19 A Abrasions --

20 Q Abrasions.

21 A -- on the -- on the fronts of the thighs. Yes.

22 Q Okay. By the way -- by the way, in terms of
23 injures, you talked a lot about injuries. You talked a
24 lot about what you saw. You talked a lot about what
25 the autopsy showed.

1 What you didn't see are any broken bones in
2 the arms, hand, fingers, leg, feet, ankles, etc. etc.
3 etc. Correct?

4 A That's right.

5 Q You didn't find that remarkable?

6 A No.

7 Q Okay. This is a woman who's fallen down a
8 cliff, in your reconstruction. You don't find that
9 remarkable?

10 A No.

11 Q You -- you saw her pantyhose. Her -- they
12 had been torn.

13 A Yes.

14 Q You saw her feet.

15 A Yes.

16 Q You saw her toe nails, almost looked as if
17 they had a pedicure, that's how clean they were. Yes?

18 A Yes.

19 Q But you didn't find that remarkable?

20 A No.

21 Q All right, let's go back to our -- Dr.
22 Wecht's reconstruction. She comes down head first?

23 A Yes, sir.

24 Q How do you know to a reasonable degree of
25 medical certainty precisely how she fell?

1 A Because I explained, sir, the abrasions on the
2 right side commencing at that base of the lower cheek,
3 right jaw area moving down on the neck onto the upper
4 right cheek and then finishing up with that gaping
5 wound on the superior aspect of the right chest and
6 fits in with the crest of rock B. That's the --

7 Q Now, when you say --

8 A -- that's the basis for opinion, which I expressed
9 with reasonable medical certainty.

10 Q Now, when you say fits in, what you're saying
11 is is consistent with.

12 A Yes, consistent with. And I've explained how --

13 Q Can you explain when she slides down, is --
14 is -- is this where she receives those?

15 A Yeah. Abrasions on --

16 Q Abrasions?

17 A -- on the legs.

18 Q Where? Where? On the legs?

19 A On -- on the legs. She's -- she's tumbling down.
20 She's getting something on the legs, but she's also
21 then getting them on the right side from the --

22 Q Could I, let me just go grab those -- the --
23 the -- the head.

24 MR. MELLO: 298.

25 BY MR. MELLO:

1 Q This is how she suffered those abrasions?

2 A Yes, sir.

3 Q Sliding down here?

4 A Yes, sir.

5 Q If there's no blood here, what does that say
6 about your opinion?

7 A Well, I don't know that there's no blood there,
8 sir.

9 Q Well, what I'm asking you is this. I'm
10 asking you if the jury should find as a fact that there
11 is no blood on this path of descent, and there is no
12 evidence of human contact. If the jury should find
13 that as a fact, would that change your opinion, Doctor?

14 A No, because that would depend again on what kind
15 of meticulous microscopic examination was done to rule
16 out, sir, whether there was any blood or tissue, number
17 one. And number two, there are no extensive injuries
18 that are going to produce any significant bleeding.
19 There are no vessels that are lacerated other than the
20 most tiny capillaries from these abrasions.

21 Q I see.

22 A So, you don't have an infusion of any substantial
23 amount of blood.

24 Q I -- I see. So, if I fell 10 feet down that
25 ledge, you wouldn't expect to see any blood? Is that

1 your testimony?

2 A I -- if -- if -- if my colleague Dr. Henry Lee
3 went there and went crunching down, you might see some
4 blood --

5 Q No, no (inaudible -- verbal argument)

6 A Than I would

7 MR. BILINKAS: Objection.

8 THE COURT: Don't argue with the witness.

9 MR. BILINKAS: And -- and at this point,
10 Judge, if I may? I would ask that the Prosecutor not
11 put his finger in Mr. Wecht -- Wecht's face. I think
12 that's disrespectful and let him answer the questions.

13 THE COURT: Right.

14 BY MR. MELLO:

15 Q If I did that, I apologize.

16 A No, no, no -- no problem. No problem.

17 THE COURT: Proceed.

18 BY MR. MELLO:

19 Q Now, let's say, here you are, around this
20 area.

21 A Yes, sir.

22 Q And you said she now, she now strikes rock B.

23 A Yes, sir.

24 Q And she is now impaled?

25 A Well, it's not true -- it's not -- it's not a -- I

1 did use that word.

2 Q Now, Doctor --

3 A Yeah.

4 Q -- you did use that word.

5 A No, just say -- say -- it's a slight impalement.

6 That's right, not -- not a through and through

7 impalement.

8 Q Uh-huh.

9 A But, slight impalement. Right.

10 Q Now, Doctor -- Doctor, now you've, you've

11 seen the report. I'll make it easy, I circled it.

12 Impaled. Right?

13 A That's right. I can use that word.

14 Q Not slightly impaled. Impaled.

15 A I'm just differentiating, sir, that impalement

16 often means going all the way through and we know that

17 did not happen.

18 Q Oh, we do? We do?

19 A In the same sort of accident.

20 Q I -- I see. Now, this rock, that -- that --

21 that rock edge you say is sharp. It doesn't appear to

22 be that sharp, but that's what you said.

23 A Well, it comes to a -- a -- a crest, sir. It's --

24 it's, I said it's not sharp like a knife, but --

25 Q You -- you said she was impaled?

1 A Yes, sir.

2 Q All right. She's has now slid down that 10
3 foot cliff face, where she is impaled on rock B and she
4 sustains the injuries that you described. Yes?

5 A Yes.

6 Q And those injuries are what?

7 A The abrasions commencing on the lower right side
8 of the face, culminating in the 9-inch wound across the
9 upper part of her chest on the right side, going
10 slightly across the midline toward the left --

11 Q Then --

12 A -- producing rib fractures --

13 Q I'll get to that.

14 A -- and some internal damage.

15 Q I'll get to that. Let's start with the 9-
16 inch by 4-inch, 9-inch by 4-inch gaping --

17 A Wound.

18 Q -- laceration to the chest. So give or take,
19 if Mrs. Scharf stood here and fell to the floor on that
20 rock that would have produced the 9 by 4-inch gaping
21 wound.

22 MR. MELLO: Could I see that photograph,
23 again? Thank you. Sorry.

24 BY MR. MELLO:

25 Q Produce that wound?

1 A Yes.

2 Q That fall produced that wound?

3 A Yes.

4 Q That's your opinion?

5 A Yes, sir.

6 Q No question?

7 A No question. The -- the gaping aspect of it, once
8 the tissue is pulled apart then there will be gaping.
9 What the actual width is -- is a different matter
10 because it was going to be brought together by the fall
11 in that fashion.

12 Q I see. Then C and D, right. Is that
13 photograph an enlargement of those rocks?

14 A Well, you know, this is a -- a -- a real close-up.

15 Q Yeah.

16 A I haven't seen this particular, but yes it -- it
17 could be. I -- I'm not -- I'm not saying the -- the
18 inside, so I'm not hesitating in answering your
19 question, but if you tell me that these are the C and
20 D, I -- I accept your word.

21 Q And, and, and you see those photos?

22 A That -- that -- I -- I haven't seen this one, I --

23 Q Well, you're looking at it now?

24 A Yes, sir.

25 Q Okay. Remember I asked you about blood?

1 A Yes.

2 Q Yes. Okay. If the jury should find as a
3 fact that no blood was observed or photographed -- or
4 photographed in that setting on those rocks, does that
5 change your opinion?

6 A I would again, sir, have to know the nature and
7 the thoroughness and the meticulous of that
8 examination.

9 Q Okay. I'll give it to you this way. This is
10 meticulous. There's a photograph.

11 A Okay.

12 Q Now, I think you'll grant there does not
13 appear to be blood on this rock.

14 A Sir, you're showing me the tops of the two rocks.
15 The -- the head is impinged in the crevice between the
16 rocks.

17 Q Oh, this is -- is not.

18 A Yeah. I said, I made that very clear.

19 Q Yes, you did.

20 A It -- it's not striking the top. It's not
21 striking the top, sir.

22 Q And I'm going to ask -- and -- and -- I'm
23 going to ask you about that right now. I'm going to
24 ask you that.

25 At the same time, as I understand it. She

1 slides down the face, head first. Impales on rock B
2 and at the same time her head is now impinged --
3 impinged between C and D?

4 A Not at the exact same time as I said in response
5 to Mr. Bilinkas's question. I said in a fraction of a
6 second. Yes, as the body swings and the head moves
7 over. That's right.

8 Q You don't really know if it was at the exact
9 same time or if it was a fraction of a second.

10 A Well, no, I -- I do know sir, because anatomically
11 you can't have, based on my reconstruction of this, you
12 can't have the lacerated wound on the right chest and
13 the head exactly at the same -- precise millisecond and
14 that's why I say in a fraction of a second.

15 Q Okay, like a millisecond, okay. So --

16 A I -- I said in the --

17 Q So, in one point -- in one point all this is
18 happening. Right?

19 A Yes, sir, within a fraction of a second as the
20 body just moves slightly laterally then the head
21 becomes impinged between rocks C and D.

22 Q So, for example, if you are wrong and she
23 struck the tree, the base where she was found at, that
24 same kind of contact, based on your anatomical
25 assignment could be the same. Not precisely the same,

1 but almost at the same moment.

2 A Oh, no, sir. There's no way you are going to get
3 a bilaterally symmetrical avulsion, a ripping open of
4 scalp by striking the tree. This tree -- the tree is
5 curvilinear. How do you get that on both sides?

