

**STATE OF NEW JERSEY v STEPHEN F. SCHARF -- May 24, 2011**

SHEET 1

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CRIMINAL PART  
BERGEN COUNTY  
INDICTMENT NO. 09-08-1485  
APP. DIV. NO. A-1580-11T4

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

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

Date: May 24, 2011

BEFORE:

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

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, ESQ. (Office of the Public  
Defender, Appellate Section, 9th Floor,  
31 Clinton Street, Box 46003, Newark, NJ 07102)

APPEARANCES:

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

EDWARD J. BILINKAS, ESQ. (Edward J. Bilinkas, Esq.)  
Attorney for the Defendant

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I N D E X

SUMMATION	PAGE
BY: Mr. Bilinkas	4
BY: Mr. Mello	83
Jury Charge	139

Colloquy

1 (Jury present in courtroom)  
2 (Off-the-record conversation at sidebar)  
3 (Off the record. Back on the record)  
4 THE OFFICER: Jury entering.  
5 (Jury enters courtroom)  
6 THE COURT: Welcome back, ladies and  
7 gentlemen of the jury. You may be seated. Madam  
8 Clerk, roll call.  
9 (Roll call of jury taken, all present)  
10 THE COURT: Ladies and gentlemen of the jury,  
11 we're going to divide up the morning into three  
12 segments. You'll hear from the defense first, the  
13 prosecution, and then I will go through my jury  
14 instructions. All right. At the end of each segment  
15 we'll take a ten-minute break so everyone can refresh  
16 themselves or use the restroom or whatever might be  
17 necessary. We anticipate utilizing the entire morning  
18 for this purpose.  
19 Counsel will make their final arguments to  
20 you. Counsel for the defendant will have the opening  
21 argument. Counsel for the State will then have his  
22 opportunity for argument. The attorneys in making  
23 these arguments to you will be commenting upon the  
24 testimony that you have heard and the evidence that has  
25 been presented in this case.

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Summation - Bilinkas

4

1 They, as you, will be recalling the evidence  
2 that has been presented. They will not intentionally  
3 try to mislead you. However, if their recollection of  
4 the evidence differs from what your recollection is,  
5 you must follow your own recollection. These final  
6 arguments are not to be construed by you as evidence in  
7 this case or instructions on the law.

8 They are, however, intended to help you  
9 better understand the contentions of each side and the  
10 issues you are about to decide. You should give both  
11 sides your close attention.

12 Counsel for the defendant, Mr. Bilinkas, may  
13 proceed with final argument.

14 MR. BILINKAS: With great respect to this  
15 Court, counsel, ladies and gentlemen of the jury.  
16 Before I start my summation I would like to thank you  
17 for serving in this case. I realize what a huge  
18 sacrifice it is for you to sit so long. From the  
19 bottom of my heart I appreciate your attention, your  
20 time.

21 This is what makes our country great. This  
22 process is what distinguishes this country from any  
23 other country in the world. It is an honor. It's been  
24 a pleasure to appear before you and be part of this  
25 process.

Summation - Bilinkas

5

1 I realize you have an awesome responsibility.  
2 I too have an awesome responsibility. As I said in my  
3 opening, I represent an innocent man, a man that has  
4 been wrongfully accused with the death of his wife, an  
5 awesome responsibility. Assume for a second, just for  
6 a second as the law requires, that Mr. Scharf is  
7 innocent, that he's been wrongfully accused. And then  
8 I hope you understand my responsibility.

9 If I got too loud, too emotional, aggressive,  
10 and I offended anyone, I apologize. I meant no  
11 disrespect. I do not apologize for vigorously  
12 defending my client. I do not apologize for  
13 questioning the prosecutor's case and bringing out the  
14 truth, both sides. I make no apologies for that. And  
15 anyone charged with such a serious crime I hope you can  
16 appreciate where I'm coming from.

17 As I said in my opening, this case is an  
18 accident, nothing more, nothing less. Tragically a  
19 large number of people have fallen and died from these  
20 cliffs over the years. Recall Police Officer Abbott's  
21 (phonetic) testimony, he told you that people fall  
22 every year. The vast majority of those cases are  
23 accidents. That's why they're called accidents. You  
24 don't rush to place blame or pass judgment unless blame  
25 is rightfully deserved.

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Summation - Bilinkas

6

1 In our system of justice, especially in the  
2 criminal court, blame is measured by a very high  
3 standard, reasonable doubt. It's the linchpin of our  
4 entire system. Our system rises or falls on that  
5 concept. Reasonable doubt can be based on the evidence  
6 or lack of evidence. I submit, ladies and gentlemen,  
7 that this case is riddled with doubt. There is no  
8 evidence to prove beyond a reasonable doubt that my  
9 client killed his wife.

10 Remember, your decision must be based on  
11 evidence, not speculation, conjecture, evidence, not  
12 the color of someone's skin, their likes or dislikes.  
13 The fact that you don't like someone's lifestyle is not  
14 what you base your decision upon.

15 If your liberty was at stake what type of an  
16 investigation do you feel should have been done in this  
17 case? If anyone is charged with such a serious crime  
18 don't you think the investigation should have been more  
19 thorough, more complete, unbiased? We are talking  
20 about a murder case.

21 The way our system works I sum up first. The  
22 prosecutor gets the last word. I won't be able to  
23 respond to what he's going to say. I'm going to try to  
24 anticipate the areas that he'll address. I ask you to  
25 question everything that he says. Make sure the

Summation - Bilinkas

7

1 statements he gives to you are supported by the  
2 evidence, that he's not speculating. Make sure the  
3 evidence supports his theory.

4 Think what would that crazy defense lawyer  
5 say in response to this or that. Why do I say that?  
6 Why do I express this concern? Because if you only  
7 heard the prosecutor's opening, the prosecutor's direct  
8 their experts, my client -- any person charged with the  
9 crime would have been convicted. You can't look at one  
10 side. You have to look at all sides. That's why the  
11 indictment is not evidence of guilt. The grand jury  
12 only heard one side, the prosecutor's side.

13 Why am I concerned that I don't have the last  
14 word? Look at the way a number of things were  
15 portrayed here. Look how, for instance, the initial  
16 testimony regarding the path leading to the flat rock,  
17 did anyone get the impression based on what was put  
18 forth by the State that they were attempting to suggest  
19 that it was a difficult path to navigate? How many  
20 times did we see this photograph which clearly looks  
21 like you need a machete to get down to that path?

22 Every single witness, ladies and gentlemen,  
23 on behalf of the State testified with regards to this  
24 entranceway. Well, what evidence was produced? The  
25 evidence -- the other side that defense brought out and

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1 that you saw from your own visit to the scene was that  
2 that path is easily navigable. It looks nothing like  
3 the picture that the prosecutor has used many times,  
4 the picture he used to create the impression that the  
5 path was difficult.

6 How about the testimony regarding the flat  
7 rock? Is it just me or was the prosecutor suggesting  
8 that that was not the type of location that a couple  
9 would frequent, that it was too dangerous? Recall the  
10 defense, ladies and gentlemen, the other side, the  
11 defense brought out things like the graffiti on the  
12 rock, you know, that there many bottles and cans, food  
13 containers that people had thrown over from that exact  
14 spot.

15 One witness that the defense brought out even  
16 testified that there was a washing machine at the  
17 bottom. Clearly a different impression than what was  
18 initially proposed to you.

19 How about the statements with regards to my  
20 client's demeanor? How many times did I hear demeanor  
21 noted? And all the police officers would testify that  
22 my client didn't appear upset or emotional, that my  
23 client didn't appear to care one way or the other that  
24 his wife had just fallen from the cliff. That was the  
25 impression from the direct testimony.

1 And what did defense bring out? From those  
2 same witnesses that the prosecutor neglected to ask,  
3 things like he was zoned out, he was dazed. You know,  
4 the prosecutor wants you to ignore all the other  
5 factors clearly indicating what the evidence indicates,  
6 that my client was concerned, that he was upset and  
7 emotional.

8 These officers had never seen him before.  
9 They've never seen him react to a stressful situation.  
10 And then come before you 19 years later and try to  
11 convince you with regards to what his demeanor should  
12 be under those circumstances.

13 And if the prosecutor comments on his  
14 demeanor, in the back of your mind you should be asking  
15 him what about the person who first came into contact  
16 with my client, the motorist. Where was he, Mr.  
17 Prosecutor? The only independent witness, the only  
18 witness that was not part of the prosecution team  
19 trying to convict my client is nowhere to be found.

20 Demeanor, look at the facts, the evidence.  
21 The fact that my client had asked if the paramedics --  
22 had asked specifically if the people, the rescue people  
23 were on their way. The fact that he had his hands in  
24 his face, the fact that he was mumbling, calling his  
25 wife's name, the fact that he was praying in the car

1 and kneeling at some point according to the officer's  
2 testimony. Look at the facts, the evidence, and judge  
3 that demeanor.

4 How about the use of the aerial photograph  
5 that the prosecutor has used over and over again with  
6 every witness, with every expert? The top and the  
7 bottom he would point out to you over and over again.  
8 And this photograph clearly, clearly is creating the  
9 impression, I submit, that there is such a great  
10 distance from A to B. He used it with every witness.

11 Then defense puts in another aerial  
12 photograph from the same collection that the prosecutor  
13 had. And you can see in this photograph because it's  
14 taken from a little bit of a different angle, this  
15 photograph looks much different. This photograph, I  
16 submit, gives you a much more accurate description of  
17 that cliff face.

18 Now why would the prosecutor use the other  
19 photograph? Let's use our common sense -- he's trying  
20 to create the impression that there is a huge  
21 difference between A and B. He wants you to think that  
22 there is no way on the face of the earth that someone  
23 can go from A to B without being forcibly propelled.  
24 That's why he used that photograph. Take a look at the  
25 defense photograph when you're in the jury room.

1 How about all the mistakes, the mistakes with  
2 regard to the investigation that I brought out, not the  
3 prosecutor? And if you recall when the witnesses  
4 testified on the stand I specifically asked them did  
5 you talk to the prosecutor before you testified and  
6 there was the discussion between the Court and counsel  
7 and -- so the record is clear, I wasn't suggesting that  
8 it's improper to talk to your witness.

9 What I am suggesting and what is a fact is  
10 that the prosecutor was privy to all of these mistakes.  
11 He knew that they were made and he chose to keep them  
12 from you. When he stands up and he says something look  
13 for the truth. Look for the entire picture, the whole  
14 story.

15 How about the references, the one-sided  
16 references that my client was dating other women? And  
17 I could see how that affected all of you -- affect any  
18 person. Someone screwing around on your spouse it's  
19 offensive. I find it offensive. The prosecutor wants  
20 you to take a quantum leap from that and think that my  
21 client killed his wife. He's -- he's playing on your  
22 emotions. That's why the defense tried to give you the  
23 whole story.

24 That's why the defense -- and I didn't mean  
25 to disparage Jodie Scharf. Once that comes out I think

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1 it's important that you know all the facts.  
2 Specifically that she was dating other men. I brought  
3 that out. Nowhere at any point in time did the  
4 prosecutor ever bring out any evidence with regards to  
5 her dating other men. Why? Why? Because he's hoping  
6 in his heart of hearts that you will use that against  
7 him, period.

8 And what does the evidence show now?  
9 Remember, my client said when he was first questioned  
10 by the prosecutor's office he had an open marriage.  
11 And if you recall the testimony of Hilferty (phonetic)  
12 I brought out that she told the prosecutor's office  
13 that Jodie was dating and even using a dating service.  
14 The prosecutor, as I said in my opening, turned a blind  
15 eye. They only looked at my client's actions and not  
16 his wife's.

17 They waited 19 years almost and presented  
18 their case with regards to his indiscretions. But what  
19 does the evidence show? The evidence will show that  
20 they did have an open marriage, that both he and his  
21 wife were dating other people. He knew it. Obviously  
22 he said it when he was questioned. And the wife knew  
23 it.

24 And how do we know the wife knew it? Well,  
25 recall the girlfriend Scanlon (phonetic). She even

1 said, ladies and gentlemen, that she had a conversation  
2 with Jodie Scharf and Jodie Scharf said, okay, good  
3 luck with him. It's clear -- the evidence is clear  
4 that they did have an open marriage.

5 Now if I didn't bring that out, ladies and  
6 gentlemen, do you think for a second that you may have  
7 felt a little bit different with regards to my client?  
8 You think you may have been a little more prejudiced  
9 against him for screwing around on his wife? You know  
10 the facts now. Why? Because the defense brought them  
11 to your attention.

12 The prosecutor brings out that my client was  
13 lying to these other women. Another thing he wants you  
14 to use against my client. And, again, I don't condone  
15 that, but that doesn't mean he murdered his wife. Use  
16 your common sense. How many men and women have lied to  
17 people that they're dating? How many men or women that  
18 you know for a fact maybe don't tell the person that  
19 they're married or say something else with regards to  
20 the spouse?

21 The prosecutor had no problems pointing that  
22 out with respect to my client. What I suggest he did  
23 have a problem with and he never brought out was that  
24 the wife was doing the same thing. And how do I know  
25 that? How did you know that for a fact? Look at the

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1 dating profile that I introduced. The spot that says  
2 marital status, she marked off that she was divorced.  
3 She neglected to mention that she was married to my  
4 client.

5 And had the prosecutor ever contacted the  
6 dating service in 1993 when Hilferty told him he used  
7 it and subpoenaed those records and was able to  
8 identify each and every man that the wife had gone out  
9 with -- and we could have interviewed those people. We  
10 would have seen and been told exactly what she said,  
11 whether she lied and said the same type of things that  
12 my client said to his girlfriends.

13 We can't do that at this point. Our hands  
14 are tied at this point. Why did the defense bring out  
15 that Jodie Scharf was concerned about the claim that  
16 she was an unfit mother? Two different witnesses that  
17 testified for the State brought that fact out through  
18 the defense.

19 The prosecutor neglected to get into that  
20 area, that Jodie Scharf was concerned with regards to  
21 custody of her son that it would be claimed that she  
22 was an unfit mother, that she was leaving her son  
23 alone. She was going out drinking when he was left all  
24 alone. Why does defense have to bring that out?  
25 Again, I don't mean to disparage Ms. Scharf, but I want

1 you to know the truth, the whole truth, and nothing but  
2 the truth.

3 I brought out references to her drinking.  
4 Her drinking -- and, again, I'm sure when I first got  
5 into that area that may have bothered some of you, like  
6 why is he kicking her when she's down? The reason,  
7 ladies and gentlemen, is, number one, I've got a job to  
8 do, but in the prosecutor's opening if you recall he  
9 suggested and said to you that on the day in question  
10 my client manipulated her drinking, that he manipulated  
11 how much his wife drank. He plied her with alcohol and  
12 got her to that ledge.

13 That's what he said. That's why I brought up  
14 the fact that -- and I think the evidence is clear --  
15 no one has to ply Jodie Scharf with alcohol. She drank  
16 in the day and at night. She drank during the week and  
17 on weekends. It was a constant circumstance with her.  
18 Should you have known that when you're trying to make a  
19 determination as to what the prosecutor suggests that  
20 my client was the one manipulating the alcohol on the  
21 day in question? I say yes. I say yes.

22 The prosecutor puts on a divorce lawyer. He  
23 had a very, in his mind, important part of the case.  
24 He brings out that the divorce complaint was just  
25 recently served. That sounds bad. That's why he

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1 brought it out to you.

2 When I got up I brought out the fact that the  
3 defense lawyer had sent a letter to Stephen Scharf in  
4 February of '92, a letter stating that he was  
5 representing his wife and was planning on filing a  
6 divorce complaint. Did the prosecutor know that? Why  
7 did the defense have to bring it out? You decide. You  
8 want the truth, the whole truth, and nothing but the  
9 truth.