6 And more importantly, sir, on the
7 undersurface of the scalp, the galea, there is no
8 hemorrhage. And more importantly Sir, the dura mater,
9 the membranous covering is intact. And most
10 importantly, sir, the brain is intact.

11 So, if you've got that body hurtling 122 feet
12 through the air with that velocity and it smashes up
13 against the tree.

14 Q Uh-huh.

15 A You are no more going to wind up with an intact
16 brain and dura mater than I'll grow a head of hair on
17 this bald head tomorrow. That -- let me tell you that,
18 okay?

19 Q Okay. Well, it stress. Now, and again, all
20 the injuries that you saw could have been the result of
21 a push. Everything you just said.

22 A We're back here -- we're back to the -- we're back
23 to the ledge.

24 Q To include growing hair on that bald head.
25 Everything you said could be the result of a push?

1 A We're back to the ledge, sir. Yes. But I don't

2 --

3 Q That's back to my question.

4 A No, no, well no, you got -- you got -- wait,

5 Q You're -- sir --

6 A -- well, you're --

7 MR. BILINKAS: Judge, again.

8 THE COURT: Okay.

9 MR. BILINKAS: Can the witness answer the
10 question before another one is proposed?

11 THE COURT: Give the witness an opportunity.

12 MR. MELLO: I will, Judge.

13 MR. BILINKAS: And -- and a little respect
14 Mr. Mello, please.

15 MR. MELLO: I -- I think -- I think Dr. Wecht
16 certainly can answer himself.

17 BY MR. MELLO:

18 Q At any rate, as I understand your
19 reconstruction, suffering those injuries that you
20 described, being impaled in rock B, head impinged
21 between C and D, she now is catapulted forward?

22 A Yes, sir. The -- the -- the force of the body,
23 right, the motion.

24 Q And now what happens to her?

25 A And then she hurtles through space and she impacts

1 against the tree in a horizontal type position -- the
2 lower chest, upper abdomen, whereupon she suffers the
3 laceration of the aorta, the damage to the liver and
4 the spleen, accounting for those injuries and the
5 absence or paucity of blood from those injuries,
6 containing a great deal of blood, in the case of the
7 aorta, blood under tremendous pressure. That's the
8 only plausible, scientific explanation.

9 Q And -- and once again, all that you've said
10 could have been the result of a push?

11 A If you go back to the file they've got, I don't
12 know which theory you want to adopt, sir. Whether you
13 want to go with the flying --

14 Q I'm -- I'm not adopting anything.

15 MR. BILINKAS: Judge, Judge, Judge, can he
16 answer?

17 THE COURT: All right.

18 MR. BILINKAS: Can he answer the question?
19 Again.

20 MR. MELLO: Not if he's asking my opinion.

21 MR. BILINKAS: He keeps -- no.

22 THE COURT: Stop it.

23 MR. BILINKAS: He keeps interrupting him.

24 MR. MELLO: Doctor, you can resume your seat.

25 THE COURT: Step back.

1 MR. MELLO: You can resume your seat.

2 DR. WECHT: He said to go back there.

3 MR. MELLO: Please.

4 BY MR. MELLO:

5 Q Now, Doctor, when you say she was hurtling
6 through space. I just want to take a moment and
7 examine this photograph.

8 (Pause in proceedings)

9 BY MR. MELLO:

10 Q Did -- did you examine it?

11 A Yes, sir.

12 Q Can you tell us where she struck?

13 A No, sir.

14 THE COURT: Can I suggest --

15 MR. MELLO: Yes.

16 THE COURT: The jurors are having difficulty
17 seeing the photograph. It might be better midway to
18 use that as an opportunity --

19 MR. MELLO: Thank you.

20 THE COURT: -- to show it to the jury, and
21 the Doctor can step down for further questioning.

22 MR. MELLO: Doctor, can you.

23 DR. WECHT: No, well, I saw it. If you want
24 me to go down there, but I've -- I've seen it and my
25 answer is I --

1 THE COURT: Please -- please step down.

2 DR. WECHT: Oh, oh, you want me to -- yes,
3 Your Honor. Yes, sir. Of course.

4 MR. MELLO: Now, Doctor, you see --

5 THE COURT: Once again, you have to tilt
6 yourself a little bit so juror number one can see the
7 photograph.

8 MR. MELLO: Okay. Maybe it would be easier
9 --

10 (Pause in proceedings)

11 THE COURT: Thank you.

12 MR. MELLO: Thank you, Judge.

13 BY MR. MELLO:

14 Q You see the rock ledge?

15 A No, no, orient me, sir. (Pause) Okay. That --
16 that's the -- the top flat rock.

17 Q Top flat rock, fine.

18 A Flat rock, okay.

19 Q And the rock ledge that we've discussed
20 below.

21 A Okay.

22 Q And now the tree --

23 A Oh, okay.

24 Q -- where Mrs. Scharf is found here.

25 In your opinion when she is propelled

1 forward, tell us how she is impaled on rock B, has her
2 head be impaled between rock C and D, and now is
3 catapulted out?

4 A Well, sir, yes. As the head is being caught,
5 compressed between rock C and D in that crevice, but
6 the body of this 167 pound lady is turning over. There
7 is a tremendous amount of force and the weight is
8 sufficient then to disengage the head from the rocks,
9 which is not stuck. Nothing protruding into it. It's
10 just somewhat compressed and it flips out. And that
11 presents what I have referred to as a catapulting-like
12 motion with the body then hurtling through space.

13 Q So, you're -- you're positing a theory that
14 she suffers the chest wound by being impaled on rock B.
15 Her head is impinged between C and D, and now she flips
16 over and out?

17 A Yes, sir.

18 Q How wide is it? You said you measured. How
19 wide is it at the point of rocks B, C and D. How wide
20 is that ledge? It's very narrow, isn't it?

21 A I think, sir, a total of maybe six foot, I think,
22 something like that.

23 Q Well, is that -- are you saying its 6 foot
24 wide at that point? Now, I'm going to --

25 A Between 5 to 6 foot, I think.

1 Q No, maybe you think wrong.

2 A Well --

3 MR. BILINKAS: Judge, Judge, again, again, I
4 object.

5 THE COURT: What is your objection?

6 MR. BILINKAS: The Prosecutor just said to
7 the expert, "I think wrong." And then he start.

8 MR. MELLO: No, I said I think -- I said
9 possibly, y maybe he's wrong.

10 MR. BILINKAS: No. He said, I think wrong,
11 Judge.

12 THE COURT: Ask another question --

13 MR. MELLO: All right. I'll ask another
14 question.

15 THE COURT: -- without the commentary.

16 MR. MELLO: Yes, sir.

17 BY MR. MELLO:

18 Q Does this show you the flat rock?

19 A Well, I -- I -- I can't tell, but I mean, I -- it
20 -- it -- it would fit in with the flat rock. Yes, I --
21 I accept it as being the flat rock.

22 Q And would you say this shows you the area of
23 rocks B, C and D?

24 A Yes. That would -- that would be consistent.
25 Yes, sir.

1 Q And with respect to rocks B, C and D would
2 you say that is a much narrower distance than 6 feet?
3 Perhaps only --

4 A Sir --

5 A -- a couple of feet?

6 A Well, it looks to me and I -- more than a couple
7 of feet, because the rocks themselves, I think it's
8 more than a couple feet. If it's less than 6 or 5
9 feet, I -- I won't argue with you. I know it's narrow.
10 I was -- I was there.

11 Q It's narrow.

12 A I know that it's narrow, but it's more than two
13 feet. I -- I would not have gone out onto a two feet -
14 - there -- there's no way I'm going to go out on two
15 feet ledge. No way.

16 DR. WECHT: Do you still want me here, sir?

17 MR. MELLO: No. I'm sorry, Doctor. Thank
18 you.

19 THE COURT: Please return to the stand.

20 Thank you, Doctor.

21 BY MR. MELLO:

22 Q Now, I think, Doctor, you said in your direct
23 testimony that you placed a certain amount of weight in
24 rendering your opinion on the purse being on that
25 ledge?

1 A I was just asked one question about that, sir, I
2 think. As I recall, what did it mean to me that the
3 purse was found on the ledge and I simply said, my
4 answer was that if the purse could be there the body
5 could have fallen there. That's all I said.

6 Q Could have?

7 A Yes, sir.

8 Q But -- but what you can't tell the jury is
9 how the purse got there, can you?

10 A Well, I believe the purse fell with the body.

11 Q All right. Let me ask you this, In your
12 forensic expert opinion, that is not the only way that
13 purse could have gotten there, is it?

14 A I -- I don't know what you mean by the question,
15 sir?

16 Q Well, I mean this. You say you believe it
17 got there when Mrs. Scharf fell?

18 A Yes, sir.

19 Q It also could get there when Mrs. Scharf was
20 pushed.

21 A Back to that again?

22 Q Yes. We're back to that again.

23 A Yes. But -- but the purse why don't we just leave
24 it that the purse, I believe would have been -- would -
25 - would mostly likely would have been, could have been

1 with Mrs. Scharf.

2 Q Okay. Now, of course, at this time, at the
3 time that she fell we know the location that Mr. Scharf
4 reported. Correct?

5 A Yes, sir.

6 Q And we know that Mr. and Mrs. Scharf,
7 according to Mr. Scharf's statements to the police,
8 arrived at the Rockefeller Lookout by car?

9 A Yes, sir.

10 Q They walked through the same wooded area that
11 I'm sure you walked through?

12 A Yes, sir.

13 Q Accordingly to Mr. Scharf's statements to the
14 police, they were on that rock ledge, etc.?

15 A Yes, sir.

16 Q And that her purse is found on the ledge?

17 A Yes, sir.

18 Q You'd agree with me wouldn't you that the
19 purse could have been put on the ledge?

20 A When you say put, you mean someone walked down and
21 placed it there?

22 Q No. I -- I mean either someone could have
23 dropped it or placed it in any other manner to include
24 walking down.

25 A It would have been physically possible for

1 somebody to do that. Sure, I can't --

2 Q Yes, you can.

3 A Yeah. No.

4 Q Now, these are views -- I'm going to ask you
5 to accept my representation that testimony has
6 established that the two photographs that I'm about to
7 show you are 273 and 272, show the base of the cliff
8 and the location where the body was found.

9 A Can I?

10 Q Yeah, I just want to show the jury.

11 A Sure. Sure. Oh, I'm sorry, I'm sorry. Go ahead.
12 Go ahead.

13 Q Okay. Maybe if I come this way here.

14 A Yeah. Okay.

15 Q Okay.

16 A Where -- where, sir, are you saying the body was
17 found? Is this the tree?

18 Q That's the tree.

19 A That's the tree. Okay. And the body was found
20 near there. Okay.

21 Q At the base of the tree.

22 A Yeah.

23 Q I think you'll agree with me that that cliff
24 face is extraordinarily rugged?

25 A The cliff face is, sir. Yes. But within a

1 parameter of several feet at the base of the tree there
2 are no large rocks. Right -- right there.

3 Q At the base of the tree?

4 A At the base of the tree. Right.

5 Q But -- but Mrs. Scharf, according to your
6 testimony and opinion, left the rock ledge at the top
7 of the cliff and ended up at the base of the tree?

8 A After striking the tree. Yes, sir.

9 Q And you do accept that she struck the tree?

10 A Yes, sir.

11 Q And if she struck the tree it would be fair
12 to say, would it not, forensically speaking, that she
13 came through the tree, striking the tree?

14 A Uh, what do you mean through the tree, sir?

15 Q As opposed --

16 A You mean, through some -- some branches as --

17 Q -- as opposed to simply hitting that spot?

18 A Well, there would have been -- some descent. Yes.
19 That -- that -- that -- that's correct. She didn't
20 come down -- or, yes, I mean, she came down.

21 Q And you accept that?

22 A That there -- there -- there was a -- a downward
23 movement of the body, then eventually striking the
24 tree.

25 Q And -- and that would have some effect, would

1 it not on her body speed? Coming through the trees?

2 A You mean, that -- that tree branch alone, sir, or
3 are you talking about all the way?

4 Q All the way.

5 A The -- the answer is that if it -- if it struck
6 some branches, I think, to a minimal extent there could
7 have been some decreased -- a decrease in the velocity.
8 And it's possible, we -- this was talked about, that if
9 there were fairly large branches with some spring to
10 them, and she hit it, could there be a little bit of
11 additional impetus -- a little bit of additional
12 momentum transferred to the body. So, either is
13 possible.

14 Q And what you've posited for us today is that
15 Mrs. Scharf fell from that flat rock, suffered the
16 injuries described at autopsy on that first ledge?

17 A There are three points of impact in my opinion,
18 sir. The chest, essentially on the -- on the ledge,
19 yes. The head on the ledge, yes, and the tree farther
20 down as the third point of impact.

21 Q When was the aorta torn?

22 A When the body struck the tree, to explain the
23 paucity of blood 30 ccs, 1 ounce and 50 ccs, just think
24 it as a 6 ounce can of Coke and you're taking 1/6th of
25 that. That -- that -- that's -- that's -- that's

1 nothing. I could cut myself bleeding and shaving and I
2 can bleed out an ounce before I get it to stop.

3 Q Wouldn't that tearing of the aorta require
4 extraordinary force? You'd agree with that.

5 A Oh, yes. Yes there's force when the body impacts
6 against the tree. The answer is yes.

7 Q And, so I understand, the beginning point of
8 your analysis was the flat rock. Yes?

9 A Yes, sir.

10 Q So I understand, you have explained to the
11 jury how Mrs. Scharf went from point A, where you began
12 your analysis to point B, the tree against which she
13 impacted?

14 A If -- if you're calling A the top of the flat
15 rock.

16 Q I am.

17 A And if you're calling the tree B, then -- then the
18 answer to your question is yes. I have given my
19 explanation as to how I think the body reached that end
20 point.

21 Q Now, you will agree with me that you've read
22 the materials by both prosecution and defense that
23 suggest that the cliff base is some 52 feet from the
24 tree at which Mrs. Scharf impacted?

25 A Yes, sir. That's my understanding of the distance

1 out from the cliff.

2 Q And that distance would you say, forensically
3 speaking, would be akin -- you're at the top of a
4 building, which you are very familiar with, right?

5 The top of a building in Manhattan -- there
6 is a fall. That's about equivalent to the body falling
7 from the top of the building, twelve stories, clearing
8 the sidewalk below, clearing the street, and landing on
9 the other side of the street?

10 A Ah ha, sir. That's -- that's -- thank you very
11 much. That's -- that's an important point. I would
12 like to know what 600 pound sumo wrestler was able to
13 lift a 167 pound woman and hurl her out so that she
14 lands 52 feet away. I would like to have that
15 explained.

16 Q But, Doctor --

17 A How this -- how this 180 pound guy and middle
18 aged, not so great in shape guy, hurled that body out.
19 I'd like to have somebody explain that to me.

20 Q Okay. Well, I think you explained it. I
21 think you did, Doctor.

22 A That was a 600 pound sumo wrestler.

23 Q No, because you've told this jury, you've
24 told this jury how she got there.

25 A Oh, yes. And that's how she got there.

1 Q Okay.

2 A Striking -- striking the rocky ledge. No way did
3 she get there by jumping or being pushed from the flat
4 -- you can push somebody, you're no more going to push
5 them out 52 feet than -- than you're going to push a GM
6 truck down Route 80.

7 Q Doctor, you just told us through this morning
8 that Mrs. Scharf fell accidentally and somehow landed
9 where she was found?

10 A Yes. That's right and I've explained it.

11 Q You've explained that to us.

12 A Sir, the body comes down, it impacts on rock B,
13 the chest. The head gets compressed between rock C and
14 D. The weight of the body flipping over pulls the head
15 out and hurls the body in catapult like fashion and it
16 goes out and it does land there. I'm not aware that
17 anybody is suggesting that her body was moved. The
18 body is found 52 feet out, and that's my explanation as
19 to how it could have gotten there. And I'm not aware,
20 sir, of any alternative explanation --

21 Q No.

22 A -- absent the body hitting something on the flat
23 ledge of how that body goes out 52 feet. Because when
24 the detectives or the police officers wanted to hurl
25 sandbags, sir, 167, they tethered themselves so that

1 they would not fall off. Okay?

2 Q Again, we go back to your analysis began with
3 point A, that's number one. Correct?

4 A That's right.

5 Q And number two, unless I am wrong -- correct
6 me if I am wrong -- you have explained to this jury how
7 she went from point A, that flat rock, to point B, that
8 tree, some 52 feet and you explained it by her, now you
9 say, being hurled from the ledge outward to the point
10 at which she came to rest.

11 A The body catapulting, that's correct. Yes, sir.

12 Q And once again, and I will conclude with
13 this, you cannot distinguish the injuries or the
14 mechanics that you've described and the point that
15 which she is found, you cannot distinguish between
16 accident or push?

17 A Scientifically, no, I -- I can't distinguish --

18 Q Nothing further.

19 A -- between a -- a -- a --

20 Q Nothing further, Doctor.

21 A -- push and a fall. That's right.

22 REDIRECT EXAMINATION BY MR. BILINKAS:

23 Q Dr. Wecht, the Prosecutor showed you State
24 Exhibit 255 and asked you --

25 MR. MELLO: Can I see that? I'm sorry.

1 BY MR. BILINKAS:

2 Q -- and asked you specifically whether or not
3 you saw blood on these rocks. Do you recall that
4 specific question on cross-examination? These specific
5 rocks, do you recall that?

6 A Yes, sir.

7 Q Now, are you aware of the fact -- the fact
8 that the rocks that the Prosecutor asked you find blood
9 are to the left of rocks A, B, C and D.

10 A No. I was told that they were Rocks C and D, I'm
11 sorry.

12 Q By who, the Prosecutor?

13 MR. MELLO: Judge, the -- the facts are for
14 the jury to find.

15 MR. BILINKAS: Right, okay.

16 MR. MELLO: In the light of all the
17 testimony.

18 THE COURT: All right. Next question.

19 MR. BILINKAS: Can you hold this up here,
20 please?

21 BY MR. BILINKAS:

22 Q Dr. Wecht, could you please step down here
23 for a second?

24 A Your Honor?

25 THE COURT: You may. Thank you.

1 BY MR. BILINKAS:

2 Q With regards to the Prosecutor's question
3 about whether or not you saw blood on this specific
4 diagram, and whether or not if the jury found to -- of
5 the fact that there was no blood, would that change
6 your opinion. Do you see the striations on the rock in
7 the middle of this diagram?