10 How about the testimony regarding the  
11 officers that rappelled down the cliff? Recall they  
12 both testified to the length of time it took to get  
13 from the top to the bottom. Amazingly, amazingly, they  
14 both said 50 minutes. After almost 19 years they  
15 recall the specific amount of time as 50 minutes.

16 Remember on cross I asked Cioffi (phonetic)  
17 did you look at Pagan's (phonetic) report? Yeah. I  
18 said why are you looking at his report, did you look at  
19 the detective memo regarding your interview which, by  
20 the way, occurred ten years after the fact? And I  
21 brought out that in both those reports no one ever  
22 mentioned the time it took, but miraculously they  
23 testified to the exact number. And that's when the  
24 prosecutor sat down.

25 And then all of a sudden in going through the

1 paperwork and the reports with regards to the actual  
2 times when things were called in, I bring out before  
3 you that it only took Pagan 15 minutes.

4 Now why would the prosecutor want the amount  
5 of time to be much greater? Because I submit to you,  
6 ladies and gentlemen, he's going to stand up here and  
7 he's going to say to you that they carefully looked at  
8 the ledge, they -- they rappelled down looking for  
9 evidence that she had passed in that direction. And  
10 they didn't see this, they didn't see that. They want  
11 you -- and he's trying to create the impression that  
12 they meticulously searched this area.

13 You're going to have to judge for yourself.  
14 I submit that that is an absolute falsehood. But use  
15 your common sense, that's why they want the amount of  
16 time much greater. 15 minutes to travel this distance  
17 in pitch darkness searching for what they hoped was a  
18 live victim. You decide.

19 Finally, the biggest reason why I'm  
20 concerned, the thing that frightens me more than  
21 anything else in this case, the reason why you should  
22 question everything the State puts before you is this,  
23 remember the cross-examination of Cyril Wecht. The  
24 prosecutor questions him specifically with regards to  
25 these rocks depicted in S-255. Remember that number.

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1 Recall his testimony.  
2 He was aggressive with Dr. Wecht, said are  
3 these the rocks, B, C, and D, Dr. Wecht says at some  
4 point -- and, again, your recollection will control --  
5 I can't tell if those are the rocks. The prosecutor  
6 says to him these are the rocks. There's no blood on  
7 these rocks, is there, Doctor? If there's no blood on  
8 these rocks, Doctor, doesn't your theory go down the  
9 drain? This is the photograph that he used.  
10 He then sits down triumphantly. I destroyed  
11 Dr. Wecht's theory. And I get up, I take his  
12 photograph and you can see the exact striations on D-  
13 155. You can clearly identify the two rocks in the  
14 prosecutor's photographs. And you can clearly see  
15 beyond a shadow, a shadow of a doubt that the rocks  
16 that Dr. Wecht testified to are to the left. They are  
17 not depicted in this photograph. My -- when I sit down  
18 question everything. A man's life is at stake.  
19 The prosecutor told you in his opening  
20 statement I'm going to prove all these things. Talks  
21 about inconsistent statements that Jodie Scharf was  
22 afraid of her husband, afraid of heights. He talks  
23 about the infamous hammer, the son -- divorce. But  
24 most of all, ladies and gentlemen, he talked about the  
25 only physical evidence that he has, the two experts,

1 Clayton and Baden.  
2 He specifically said he will prove to you  
3 that Jodie Scharf did not hit anything on the way down.  
4 And that all the injuries were from a single impact  
5 with the tree. That's what he said. That's his theory  
6 of the case. And based on that the body had to have  
7 been forcibly propelled.  
8 Now I told you in my opening that what the  
9 case was really about is the police and the prosecutors  
10 doing an incomplete, an incompetent investigation, that  
11 the police and the prosecutor are attempting to cover  
12 up their mistakes and blunders with a conviction for  
13 trying to justify the actions of the people that  
14 screwed up.  
15 For once -- and I've been doing this for 30  
16 years. For once I wish someone would finally say I  
17 screwed up. I wish a prosecutor would finally say to a  
18 jury this guy screwed up. This is a mistake. I asked  
19 all of those witnesses, and I'm going to go over the  
20 mistakes, but I asked each witness that screwed up,  
21 that made a mistake, not one, not one, ladies and  
22 gentlemen, could say that word.  
23 They used different type of phrases like, oh,  
24 I was inexperienced at the time, or, geez, I really  
25 wasn't conducting a criminal investigation. If I had

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1 to do it over again. Not one could get those words out  
2 of their mouth. I submit, ladies and gentlemen, that  
3 based on that fact alone you should let Mr. Scharf  
4 free. These witnesses refused to admit that they made  
5 mistakes once it became obvious. That should affect  
6 their credibility.

7 My position, ladies and gentlemen, is that if  
8 you're trying to determine whether or not to believe  
9 somebody, if someone's credibility -- and everyone who  
10 took the stand's credibility is in issue. If you're  
11 really trying to determine whether that person is  
12 telling the truth, shouldn't you know all the facts?  
13 Why does the defense have to constantly bring out the  
14 mistakes?

15 I submit, ladies and gentlemen, that those  
16 mistakes, which I'll get into in a brief moment, affect  
17 the entire prosecution. Everyone relied on everyone  
18 else. Cioffi and Pagan relied on Abbott and Tomayo  
19 (phonetic). The medical examiner and Baden relied on  
20 Cioffi and Pagan. If you find that any of those people  
21 made mistakes, particularly when they refused to admit  
22 them, then I submit that the entire investigation is  
23 tainted.

24 Let's go over some of the mistakes, the more  
25 prominent mistakes. Letting the motorist go. That's

1 very important because he was the first person who came  
2 into contact with my client, I submit immediately after  
3 this incident. The prosecutor may suggest, well, we  
4 don't know how soon -- well, if you had that person, if  
5 he was here to testify and tell you what he knew, he  
6 may have told you exactly what you thought was  
7 important.

8 How about the fact that the police -- and  
9 this is amazing to me. The police cleared all the  
10 potential witnesses from the lookout area. Is anybody  
11 bothered with that? Does that offend anyone? You know  
12 that that's important. Why? Because all the cops are  
13 trying to throw each other under the bus regarding that  
14 issue. Remember Tomayo, remember Serrie (phonetic)  
15 specifically saying we were told by Pagan, the man in  
16 charge, to clear the area. That's why we did it.

17 That's how they tried to justify to you, to  
18 you, that the witnesses were chased out of the area.  
19 And maybe you started to believe that, but when Pagan  
20 testified Pagan specifically said I ordered them to  
21 locate all potential witnesses. Who's telling the  
22 truth? Who is telling the truth? Why would you chase  
23 out 15 cars? And there's a difference with regards to  
24 their recollection regarding the numbers.

25 The guys that actually chased the cars out

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1 wanted to make it appear as if it wasn't a big deal,  
2 their numbers are less. The other guy, Pagan, he says  
3 15 cars -- to that lookout area. Where were those cars  
4 located? Was anyone close to Stephen Scharf's car?  
5 Don't you think those things are important, especially  
6 when the prosecutor is going to suggest to you that she  
7 was forced to that location?

8 Don't you think that that's important? Is  
9 that a screw up? Is that a major mistake? He may try  
10 to couch that in, well, it was a rescue operation, it  
11 was this, it was that. A woman had fallen from the  
12 cliff. They're not just rappel or rescue people.  
13 Every single person is a police officer. They've had  
14 training with regards to investigation, what should be  
15 done, what shouldn't be done.

16 Is anybody on this jury -- does anybody think  
17 for a second that that wasn't important to try to  
18 locate potential witnesses? People were in the cars,  
19 more importantly according to Pagan, they were walking  
20 around, walking around.

21 I don't doubt the fact that they tampered  
22 with evidence. They moved the purse. Now why is that  
23 important? The prosecutor's going to say that that's  
24 not a big deal. Why is that important? Because that  
25 will tell you exactly where the persons -- the police

1 were with regards to that big ledge, the ledge that  
2 we've all seen over and over again.

3 And why is that important? Because if the  
4 purse was where I suggested it was -- and when I say I  
5 suggested I'm not making things up, I introduced  
6 Pagan's diagram. Look at the diagram, ladies and  
7 gentlemen. This isn't something I pulled out of the  
8 air. The diagram made right after this incident, not  
9 19 years later, indicates that the purse is in the  
10 middle of that rock ledge.

11 Why is that important? Well, all of the  
12 prosecutor's witnesses, the same people, including the  
13 guy that drew this diagram, want you to believe that  
14 they were close to the sharp rocks on the edge. That's  
15 what they want you to believe. Why? Because he's  
16 going to get up and say they meticulously examined that  
17 ledge, those specific rocks. And so that's why I went  
18 into this area.

19 And do you think maybe that they know that  
20 Cyril Wecht is coming along? Do you think maybe  
21 someone showed him the photographs of the sharp rocks?  
22 You decide whether or not this diagram made right after  
23 the incident is consistent with their testimony. I  
24 submit not. The fact is they should have photographed  
25 that ledge. They should have done that that night.

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1 They never should have moved that purse. And  
2 recall the testimony. This gets almost unbelievable,  
3 the testimony with regards to Pagan and Cioffi. Cioffi  
4 specifically said I told Pagan don't move that purse.  
5 He knew it was evidence. He knew it was part of a  
6 investigation scene. Pagan takes the stand, I ask him  
7 the same question. Did Cioffi tell you not to do that  
8 because that obviously would be even more outrageous?  
9 He said absolutely not.

10 Who's telling the truth? Who's telling the  
11 truth? These are the two people that the prosecutor  
12 must rely on to support their experts. How about the  
13 mistake that they missed numerous items on the ledge?  
14 Is that outrageous to you? Does that bother anyone?  
15 Does that affect the credibility of those two officers,  
16 the prosecutor's case?

17 To this day as we sit here almost 19 years  
18 later those items have never, never been recovered.  
19 And this is why this is important. And I'm going to  
20 anticipate that the prosecutor is going to get up and  
21 say, well -- because in some of his statements to you  
22 during our arguments he says we don't know whether that  
23 purse was planted or not. That's what I submit to you  
24 they say to you.

25 If he says that, if he gets those words out,

1 you should think to yourself, ask yourself why didn't  
2 you get those items? Why didn't you submit those items  
3 to the forensic lab to see if there were fingerprints  
4 on them, fingerprints? It would be pretty hard for me  
5 as a defense lawyer to explain why my client's  
6 fingerprints was on the makeup brush or the case.  
7 Maybe the credit cards I could come up with something.  
8 I got nothing regarding the makeup case or the brush.

9 Well -- well, there was testimony that  
10 supposedly my client had makeup to cover up scratches  
11 on his face, but that would be difficult to dispute.  
12 As opposed to doing your job, as opposed to conducting  
13 a complete and thorough investigation, they chose to  
14 let those items disappear so they could come and argue  
15 something to you. That's how they handle this entire  
16 case, period.

17 The biggest mistake, I submit to you, is  
18 moving the body. Moving the body before it was  
19 properly documented. And all the arguments with  
20 regards to this is a rescue mission and we were trying  
21 to save a life which -- which I applaud go out the  
22 window as soon as they get to the base, they find the  
23 body, they see clearly that Mrs. Scharf is dead.

24 There are no more reasons to hurry. There  
25 are no more reasons -- and if you recall their

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1 testimony they were surprised at how far the body was  
2 away from the cliff. They had suspicion. Why move the  
3 body before someone can document it? Use your common  
4 sense. You've all seen those chalk lines drawn around  
5 the body. Even a lay person knows you don't move the  
6 body, especially in a case like this. The position of  
7 the body can tell you everything, can tell you how she  
8 fall, what she struck.

9 They chose not to do that, outrageous. And  
10 they'll wait 19 years to bring in an expert and say she  
11 fell this way or this way. Their experts can't even  
12 get in line with regards to how the body hit the tree.  
13 One put it at a diagonal, the other up and down. It  
14 doesn't make sense. That would have been prevented had  
15 the Bergen County Prosecutor's Office done their job.

16 And just so there's no dispute about this,  
17 both the medical examiner and the Bergen County  
18 Prosecutor's Office was notified on that date, period.  
19 So it's not just Cioffi and Pagan making these  
20 decisions. These were decisions made by the people --  
21 specifically the prosecutor's office and the medical  
22 examiner who were in charge by law, by law of the  
23 scene.

24 And do you recall my question to the medical  
25 examiner, isn't it against the law for someone to move

1 the body without your authority? And remember her  
2 response, the cavalier response of the medical  
3 examiner, yes, but in practice that doesn't happen.  
4 Are you kidding me? Does that offend anyone? Does  
5 that bother anyone? Does it affect the prosecution's  
6 case? I submit yes.

7 The fact is they never documented the scene.  
8 And it becomes even more important because of this,  
9 because of this, ladies and gentlemen. Both Cioffi and  
10 Pagan put in the reports that the body was wedged  
11 between the tree and a large rock. Both reports  
12 contained that information. It's not in dispute. If  
13 we had a photograph of that body, if we had a  
14 photograph of that tree and that rock, I wouldn't be  
15 arguing this, but we don't.

16 Specifically, the testimony concerning that  
17 rock after the defense hikes up their -- takes  
18 photographs of the base of that tree indicating that  
19 there are no rock -- there is no rock by the tree that  
20 they've identified. After 19 years almost both of  
21 those officers who said the body was wedged between a  
22 rock and a tree testified that they moved the rock.  
23 They had an excuse why there was no rock. Don't  
24 believe it.

25 One of them said -- Cioffi said we both moved

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1 the rock. Remember this testimony? We both moved the  
2 rock to get her in the basket. Then Pagan takes the  
3 stand. He says I moved the rock and I rolled it down  
4 the hill. Are you kidding me? Pagan says the rock was  
5 filled with blood and he's rolling it down the hill.  
6 They're inconsistent with each other. It doesn't make  
7 sense, ladies and gentlemen.

8 But I submit to you they had to come up, they  
9 had to come up with why there's no rock right next to  
10 the tree that the body supposedly was wedged before.  
11 And remember the inconsistencies, again, on the people  
12 that the prosecutor's experts, the medical examiner and  
13 Baden are relying on, one of them says, Cioffi, the  
14 head definitely wasn't wedged.

15 Well, I show him the report, the report that  
16 the prosecutor's detective did of his interview ten  
17 years later. I show him that exact report. Doesn't  
18 this report say -- doesn't it say that you said that  
19 the body was wedged between the rock and the tree?  
20 Recall his testimony. Recall his testimony. On the  
21 stand under oath he says I didn't say that to him. I  
22 never looked at that report. That's wrong. That  
23 report contains false information.

24 Does that affect all the other reports?  
25 Should you question what was contained in everything

1 else? You have a police officer testifying under oath  
2 that that report is false. And the thing that bothers  
3 me is when did he find out about that? Isn't he under  
4 an obligation to tell the prosecutor, defense that a  
5 official report contains false information? I never  
6 got any notice of that. It affects their credibility.

7 Neither of those people -- and this what I  
8 submit should really bother you. Neither of those  
9 people in all the reports, both Pagan's two reports and  
10 Cioffi's one report done by the detective, neither of  
11 those reports ever mention that they moved the rock. I  
12 submit to you, ladies and gentlemen -- and this must be  
13 a little crazy, but remember the testimony of Pagan, he  
14 said he never went out to the scene and identified that  
15 tree that the body was wedged between until over two  
16 years after the incident.

17 Can you say, can you truly say beyond a  
18 reasonable doubt that they even have the right tree  
19 when there is no rock? There's all these  
20 inconsistencies. And just to throw a little gas on the  
21 fire, look at the large tree to the left of the tree in  
22 question. Do you see a large rock next to that tree a  
23 short distance from the tree that Pagan two years, I  
24 believe, three, four months later identified as the  
25 tree? A tree that he was only there for a brief period

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1 of time in rugged terrain, dark, dangerous, stressful  
2 conditions.