8 A Yes.

9 Q Okay. And do you see the crevice in the
10 upper left hand portion?

11 A Well, there is the suggestion of the beginning of
12 a crevice. I can't actually look down there.

13 Q Oh, okay. And did -- and did you see like a
14 little chip in the rock to the left?

15 A Well, a little irregularity in the contour --
16 yeah.

17 Q Okay. Now, I'm going to show you what's in
18 Evidence D-155, which depicts both rocks A, B, C and D.

19 A Do you want?

20 Q I'm going to let the jury see this, I just
21 want. Do you see those same crevices on this rock that
22 match the rock in the middle of the left hand portion,
23 the same crevices?

24 A They look -- yeah, I mean, this one here. This
25 rock -- this here. They look -- they look very

1 similar.

2 Q Yes. Okay. And can you also see the gap
3 between the two rocks that's depicted in this
4 photograph?

5 A Yes.

6 Q And -- and the -- the exact similar shape of
7 the rock on top of the rock depicted by the Prosecutor?

8 A Yes.

9 Q And would you agree with me that those
10 photographs, the photograph that the Prosecutor
11 questioned you with regards to blood are to the, if
12 you're looking down to the left of the rocks in
13 question?

14 A Yes. They are rocks that are -- as you -- as you
15 proceed down from the upper flat rock, as you come down
16 and so on, as you are going down then those rocks you
17 would come to first before you get to rocks D, C, B and
18 A.

19 Q And -- and would you agreement with me that
20 according to your professional opinion, you know, Mrs.
21 Scharf's body --

22 MR. MELLO: Objection.

23 MR. BILINKAS: -- had nothing.

24 MR. MELLO: My mistake, proceed.

25 THE COURT: Hold on. These's an objection.

1 MR. MELLO: Proceed.

2 BY MR. BILINKAS:

3 Q Is your opinion with regards to what Mrs.
4 Scharf's body struck have anything to do with the two
5 rocks that the Prosecutor questioned you on cross-
6 examination with regards to whether or not there was
7 blood on them?

8 A No.

9 MR. BILINKAS: I'm going to ask the jury to
10 take a close look at both of these two exhibits.

11 (Pause in proceedings)

12 BY MR. BILINKAS:

13 Q Now, Dr. Wecht, the Prosecutor discussed with
14 you the distance from the flat rock out to the tree
15 that Mrs. Scharf impacted against. Did you review the
16 sandbag toss video that the Prosecutor's Office had
17 done in this case?

18 A Yes.

19 Q And did you see sandbag three hit Rock D?

20 A Yes.

21 Q And are you aware of the fact that the
22 sandbag that hit that ledge traveled 32 feet out from
23 the ledge, even after all of the sand or most of the
24 sand had left the bag and landed 20 feet away from the
25 tree?

1 A Yes.

2 Q Does a body react differently, based on your
3 vast experience, than a sandbag with regards to the way
4 it reacts when it hits objects?

5 A Yes. Number one, the sandbag is an inert,
6 inanimate object with no involuntary neuromuscular
7 reflexes. And Number two, as you stated in your
8 question, the sandbag had burst and the sand had come
9 out. So, that as the bag then continues it does not
10 have its original weight. So for those two reasons,
11 considering then the ability of the body in this
12 involuntary -- involuntarily mediated neuromuscular
13 reflex and to -- and just simple physical dynamics to
14 come out and to catapult forward, the differences are
15 substantial. It -- it's not really -- you're not
16 comparing a green apple to a green apple.

17 Q Now, in rendering your opinion, did you
18 review Dr. Clayton's autopsy report?

19 A Yes.

20 Q And -- and her Addendum with regards to the
21 manner of death and so forth?

22 A Yes.

23 Q And did you review the State's expert,
24 Michael Baden's report with regards to what his opinion
25 was in -- in this particular case?

1 A Yes.

2 Q Now, did you also take a look at the
3 videotape of Medical Examiner Clayton's testimony
4 before this jury and Michael Baden's testimony before
5 the jury?

6 A Yes. They were sent to me.

7 Q Now, with regard to the eleven times the
8 Prosecutor asked you the specific question whether
9 those injuries can be caused as a result of a fall or a
10 push. Did either Baden or Clayton indicate either in
11 their reports or during their testimony, that in their
12 professional opinion the body struck some other object,
13 other than the tree at the base?

14 A No. It's my definite understanding and impression
15 and memory recollection that both Dr. Baden and Dr.
16 Clayton opined that Mrs. Scharf was in some way thrown
17 from the top of that -- that flat rock and just struck
18 against the -- the tree. There was no mention by
19 either one of those folks about the body impacting on
20 any object on the flat ledge some 11, 12, 13 feet
21 beneath the top flat rock.

22 Q Okay. And, specifically, wasn't their
23 opinion based on the body traveling unimpeded to the
24 tree at the base?

25 A Yes. That's my understanding.

1 Q And did either Clayton or Michael Baden with
2 regards to rendering their opinion talk about or
3 suggest the body leaving from any other spot other than
4 the flat rock?

5 A No. I have no recollection of any such
6 conjecture.

7 MR. MELLO: That's for the testimony of the
8 jury, Judge. That's the jury's job.

9 THE COURT: Right.

10 MR. BILINKAS: No. I'm specifically asking
11 him with regards to the experts --

12 MR. MELLO: Form of the question, Judge.

13 MR. BILINKAS: -- that the State have relied
14 on.

15 THE COURT: The facts will be determined by
16 the jury. All right. Stop the argument. Move on.

17 MR. BILINKAS: Dr. Wecht, it's a pleasure
18 having you here. No further questions.

19 MR. MELLO: It was, Doctor. Thank you.

20 THE COURT: Thank you, Doctor. Please step
21 down.

22 DR. WECHT: I'm glad it was a pleasure. I
23 thank you, Your Honor. I appreciate it. Thank you,
24 sir.

25 THE COURT: Can I see the attorneys at

1 sidebar.

2 (Sidebar begins)

3 THE COURT: You have to gather certain
4 evidence that I think that you should need.

5 MR. BILINKAS: Yes. Yes.

6 THE COURT: And I also have the question.

7 MR. BILINKAS: Right.

8 THE COURT: Okay? There's no other
9 witnesses?

10 MR. BILINKAS: No, done.

11 THE COURT: Okay. You want to send them to
12 lunch?

13 MR. BILINKAS: No, no, no. Judge, we're
14 done. We're done.

15 MR. MELLO: No we can -- you can rest.

16 MR. BILINKAS: Yes, yes. I'm going to rest.

17 MR. MELLO: You need to --

18 MR. BILINKAS: We'll make our motion.

19 MR. MELLO: You need to talk to your --

20 THE COURT: All right. The jury is asking to
21 be excused.

22 MR. BILINKAS: Yes. We don't need the jury
23 any further. You can discuss with him. He's going to
24 tell you. If you want the -- the -- the read charge.

25 MR. MELLO: Right.

1 MR. BILINKAS: And -- and I don't think we
2 need the jury.

3 MR. MELLO: You can rest now.

4 MR. BILINKAS: Yes. I'll rest.

5 MR. MELLO: And then whatever --

6 MR. BILINKAS: Unless you want to -- Judge,
7 Judge, give me one --

8 MR. MELLO: That would be nice -- but --

9 MR. BILINKAS: Can I see -- I say let the
10 jury go, then, you know, then --

11 THE COURT: I -- I'm going to let them go.

12 MR. BILINKAS: Right.

13 MR. MELLO: Right.

14 THE COURT: I want to take care of them.

15 MR. BILINKAS: And I don't see why you need
16 to do that. They don't need to be here. But,
17 obviously, they're not going to --

18 THE COURT: You -- you can't rest until --

19 MR. BILINKAS: Okay. I'm representing that
20 I've discussed it with my client, subject to
21 reconfirming that on the record, I'll -- I'll rest.
22 I'll rest. Whatever you want to do, Judge. I'm just
23 trying to make it a little more --

24 THE COURT: I understand.

25 MR. MELLO: If you want to give them five --

1 five minutes, and then --

2 MR. BILINKAS: I can still, you know, I'll
3 give them five minutes break time.

4 MR. MELLO: Just five minutes and bring them
5 back in here too.

6 MR. BILINKAS: Okay.

7 THE COURT: We'll bring them back before
8 12:30 and complete everything.

9 (Sidebar ends)

10 THE COURT: All right. We've completed the
11 testimony. There is something that I have to go over
12 with the attorneys. It will take about ten minutes,
13 so, Sheriff's Officers please escort the jury to the
14 jury room.

15 (Jury exits Courtroom)

16 (Off the record. On the record.)

17 THE COURT: All right. Mr. Bilinkas, Mr.
18 Mello.

19 MR. BILINKAS: Yes, Judge.

20 MR. MELLO: Yes, Judge.

21 THE COURT: The defendant's election not to
22 testify. Your client has made a decision?

23 MR. BILINKAS: Yes, Judge. We've -- we've
24 had extensive discussions with respect to this. My
25 client understands his rights and -- and his right to

1 testify and he elects not to testify.

2 THE COURT: Mr. Scharf.

3 MR. SCHARF: I concur with the right.

4 THE COURT: Do you understand that this is
5 your absolute right?

6 MR. SCHARF: Yes, Your Honor.

7 THE COURT: And in consultation with your
8 attorney --

9 MR. SCHARF: Yes, Your Honor.

10 THE COURT: -- as part of your trial strategy
11 you have made a decision not to testify?

12 MR. SCHARF: Yes, Your Honor.

13 THE COURT: Now, there's a form that you've
14 reviewed?

15 MR. SCHARF: Yes, Your Honor.

16 THE COURT: It reads as follows: It is the
17 Constitutional right of a defendant to remain silent.
18 The defendant in this case chose not to be a witness,
19 and therefore elected to exercise that right.