3 Do we even have the right tree? And if you  
4 recall the testimony the tree to the left in this  
5 picture is where they say they came down. I submit,  
6 ladies and gentlemen -- I don't know, as we sit here  
7 today I can't say for sure what tree her body hit. And  
8 I submit to you that that tree should have been  
9 documented that night. It would have shut me up. I  
10 wouldn't be arguing this to you, but it wasn't, a huge  
11 mistake.

12 And recall the testimony regarding did you  
13 take a photograph, did they dance around that or what?  
14 No. I didn't have a camera. Does anybody have a  
15 camera? You got a radio, you're communicating with the  
16 people up top. Does anybody got a camera up at the  
17 lookout? Can you call somebody? Can you get a camera?  
18 They fluffed that off, no, no, I didn't have a camera,  
19 no big deal. Boom.

20 Move the body, destroy all the evidence, and  
21 then wait 19 years later to make an argument to the  
22 jury that, you know, they did their job right, that it  
23 doesn't affect their testimony.

24 How about the fact that Pagan put his hand in  
25 the blood smear? Does anybody think that that was

1 proper? You're on a suspicious death scene. It's not  
2 a rescue operation. You see what you describe in the  
3 reports only, only as a blood smear. He says he puts  
4 his hand in the blood smear.

5 Now why -- number one, why would you do that?  
6 An experienced police officer. Why would he say he did  
7 that? I think he had a reason because he testified  
8 that there was brain tissue in the blood smear.  
9 Remember that testimony? He described it. And he even  
10 said he took the blood smear and he looked at his hand,  
11 he looked at a flashlight. Yeah. Yeah. That's brain  
12 tissue. That's what he testified to.

13 That's what the prosecutor brought out on his  
14 direct examination. Brain tissue? Thank God he's not  
15 a doctor. Thank God he didn't read the autopsy report.  
16 Thank God defense counsel brings out from the medical  
17 examiner that the brain was intact. Not only was the  
18 brain intact, but the membrane that surrounds the brain  
19 was intact.

20 The medical examiner then said unequivocally  
21 that based on that fact -- and it's kind of hard to  
22 argue with that, I'm sure she would if she could, she  
23 testified that there's no way that there was brain  
24 tissue in that blood smear. And what's important,  
25 what's really important is that both Cioffi and Pagan

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1 never mentioned tissue in their reports. Even ten  
2 years later when Cioffi talks to the prosecutor he  
3 never mentions the word tissue.

4 Now why does it hurt the case if there's only  
5 a blood smear? Single impact theory. There is no way  
6 that the prosecutor can get you to believe his theory  
7 unless there's tissue. Does anybody on this jury think  
8 that a body falling 119 feet hitting the tree at a very  
9 significant velocity is not going to leave some type of  
10 tissue? If the head hit the tree there would be  
11 tissue. So I'll address that a bit later on, but it  
12 concerns me. I submit it should concern you.

13 Why didn't they take -- and this is a huge  
14 screw up. Why didn't they take a sample of the blood  
15 smear? Every single expert, both the State and the  
16 defense, specifically told you that had they taken a  
17 sample you could have determined what part of the body  
18 struck the tree, period. That was not done. The  
19 prosecutor's going to argue this or that. That should  
20 have been done. It affects the validity of their  
21 entire case.

22 What is even more outrageous is that if you  
23 recall Cioffi and Pagan only mentioned blood smear. 15  
24 years later, 15 years later the medical examiner  
25 changes the death certificate which I submit, ladies

1 and gentlemen, there's no way that you can prosecute  
2 Stephen Scharf for murder if the woman who did the  
3 autopsy cannot determine the manner of death.

4 So 15 years later she changes her death  
5 certificate. And what's important about that is that  
6 in that official document -- this is outrageous -- that  
7 official document she says -- and I had her quote this  
8 on the stand -- "Lieutenant Pagan and Cioffi recall  
9 observing blood, hair, and tissue on the tree."  
10 Someone added the word hair. Single impact, head  
11 hitting the tree, should there be hair on that tree?  
12 Are you going to believe that's a single impact with  
13 the head if there's no hair on the tree?

14 Someone, specifically the medical examiner,  
15 puts in her official report amending the death  
16 certificate that brings this case before you, hair.  
17 It's right there. And I questioned about it. Recall  
18 my questions to Cioffi and Pagan. Did you ever tell  
19 the medical examiner that you observed hair on the  
20 tree? I asked both of them over and over again and  
21 they both said no. I said are you sure, are you  
22 absolutely positive? Both of them said they never told  
23 the medical examiner hair.

24 How does hair -- how does hair, ladies and  
25 gentlemen, get in the official medical examiner's

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1 report regarding the amendment of the death certificate  
2 when the only two people that were there on that night  
3 and observed the blood on the tree never said it? Does  
4 that stink? Does something bother you about that? Can  
5 the prosecutor explain how that word hair got on the  
6 medical examiner's report? I hope so. I hope he comes  
7 up with something.

8 They did what they did with all the evidence  
9 here. They would rather wait 18 years and put an  
10 expert on and said this person told me this or this  
11 person told me that. The bottom line is it's a screw  
12 up, a major screw up that affects every aspect of this  
13 case. It affects their experts, you know, to the point  
14 where I submit you should completely and totally  
15 disregard them.

16 Why didn't she save the clothes, the medical  
17 examiner? What possible reason would she have not to  
18 save the clothes when she testified that there were  
19 tears in the clothes? And recall that I'm the one that  
20 brought out, not the prosecutor, I'm the one that  
21 brought out that with regards to these tears on the  
22 clothing one of the detectives from the prosecutor's  
23 office said that there were green markings from  
24 branches.

25 Why wouldn't you save those clothes and

1 submit them to the lab to determine specifically what  
2 caused those tears? For instance, especially the wound  
3 to the chest on Jodie Scharf, did a rock cause that  
4 like Rock B or did the tree cause that tear? Would  
5 there have been bark or wood splinters in those  
6 clothing to establish beyond any shadow of a doubt,  
7 Prosecutor, any shadow of a doubt what part of the body  
8 struck the tree? No.

9 But as the defense sits here 19 years later  
10 and the clothing has been destroyed, I can't address  
11 that point because the prosecutor's office screwed up.  
12 The medical examiner and the prosecutor's detective who  
13 was there photographing it didn't seize it and take it  
14 into evidence. They got the hammer. They got a lot of  
15 other items. They discarded the clothing.

16 Those are the screw ups on the night. They  
17 continue. They continued the next day. The next day  
18 -- maybe the prosecutor's going to say, well, geez, you  
19 know, it was dark out, it's dangerous there. What's  
20 the excuse for the next day, Mr. Prosecutor? What is  
21 he going to say to you as the reason why they didn't  
22 document the scene? They didn't document the top or  
23 the bottom.

24 The medical examiner -- and this -- this  
25 astounded me. The medical examiner said she never even

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1 looked over the edge. Do you recall that testimony?  
2 Is that outrageous to you when she's obviously told  
3 that a pocketbook has been found there? She's  
4 obviously been told, I assume, that certain items were  
5 left on that ledge. She never even looks over the  
6 edge. She never looks at Rock B, C, and D.

7 The prosecutor never thoroughly searches that  
8 ledge. The prosecutor never photographs the entire  
9 ledge. He photographed portions of the ledge, the  
10 portion that he questioned you or questioned Wecht  
11 about without the sharp rocks. That's a screw up.  
12 They should have been on their hands and knees with  
13 magnifying glass going over every bit of that ledge.  
14 Why? Because that's where the purse was found.

15 There was evidence left on that ledge from  
16 the night before that I brought out. According to I  
17 believe Serrie the next day was missed by Cioffi and  
18 Pagan due to darkness. That's what he put in his  
19 report. He missed those items due to darkness. How  
20 about trace samples of blood or tissue on those sharp  
21 rocks? Do you think that if he actually missed those  
22 big items, which I submit are like slapping you in the  
23 face, do you think he could have missed blood and  
24 tissue?

25 Remember that body according to Wecht struck

1 those rocks within a second. And within a fraction of  
2 a second, you know, the body was catapulted out from  
3 those rocks. Recall that the chest that became impaled  
4 on that rock there were three layers of clothing  
5 buffering that wound.

6 To do your job properly you look for  
7 evidence. A criminal case is not about speculation,  
8 conjecture. A criminal case is not about, not about,  
9 ladies and gentlemen, waiting 19 years later and coming  
10 up with some theory. A criminal case is about  
11 evidence.

12 And can you tell me why on the next day the  
13 medical examiner didn't go to the tree when obviously  
14 she knows that there was a blood smear? Why didn't she  
15 or anyone from the prosecutor's office the next day,  
16 the very next day in daylight go back and find that  
17 tree?

18 Cioffi -- excuse me -- Pagan, why didn't he  
19 spray paint around the blood smear? Why didn't they  
20 take measurements? What possible reason can the  
21 prosecutor come up with why that wasn't done? That  
22 would have told you everything. Instead, they wait two  
23 years, three months, to identify the tree. They left a  
24 blood smear, you know, become destroyed. Any evidence  
25 of just blood versus tissue, hair, is destroyed with

1 time, with the elements.

2 He's going to get up and say that two years,  
3 three months later Pagan positively identified the --  
4 and put a spray painted circle exactly where it was --  
5 are you kidding me? Are you kidding me? Even his  
6 estimates on that night were off. Some said a few  
7 feet, some said six, seven, eight feet. Do it right.  
8 When you're going to charge my client with murder,  
9 murder, do it right.

10 How about taking a sample of the -- to match  
11 that imprinting that all the experts tested. Never did  
12 that. How about this, why didn't they seize the drawer  
13 and send it to a lab like I suggested? Remember that  
14 colloquy between me and the prosecutor, if, if, if --  
15 my client on the night in question and the day after  
16 was cooperating to the fullest extent possible with the  
17 police and the prosecutor's office, he had given  
18 numerous statements.

19 He had given numerous consents with regards  
20 to the search of his body, you have photographs, his  
21 car twice, and his residence, his home. He brought  
22 them into his home. And during one of those statements  
23 clearly they questioned him about the infamous hammer.  
24 He gives a plausible explanation. You may not like it,  
25 you may not think that it's appropriate under the

1 circumstances, but he gives you an explanation.

2 Well, can we assume that when the police are  
3 at the house with a search consent form they're  
4 searching for anything having to do with this fall? Do  
5 you think when my client volunteers to a detective from  
6 this office that this is the drawer that they asked me  
7 about, that I was telling them about, here's the  
8 drawer, they don't take it, they don't submit it to a  
9 lab, screw up?

10 It's like everything else, like the clothing,  
11 you know, if we just let it go, if we don't take it  
12 into evidence I can argue something later on. God  
13 forbid, God forbid, ladies and gentlemen, that their  
14 forensic expert said that, hey, this drawer was fixed  
15 and there are hammer marks on it, you know. You --  
16 that is a reasonable explanation. God forbid, that's  
17 why they didn't take it into evidence. That's why they  
18 don't care about the clothing, ladies and gentlemen.  
19 Screw up? Mistake? You decide.

20 How about this, at that same search the  
21 prosecutor 19 years later -- and again, just so the  
22 record is clear, I told you there was nothing new, that  
23 their entire case is based on the same old stuff they  
24 had almost 19 years ago. The statement that Ehrenberg  
25 (phonetic) -- and, again, Gundersdorf (phonetic) said

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1 the no statement I'm going to call it where he's  
2 talking about religion, you know, God, and -- you know,  
3 at one point Ehrenberg says, you know, there's a  
4 statement regarding was this a mistake and Ehrenberg  
5 says he's got a recollection my client said no.

6 Now Gundersdorf has a different recollection.  
7 What's important about Gundersdorf's statement is that  
8 the actual transcript taken down by one of those old  
9 time stenographers of exact words specifically put that  
10 my client when he said the word no it was a question.  
11 That's in the official transcript of that interview.

12 I'm sure the prosecutor is going to argue  
13 classic confession, it's this, it's that. My point at  
14 this point and the reason why I'm bringing it up is  
15 shouldn't the prosecutor's office have clarified that  
16 discussion? Is there any doubt in your mind that at  
17 that point my client was fully cooperating with them?  
18 Both Ehrenberg and Gundersdorf said they told the  
19 prosecutor's office, the detectives there doing the  
20 search, about this conversation.

21 Did they seek to clarify it? Did they seek  
22 to question my client further? No. What did they say  
23 they did? They said -- we already got a statement from  
24 him and -- to me in the back of their minds they  
25 probably said, geez, we don't want to -- we can

1 probably use that as a confession later. Why clarify  
2 that? Why question him further? God forbid he denies  
3 saying that. God forbid he explains exactly what he  
4 meant.

5 It's like everything else in this case,  
6 ladies and gentlemen. I submit it's a huge mistake.  
7 It infects the entire prosecutor's case here that they  
8 didn't take any formal statements. Doesn't it bother  
9 you with all the powers, the resources of the  
10 prosecutor's office that they never took any formal  
11 statement from the witnesses, from my client? They  
12 never tape recorded anything, videotaped someone, which  
13 even back in 1992 I submit was standard police  
14 procedures.

15 Again, they would rather do an interview,  
16 they would rather take a biased witness who's close to  
17 them who's on the same team and say they said this or  
18 they said that. I submit, ladies and gentlemen, that  
19 their failure to do that should cause you grave concern  
20 with regards to anything that was said. And why do I  
21 say -- say that? Is that an outrageous statement for  
22 me to make? This is why. Because the only recorded  
23 statement we have is from Jon Scharf. And it's  
24 outrageous, outrageous what they did in that statement.  
25 And I'm going to get into that in detail later on.

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1 If they could lie, mislead, suggest answers,  
2 like they did with Jonathan Scharf on camera, can you  
3 imagine what they did off? Can you imagine what they  
4 did off camera? I also submit that it's a huge mistake  
5 in a homicide investigation to collaborate with the  
6 insurance company. There was testimony that the  
7 insurance company investigator -- and I questioned the  
8 witness -- were sharing information with the  
9 prosecutor's office.

10 They were questioning the same witnesses that  
11 the prosecutor was questioning in a homicide case.  
12 Those weren't recorded either. Do we have any idea  
13 what that investigator told those witnesses, whether or  
14 not they tried to influence them? Insurance company  
15 owes a lot of money, they don't want to pay that money.  
16 We don't know what they said. I submit that that was  
17 improper.

18 How about the references -- and I'm sure the  
19 prosecutor is going to talk about the shoes. He  
20 mentioned it in his opening statement. I got a -- I  
21 got a feeling. Let me address that. It's obvious that  
22 Jodie Scharf was wearing shoes on the night in  
23 question. She had clean feet. The prosecutor I assume  
24 is going to make references to the tears in her -- her  
25 stockings. He's going to suggest that she wasn't

1 dressed for hiking that day.

2 Well, first of all, defense isn't suggesting  
3 that she was going to go for a long hike. What the  
4 defense is suggesting is that her and her husband were  
5 going to go to that flat rock and fool around. I don't  
6 know if any of you had stockings on when you went there  
7 on that day. I had a dress suit, wing tips on. Again,  
8 I submit there were other things on their mind at that  
9 point, not specifics regarding whether they're hiking  
10 or not hiking.

11 And when we talk about hiking doesn't the  
12 profile say that that was one of her likes, her  
13 interests? Doesn't that bother you, I mean that the  
14 prosecutor is suggesting something and the only  
15 document that the defense was able to get a hold of so  
16 many years later is the dating profile that  
17 specifically says that she liked to hike? You decide  
18 its relevance.

19 I submit, ladies and gentlemen, just as the  
20 medical examiner said that she had her shoes on. And  
21 it's not uncommon in these types of circumstances for  
22 people to lose shoes. She talked about car accidents.  
23 She fell off the cliff. She hit the ledge. Her body  
24 was catapulted out according to Wecht, you know. It's  
25 not unreasonable to think that her shoes came off. And

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1 if my client really intended to murder her and this was  
2 all planned do you think we would have put some shoes  
3 on her? It doesn't make sense.