20 I charge you that you are not to consider for
21 any purpose or in any manner in arriving at your
22 verdict the fact that the defendant did not testify,
23 nor should that fact enter into your deliberations or
24 discussions in any manner or at any time.

25 A defendant is entitled to have a jury

1 consider all of the evidence and is entitled to the
2 presumption of innocence, whether or not he testifies
3 as a witness. Therefore, you may not draw any
4 inferences of guilt from the fact that the defendant
5 did not testify.

6 Now, below that there are two choices. To
7 have the charge read to the jury or not to be read to
8 the jury. Which have you decided to do?

9 MR. SCHARF: The first, Your Honor.

10 MR. BILINKAS: We elect to have it read to
11 the jury.

12 THE COURT: Okay.

13 MR. BILINKAS: And I'll hand up the signed --

14 THE COURT: The form has been signed?

15 MR. BILINKAS: -- executed copy to the Court.

16 THE COURT: All right. Now, are there any
17 other witnesses, counsel?

18 MR. BILINKAS: No, Judge.

19 THE COURT: Now, what I intend to do is to
20 bring the jury back. You'll rest formally in front of
21 the jury, and then we'll send them home and they'll
22 return on Tuesday.

23 MR. BILINKAS: Okay.

24 THE COURT: Okay? Bring the jury back.

25 (Pause in proceedings)

1 COURT OFFICER: Jury entering.

2 (Jury enters Courtroom)

3 THE COURT: Welcome back, ladies and
4 gentlemen. Please be seated. Mr. Bilinkas, anything
5 further?

6 MR. BILINKAS: Judge, the defense rests at
7 this -- this point.

8 THE COURT: Okay. Ladies and gentlemen of
9 the jury, the prosecution and the defense have both
10 rested.

11 You will return next Tuesday, May 24th at
12 9:00 a.m., for the closing arguments. I'm going to go
13 over some jury instructions with the attorneys. There
14 is no reason for you to be here, but once again I
15 instruct you not to have any discussions of any nature
16 with any person concerning this case. To completely
17 avoid reading or listening to any news account, not to
18 do any research on your computer, not to visit the
19 scene.

20 You must understand that there are
21 instructions that will be given to you. You are not
22 ready to start your deliberations.

23 Once again, the news coverage will increase
24 as each day goes on. I'm relying upon the fact that
25 you have been -- you've taken oath to listen to the

1 instructions of the Court. You will remain in recess
2 until next Tuesday at which time we will resume with
3 the case. Have a good evening, good afternoon, and a
4 good weekend.

5 JURORS: Thank you, Judge.

6 THE COURT: Enjoy.

7 (Jury exits Courtroom)

8 THE COURT: I suggest the following. Do you
9 have copies of the jury instructions? Yes?

10 MR. MELLO: Okay.

11 THE COURT: Mr. Bilinkas?

12 MR. BILINKAS: Yes, Judge.

13 THE COURT: Why don't we do this? To give
14 you some time to go over them, you have the lunch hour.
15 We'll break now at 12 o'clock and resume at 1:30 p.m.
16 and then we'll complete the jury instructions.

17 I want to be able to go directly from closing
18 arguments into the jury instructions on Tuesday, and
19 hopefully by 1:30 p.m. the jury should be deliberating.
20 Okay? I'll see you at 1:30 p.m.

21 MR. MELLO: Thank you, Judge.

22 (Off the record. On the record.)

23 (Pause in proceeding)

24 THE COURT: Diane, could you make a copy of
25 this and could you give it to the attorney -- the

1 executed copy.

2 (Off the record. On the record.)

3 THE COURT: A question has arisen as to
4 defendant's presence in the Courtroom?

5 MR. BILINKAS: I waive the defendant's
6 presence, Judge. We've already conferenced. I never

7 --

8 THE COURT: I -- I understand. It makes me
9 feel more comfortable to have the defendant present and
10 unless he comes up and says that he doesn't want to be
11 here.

12 MR. MELLO: Definitely want to --

13 THE COURT: Bring him up, and I'll ask him
14 and if he doesn't want to be here we'll send him back.
15 But, it has to be his choice.

16 MR. BILINKAS: All right.

17 MS. SENCER McARDLE: And, Judge, can Ms. Berg
18 [sic] -- Berg and I can have about five more minutes to
19 go over the charge together?

20 THE COURT: I'm sorry?

21 MS. SENCER McARDLE: May Ms. Grootenboer and
22 I have five more minutes to go over the charge
23 together? Maybe we can --

24 THE COURT: Well, you can do that while I'm
25 questioning the defendant.

1 MS. GROOTENBOER: Yes, we -- we -- we did.
2 The only other thing I have is changing of the wording
3 of the 404B. I agree it should be given but I want the
4 wording changed.

5 MS. SENCER McARDLE: Okay. I have to look at
6 404B.

7 MS. GROOTENBOER: Well, here's -- I mean, I -
8 - here, the State has introduced evidence the defendant
9 had a girlfriend.

10 MS. SENCER McARDLE: Oh, yes.

11 MS. GROOTENBOER: Okay. Page 8, page 8.

12 MS. SENCER McARDLE: Yes.

13 MS. GROOTENBOER: And the girlfriend was
14 during his marriage and physically abused --

15 (Off the record. On the record.)

16 MR. BILINKAS: Judge, I have discussed with
17 my client whether or not he wants to be present during
18 the charge conference and obviously he can confirm to
19 this Court that he has indicated that he does not.

20 THE COURT: Mr. Scharf, I have certain
21 procedures that I follow. You could remain seated,
22 sir.

23 MR. SCHARF: Thank you.

24 THE COURT: Basically, I want to make sure
25 that you understand what's happening. That you are

1 present at all stages of the trial, but in particular
2 there are certain times when decisions have to be made,
3 but ultimately it's up to you to make the final
4 decision.

5 The charges are primarily legal issues that
6 your attorney has gone over and I have no doubt that he
7 can go over this without any difficulty, but you have a
8 right to be here or not to be here. As I said, he can
9 fill you in on what you have here, you can be here, not
10 be here, but it's your choice. That's why we brought
11 you back.

12 So, my understanding -- why don't you speak
13 to your attorney, make a decision.

14 MR. SCHARF: Judge, I prefer to go back.

15 THE COURT: You prefer to go back. Okay.
16 Then Mr. Bilinkas, you'll cover this with your client.
17 Go over anything that you need to go over.

18 MR. BILINKAS: Absolutely, Judge.

19 THE COURT: All right?

20 MR. BILINKAS: And we've already discussed
21 the -- any law charges.

22 THE COURT: I understand. Okay.

23 MR. BILINKAS: So -- okay.

24 (Pause in proceedings)

25 THE COURT: All right. Mr. Scharf can go

1 back. Thank you.

2 Now, as I started to say -- can we close that
3 door?

4 (Pause in proceedings)

5 THE COURT: Okay. I have two sets of
6 requests to charge. That portion of the defendant's
7 charges, general information through false-in-one,
8 false-in- all, are all covered by the preliminary
9 charges that I do.

10 The electronic -- electronically recordation,
11 this is a 1992 case. So, if we were in 2011 we would
12 be talking about some like that. All right? So, it's
13 really not applicable.

14 MS. GROOTENBOER: And I would agree with
15 that, Judge. I have the Court Rules here with me and
16 page 968 of the 2011 Edition there is a note in small
17 print that says that Rule 3:17 was adopted in October
18 14, 2005, and is to be effective in respect of all
19 homicides case as of January 1st, 2006. And since,
20 Your Honor, has correctly noted this case occurred in
21 1992, therefore this charge ought not be given for that
22 reason.

23 MS. SENCER McARDLE: Your Honor, we would
24 argue, we're not asking the Court to tell the jury that
25 there was an obligation by Court Rule to charge.

1 THE COURT: No, but you -- you are in effect
2 using something that was promulgated many years later
3 and retroactively applying it.

4 MS. SENCER McARDLE: Well, that's true, but -
5 -

6 THE COURT: Well, I -- I don't think that's
7 fair. As with any rule or regulation there has to be
8 some time to be able to adjust to it. There was no
9 electronic requirement back in '92.

10 MS. SENCER McARDLE: There was no electronic
11 --
12 I'm sorry, Judge.

13 THE COURT: And to have an adverse inference,
14 which is exactly what that is, is an unfair
15 proposition.

16 MS. SENCER McARDLE: All right.

17 THE COURT: Okay. What else?

18 MS. GROOTENBOER: Your Honor, if I may, in an
19 effort to expedite things. Looking at the defense
20 charges I already told your clerk and counsel that the
21 State has no objection to the false-in-one, false-in-
22 all.

23 We have no objection to the expert testimony.
24 I made some minor changes that I went over with your
25 Law Clerk and counsel. They are very minor.

1 With regard to the prior contradictory
2 statements, there is disagreement that we need the
3 Court to resolve, and the disagreement deals with the
4 list of witnesses whose names are to be announced in
5 connection with this charge.