4 And if the prosecutor suggests that Cioffi  
5 and Pagan in their 15-minute dissent looked carefully  
6 and searched for the shoes and didn't see them and,  
7 therefore, there were no shoes, I say that's  
8 outrageous. You should dismiss and disregard that  
9 statement.

10 How about the reference to the hammer in the  
11 opening? Let's be honest, when the prosecutor said  
12 that there was a hammer found in the car did any of you  
13 think that he was going to prove that this was the  
14 murder weapon? Be honest. That's why he said it. And  
15 then I get up, ladies and gentlemen, and I tell you  
16 that has nothing to do with this case.

17 Specifically, I tell you their experts will  
18 not say that it had anything to do with any of the  
19 injuries. Specifically, I asked Clayton does a hammer  
20 make a distinct pattern when it's struck against the  
21 body? Right away, she didn't even hesitate, yes,  
22 absolutely. Is there any evidence that the hammer was  
23 used in this case? No. No, she said.

24 And then it's brought out that the hammer as  
25 opposed to all these other things was sent to the lab.

1 Why? Because they were hoping to God that it was used  
2 in this case, but that lab result which we stipulated  
3 to clearly indicates that it was not used. There was  
4 no blood or tissue. And, again, there are towels in  
5 there. You have nothing to suggest that he wiped it  
6 off or it even could be wiped off, you know.

7 It has nothing to do with this case. That  
8 was something the prosecutor I submit to you throws out  
9 to you attempting to prejudice you just like my  
10 client's dating other women. And if the hammer did  
11 have something to do with it why didn't they take the  
12 drawer?

13 Now -- now that I said that I assume the  
14 prosecutor is going to come up with some reason why he  
15 said that in his opening. Is he suggesting -- will he  
16 suggest that my client used this to threaten his wife  
17 to get her there? I mean how reasonable is that? Is  
18 there any evidence, Mr. Prosecutor, when he makes a  
19 statement like that? Why use a hammer, there was a  
20 knife in the cooler?

21 And if he says he may have used the hammer  
22 even though there's no evidence, but based on what I've  
23 seen here that may be a suggestion, how about the 15  
24 people that were parked or walking around the area, did  
25 anybody see -- oh, wait, I forgot, those witnesses

1 disappeared. So now the prosecutor, he can argue  
2 whatever he wants to, the evidence is the hammer had  
3 nothing to do with this case. It's outrageous I submit  
4 that he even commented on it.

5 The allegation that she was afraid of  
6 heights, first of all, you have testimony from Jon  
7 Scharf and the brother. With regards to Jon, the only  
8 thing that he said regarding his mom's afraid of  
9 heights had to do specifically with regards to her  
10 being on a stepladder in the kitchen when he was nine  
11 or ten years old. Reliable information? Something  
12 that you can take as fact as to whether or not his mom  
13 was afraid of heights?

14 Never said that she said I'm afraid of  
15 heights. She said there was an incident, she was  
16 unsteady, maybe she was drinking. Who knows? I'm  
17 submitting testimony like that does not prove she was  
18 afraid of heights.

19 The brother testifies that she was afraid of  
20 heights and she didn't want to fly, although on cross I  
21 specifically brought out that she did fly numerous  
22 times. It was not uncommon for her to fly. I then  
23 bring out -- and, again, you've got to determine the  
24 credibility of these witnesses. I bring out -- and,  
25 again, put yourself in my shoes. I bring out that she

1 -- she liked hiking and then he says absolutely not.  
2 You know, and again he related to the fear of heights.  
3 Absolutely not.

4 I show him the dating profiles and I point to  
5 that and what did he say? It gives a glimpse with  
6 regards to his testimony. He basically says that  
7 that's definitely not Jodie. She didn't do that.  
8 That's not her profile. And basically suggesting that  
9 either I or Stephen Scharf had concocted that whole  
10 thing. And what he comes up with was that she doesn't  
11 sign her name that way.

12 And, again, left alone you may have believed  
13 that, but then I'm going through the papers, the  
14 documents that have been part of this case and I bring  
15 out checks of her bank account and I bring out the  
16 medical technician form that the prosecutor put in with  
17 regards to the insurance policy and it indicates that  
18 she did sign her name with a y.

19 Unbelievable, but, again, it shows you where  
20 he was coming from. You know, I felt sorry for him  
21 when he testified. I felt sorry for the loss. I can  
22 tell that you all were moved by the sorrow that he  
23 felt. And I'm not disputing that. I'm not disputing  
24 he loved his sister. What I suggest that you focus on  
25 is the difference between direct and cross. And did

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1 you see his eyes when he pointed out my client? You  
2 could feel the hatred that he had for my client.  
3 He's obviously convinced probably from  
4 talking to people from the prosecutor's office or the  
5 insurance company that my client killed his sister.  
6 But you could feel his hatred for -- and I submit that  
7 that affects his credibility. And -- and you know how  
8 I submit you can prove he was lying? It's his  
9 statements regarding suicide. Supposedly after the  
10 death he says for the first time, it's not in any of  
11 the reports of the interviews that the insurance  
12 company and the prosecutor had with him, he says that  
13 my client said it was a suicide.

14 Don't you think that that would have been  
15 something the detectives from the prosecutor's office  
16 and the insurance company would have put in their  
17 reports? That would be an inconsistent statement from  
18 what he said. They didn't. It didn't happen. He's  
19 grabbing for straws. He's doing whatever he can,  
20 ladies and gentlemen, trying to convict my client,  
21 trying to help the prosecutor.

22 Even the prosecutor in his opening statement  
23 when he talked about all these inconsistent statements  
24 from the police and the other witnesses never mentioned  
25 this comment about suicide. What's going on here?

1 I submit to you, ladies and gentlemen, that  
2 Jodie Scharf and my client had been at this location.  
3 My client testified -- strike that. My client gave you  
4 his statements, his specific statements to the  
5 prosecutor's office, specifically that that was their  
6 favorite spot, that they had been there many times. I  
7 don't know how many he says, 20, 30 times, but they had  
8 been there for a long time. How am I going to prove  
9 that?

10 And defense doesn't have to prove anything,  
11 but I've been doing this long enough, ladies and  
12 gentlemen, to know that unless certain things are  
13 brought to your attention, certain things are admitted,  
14 that you may go along with the prosecutor. So how do  
15 we prove from a defense standpoint, although I'm not  
16 obligated to, that he was there with her on that time?

17 I -- let me move on. How do we prove that he  
18 was there on previous occasions with his wife? The one  
19 thing the defense was able to come up with is D-6,  
20 after 19 years we come up with D-6. D-6, and we  
21 questioned every police officer who's familiar with the  
22 area, specifically identified the background here as  
23 the background at Rockefeller Lookout. And, again, you  
24 were all there, you can see the buildings in the back.  
25 It's the same buildings that are still there today.

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1 And recall I asked the officers, well, is  
2 that Steve Scharf in the picture? Remember one of them  
3 had the audacity to say, well, geez, I'm not sure. I  
4 can't -- what are you crazy? When he was asked to  
5 identify him 19 years later he immediately said that's  
6 him. And when I asked him to identify him back when he  
7 dealt with him he hesitated, but then finally came  
8 around. This is Steve Scharf at the lookout, I submit  
9 right around the time that this accident happened.

10 And he indicated to the prosecutor's  
11 detective during his interview that he had been there  
12 months before with his wife. You notice something else  
13 in this photograph? What's one of the things the  
14 police seized? The cooler. The cooler and there's  
15 photographs in evidence with regards to it being in the  
16 car. I submit, ladies and gentlemen, this is the same  
17 cooler that is depicted in this photograph.

18 Obviously the cooler after the incident has  
19 been in the custody of the prosecutor's office since  
20 the night in question. Thank God. Could you imagine  
21 what they would say if they didn't seize this? They  
22 would suggest that maybe this photograph was doctored  
23 or was taken after the fact. We know it's not taken  
24 after the fact. Why? Because, thank God, they did  
25 something right, they took the cooler and kept it in

1 evidence since the night in question.

2 This photograph is clearly taken before Mrs.  
3 Scharf fell. Now I know the prosecutor is going to get  
4 up and say, well, how -- how can we say who took this  
5 photograph? First of all, that's not my job. You've  
6 had this photograph since before trial. Every single  
7 woman that my client dated were interviewed. The ones  
8 they put on the stand I specifically asked, the two  
9 that they were -- he was closest to, have you ever been  
10 to Rockefeller Lookout? They said no.

11 Who do you think took this picture? Jodie  
12 Scharf. Did the prosecutor bring in anyone else to say  
13 I was there with Stephen, this was someplace he took  
14 me? Jodie Scharf took this picture. That proves that  
15 she was there. And, again, if anyone is doubting this  
16 as to whether or not she would go to this location, I'm  
17 going to rely on Jonathan Scharf and the statements  
18 that he made to the prosecutor's office with regards to  
19 whether his -- mother would go to that location.

20 Specifically, he said, and I questioned him  
21 about that, with regards to whether or not she to the  
22 lookout on her own, "Mother was an independent lady.  
23 You know, she often did what she saw fit." He then  
24 says, and I question him, "If she didn't want to go she  
25 wouldn't have gone." Those aren't my words. That's

1 Jonathan Scharf's words.

2 And obviously Jonathan Scharf has a problem  
3 with his father. Never had a problem with his mother  
4 according to him. There's no reason to lie about what  
5 his mother was like and what she did. Jonathan Scharf  
6 says to the prosecutor in response to this, "If she  
7 didn't want to go she wouldn't go," period. Case  
8 closed.

9 Let's talk about the therapist. Was she  
10 unbelievable? Would any of you recommend her to a  
11 close friend or relative? She comes up with this story  
12 about Jodie Scharf telling her that my client asked her  
13 to go to the cliffs for a picnic. Does that sound too  
14 convenient or contrived, especially when there's no  
15 notes, no documentation? Does that bother you?

16 Well, let me throw this out to you. If Jodie  
17 Scharf was truly afraid of heights and there's no way  
18 that she would even think about going to the cliffs  
19 because of that fear, wouldn't he have known that?  
20 Would he have asked her to go with him to such a  
21 location? It doesn't make sense. He's her husband.  
22 He knows what she's afraid of and not afraid of. Why  
23 would he suggest something like that?

24 Then if she wouldn't go there on that day,  
25 according to the therapist, why would she go on this

1 day? How is the prosecutor going to explain that? You  
2 know, did he force her? Did he knock her out? Tie her  
3 up? Well, let's look at this. Let's look at this  
4 point. The evidence is uncontroverted, no matter what  
5 the prosecutor said, there's no evidence of a struggle.

6 And this is why I say that. Thank God, thank  
7 God, they took photographs of Stephen Scharf that  
8 night. No scratches, which is a problem for the  
9 State's witnesses, at least Ferrante (phonetic) and the  
10 other women that testified. You know, no evidence of a  
11 struggle. She's 167 pounds, you know. She's capable  
12 of -- if she thinks her life is in danger --  
13 struggling. No evidence. No indications that her  
14 hands were tied, feet were bound, she was knocked out  
15 prior to that.

16 And, again, I don't know what the prosecutor  
17 is going to say, but use your common sense. Time of  
18 death, you know, is he going to say that he threw her  
19 in the trunk or carried her on her back? How about  
20 those 15 cars and the people walking around, wouldn't  
21 anybody had seen that? What's going on here? No  
22 evidence of struggle.

23 And, more importantly, more importantly, they  
24 took the scrapings from under Jodie Scharf's  
25 fingernails and thank God they submitted them to the

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1 lab. No evidence. No skin, nothing to indicate that  
2 there was a struggle. What's the prosecutor going to  
3 say? The prosecutor may say, well, he threatened her,  
4 he did this, he did that. Speculation. There is no  
5 proof of that fact. Whatever he says, ladies and  
6 gentlemen, question.

7 What to me is key with regards to her fear of  
8 my client, her fear to go to this location is how about  
9 the fact -- and this is uncontroverted -- she went out  
10 to dinner with him the night before, to dinner the  
11 night before. Uncontroverted. What's the prosecutor  
12 going to say about that? Well, maybe the son came  
13 along. A ten-year-old kid, what are you kidding me?  
14 She went to dinner with him the night before.

15 She also was aware of the life insurance  
16 policy. Do you honestly think that if she was truly  
17 afraid of my client she would have agreed to such a  
18 policy? Absolutely not. And, again, it's  
19 uncontroverted that she knew. The medical technician  
20 did an extensive physical exam. She signed her name on  
21 that book. So she knew about the policy.

22 Why I submit the divorce evidence is  
23 important is this. The prosecutor has introduced a  
24 number of witnesses, these women, the women that worked  
25 at Schooley's Mountain, had gone out to drinks with her

1 after work, on the weekends. And basically all of  
2 these women are saying that they were specifically told  
3 by Jodie Scharf that she was afraid for her life when  
4 my client was served with the divorce complaint.  
5 That's what they all said.

6 First of all, it's amazing that they all said  
7 pretty much the same thing after 19 years. And, again,  
8 I tried to question them and they were holding firm.  
9 They remembered the exact words, they remembered the  
10 exact date, details. It was amazing. And what I  
11 suggest when you go in the jury room is to think back  
12 19 years to some important conversation you had. And  
13 think to yourself, can I recall this? Can I recall  
14 that?

15 And I guarantee if you asked the person you  
16 had that conversation with your recollection would be  
17 different than theirs. Did you ever play that game as  
18 a kid where you start off with a phrase, by the time it  
19 goes two or three kids around the circle it's totally  
20 different. It's amazing how -- how -- how similar they  
21 were.

22 I submit that she was attempting to prepare  
23 for her divorce case, she was badmouthing her husband.  
24 And, again, I suggest that a lot of spouses, both men  
25 and women, do the same type of thing when they're

1 anticipating a divorce.

2 What proves that these people are not telling  
3 you the truth, like this doesn't make sense, is this,  
4 ladies and gentlemen. They all said that she was in  
5 fear for her life when her husband was served with a  
6 copy of the divorce complaint. What the evidence is is  
7 that the defendant got the divorce complaint months  
8 before. And she knew it, the wife knew it.

9 What difference does it make if you're  
10 getting it in the mail or you're served by someone?  
11 What difference does that make? And that occurred  
12 months before. So Jodie Scharf obviously isn't telling  
13 these women right before the incident that, you know,  
14 she's in fear of her life when he gets served. He  
15 already had the complaint. That's in evidence. The  
16 defense brought that out.

17 What's important about these women I submit,  
18 ladies and gentlemen, is this. They talked about what  
19 Jodie told them supposedly. Not one of those people,  
20 ladies and gentlemen, gave you any specifics with  
21 regards to observations that they made regarding  
22 evidence of abuse, black eye, bruises, any specific  
23 conversation with Jodie Scharf regarding, you know, the  
24 alleged abuse. Some of these women were friends for  
25 her for five, seven years. No testimony regarding

1 that.

2 All they could come up with after talking to  
3 the prosecutor's detective, after talking to the  
4 insurance people, after going to the wake, and some of  
5 them supposedly seen scratches covered up with makeup  
6 thinking that those were caused by Jodie Scharf in the  
7 struggle, thinking that my client had murdered his  
8 wife, they come up with these statements, which I  
9 submit we know are not true because the divorce  
10 complaint was already received in the mail and she knew  
11 it.

12 I know I'm taking a long time. I'm just  
13 trying to hit every possible point. Just -- just stick  
14 with me a little longer. I appreciate it. Again, the  
15 fact that the therapist never took any notes to me is  
16 crazy. Why do we know -- how can we say that she's not  
17 telling the truth? This is why. Do you recall her  
18 explanation as to why she didn't transcribe the notes?  
19 She basically said she was afraid that my client would  
20 -- would break into her office and steal her file.

21 Is there any evidence that he even knew she  
22 was seeing a therapist? Are you kidding me? Does that  
23 make sense to you? And isn't she under an obligation  
24 if these threats were real, were serious, to contact  
25 someone and protect her client? Use your common sense.

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1 Let me go over Jon's testimony. I submit he  
2 was the best witness for the defense. He showed you  
3 how the witnesses, like I said in my opening, were  
4 colluding, you know. I told you in my opening that the  
5 witnesses here were lied to, misled, that the  
6 prosecutor played on their emotions. Thank God there  
7 was a tape, the only tape of the interview with  
8 Jonathan Scharf. 16 years go by. Five detectives  
9 swoop down, grab him, and -- interview him for seven  
10 hours. He's not a defendant.

11 His initial statement basically indicating  
12 nothing. Couldn't say anything, didn't say anything  
13 with regards to any abuse by the father towards the  
14 mother. Remember I read it to you in my opening? All  
15 he said was there was an incident with coffee and I'm  
16 not sure if I dreamt it or it actually happened.  
17 That's all he said.

18 Why are they focusing on Jonathan Scharf?  
19 Why are five detectives from the prosecutor's office --  
20 one is Horniak (phonetic), the guy that said and  
21 admitted on the stand that he's been waiting 16 years  
22 to arrest my client, seething, waiting for the day.  
23 They had an agenda. Their agenda was to try and turn  
24 Jonathan Scharf.

25 And I brought out through Jonathan Scharf,

1 number one, his initial statement had nothing to help  
2 the prosecutor. His 250-page statement, the first 114  
3 pages said nothing to hurt his father. And then the  
4 prosecutor started with this. They started to play on  
5 his guilt.

6 Jonathan says during conversations, as I  
7 brought out, "I blame myself for her going."

8 The detective, "You got to remember  
9 something, what we're doing is for your mom. We're  
10 acting on behalf of your mom. Your mom passed away and  
11 she can't speak for herself."

12 They start playing on his emotions. Okay.  
13 That doesn't work. He starts to become vulnerable.  
14 They start saying things like this. "The reason your  
15 mother died was basically to protect you." These are  
16 detectives from the prosecutor's office. Everything  
17 they're talking -- everything we're talking about is  
18 how your mom was trying to help you. Everything she  
19 did was to keep you safe. 16 years later we need you  
20 to sit here and think, we need you to help protect your  
21 mother.

22 That still isn't working. And then the  
23 prosecutor says pressure him. There's no doubt in my  
24 mind and all of these other guys that he propelled her  
25 off the cliff. They lied to her. They -- strike that.

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1 They lied to him. They talk about the life insurance  
2 policy. They tell him that the accident portion was  
3 just recently purchased. Sound bad? Sure does. The  
4 evidence indicates that it was with the original policy  
5 16 months before. They deliberately lied to him.

6 They also say, and Jonathan Scharf testified  
7 to this, that there's new technology, new technology  
8 and that's why we're convinced that his dad killed his  
9 mother. Has anyone here seen any new technology,  
10 anything different from a scientific or forensic  
11 aspect?

12 They lie about the statement that my client  
13 gave to the police. They only bring up -- and this is  
14 16 years later. So I would think within that period of  
15 time they would definitely have known exactly what he  
16 had said or didn't say. If they didn't, they should  
17 have. They only bring out that short statement that my  
18 client gave to the Palisades Police Department, the  
19 statement that, you know, is only nine or ten lines.

20 They don't talk or even mention the other  
21 statements, the ones to the prosecutor's office that  
22 are -- that are in detail and that go on for pages and  
23 pages. They only tell them about this one statement.  
24 They say -- and this is the prosecutor's detective. "I  
25 just want to show you the length of this statement,

1 maybe nine or ten lines. I mean if my wife died I  
2 would have more to say than just this. I mean this is  
3 glossing over your mother's death in just a few  
4 sentences."

5 Does that offend anyone that the prosecutor  
6 would be saying things like that to a son who lost her  
7 mother, who grew up without the mother, who has already  
8 told them that he feels guilty because he went to a  
9 friend's house that night?

10 And then when that's not enough it's the coup  
11 de grace, they say to Jonathan Scharf regarding the  
12 money that was gotten you got nothing, nothing for the  
13 death of your mother, nothing, nothing? And then the  
14 detective says -- and this probably the only true  
15 statement that came out of his mouth on this case, he  
16 goes, "I'm not a saint. They grow up without a mother.  
17 I think they're entitled to something." They plant the  
18 seed.

19 They say all these things to roll over  
20 Jonathan Scharf. Jonathan Scharf who obviously loves  
21 his mother, who had to grow up without his mother, who  
22 was feeling guilty because of his mother's death. They  
23 say all these things. They lie to him. They mislead  
24 him. And then they tell him unequivocally in their  
25 mind on behalf of law enforcement these five

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1 experienced detectives that they have new technology  
2 that your father killed your mother.

3 Can you imagine the rage that must have gone  
4 through his body? He had no idea what happened. And  
5 these detectives from the prosecutor's office are  
6 telling them, a position of authority, that they have  
7 evidence and they all believe that his father killed  
8 his mother.

9 Look at his original statement as a ten-year-  
10 old. And he wasn't with my client who influenced him,  
11 he was with Aunt Dolly who's dead and can't testify to  
12 that. He basically said there is no abuse. There is  
13 no -- nothing I can tell you. In his first 114 pages  
14 he says the exact same thing until all these other  
15 things are -- are said to him.

16 You've got to judge him like any other  
17 witness. And how many times did he admit lying on the  
18 stand? Over and over. I think it's 30, 40 different  
19 times. And I submit, ladies and gentlemen, that he  
20 wasn't being honest with you. He only didn't just lie  
21 to the police, he was coloring his testimony, his  
22 statements. And, again, I'm only going to highlight  
23 one or two areas.

24 The issue regarding college tuition,  
25 specifically said that his dad didn't give him

1 anything. He never got any of that money. I show him  
2 a check from the -- from the account that the money was  
3 put in, says payoff of college loan, has his Social  
4 Security number on it. And as soon as I showed him  
5 that it was like, ah, ah, okay, well, you know, he did  
6 pay that, you know, but I did this, I paid for the  
7 rest.

8 Well, he didn't pay for the rest, he got a  
9 scholarship. This was all the money that he had to lay  
10 out for his college. So the father did pay for his  
11 college, you know. The father did do other things.  
12 And if he's such a terrible father why is he going into  
13 some business type arrangement with him? Why is he  
14 asking the father for money for an IRA? Why is he  
15 asking the father to pay for appliances for his rental?  
16 You know, and recall my specific questions. He tries  
17 to come back and he says, well, this was a loan. And I  
18 asked him did you pay it back, no.

19 And, again, is there any doubt in anybody's  
20 mind on this jury that he has no intentions of paying  
21 that money back? And what did he say? He wasn't  
22 honest with you, I could pay it back or, you know, he  
23 danced around that issue. He -- he -- the way he tried  
24 to describe himself, the relationship, it wasn't a  
25 formal business relationship, you scratch your mind --

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1 you scratch your back, I'll scratch -- no. Let me get  
2 this right. I'll scratch your back, you scratch mine.  
3 And then I brought up the fact that after my  
4 client was arrested my client's wife, Tina Scharf, went  
5 to his house and helped him renovate, did manual labor  
6 for his piece of property. And then when it was time  
7 for him to help her, sorry, didn't pick up a finger.  
8 That doesn't sound like scratching each other's backs.  
9 That sounds like some spoiled kid who's got a problem  
10 with his father.  
11 The insurance, nothing to do with this death.  
12 The defense brings out that Jodie Scharf had two life  
13 insurance policies, numerous life insurance policies,  
14 with the same company where she was the beneficiary.  
15 She had policies on him. He had policies on her.  
16 You know, the one point that drills home, and  
17 this is why I submit Jonathan Scharf is such a great  
18 witness for the defense, the one thing that proves to  
19 you that insurance had nothing to do with this death is  
20 from Jonathan Scharf's own mouth. With regards to the  
21 life insurance policy questions that the prosecutor's  
22 detective asked him, remember this question or  
23 statements that I brought out, Jonathan Scharf tells  
24 the prosecutor, "Doesn't think what transpired was due  
25 to money."

1 He specifically says it's not motivated by  
2 income. He knows his father. Even Jonathan Scharf  
3 says it had nothing to do with his mom's death.  
4 Irrespective of what else he said, that's his  
5 statement, not mine, not the prosecutor's statement,  
6 Jonathan Scharf's statement. And God knows, he's not  
7 looking to help his father.  
8 The girlfriends' testimony, the prosecutor  
9 put those girls on I submit, ladies and gentlemen, to  
10 dirty up my client, to make you feel that, you know, he  
11 did something, you know, outrageous because he was  
12 going out with these other women. I've already  
13 addressed that point.  
14 But what these women did say, both of them,  
15 even after his lies, even after what he did to them,  
16 both of them said and I quote, "He was gentle, caring,  
17 sweet." Scanlon even testifies, and this came out no  
18 way my client killed his wife, wouldn't hurt anyone.  
19 They also confirmed the issue concerning the open  
20 marriage, you know, with Scanlon indicating that she  
21 spoke to Jodie Scharf. And, again, if the prosecutor  
22 suggests that that's not the case again hold him  
23 accountable for not, you know, subpoenaing the -- the  
24 dating service, letting those records become destroyed.  
25 Regarding my client's statements, he's going

1 to argue that they're all inconsistent. I submit  
2 basically they're saying -- they're all saying they  
3 were an accident. The one thing that the prosecutor is  
4 going to mention is Detective Horniak's statement, he  
5 specifically said in his opening statement that my  
6 client lied with regards to him breaking off the  
7 relationship with Scanlon and Scofield (phonetic).  
8 That's what he said in his opening.

9 And to do that, you know, he put on those two  
10 women, the two girlfriends. And they specifically said  
11 that my client didn't break up with them. The  
12 prosecutor said in his opening if he lied he's guilty.  
13 Those were his exact words. And then all of a sudden  
14 Horniak -- Horniak takes the stand and, again, in the  
15 memo, it's not an exact statement, but in the memo  
16 Horniak doesn't confirm that.

17 Horniak says rather than my client said that  
18 he was attempting to break off, he didn't indicate that  
19 he definitively broke off the relationship. Big  
20 difference, ladies and gentlemen. And that's why  
21 statements should be taped and recorded.

22 The prosecutor's going to talk about Serrie's  
23 statement, you know, that supposedly my client said  
24 something while he's in the back of the car that, you  
25 know, we were walking, she said to go to the car, she

1 slipped, I didn't see her anymore. Recall his state of  
2 mind. His wife had just fallen off the cliff. He's  
3 been described as zone -- and dazed. Serrie is also  
4 the guy, ladies and gentlemen, that's got a problem  
5 with my client taking a drink at the water fountain.  
6 What relevance is that?

7 He said he put water on his face and he -- is  
8 there anything criminal about that, any suggestion that  
9 has anything to do with this case? That's how these  
10 cops think. Everything that they see they try to fit  
11 into their mold to help their case.

12 Finally, ladies and gentlemen, the experts.  
13 The prosecutor put on two experts, the medical examiner  
14 and Michael Baden. They both testified that the  
15 injuries are consistent with the single impact theory.  
16 They base their opinion on, to a large extent, Cioffi  
17 and Pagan's statement, specifically that they didn't  
18 observe any -- they didn't observe any evidence that  
19 she had hit the ledge.

20 He's going to get up and argue, ladies and  
21 gentlemen, I'm sure that they did this unbelievable job  
22 of examination. We know that that's not the -- the  
23 fact. But their theory is based solely on the single  
24 impact concept. Now after Wecht testified I wouldn't  
25 be surprised if the prosecutor tried to change his

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1 theory. That's what he opened up to, that's what his  
2 experts have said.

3 If he changes that theory the word reasonable  
4 doubt should go off in your head. I don't know if he's  
5 going to do that, but I got a stinking suspicion that  
6 after Wecht he may try to massage his theory, what his  
7 experts said. Look for facts. Look for evidence. God  
8 knows, Clayton changed her mind numerous times. She  
9 originally said that the manner of death was under  
10 investigation.

11 After obviously she concluded a thorough  
12 investigation she puts specifically that the manner of  
13 death could not be determined. Reasonable doubt that  
14 is. It's not until 15 years later after the famous  
15 Michael Baden was hired by the prosecutor's office that  
16 she changes the death certificate. And we've already  
17 talked about that.

18 The important fact is that both Clayton and  
19 Baden relied on Cioffi and Pagan. And we've already  
20 gone over extensively with regards to the  
21 inconsistencies in the -- in their testimony. Why  
22 would the prosecutor change her death certificate 15  
23 years later? Is there any new technology? The  
24 prosecutor basically is going to say that she was  
25 young, inexperienced back in '92.

1 That's code in the legal world for she  
2 screwed up. 15 years go by, she then goes to the  
3 scene. What caused her to go to the scene? What  
4 relevance would the scene have at that point? 15 years  
5 go by. She testified -- and this is key, ladies and  
6 gentlemen, she testified that with regards to the first  
7 amendment where she indicated that the manner of death  
8 could not be determined, she consulted with the  
9 prosecutor's office.

10 Why are you consulting with them? She said  
11 that. Why is she consulting with the prosecutor's  
12 office regarding a medical opinion? And what did she  
13 tell you? She said they said they didn't have enough  
14 so she put down could not be determined. If they  
15 didn't have enough then, they don't have enough now.  
16 She has to change the death certificate in order to  
17 prosecute my client.

18 Do you think Michael Baden, you know, had  
19 something to do with it? You think the prosecutor's  
20 office had something to do with that 15 years later?  
21 Do you think guys like Horniak who have been waiting,  
22 you know, chomping at the bit, you know, for 16 years  
23 to arrest my client had something to do with that? Is  
24 that a independent decision?

25 We've already talked that Clayton lied in

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1 that official document regarding the statements  
2 concerning hair. I submit based on that fact alone you  
3 should totally disregard her testimony.

4 The prosecutor's whole case is based on  
5 Cioffi and Pagan and their observations. Remember  
6 their direct testimony, remember how specific the  
7 prosecutor questioned them with regards to things like,  
8 well, I was looking for evidence of the body falling  
9 and I looked here, I looked on the ledge, I -- is he  
10 trying to set things up for his experts?

11 What did defense bring out, that they missed  
12 all these things, they rushed down there. And I don't  
13 have a problem with what they did as far as trying to  
14 save a life. That's admirable. I applaud them. But  
15 don't you think that that would have some effect on the  
16 powers of observation? And why? Can you tell me why  
17 defense had to bring out through Pagan that the lights  
18 that were set up blinded him? I didn't say that word.  
19 He used the word blinded.

20 Would that affect his ability to observe  
21 things? Would that affect his ability, you know, to  
22 make observations? These guys were trying to save a  
23 life, they're not worried about evidence. You know,  
24 they should have done that after the fact, but they  
25 never went back. That's the problem.

1 What's more important is the testimony  
2 regarding the rappellent. They're saying and the  
3 prosecutor brought out that they went down right in  
4 front of the flat rock and they had to move over to get  
5 to the ledge. I bring out, ladies and gentlemen, the  
6 rappelling lines. How dare he say that? Those  
7 rappelling lines if you're looking down off the flat  
8 rock are to the right of those sharp rocks. You can  
9 see the lines going right down to the left of the area  
10 where the flat rocks are.

11 And you recall I confronted him at the --  
12 with regard to his rappelling lines. And this was what  
13 he came up with. He said they could have been moved.  
14 Well, they also could not have been moved. The fact is  
15 they should have gone to the scene. They never went to  
16 the scene.