6 The State would agree that this charge should
7 be given in connection with Jonathan Scharf and John
8 McCauliff (phonetic). We vehemently disagree about
9 giving this charge in connection with the testimony of
10 Patricia Teague (phonetic), Anna Rolfsen (phonetic),
11 Marianne Milerty (phonetic), Maureen Glennen
12 (phonetic), Maureen Durante (phonetic), Cathy Scanlan
13 (phonetic) and Terry Scofield (phonetic), and the
14 reason why we object is because that list of witnesses
15 did not give the prior contradictory statements that
16 this -- this Rule and this charge talk about. So, I
17 heard from counsel that they were objecting, so --

18 THE COURT: Why do you have to designate
19 specific individuals at all?

20 MS. GROOTENBOER: Judge, my -- I can answer
21 that simply by saying when I looked at the model
22 charge, the model charge from 1994 in the paragraph
23 said -- states that, "In regard to the testimony of
24 blank". The concerns I have, Judge --

25 THE COURT: We don't have to necessarily have

1 to have the name of a person, and that would resolve
2 the differences between both sides.

3 MS. SENCER McARDLE: Our position, Your
4 Honor, is that all of the witnesses did express that
5 they didn't remember, that they had poor recollection,
6 and therefore all of the witnesses were cross-examined
7 and did give inconsistent statements and we would ask
8 that all the witnesses be included.

9 THE COURT: Well, my point is you've heard
10 testimony. It would be more generalized so as to apply
11 to all witnesses, without specifically delineating each
12 and every witness.

13 MS. GROOTENBOER: Then --

14 MR. BILINKAS: Judge -- Judge, we -- we
15 agree, but just from our standpoint, the model jury, I
16 -- I believe, indicates that the names should be
17 included, and -- and in light of the fact that those
18 would be witnesses that the defense would like
19 highlighted, we'd ask that they -- they are included
20 and we'll leave it up to your discretion.

21 THE COURT: Let me approach it a different
22 way. Why do you object to the inclusion of the
23 additional witnesses?

24 MS. GROOTENBOER: Because they didn't give,
25 they didn't give contradictory statements, Judge, as --

1 as is defined by this charge. That's what --

2 MR. MELLO: The --

3 MS. GROOTENBOER: Go ahead.

4 MR. MELLO: I'm sorry. I didn't mean to
5 step.

6 MS. GROOTENBOER: That's okay.

7 MR. MELLO: With respect to the comment by
8 Mr. Bilinkas, the charges are -- model charges are
9 model charges --

10 MR. BILINKAS: We concede they are model
11 charges.

12 MR. MELLO: -- and can be modified. To me
13 this is clearly within the exclusive province of the
14 jury, and I think your suggestion that -- the charge
15 certainly should be given, no question.

16 THE COURT: No question.

17 MR. MELLO: And it should simply be given in
18 its form, and then Mr. Bilinkas or I can make our
19 arguments to the jury in light of the general
20 instruction.

21 THE COURT: In -- in most cases I have not
22 had as many witnesses, but we haven't specifically
23 delineated each and every witness. What we did is we
24 left it up to the jury to determine what, if any,
25 inconsistencies were given.

1 The problem that you have is when you get
2 into delineating particular people, you could in fact
3 be wrong about -- and I'm not saying -- you would do it
4 unintentionally. You could be wrong and include
5 someone that should not be included. If you leave it
6 open, it applies to anyone that the jury feels that it
7 should apply to.

8 MR. BILINKAS: Judge, I -- I understand and
9 normally I wouldn't have a problem with that. In light
10 of the fact that you've requested a limiting
11 instructing -- instruction with regards to each and
12 every one of the witnesses at the time they did testify
13 --

14 THE COURT: But that's a different
15 instruction.

16 MR. BILINKAS: Right.

17 THE COURT: The -- the state of my
18 instruction --

19 MR. BILINKAS: Uh-huh.

20 THE COURT: -- will be given as an
21 instruction, and I'll emphasize that. But we're --
22 we're talking about something different. We're talking
23 about inconsistent statement. And that is not
24 something that would be given at the time that a
25 witness would testify. I think we went through this.

1 MR. BILINKAS: Yes, yes. No, and -- and I --
2 I -- I understand the Court's position. In -- in light
3 of the fact that -- and I would consider this case a
4 unique circumstance with the number of witnesses, the
5 length of time. The fact that no witness, other than
6 the son, had given a formal statement and they were --
7 their recollections were refreshed with regards to, you
8 know, interview memorandums. I think it's a --
9 different circumstances and I understand that if the
10 Court rules against me, but that's our position from
11 the defense standpoint.

12 MR. MELLO: Okay. And I think that just
13 points out the -- the problem that the Court has
14 referred to and the complicates the problem. And --
15 and it's a broad based type of instruction for a
16 reason, and refreshing recollection, for example,
17 doesn't --

18 THE COURT: Perfect example, false-in-one,
19 false-in-all. Do we say that about a particular
20 person? If -- if the person said something false that
21 basically you -- you could lay this proposition before
22 his or her feet? You -- you give it in general terms,
23 and if it fits you wear it.

24 MS. SENCER McARDLE: Uh-huh. Okay.

25 MR. BILINKAS: Understood.

1 THE COURT: What better example could there
2 be?

3 MR. BILINKAS: I -- I don't believe the full
4 model jury charge has --

5 THE COURT: And that's a model jury charge.

6 MR. BILINKAS: Right. But, I don't think it
7 has the -- a -- a -- a space for a [sic] insertion of a
8 name, so --

9 THE COURT: I sat on that Committee for two
10 years, okay? And they made changes, upon changes and
11 upon changes, and then they made additional changes.
12 And every week we would make changes.

13 But my point being, it's exactly that. It's
14 a guide. It's a model. And I think given the number
15 of -- of witnesses that you had testify that basically
16 you're telling this group of people, if you find A or B
17 then, you know, this is something that you should do.

18 What happens if you wind up in a situation
19 where a particular witness -- it's not necessarily
20 inconsistent but a different perception? Then you're
21 calling that inconsistent. You're bringing it to their
22 attention. You're telling them view it as
23 inconsistent.

24 I would rather that the jury decide who is
25 inconsistent. Who is telling the truth -- that's their

1 job.

2 MR. BILINKAS: Okay. And, and, and Judge --

3 THE COURT: Okay.

4 MR. BILINKAS: And I understand the Court --
5 Court's position and, you know, I -- I have a clear
6 inclination of which way you're going.

7 THE COURT: No.

8 MR. BILINKAS: And --and I, obviously, have
9 no problem with that.

10 THE COURT: I don't think there's any harm.
11 I -- I think we're enhancing the -- the jury's
12 position. They'll make the final decision. What else?

13 MS. GROOTENBOER: Your Honor, with regard to
14 the defense submission about prior proof of other
15 crimes, wrongs or acts. I did make some amendments to
16 that, and there is a point of disagreement that we need
17 the Court to resolve.

18 This page 8 of the defense submission. I
19 reworded the first sentence and defense agreed with
20 this rewording. So, the charge should read as follows
21 for the first sentence.

22 THE COURT: Well, what -- they agree.

23 MS. GROOTENBOER: They agreed.

24 MS. SENCER McARDLE: I'm not sure I agree
25 with -- I think you're highlighting the physical -- the

1 physical abuse too much. That's my concern.

2 MS. GROOTENBOER: All right. Then just put,
3 all right, but you didn't tell me that before.

4 MS. SENCER McARDLE: Yes, I know. I know. I
5 know.

6 MS. GROOTENBOER: Okay. I don't read minds.
7 Just then this --

8 MS. SENCER McARDLE: I think this is under

9 five. MS. GROOTENBOER: -- it should read as
10 follows: "The State has introduced evidence that the
11 defendant had girlfriends during his marriage and
12 abused the victim." If you want to take out physical
13 then put and abused the victim.

14 THE COURT: Okay.

15 MR. BILINKAS: No objection.

16 THE COURT: All right.

17 MS. GROOTENBOER: Then the fourth paragraph
18 down. The rewording, which it was my understanding,
19 though that might change, was acceptable as this: "In
20 this case, the evidence of defendant's infidelity and
21 abuse of the victim was admitted for the limited
22 purpose of refuting defendant's contention that Mrs.
23 Scharf accidentally fell off of the cliff."

24 MS. SENCER McARDLE: I would rather leave the
25 words in, tumultuous relationship, and not highlight

1 physical abuse.

2 MS. GROOTENBOER: The problem, Judge, with
3 the words "tumultuous relationship" is that is not what
4 can be considered a prior -- a wrong under the 404B
5 Rule. That is not -- and not only that, but a
6 relationship is two-sided.

7 The evidence we brought in was about
8 infidelity and abuse. If counsel wants the word
9 physical out, we're fine with that because, in reality,
10 this jury heard evidence that the defendant abused the
11 victim in a variety of ways. So, we're fine with just
12 the word abuse going in. That's perfectly acceptable
13 to us, Judge, and it's part of our case. So --

14 THE COURT: Well. Why don't you combine the
15 two and come out with abusive relationship?

16 MR. BILINKAS: No objection.

17 MS. SENCER McARDLE: That's fine.

18 THE COURT: Tumultuous comes out and then you
19 combine abusive with relationship.

20 MS. SENCER McARDLE: That's fine, Judge.

21 MR. MELLO: Fine, Judge.

22 MS. GROOTENBOER: The next point of
23 contention, Judge, is this. There is in the next to
24 last paragraph, the following sentence: "Mr. Scharf
25 contends that his wife fell off of the cliff when

1 getting up and that the fall was an accident."

2 The reason why the State wants that out is
3 because that's argument. That's testimony that should
4 not be part of the charge. Generally, he's contending
5 it's an accident.

6 And the reason why the State feels so
7 strongly about this particular position is because the
8 defendant said a variety of things about how his wife
9 fell. He didn't limit it to one. So, our proposal,
10 Judge, to the extent that that statement actually even
11 rewording it is somewhat redundant because the
12 contention of the defense of accident is already in
13 here. But, Judge, I just want to be clear that we have
14 a very strong opposition to having the sentence as it
15 reads stay in.

16 THE COURT: Counsel, it does sound redundant
17 and it may not be inclusive.

18 MS. SENCER McARDLE: Well, Your Honor, I -- I
19 think that Mr. Scharf did contend that his wife fell
20 off the cliff when getting up and that the fall was an
21 accident. The next sentence, the evidence of the
22 status of the marital -- martial relationship was
23 admitted to negate Mr. Scarf's contention that Mrs.
24 Scharf accidentally fell from the cliffs. Then take out
25 both sentences because you -- you can't -- it's unfair,

1 really, to keep highlighting one and not the other.

2 MS. GROOTENBOER: Judge, we're not unfairly
3 highlighting one without the other. The sentence the
4 State wants out, we want out because it is not
5 reflective of the testimony as given. The testimony as
6 given was that the defendant gave various versions of
7 how his wife fell.

8 Number two, the paragraph without that
9 sentence still sets forth the defense contention of
10 accident. It still does it. If you take out the
11 sentence that we find objectionable you still have in
12 there the defense position as to how this occurred.

13 THE COURT: Okay. Let me try to crystallize
14 the positions and maybe we could do it this way.
15 Basically, the defense's position is that it was an
16 accident.

17 MS. SENCER McARDLE: Correct.

18 THE COURT: Okay? And the State's position
19 is that there had been different accounts. Okay? So,
20 can we somehow combine the two of these, shorten it?
21 What I -- instead of having the additional verbiage,
22 can we just condense it a little bit?

23 MS. GROOTENBOER: I thought -- Your Honor, I
24 though, actually if I do say so, that my rewording of
25 the last sentence of that paragraph does what you --

1 THE COURT: Okay. Well -- well, why don't
2 you repeat it again? Maybe I wasn't listening.

3 MS. GROOTENBOER: Here's the -- the evidence
4 of defendant's infidelity and abuse was admitted to
5 negate Mr. Scharf's contention that Mrs. Scharf
6 accidentally fell from the cliffs.

7 MS. SENCER McARDLE: No. I think that
8 unfairly highlights the Prosecutor, without going
9 through what -- what the defense's position is. The
10 defense's position is Mr. Scharf contends that his wife
11 fell off the cliff when getting up and that the fall
12 was an accident. The evidence of the status of a
13 marital relationship was admitted to negate Mr.
14 Scharf's contention that Mrs. Scharf accidentally fell
15 from the cliffs.

16 I don't think that that is too much verbiage,
17 quite frankly, and I think it fairly sets out what the
18 positions of the relative parties are in this case.

19 MS. GROOTENBOER: Your Honor, I have to fight
20 this, because it -- what counsel wants is basically
21 testimony. Defendant contended a lot of things. He
22 said she fell when she went to get up. He said that
23 she slipped and fell and he turned around and then he
24 said he -- he turned around and she wasn't there. He
25 said a lot of things about how she fell.

1 We cannot put in this charge, take just one
2 of those things that he said and put it in this charge.
3 That's my point, Judge. And it is a very important
4 point, because we have a case where the defendant has
5 chosen not to testify, as is his right. We cannot
6 insert in this charge that you're going to give the
7 jury anything that seems remotely like it's testimony.

8 And putting in just one of his claims would
9 make, is basically doing that. That's our objection,
10 Judge. And -- and the reason why I have to insist on
11 it is because in a case where the defendant gave many
12 different accounts of how the fall happened, we can't
13 have just one in here.

14 MS. SENCER McARDLE: Then we can strike these
15 words, Your Honor. Mr. Scharf contends that his wife
16 fell off the cliff and that the fall was an accident.
17 Take out the words when getting up.

18 MR. BILINKAS: Seems fair to me.

19 MS. GROOTENBOER: Judge, I -- I don't think
20 the sentence needs to be in there at all because within
21 that paragraph you have him, you have the defense
22 contention that it was an accident twice.

23 MS. SENCER McARDLE: And you have the State's
24 contention that it wasn't twice.

25 MS. GROOTENBOER: Great. What -- so having

1 that sentence gives the balance to the defense then.
2 Then that would be three times where it says defenses
3 says it's an accident. Keep the balance true. Taking
4 that sentence out keeps the balance true.

5 THE COURT: Mr. Mello?

6 MR. MELLO: I agree with my colleague. There
7 are two many --

8 THE COURT: I though you would.

9 MR. BILINKAS: And I agree with my colleague.

10 MS. SENCER McARDLE: I'm shocked.

11 MR. BILINKAS: And we'll leave it up to Your
12 Honor.

13 MR. MELLO: The -- the -- the fact there's --
14 that there were too many versions to do it the way that
15 was suggested by the defense, and so long as it says
16 what it says with respect to accident, and the purpose
17 for which the testimony is admitted conforms to law.

18 THE COURT: Why don't read the modified
19 version?

20 MS. GROOTENBOER: Sure. In this case the
21 evidence of defendant's infidelity and abuse of the
22 victim was admitted for the limited purpose of refuting
23 the defendant's contention that Mrs. Scharf accidentally
24 fell off of the cliff. The evidence of -- of -- of
25 defendant's infidelity and -- and abuse was admitted to

1 negate Mr. Scharf's contention that Mrs. Scharf
2 accidentally fell from the cliffs.

3 MR. BILINKAS: It's the same thing twice,
4 Judge.

5 THE COURT: It -- it sounds repetitious.

6 MS. SENCER McARDLE: Right.

7 MR. BILINKAS: Take out the second sentence.

8 THE COURT: Why can't you combine those two?

9 MS. GROOTENBOER: Well, you could actually
10 take out. You can only have the one sentence, Judge,
11 and then leave it like that if you want.

12 MR. BILINKAS: So, let's leave it out.

13 THE COURT: It's the repetition I think that
14 is --

15 MR. BILINKAS: We'll leave it out.

16 THE COURT: -- troublesome to the counsel.

17 MR. BILINKAS: Take out the second sentence.

18 MS. SENCER McARDLE: But, Your Honor, it's
19 not abuse, it's abusive relationship as you put forth.

20 THE COURT: Let's -- let's take care of the
21 sentence first.

22 MS. SENCER McARDLE: Right.

23 THE COURT: We're deleting the sentence.

24 MS. SENCER McARDLE: Right.

25 (Pause in proceedings)

1 THE COURT: Now, what is your disagreement
2 with the charge as amended?

3 MS. SENCER McARDLE: Mine? You -- we talked
4 about that being termed an abusive relationship and not
5 -- that's -- that's what I wanted -- that's how we want
6 it framed, not abuse of.

7 MR. MELLO: You know, I think we're parsing
8 words here. It -- it's -- it's clear that the evidence
9 is such that -- that the jury has received evidence
10 that Scharf engaged in abusive conduct toward his wife,
11 both physical and otherwise. That's what it's about.
12 And that's the purpose of this charge to say, okay
13 folks, here's the purpose this evidence has been
14 admitted. You are to use it for this purpose and no
15 other.

16 MS. GROOTENBOER: Them the only other thing,
17 Judge, on page 9, it's just a minor correction in the
18 first full paragraph. The last sentence beings, "On
19 the other hand you may decide that the evidence does
20 demonstrate that Mr. Scharf pushed his wife," and I
21 just wanted the words "off of the cliff" added.

22 THE COURT: Any objections?

23 MS. SENCER McARDLE: That's fine, Judge. No,
24 that's fine.

25 THE COURT: There's no objection.

1 MR. MELLO: One -- one moment.

2 MS. GROOTENBOER: Hold on one second.

3 MS. SENCER McARDLE: And there's a typo, Your
4 Honor, in the -- in the first -- first full paragraph
5 "did not accidentally", it should "fall" rather than
6 "fell".

7 (Pause in proceedings)

8 THE COURT: Do you have that technical
9 correction, Prosecutor?

10 MR. MELLO: Yes.

11 (Pause in proceedings)

12 MR. MELLO: Okay. You have it there?

13 MS. GROOTENBOER: Yes. Thank you, Judge.

14 MR. MELLO: Thank you, Your Honor.

15 THE COURT: What else?

16 MS. GROOTENBOER: Your Honor, the defense
17 submitted their own Colciello (phonetic) charge. We,
18 in our model, have the Colciello charge, which is
19 titled statements of the defendant. It doesn't list
20 all the people that testified about statements of the
21 defendant. It just has the language of the, you know,
22 the -- the -- the model charge. That is the one that
23 we want submitted.

24 MR. MELLO: The same problem as before.

25 MS. GROOTENBOER: The problem we have with

1 the defense charge is that their proposal isolates the
2 statements to the one defendant made to Lieutenant
3 Aaron Berg (phonetic) and it also contains language we
4 find objectionable and is not part of the model charge.

5 And just so the records clear, the
6 objectionable language occurs in the last sentence of
7 the first full paragraph and it regards as follows in
8 the defense submission: "You must also consider whether
9 or not Lieutenant Aaron Berg actually understood what
10 Mr. Scharf was saying or whether he misunderstood Mr.
11 Scharf's meaning inasmuch as the Lieutenant failed to
12 pose any follow-up questions."

13 Your Honor, that is argument. That is not
14 something that should be in the model charge. Not only
15 that but again the submission of the State adequately
16 sets forth the legal principles that the Court -- that
17 the jury needs to be guided by when they are evaluating
18 and reviewing the many statements that the defendant
19 gave in this case.