17 Let's talk about Michael Baden, the world  
18 famous Michael Baden -- Michael Baden. I would up  
19 Cyril Wecht against him any day of the week. Michael  
20 Baden specifically relies on Cioffi and Pagan in coming  
21 up with his single impact theory. He testifies to all  
22 these -- all the experience he had with regards to  
23 these falls in New York City. And then he says, well,  
24 I had some regarding the mountains or cliffs.

25 But predominantly his experience has to do

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1 with falls from the City. Wecht's got the same type of  
2 experience. But what does Baden say? He basically  
3 said that with regards to his opinion, you know, that  
4 based on his experience if a body falls out of a  
5 building it lands one or two feet from where it left.  
6 And then he throws out, well, if that person jumps, if  
7 it's a suicide, it's only three or four feet out.

8 And he basically says that the distance, the  
9 52 feet from the top to the base, there's no way that  
10 that body could have -- based on my experience one or  
11 two feet, three or four feet. And he specifically says  
12 if it was an accident, if it was a passive fall, she  
13 would have landed on the ledge.

14 Look at the evidence here. Look at the  
15 sandbag test from the prosecutor, specifically Bag 3  
16 that hit the same rocks that we're claiming Jodie  
17 Scharf did. It hit the same rocks. And that bag was  
18 found 20 feet from the base of the tree. That bag, 52,  
19 20 feet, traveled 32 feet from the flat rock.

20 And that bag, ladies and gentlemen, this is  
21 key here, that bag, you see it exploding on that rock.  
22 You see the sand releasing on that rock. And even with  
23 all of that weight out of the bag it traveled 32 feet.  
24 And you have Wecht testifying that a body is totally  
25 different than a bag. Does that make sense to you,

1 that a body with muscular structure -- reactions one  
2 way or the other -- or did it react differently than a  
3 sandbag filled with sand or cement?

4 That bag, ladies and gentlemen, literally  
5 traveled 32 feet. So to hell with Michael Baden's  
6 theory. And he also relies on the fact that my client  
7 said he didn't hear his wife scream. Well, if she hit  
8 that ledge and she became impaled within a split  
9 second, her head was -- and she was knocked out, that  
10 might very well explain why she didn't scream.

11 Michael Baden, ladies and gentlemen, you  
12 know, he renders his opinion, the injuries are  
13 consistent with the body hitting the tree, the head and  
14 the chest, that those wounds were caused by the tree.  
15 He basically doesn't base his opinion on any scientific  
16 engineering or medical principles. I asked him  
17 questions regarding the velocity or the type of force  
18 that -- was necessary. And what was his response?  
19 It's above his paygrade.

20 Now it wasn't above the engineer hired by the  
21 prosecutor Becker's (phonetic) paygrade, the engineer  
22 that the prosecutor hired that they chose not to put on  
23 the stand, the engineer the prosecutor hired whose  
24 testimony would have been consistent with my engineer's  
25 paygrade.

1 Compare them, Clayton and Baden, to our  
2 experts, to the defense experts. And, again, I don't  
3 have to put on anybody. There is no burden on behalf  
4 of the defense. But what does my engineer say?  
5 Unequivocal, without question, period, you know, the  
6 prosecutor's theory that the body was propelled and  
7 traveled unimpeded to that tree defies the scientific  
8 community, defies the law of physics, period. It's  
9 impossible.

10 And let's go to Wecht, who I submit was far  
11 more qualified, more experienced. And he bases his  
12 opinion -- and I told you he was going to do this -- on  
13 sound medical and forensic principles. He testified  
14 not just by opinion, but I submit he proved to you that  
15 the injuries could not be caused by a single impact,  
16 that there was no way that the chest and head wounds  
17 occurred at the same time as the other wounds.

18 And how did he -- how did he prove that? He  
19 goes to the scene. That's bothering him. Why is it  
20 bothering him? Because he talks about that aorta tear,  
21 he talks about the laceration of the liver and the  
22 spleen. There's no blood in both of those cavities  
23 which is a problem with him. It indicates to him that  
24 the other wounds must have occurred prior.

25 So he goes to the scene, he looks over the

1 edge, as opposed to the medical examiner, and he sees  
2 these sharp rocks. And what does he do? Does he walk  
3 away and just basically say, well, you know, I'll  
4 render an opinion like the medical examiner or Baden?  
5 This 80-year-old man walks out on this ledge to find  
6 the truth. He risked his life to go out on to the  
7 ledge and measure Rocks B and C and D.

8 He goes out on the ledge that the  
9 prosecutor's detectives, Serrie from the Palisades  
10 Police Department, specifically said I'm not going down  
11 there, it's too dangerous. It's almost like they don't  
12 care about the truth. Dr. Wecht did care about the  
13 truth. He goes down and he measures these rocks and  
14 these rocks have the exact same dimensions and angles  
15 that fit the chest wound and the head wound.

16 And if that was not true you can be damn sure  
17 the prosecutor would have recalled Baden or Clayton to  
18 dispute those facts. These rocks have the exact  
19 dimensions and the exact angles necessary to cause the  
20 wounds in question. Well, how do we know other than  
21 that analysis of the ledge that what he says is true?  
22 Before I move on, I'm sure the prosecutor is going to  
23 criticize Cyril Wecht for not walking up to the tree.  
24 When he does that I ask you to recall this phrase,  
25 who's calling the kettle black?

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1 How dare he criticize Wecht when his own  
2 people didn't do what they were supposed to do. And I  
3 submit that Wecht is in a much different position at  
4 this point. At this point the scene has been  
5 documented. The defense had given him photographs, had  
6 given him engineering reports, laser scans of the exact  
7 dimension of the mountain. It's a different  
8 circumstance. Let's see what the prosecutor has to  
9 say.

10 How do we know you should believe Wecht?  
11 Remember when I told you you don't even need a medical  
12 degree to understand the facts in this case. And I  
13 submit that you don't. It's obvious. You use your  
14 common sense.

15 How do we -- how do we know that the chest  
16 wound and the head wound was caused before the other  
17 wounds? First of all, as far as the head wound is  
18 concerned -- strike that -- the chest wound, the  
19 evidence clearly established that it was caused by a --  
20 object. If you look at the parallel linear abrasions,  
21 that's these photographs here, Dr. Wecht testified that  
22 there were -- these abrasions, vertical, parallel  
23 abrasions from the head and neck to the chest. They  
24 stop at the wound.

25 The big point that Dr. Wecht made that I

1 think if you use your common sense it's easy to  
2 understand is that there's nothing below that wound  
3 which would indicate that she was falling head first,  
4 that she struck a hard object in her face, went to her  
5 neck, started to impress more forcefully into her chest  
6 where it pierced the skin and caused the wound in  
7 question.

8 Now when the body is going over according to  
9 Dr. Wecht, when the body is going over the cliff and  
10 becomes impaled and is stopped, the legs naturally are  
11 thrown back. The head comes up and the exact  
12 dimensions of C and D fit the scalp -- wound on both  
13 sides of the head. He says the body is then catapulted  
14 out into the abyss. And the body falls 119 feet.

15 And I submit that would explain why there are  
16 no injuries to the back, to the back of the legs. And  
17 I'm sure the prosecutor is going to try to come up with  
18 something with that. And the body falls and then hits  
19 this branch, that branch. Even Baden says the body can  
20 be propelled out further because of those strikes with  
21 the branches depending on how big they are.

22 The exact position that the body travels he  
23 said there's too many variables. We don't know if the  
24 body was moved to the left, to the right, you know, how  
25 big the branches were. But the bottom line is it

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1 strikes the tree below the chest area and the abdomen  
2 area. And those cause the injuries to the spleen and  
3 the liver.

4 And that displaced fracture that the medical  
5 examiner talked about, that the aorta runs right along,  
6 was torn at that point. And how do we know from a  
7 common sense standpoint and from a medical standpoint  
8 that the injuries to the chest and the head occurred  
9 prior to that? Because Dr. Wecht testified -- and this  
10 is uncontroverted -- that when the aorta -- aorta  
11 breaks -- and this is common sense, it's got to be  
12 filled with blood.

13 There was hardly any blood in the chest  
14 cavity indicating that at that point the blood pressure  
15 was next to nothing, she was dying. And that's why no  
16 blood was pumping from the heart. No blood pressure,  
17 no blood. And if that's not good enough, the same  
18 thing has to do with the liver and the spleen which is  
19 in a different cavity, the abdominal cavity. There was  
20 hardly any blood. And Dr. Wecht testified that both  
21 those organs are full of blood. You lacerate them,  
22 that cavity would be -- would be gushing with blood.

23 And recall Dr. Wecht's analogy. He said I  
24 can cut myself shaving and before I got it to stop  
25 there would be more blood than was found in those

1 cavities. That's his term. That's uncontroverted. So  
2 that clearly indicates that we're not talking about a  
3 single impact injury, like Clayton and the prosecutor  
4 said.

5 And I can't wait for the prosecutor to change  
6 his theory maybe when he talks to Wecht and he says,  
7 well, could that have been consistent with a push?  
8 Sure, it can, but that's not his theory. That's not  
9 what his experts said. That's not what he opened up to  
10 you, ladies and gentlemen, on. His theory is a single  
11 impact. I submit to you that the defense has proved  
12 beyond any shadow of a doubt that that is not the case.

13 How do we know that the head didn't hit the  
14 tree? Dr. Wecht says -- and, again, use your common  
15 sense. The head would have exploded. Is there any  
16 doubt in your mind that if you traveled from A to B and  
17 struck the tree that it would have exploded? And there  
18 was no depress fractures, the fractures he called  
19 compression fractures.

20 The skull was not pushed inward. Is there  
21 any doubt in anybody's mind that if the head hit the  
22 tree that the skull would be depressed inward? He says  
23 that the membrane was not lacerated. So however bad  
24 that -- those fractures were from the compression they  
25 never even pierced the lining of the brain. He also

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1 says that with regards to a blunt force injury, banging  
2 your head against a tree, that in every instance they  
3 have subgaleal hemorrhaging.

4 And he testified, and you can look in that  
5 autopsy report that's in evidence, there was no -- no  
6 subgaleal hemorrhaging. There's also no brain injury.  
7 No brain injury from the -- from the body falling 119  
8 feet and smashing its head against the tree, come on.

9 What about the chest wound? He describes it  
10 as a piercing wound. He says there's nothing on the  
11 tree that could cause that type of injury. He talks  
12 about the parallel linear abrasions. Remember the  
13 prosecutor's expert when Clayton testified that the  
14 fell like -- like this. Those abrasions are going the  
15 wrong way according to her. Look at the pictures.  
16 They're going the wrong way according to the pictures  
17 -- and her recollection, her opinion regarding how the  
18 body fell.

19 The main reason why we know that the chest  
20 wound is not caused by the tree is this. This -- wait,  
21 I got it. I got it. Is this. If -- if -- if the body  
22 fell as either Clayton said or, more importantly, Baden  
23 said, different angle, don't you think her breasts  
24 would be damaged? How do you fall 119 feet and bang  
25 your chest against that tree and not have any injury to

1 the breast?

2 THE COURT: Excuse me one moment.

3 UNIDENTIFIED JUROR: Sorry.

4 THE COURT: If you would.

5 MR. BILINKAS: I got to go too. I'm almost  
6 done. I'm almost done. Just please --

7 THE COURT: While we're waiting is there  
8 anyone else? Let's wait a few moments.

9 (Off the record. Back on the record)

10 (Jury present in courtroom)

11 THE COURT: Counsel, you may continue.

12 MR. BILINKAS: Ladies and gentlemen, I've  
13 spent an enormous amount of time, I apologize if maybe  
14 I was a bit longwinded. There's nothing that stands  
15 between Stephen Scharf and the prosecutor and the  
16 conviction for murder, but me. I submit that my  
17 experts blow the prosecutor's theory out the window.  
18 There's absolutely no way that the chest and head wound  
19 could have been caused by impacting the -- the tree as  
20 I've described to you.

21 The fact regarding the chest wound that the  
22 breasts aren't -- I use Dr. Wecht's analogy of the  
23 Kennedy assassination. The bullet was pristine.  
24 There's no way that the body is going to fall 119 feet  
25 and have her chest slam against that tree and not

1 damage the breasts.  
2 He also testified that there was no wood  
3 splinters in that wound which clearly would have been  
4 caused -- and present if the prosecutor's theory was  
5 correct. And as I said, with regards to these specific  
6 medical opinions, you know, the no blood in the  
7 cavities, you know, if that was not the case the  
8 prosecutor could have put his -- experts on and  
9 addressed those issues. He chose not to. And I  
10 submit, ladies and gentlemen, that he cannot do that  
11 because the medical evidence is the medical evidence.  
12 Now the prosecutor said in his opening and I  
13 quote, "The cliffs don't lie." In this case with all  
14 the horrible decisions and mistakes made by the police,  
15 the prosecutor, the medical examiner, the people in  
16 charge with preserving the evidence, with seeing that  
17 justice is done, the cliffs have been silenced.  
18 Because of their blunders the only thing that  
19 we can be certain of here is that Jodie Scharf's life  
20 was tragically cut short and that my client, Stephen  
21 Scharf, his life has been destroyed, ruined by this  
22 botched investigation. And the absurd, I submit the  
23 absurd decision to go after him and prosecute him 19  
24 years later.  
25 I submit that once you go in there, review

1 all the evidence, even after you hear the prosecutor's  
2 arguments, that once you take a look at this case I am  
3 confident that your verdict will be not guilty, not  
4 guilty, not guilty, not guilty. Set Stephen Scharf  
5 free. Finally let the truth be told. He's innocent.  
6 He should never have been prosecuted. Set him free. I  
7 appreciate your time. I appreciate your attention.  
8 Thank you.  
9 THE COURT: Thank you, Mr. Bilinkas. It's  
10 12:15. The jury will take its lunch at this time.  
11 We'll resume at 1:15.  
12 (Luncheon break)  
13 (Jury enters courtroom)  
14 THE COURT: Welcome back, ladies and  
15 gentlemen of the jury. You may be seated. Roll call.  
16 (Roll call of jury taken, all present)  
17 THE COURT: The prosecution may proceed with  
18 closing argument. Mr. Mello.  
19 MR. MELLO: Thank you, Judge. Good  
20 afternoon, ladies and gentlemen. I believe, I believe  
21 that people have a great capacity to hear the truth.  
22 And this I know. Truth is eternal. It may be hidden,  
23 it may be kept from view, it may be difficult -- but in  
24 the end, in the end truth and the cliffs will happen.  
25 Let me begin in a very real sense at the

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1 beginning which is to say the son of Jodie Ann Scharf,  
2 the living embodiment of his deceased mother. Mr.  
3 Bilinkas suggests to you this rather fanciful notion  
4 that, one, Mr. Jonathan Scharf was the best witness for  
5 the defense; that, two, Jonathan and his testimony had  
6 been -- I believe the word he used was polluted by  
7 detectives; that, three, it turned him a spoiled brat,  
8 presumably not worthy of belief.

9 Now you see the wonderful thing about this  
10 system is that it is dependent on the common collective  
11 sense of the deliberative body that we call the jury.  
12 It is your common sense, your life experience that  
13 makes this system work. In the end it is that  
14 collective common sense that you and every jury that  
15 hears a criminal matter brings the final answered  
16 prayer of justice. And justice, as any reasonable  
17 person would tell you, is a finding of the truth.

18 In that regard, Mr. Bilinkas may say what he  
19 has said, but you have heard the testimony of Jonathan  
20 Scharf. You have heard his testimony and suffered with  
21 him the depths of the life that he described to you. I  
22 suggest to you that his testimony was compelling and  
23 riveting in its honesty and its exploration of what  
24 preceded the death of Jodie Ann Scharf.

25 And I begin with Jonathan because to

1 understand this case you must view all the evidence,  
2 not just one particular witness or one particular facet  
3 of one particular witness or one particular question of  
4 one particular witness, but the whole because, you see,  
5 this is really in a sense -- play in three acts, the  
6 first of which is what comes before because you cannot  
7 understand the third act, you cannot work the problem  
8 until you understand it from its beginning. And that's  
9 what Jonathan Scharf begins to tell you.

10 And this is what the spoiled brat has told  
11 you. That his mother was his best friend, his  
12 protector. That his father was his tormentor and the  
13 tormentor of his mother. That the man who should have  
14 been his protector in fact was the man who perpetrated  
15 torment upon him and his mother.

16 This so-called spoiled brat tells you that  
17 his father was unfaithful to his mother, that his  
18 father maintained a personal telephone in his bedroom  
19 which could not be answered by his mother. That his  
20 mother and father slept in separate bedrooms. That she  
21 lived in fear of him.

22 He in his testimony told you his mother was  
23 his father's indentured servant. He told you the fear  
24 that his mother labored under to protect him and  
25 explained that as why she stayed as long as she did.

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1 And in that context you will begin to hear  
2 the tale of Mr. Scharf, that he so loved his wife, that  
3 he so loved his wife that on the day of her death when  
4 he is not only the last person to see her alive, but  
5 she and he are alone together at her death, which makes  
6 him the last person to be with her at her death.

7 This now man tells you really the beginnings  
8 of this case. Through the eyes of not just the 28-  
9 year-old man who he has become, but also through the  
10 eyes of the 10-year-old child that he was.

11 Now much was made by Mr. Bilinkas regarding  
12 the initial statement made by this ten-year-old child  
13 to police detectives when he did not disclose abuse  
14 suffered at the hand of his father or abuse that his  
15 mother suffered at the hand of his father. That must  
16 have been a shock to you. That having just been told  
17 that his mother died tragically, that he is now without  
18 mother, without best friend, without protector, and  
19 alone with Scharf, he says nothing about Scharf.

20 He tells you that in 2008 when he is  
21 interviewed by detectives he initially does not  
22 disclose that which came before you in this case and he  
23 explained why to you. And he told you that he needed  
24 time to process this event, that he needed time to go  
25 back to a place that he had left long ago, that he

1 needed time to go back to a place that he put in a  
2 square never to be revisited.

3 He tells you that there was no possibility  
4 that his mother would reconcile with his father. He is  
5 that voice. He lived in that house. He told you of  
6 the fear. You could feel it in his testimony. And he  
7 tells you one other thing. She had a fear of heights.  
8 And, yes, he recollects one particular event, but how  
9 did he explain that event to you? He explained the  
10 event of the stepladder just not in terms of it was a  
11 woman afraid of heights, it was a woman who was  
12 physically ill by that rather minimal height.

13 And of course you now know that the brother  
14 of Jodie Ann Scharf whose testimony was significant in  
15 only one respect told you the same, that she had a fear  
16 of heights, that in fact this was a lifelong fear. And  
17 he gave you examples of that fear dating back to their  
18 childhood. That had to absolutely ring true with you.

19 So this is where we begin. Now, remember,  
20 the story of Mr. Scharf will be that he took his wife  
21 to the cliffs which was their spot to reconcile with  
22 her. At the same time in 1992 he is maintaining two  
23 separate relationships apart from others with 2 women,  
24 Kathy Scanlon, Kerry Scofield.

25 The same man who tells you he just had to be

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1 on those cliffs on that night to reconcile with his  
2 wife on the 20th of September 1992. On September 18,  
3 1992, he spends the night with Kathy Scanlon.

4 Now the testimony of Scofield. Scofield  
5 tells you that the same man who so loved his wife --  
6 lived with her three days a week. She also says among  
7 the many things he tells her, she also says that  
8 regarding the divorce, he wanted total custody of his  
9 son. And then there is a conversation which you heard  
10 in the testimony which wasn't commented on by counsel  
11 and that is the conversation between Scofield and  
12 Scharf on the beach down the shore, Labor Day weekend,  
13 just two weeks before Jodie Ann goes off the cliffs.

14 And what did she tell you he said? She said  
15 he said just give me until the end of September, just  
16 give me until the end of September and the pressure  
17 will be off. You know that regarding the relationship  
18 that you now have heard so much about that in the  
19 spring of 1991 Jodie went to see Ben Michel, a partner  
20 at Riker Danzig, one of the largest firms in the state.

21 She went to Ben Michel, then head of  
22 litigation at Riker Danzig, for purposes of  
23 representation in a divorce action against her husband.  
24 The road to divorce began in the spring of 1991. The  
25 divorce complaint is mailed to the defendant in the

1 summer of 1992. On September 8, 1992, the divorce  
2 complaint is served by the Office of the Sheriff of  
3 Morris county upon Stephen Scharf. The game is now  
4 about to end.

5 This woman who suffered so long has finally  
6 and irretrievably moved away from him and his control.  
7 It is over. And what now is projected into the future  
8 for Stephen Scharf is a costly divorce, the assigning  
9 and separation of assets, the custody of a child.  
10 That's what looms ahead for him.

11 What did Ben Michel tell you? There never  
12 was an instruction or conversation regarding  
13 reconciliation. This marriage was over. Now at about  
14 the same time in terms of the beginnings of this case,  
15 at about the same time that Jodie is seeking help in  
16 the legal world, she now seeks out the help of a  
17 therapist, Patricia Teague (phonetic).

18 Teague is treating her for depression. And  
19 what is significant about Teague's testimony is this.  
20 In August of 1992, the month before Jodie went off the  
21 cliffs, she tells Teague this remarkable vignette which  
22 presages her future and death. She tells Teague that  
23 listen here, my husband tells me he wants to take to me  
24 -- take me to a place, the Palisades, I know they're a  
25 set of cliffs, I don't know about them.

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Summation - Mello

90

1 He says I can have a picnic, bring some wine  
2 coolers. He's found an opening where there's a view of  
3 New York. He's crazy. I would never go there. You  
4 heard the testimony of Patricia Teague. You saw her.  
5 You know this story rings true. How could she know  
6 unless she was told by Jodie? And Patricia Teague, a  
7 social worker engaged in therapy, was quite obviously a  
8 woman who simply came to tell you that truth.

9 And it is a truth that she recollects, not by  
10 the aid of notes, but by the aid of memory because it  
11 is that same woman who was treating Jodie, who was in  
12 therapy with Jodie who was told the news just a month  
13 later that her client has fallen from the Palisades to  
14 her death.

15 Now in addition to the witnesses that I've  
16 discussed so far there are other witnesses that speak  
17 about the beginnings of this case, that speak about the  
18 relationship between Scharf and Jodie. Marion  
19 Hilferty, Marion Hilferty tells you she was always  
20 frightened of the defendant, but that fear was  
21 accelerated and increased as the divorce complaint was  
22 being prepared and filed, that she expressed grave  
23 concern about the service of the divorce complaint,  
24 that Jodie gave her a photograph of Scharf saying to  
25 her if you see him let me know, that she said and I

Summation - Mello

91

1 quote, "If something happens to me you know who did  
2 it."

3 You saw the testimony of Marion Hilferty.  
4 You could feel as she discussed the fears of Jodie, the  
5 fear that Jodie had. "If something happens to me you  
6 know who did it."

7 Hannah Rolson Muller (phonetic), she saw her  
8 just two days before her death, September 18. She was  
9 told by Jodie of the fear she had over serving Scharf  
10 with the divorce complaint. She told Rolson Muller  
11 that she feared the defendant would kill her to get  
12 custody of Jonathan. She too was given a photograph of  
13 the defendant. Again, if you see him tell me.

14 Maureen Durante (phonetic), Maureen Durante  
15 saw her the day before Jodie died. She was told by  
16 Jodie that the defendant had threatened her life, that  
17 he would "see her dead."

18 Maureen Glennon (phonetic), she too saw her  
19 the day before Jodie died. In reality just -- and you  
20 recall the testimony of Glennon. As the hours are  
21 racing by and it is now the night of the 19th, a very  
22 busy waitress Glennon is passed a note by Jodie. She  
23 briefly looks at it, knows it has something to do with  
24 the divorce and her fear, but is never able to speak to  
25 her.

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1 We know at about the same time that Jodie is  
2 beginning therapy with Teague and about the same time  
3 as she is going to Ben Michel to represent her in her  
4 divorce a life policy is taken out on the life of Jodie  
5 Scharf. The named beneficiary is Stephen Scharf. It  
6 is a 300,000-dollar policy with a 200,000-dollar  
7 accidental death benefit. And you all now know in the  
8 world of insurance murder is deemed a payable accident  
9 unless the killer is the beneficiary. It makes her  
10 worth more dead to Stephen Scharf than alive.

11 But we know -- Jonathan is on the 19th of  
12 September, Saturday night. Scharf wants to go to  
13 dinner with Jodie. His mother did not want to be alone  
14 with him. Jonathan is brought along. On the 20th of  
15 September, the date of her death, Jonathan overhears  
16 conversations regarding -- she -- he hears his mother  
17 say if I wanted to go out with you I wouldn't be  
18 divorcing you. But, yet, we know she does go.

19 And I think you know how that begins. The  
20 world to Jodie is her son. Use your common sense. It  
21 is the son that provides the lure to get her to go with  
22 Scharf. It is, I suggest to you, a suggestion made by  
23 Scharf, let's talk about Jonathan. Perhaps he -- maybe  
24 it's best he's with you. But she will go.

25 Those are the beginnings of what you now know

1 to be the setting that this crime takes place. We know  
2 that at 8:08 p.m. on Sunday, September 20th, a motorist  
3 arrives at Palisade Interstate Parkway Police -- that  
4 motorist will tell police officers that he was flagged  
5 down by an individual at the Rockefeller Lookout, that  
6 that individual told him his wife had fallen from a  
7 cliff, and the police now respond to that report.

8 The first police officer on the scene you  
9 recall is Police Officer Abbott. Now I want you to  
10 recollect that scene and you've been there and that  
11 your review gives you an important perspective. Abbott  
12 pulls into the Rockefeller Lookout. He sees a man who  
13 of course is Scharf. Scharf is flagging him down. At  
14 this time it is eight-plus. It is dark. It is  
15 September. Foliage is completely full.

16 Scharf will now take him to the north end of  
17 the lot where he parked his car. He will tell Abbott  
18 and Tomayo who followed shortly that as they arrive at  
19 the lookout they went through the woods that you're now  
20 familiar with, down the path to the fence, through the  
21 fence, to the rock.

22 This gives you an idea of what the foliage  
23 looked like in September of 1992. Now I want you to  
24 take this visual and now add to it darkness because,  
25 remember, Scharf will tell police they arrived at dusk,

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1 she fell, it was dark. I want you to see this scene  
2 from that perspective.

3 Now you will recall that as you enter the  
4 Rockefeller Lookout there are binoculars for viewing  
5 across the river. On the south end is a view of the  
6 northern Manhattan skyline and the George Washington  
7 Bridge. But he doesn't park there and he doesn't stay  
8 there. What he does is he goes all the way to the  
9 other end. You remember you now have to walk through  
10 the woods.

11 Now the point isn't that the path was worn or  
12 not, the point is what this looks like at dusk becoming  
13 dark and where they are going to. He will tell Tomayo  
14 that they were on the flat rock hugging and kissing.  
15 He stood up to get the blanket and wine. When he  
16 turned around she was gone. Now that's the first  
17 version that he gives.

18 He will be transported to headquarters.  
19 Serrie tells you this is what he says. We were walking  
20 and she said for me to go back to the car and get the  
21 blanket and she slipped and I didn't see her anymore.  
22 We were walking. She said to go back to the car. She  
23 slipped and I didn't see her anymore.

24 At headquarters he is interviewed by Carney  
25 (phonetic). This is what he tells Carney. They were

1 on their way to a comedy show in New York City. They  
2 decided to stop at the lookout which was a "special  
3 place." They walked to the cliffs' edge. Jodie sat on  
4 his lap on the bench seat rock and they began to kiss  
5 and hug. He told her he wanted to go back to the car  
6 to get a blanket and wine. She protested, she stood  
7 up, she fell forward off the cliff.

8 He will provide a handwritten statement and  
9 this is what he says about this tragedy. "Jodie and I  
10 were kissing and hugging on the flat rock by the trail  
11 overlooking the river about 7:30. And I was  
12 uncomfortable when I asked Jodie or told her I was  
13 going to get the blankets and the wine. She said, no,  
14 don't go. As I got up to get the wine and blankets she  
15 got up, fell forward, I didn't see her anymore. She  
16 didn't answer me. She did not cry out."

17 We now have -- as these interviews are taking  
18 place we now have Pagan and Cioffi attempting to save a  
19 life. Pagan and Cioffi now begin to rappel the cliff  
20 face. They see the ledge below the flat rock. There  
21 is a purse on the ledge. The purse is retrieved. It  
22 is retrieved by Pagan. It is tossed up to -- now these  
23 two officers are attempting to find a victim who they  
24 have been told has tragically fallen from this  
25 precipice.

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1           They are looking for signs of her path so  
2 that they can get to her as quickly as possible. All  
3 they see on this ledge is the -- they see no debris  
4 path down the cliff at that point. They get to the  
5 base of the cliff. She's not there. They look about  
6 for her. She's not there. Finally they find her, what  
7 we now know to be 52 feet from the edge of the cliff.  
8 And most importantly, what is found six, seven, perhaps  
9 eight feet up is a blood smear, a blood smear. Six,  
10 seven, eight feet up.

11           And notwithstanding any other evidence, what  
12 that tells you is she did not tumble to the cliff  
13 bottom and strike that tree. That's what that tells  
14 you. That mark is unmistakable proof that she struck  
15 that tree and she did not tumble down.

16           Now that tree and the body at rest were not  
17 photographed. And, indeed, in hindsight they should  
18 have been photographed. They were not. But what you  
19 have is the testimony of the police officers. And what  
20 you must base your decision on is the evidence that has  
21 been presented to you. And in that regard you know  
22 that that tree was smeared with blood and it is the  
23 blood of Jodie Ann Scharf. And what it tells you is  
24 something is wrong, something is wrong here. And  
25 that's what it began to suggest to police.

1           Now back at headquarters Carney is now  
2 interviewing Scharf. Time has passed. The body has  
3 been found. The prosecutor's office is contacted.  
4 Photographs are taken of Scharf. Now each police  
5 officer who saw him, Abbott, Tomayo, Serrie, Carney,  
6 each of them described him as being quite in control,  
7 in no wise emotional, saw no tears.

8           This is a photograph taken just hours after  
9 his wife's death, just a couple of hours. This is the  
10 concerned Stephen Scharf. He's so concerned that he  
11 has to suck in his stomach when this photograph is  
12 taken. That's how concerned he was about his wife's  
13 death. While we don't have the motorist, but we do  
14 have this photograph. And photographs quite often  
15 speak a thousand words.

16           And now we have the search of the car and you  
17 know that there's a bag inside a bag. And inside the  
18 innermost bag are some articles. There's a blanket, a  
19 candle, wine. There's even a gold cross intended to be  
20 a gift Scharf will later tell the police for his wife.  
21 There's something else in there that is just wrong and  
22 you of course know what that is. It's the hammer. Why  
23 is there a hammer in a bag inside a second bag with  
24 blanket, candle, wine, a gift? What is the hammer  
25 doing in that -- what appears to be picnic basket as it

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1 were? Again, something is wrong.

2 The question you have to ask yourself is  
3 this. Scharf will tell the police that he went to this  
4 place, this place that was their special place, that he  
5 went there to reconcile, that they brought the fixings  
6 for a little picnic as it were. What are they still  
7 doing in the car? Why is it that the blanket and the  
8 wine and the candle and the gift, et cetera, are not on  
9 the flat rock? Because he needs his hands free.