20 MR. MELLO: You cannot isolate that one.

21 MS. GROOTENBOER: And we can -- you cannot
22 isolate the statement, the one statement to one witness
23 only. That is our objection, Judge, because the jury
24 has heard that the -- many statements of the defendant
25 from many different witnesses.

1 THE COURT: This is a troublesome approach to
2 isolate one statement. Once again, if there are
3 statements of the defendant, you have the rest of the
4 language, any statement that was made should be viewed
5 in a certain manner. I think it creates problems to
6 isolate particular individuals.

7 MS. SENCER McARDLE: I wanted both -- I
8 wanted these statements isolated, as well as the
9 statement given by the State. I understand where the
10 Court is coming from. We'll abide on your decision,
11 Your Honor.

12 THE COURT: Well, we're going to modify this
13 so that there will not be a specific reference.

14 MS. GROOTENBOER: So in other words, it -- it
15 -- put another way, Judge, would you agree or would --
16 are you saying that the charged statements of the
17 defendant as submitted by the State is the one that you
18 will be reading to the jury?

19 THE COURT: (No response)

20 MS. GROOTENBOER: Thank you.

21 MS. SENCER McARDLE: Then there's the state
22 of mind charge, Your Honor, with regard to the -- with
23 regard -- that the State has submitted.

24 THE COURT: Okay.

25 MS. SENCER McARDLE: We would like a sentence

1 added to the end, "You may not use them to consider
2 whether, in fact, defendant committed the crime
3 charged."

4 THE COURT: Could you repeat that?

5 MS. SENCER McARDLE: Sure. "You may not use
6 them -- that is, the statements, or use the statements
7 -- to consider whether, in fact, defendant committed
8 the crime charged."

9 MS. GROOTENBOER: And we absolutely oppose
10 that. Our brief and the motion that we made to get
11 these statements in was premised on the fact that it
12 helps defeat accident and prove homicide. So, we most
13 vehemently oppose and object to this sentence going in,
14 because this is the very reason why this evidence is
15 going in.

16 This charge is designed to tell the jury the
17 limited purpose with which they can consider the
18 evidence, but it absolutely is part of the State's
19 theory of motive and -- and of intent in this case. We
20 can't -- we can't undo that by including this sentence
21 in that charge, Your Honor.

22 (Pause in proceedings)

23 THE COURT: No. You have the package from
24 the State. I had a copy.

25 (Pause in proceedings)

1 THE COURT: I don't have the State's charge
2 in front of me.

3 MS. GROOTENBOER: Your Honor, I will give you
4 my copy. I have no problem with that. It's just the
5 one page. Is that okay or do you want the whole
6 charge?

7 MR. MELLO: Danielle. Danielle. No. No. No.

8 MS. GROOTENBOER: Well, mine includes the
9 defense proposal.

10 MR. MELLO: No, no, no. He wants to see.

11 THE COURT: I don't have my copy.

12 (Pause in proceedings)

13 MR. MELLO: That's the additions. Right.

14 MS. GROOTENBOER: I know.

15 MR. MELLO: We don't want that.

16 MS. GROOTENBOER: I know we don't.

17 MR. MELLO: Right?

18 MS. GROOTENBOER: I -- I know we don't.

19 MR. MELLO: Okay.

20 (Pause in proceedings)

21 MS. GROOTENBOER: I understand. I
22 understand.

23 THE COURT: All right. It's the state of
24 mind charge?

25 MS. GROOTENBOER: The state of mind charge,

1 yes, Your Honor.

2 THE COURT: Okay. The -- the sentence that
3 counsel has suggest -- suggested would follow the word
4 "reason".

5 MS. GROOTENBOER: That's their proposal.
6 Yes.

7 MS. SENCER McARDLE: Correct, Your Honor.

8 THE COURT: All right. If you find that she
9 made these statements then you may consider them only
10 for the purpose of determining her state of mind at the
11 time those statements were made, and for no other
12 reason.

13 MS. SENCER McARDLE: Correct.

14 THE COURT: Okay. Now, why would you object
15 to that sentence?

16 MS. GROOTENBOER: Because this sentence
17 basically says, ignore all the state of mind evidence
18 and it directs the verdict of acquittal is what it
19 does.

20 Remember, Judge, when we argued these motions
21 in front of you at the beginning of April we -- we
22 argued to you that all of this state of mind testimony
23 should be admitted because it negates accident. It
24 negates accident. That was whole legion of case law
25 that we put in our brief. It said state of mind is

1 helpful in negating a claim of accident in a homicide
2 case.

3 So, basically, Judge, by virtue of negating
4 accident what we're saying is he did commit the crime
5 charged. That's what we're saying.

6 And if you put this formulation in what
7 you're basically saying is just ignore this evidence
8 outright, don't use it at all, and, you know, direct a
9 verdict of acquittal. That's -- and I have to phrase
10 it that starkly, Judge, because that's what this
11 sentence says.

12 Again the -- it's state of mind. They can't
13 speculate per se as to anything else other than her
14 state of mind during this point in time. But, as our
15 brief made clear, and as Your Honor's written ruling
16 made clear, this evidence was coming in to negate
17 accident, and by negating accident prove homicide.

18 THE COURT: Let's come back to that. What
19 else?

20 MS. SENCER McARDLE: Your Honor, that's it.
21 That's the only objection we have.

22 THE COURT: Then we'll come back to it now.
23 All right.

24 MS. SENCER McARDLE: But, good.

25 MR. BILINKAS: Give us one.

1 MR. MELLO: No, no, no. Not this.

2 MR. BILINKAS: That's all I'm asking.

3 MR. MELLO: No, no, no.

4 MR. BILINKAS: I'm going to take a hard line
5 on this one.

6 MR. MELLO: No. No. Not this one.

7 MS. SENCER McARDLE: Your Honor -- Your Honor
8 --

9 MR. MELLO: This one says every ruling that
10 you made regarding state of mind, disregard it. It
11 will prevent me from using the evidence in its proper
12 form.

13 It's very cleverly drawn. You may not use
14 the statements to consider whether defendant committed
15 the crime charged. Of course that is part of the
16 proofs in this case to determine if he committed the
17 crimes charged.

18 MS. SENCER McARDLE: Your Honor --

19 MR. MELLO: But the proper use of that
20 evidence is contained in this language drawn by Ms.
21 Foddai, which is exactly what the law requires.

22 You can use this evidence to determine her
23 state of mind at the time those statements were made.
24 So, for example, you can't use them to say his state of
25 mind.

1 MS. SENCER McARDLE: Right.

2 MR. MELLO: But that's not what this charge
3 says.

4 MS. GROOTENBOER: Right. Right.

5 MR. MELLO: You may not consider the
6 statements. You may not use the statements to consider
7 whether defendant committed the crimes charged. Then,
8 I might as well not have brought those witnesses in,
9 opened on them, brought them in, had their testimony --
10 if that happens. Because then the jury is going to
11 say, oh okay, can't consider it. Done.

12 MS. GROOTENBOER: Uh-huh.

13 THE COURT: Anything further?

14 MS. SENCER McARDLE: It's her state of mind
15 in what she thought, not what he did.

16 MR. MELLO: To negate claim of accident.

17 MS. GROOTENBOER: Accident.

18 MR. MELLO: That's the whole purpose of the
19 law --

20 MS. GROOTENBOER: Yes.

21 MR. MELLO: -- and your ruling.

22 MS. GROOTENBOER: Yes.

23 MS. SENCER McARDLE: Your Honor, your ruling
24 allowed this in. It allowed them to argue it to the
25 jury. It does not allow them to put her state of mind

1 into his physical act.

2 MR. MELLO: And that's not what we're doing,
3 but what this says is ignore --

4 MS. GROOTENBOER: Yes.

5 MR. MELLO: -- that evidence.

6 MS. GROOTENBOER: Right.

7 MR. MELLO: And that's not right. And that's
8 not what the law requires, and that's not what your
9 ruling was.

10 MS. GROOTENBOER: Exactly.

11 MR. MELLO: And this is critical.

12 MS. GROOTENBOER: Uh-huh.

13 MR. MELLO: And the defense knows it.

14 THE COURT: Anything further?

15 MS. SENCER McARDLE: No, Your Honor.

16 MR. MELLO: No, Judge.

17 THE COURT: I need to take a look at the
18 specifics of that ruling. Anything else?

19 MS. SENCER McARDLE: No, Your Honor.

20 MR. BILINKAS: No.

21 MR. MELLO: No, Your Honor.

22 THE COURT: We have one area here that you
23 are in disagreement with, and I'm going to have to make
24 a decision on that. I have your arguments and your
25 positions are on the record. Anything else?

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MR. BILINKAS: Thank you, Your Honor.

MR. MELLO: Thank you, Your Honor.

MS. SENCER McARDLE: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings Concluded)

CERTIFICATION

I, Rebecca Y. Natal, the assigned transcriber, do hereby certify the foregoing transcript of proceedings Digitally Recorded, 9:25:33 to 2:29:33 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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Agency Name

February 8, 2012
Date

[TRANSCRIBER'S NOTE: The recording contains static throughout. The audio is completely cut off at multiple points in the recording. Finally, the attorneys and witness moved away from the microphone and in engaged in cross-talk in the courtroom on multiple occasions during the proceedings and the ends of their sentences trailed off on many occasions and could not be heard.]