10 He will now be interviewed by Lynom  
11 (phonetic). Lynom first begins to discuss with him the  
12 events of Saturday, September 19th. And at first blush  
13 they may appear to be not terribly relevant to hear.  
14 And what he tells Lynom is this. He says, you know,  
15 during the week we discussed what we're going to do on  
16 the weekend. Is there anything about the marriage that  
17 you know about that suggests they ever had any  
18 conversation about anything during any week about any  
19 weekend?

20 But on this weekend he says, well, this is  
21 what we -- this is what we do. And here's the plan.  
22 We were going to go to Banana's Comedy Club in Fort  
23 Lee. Maybe get something to eat at the Plaza Diner.  
24 He also mentions oddly enough the lookout at this point  
25 with no particular connection.

1 But, you see, what happened is Jodie had a  
2 migraine. Jodie had a migraine and, therefore, plans  
3 to go to Comedy Club Fort Lee, lookout are -- when you  
4 think about this case I tell you you will think about  
5 this. She was going to go Saturday, the killing was  
6 going to be Saturday. And why is that important? Why  
7 do I say that to you? I want you to think about this  
8 from your common sense, from your own lives.

9 It's a Sunday in September. School is the  
10 next day for the ten-year-old child Jonathan. He just  
11 had to go to a Comedy Club that night. Of all the  
12 nights in all the world he just had to take her to a  
13 comedy show in Manhattan that Sunday night. He tells  
14 Lynom -- and this is important -- there was a show at  
15 8:30. They arrived at the lookout at about seven. It  
16 was already dusk. That they sat in the car. They  
17 spent about 15 minutes.

18 She had something to drink. He had a sip.  
19 She's drinking, and we know she ultimately -- her death  
20 to be .12, he is not. And he said let's take a walk  
21 where they go through the woods in the dark, through  
22 the fence in the dark, to the edge of the cliffs in the  
23 dark. Now he says to Lynom contrary to what he has  
24 told Carney she was not on his lap, you see, because  
25 that's a bit difficult here because if she was on his

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STATE OF NEW JERSEY v STEPHEN F. SCHARF -- May 24, 2011

SHEET 51

Summation - Mello

100

1 lap and she got up, he would be holding her and she  
2 could not fall.

3 Now the story changes to she was sitting  
4 between his legs and she was facing south. Now with  
5 all that you know about this marriage, with all that  
6 you know about the relationship between Scharf and  
7 Jodie, he tells police that they were on this precipice  
8 hugging, kissing, petting, that he got up, that he was  
9 adjusting his zipper which was down, that he was going  
10 to go back to the car to get a blanket and wine.

11 She stood up, said no, don't go, she fell to  
12 her knees. Think about that. She stood up, said don't  
13 go, fell to her knees, fell forward. He was two to  
14 three feet away, he tells police. She did not scream.  
15 He was two to three feet from her, but he could not  
16 save her. She fell to her knees, but he could not hold  
17 her. He now tells police that she did not scream.

18 Now Wecht gave you an explanation and I'll  
19 get to Wecht down the road because Wecht is a story in  
20 itself. But what I said to you in the beginning is  
21 what a jury trial is about, is about life experience,  
22 common sense. If you walk down the street and stub  
23 your toe in the crack of a sidewalk you say something.  
24 You utter something.

25 This is a woman who was, according to the

Summation - Mello

101

1 Scharf, on the very edge of the Palisades, the  
2 Palisades, the cliffs which you can see from the George  
3 Washington Bridge. That's how high she is. She  
4 doesn't make a sound going off. As Baden said, perhaps  
5 she was unconscious at the time.

6 Now he will tell Lynom that his marriage was  
7 what he calls an open marriage, that he had  
8 relationships with 50 to 60 other women. And then he  
9 says, oh, and by the way, my wife was engaged in the  
10 same kind of lifestyle. Now you have no evidence of  
11 that. And let's remember, let's remember, Scharf at  
12 the time was actively involved with the military,  
13 served with the military a good part of the time, on  
14 weekends, et cetera.

15 Scharf managed to stay with Terry Scofield  
16 three days a week. She had a ten-year-old boy, where's  
17 she going? Where is the evidence that she was engaged  
18 in other relationships? There is none except from his  
19 statement to the police.

20 The matchmaker witness, that told you a lot.  
21 It told you that at the end of their marriage in 1992  
22 when she was 44 years old, when her marriage was over,  
23 this poor woman engaged the service of this matchmaker,  
24 that there were a couple of responses. And it's  
25 almost, it's almost too sad that that was how she was

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1 going to meet perhaps a fellow that she could begin a  
2 new life with.

3 And that's all you know from the matchmaker,  
4 that in 1992 at 44 this is what she tried to do. And  
5 the concept of, well, there might have been records,  
6 well, there might have been, there's no evidence that  
7 there ever was. All you have is what you have and it  
8 amounts to zero.

9 Now he's interviewed by Moynihan (phonetic).  
10 And you're going to have what he said about his  
11 activities that day. I'm not going to read it to you.  
12 I want you to look at it. I want you to read it. And  
13 I want you to think about the context that those words  
14 are written, which is to say the woman he so loved has  
15 tragically died as a result of an accidental fall from  
16 the cliffs.

17 But essentially what he will say about the  
18 event of her death is that after it got dark he was  
19 going to the car. As he got up she protested. She  
20 rolled to her side, rolled to her side, got to her feet  
21 in a squatting position, and tripped forward going off  
22 the edge. Rolled to her side, got to her feet in a  
23 squatting position, and tripped forward he said. Does  
24 that make any sense? And what was he doing while this  
25 was happening because, you see, they're both on that

1 edge? And this is the woman he loved.

2 What's wrong is -- what's wrong with these  
3 stories? The statements to the police change and they  
4 are not subtle changes. They are often dramatic and  
5 they make no sense. They make no sense because what he  
6 is doing is he is not relating to you a truth because a  
7 truth is eternal. A truth is forever. A truth is the  
8 same forever. But he is creating what he wants to say  
9 is the truth.

10 Now the stories that -- by the way, with  
11 respect to the stories, we heard a lot from Mr.  
12 Bilinkas about the police, the police, the police.  
13 Well, it's the same police that took his statement  
14 which, as Mr. Bilinkas told you, in each and every  
15 version there's one central theme, it was an accident.

16 Well, those are the same police that are  
17 saying that the man that they were so after, that the  
18 man that they just had to get from square one they're  
19 taking that down and they're presenting it to you today  
20 so many years later. But the story, I want you to  
21 think about this in this only way that you can. From  
22 the perspective of your lives and common sense.

23 This is what he wants you to believe. The  
24 marriage is not on the rocks. It has been smashed.  
25 There is a pending divorce complaint. There is a 500K

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1 policy on her life. 200K is an accidental death  
2 benefit. The relationship has been an abusive one. He  
3 says he's seen 50 to 60 other women during the course  
4 of his relationship. He's got two very -- women on the  
5 hook, one of whom he's living with half of the week.

6 And he wants you to believe and he wants the  
7 police to believe that on this day when his wife falls  
8 from the Palisades, not his wife is in a car accident,  
9 not his wife suffered a heart attack, but his wife went  
10 off the Palisades, this was an accident. And they were  
11 there to hopefully reconcile. There is nothing in this  
12 case that could lead you to believe that there is even,  
13 even the smallest truth in that.

14 If you take his story further, he tells  
15 police that they were going to Manhattan, they were  
16 going to Manhattan to an 8:30 show. How does he end up  
17 on the Rockefeller Lookout at 7:30? What happened?  
18 They have to be in New York, in Manhattan, for an 8:30  
19 show. She is dressed to go out. They are going to the  
20 City. They are going to a show. The show starts at  
21 8:30. What are they doing up on Rockefeller Lookout?

22 He tells you in his statements that at the  
23 time she fell he was going to do what? He was going to  
24 go back to the car to get what? The blanket and the  
25 wine. What happened to the comedy show? It's dusk

1 when they arrive. They sit in the car according to his  
2 statements. She drinks, he has a sip. They begin to  
3 take a walk. It's now dark. It's now dark.

4 This is where the two young lovers are  
5 walking through in the dark. That's what he tells the  
6 police. You saw the Palisades. You had a unique  
7 experience. You -- help you understand all that has  
8 come before you.

9 With all that you know now do you think she  
10 was going there willingly? He tells police it was  
11 their spot, their spot. It wasn't their spot, it was  
12 his spot. And it's important to him. Now Teague tells  
13 you that just a month prior Jodie tells her he wants to  
14 take me to the Palisades, have a picnic, I can bring  
15 some wine coolers. Sound familiar? I won't go. She's  
16 afraid of heights.

17 You saw from the vantage point of the jury  
18 view -- we have that wonderful photo D-6. Here it is.  
19 D-6, a smiling Stephen Scharf with the cooler at the  
20 lookout. What you don't have, what you never will have  
21 because it never ever existed is D-6A, a photograph of  
22 a smiling Jodie Scharf here at that place.

23 Somehow this managed to survive 20 years.  
24 Common sense. The story he tells, going to Manhattan,  
25 comedy show, night out on the town, she's dressed,

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1 she's dressed in white shorts. He says -- he says we  
2 were sitting on the flat rock hugging and kissing. She  
3 sat -- at one point he says she sat between my legs  
4 facing south. Remember, it's dark, dark as can be.

5 Take a look at the rock that she sat on in  
6 white shorts while she was going to New York City to  
7 see a show. Who is going to sit on that rock, which by  
8 the way is a photo taken the next day, who is going to  
9 sit on that rock and that dirt in white shorts when  
10 they're going to New York City? The answer is nobody,  
11 nobody.

12 He says to police I took her there to  
13 reconcile. Let's think about that -- not I took her to  
14 a charming restaurant, not I took her for a getaway  
15 weekend in a romantic place, I took her to the edge of  
16 a cliff.

17 Again, you must view all the evidence and you  
18 must start at the beginning. And I'll tell you where  
19 the beginning of all problems in this case are. All  
20 the problems start with Mr. Scharf. Every single one  
21 starts with Scharf. From the first moment it starts  
22 with Scharf.

23 He takes her to a cliff edge to reconcile  
24 with a woman he treated like dirt, who he abused, who  
25 he didn't give a damn about, who was his wife while he

1 was seeing -- I don't know how many other people, and  
2 that's not to tell -- say he's a bad man. No. It's to  
3 tell you he did a bad thing which is murder. He didn't  
4 give a damn about her.

5 And he wants you to believe that he took her  
6 to the edge of a cliff to reconcile and it just  
7 happened to be that she was worth 500K at the bottom of  
8 the cliff, but it -- passive. And everything here  
9 starts with Scharf. And it's going to end with Scharf.

10 He tells the police the first thing my wife  
11 -- my wife fell off the cliff. We were hugging and  
12 kissing. We were petting. She fell tragically and  
13 accidentally to her death. And every police officer  
14 that comes on that scene that's what he tells. And he  
15 says and there's where she went off, right there,  
16 that's where we were. It starts with him.

17 If you sat and listened to the testimony and  
18 said to yourself how do I put this together, the  
19 difficulty is it started with him and it was rotten  
20 from the beginning. And it was rotten with the flat  
21 rock, that is the first place. Now he tells police, he  
22 says, oh listen, I got to tell you we had this open  
23 marriage. Okay. We discussed that.

24 But one thing we know from it is it's clear  
25 that one of them has an open marriage and we know it

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1 from the best source because it's his words -- he's got  
2 an open marriage. Okay. And he's seeing woman after  
3 woman which by the way doesn't ever end, as you heard  
4 from the testimony from this -- but not to digress, he  
5 says, listen here, listen here, I got two special women  
6 I've got to tell you about. One of them is Scanlon,  
7 one of them is Scofield.

8 And he tells Jimmy Lynom, he says but I broke  
9 up with them in September. Labor Day or thereabouts I  
10 broke up with them. Now the only problem with that is  
11 Scanlon and Scofield -- and they've got no, as they  
12 say, dog in this fight, and they are both two women who  
13 loved him and they're both two women who he manipulated  
14 also. That's who they are. What did they tell you?  
15 What did they tell you? What breakup?

16 I thought I was going to end up with this guy  
17 because, you see, a mistress or two is a very sticky  
18 thing to have around when your wife who you have so  
19 heavily insured with an accidental death benefit as a  
20 kicker, very sticky proposition. So you've got to  
21 account for that and tell the cops, but I broke up with  
22 them, except they tell you differently.

23 Think about what he tells Lynom. And you  
24 heard -- you heard Lynom's testimony. You watched him.  
25 He recited chapter and verse of what was said to him,

1 good, bad, indifferent. Just don't forget, the story  
2 that he's taking down ostensibly is his defense. It  
3 was an accident. And he's just taking it down, making  
4 notes. And the critical notes that you recall he made  
5 are -- don't forget this when you're deliberating --  
6 8:30 show, get there at dusk, she goes off at dark.  
7 That triangle is a killing triangle for him. Okay.

8 He tells Lynom she goes off the cliff. I  
9 went back to the car for a flashlight. I want you  
10 really to -- really to focus on this when you're  
11 talking about what makes sense. I went back to the car  
12 to get a flashlight. Think about that. You're a man.  
13 Your wife has fallen from the cliffs. You are in love.  
14 You do what? Go back to the car for a flashlight?  
15 What in God's name would you be able to do with a  
16 flashlight? Not run back and get help, no. Run back  
17 and get a flashlight.

18 And then after he gets the flashlight he runs  
19 back to the cliff where his wife just went off. Now --  
20 now what does he do? He runs back and somehow  
21 according to testimony you've heard on the roadway,  
22 roadway, flags down a passing motorist. And we didn't  
23 get his name, that's true. But we did get something.  
24 We got Serrie who told you that motorist was more  
25 excited than Scharf was.

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1 You've got to ask yourself this question.  
2 You know -- you know that Scharf knows that area. How  
3 do we know? Well, the best way, he said been there,  
4 been there, been there, been there 30 to 40 times with  
5 Jodie alone. Okay. That's just Jodie. That's not any  
6 other girlfriend that might have been there with him.  
7 Okay. Just Jodie 30 to 40 times.  
8 We know he grew up in the area. We know he  
9 grew up in the area. He knows the area. He knows the  
10 Rockefeller Lookout. And he knows because he must by  
11 way of clear inference know police headquarters is just  
12 up the road two, three, four miles. Does he get in his  
13 car and rush to headquarters? No. He trusts that he's  
14 going to stop some unknown person, tell that person my  
15 wife just fell off a cliff, and that person is going to  
16 go to the police. In this instance that person did,  
17 but that's a big gamble.  
18 Most importantly, what doesn't he do?  
19 Remember what Mr. Bilinkas was saying, you heard the  
20 testimony by several police officers there were several  
21 cars, there were 15 cars, they didn't get the names of  
22 any of these people. Well, you know what, none of  
23 those people stayed. None of those people stayed to  
24 say anything to the police. None of those people had  
25 anything to say to the police. And maybe I wish I had

1 one of those people because maybe one of those people  
2 saw something that I could have brought to you. You  
3 know, it's just not a one-way street.  
4 But the fact of the matter is we don't have  
5 those people. And it's just speculation on what they  
6 might or might have said, whether they might have  
7 helped me or not. But this much we know, he's running  
8 around with a flashlight going nowhere fast trying to  
9 find a motorist and there's -- we don't know how many  
10 people right there in the lookout. Does that make any  
11 sense to you?  
12 And we know when Abbott comes into the  
13 lookout all he sees is Scharf walking toward him with  
14 his hands up in a manner to flag him down. No hubbub,  
15 no other person, nobody walking around oh my God, my  
16 wife just fell off a cliff. Nobody hysterical. Nobody  
17 doing anything, just Scharf, who says with flat effect  
18 my wife fell off the cliff.  
19 Now I tell you and I think the evidence will  
20 convince you that all that was in that car save one was  
21 a prop, blankets, candle, gift, wine. All of it made  
22 to look like this was a romantic interlude between  
23 husband and wife. One item that wasn't a prop and it  
24 doesn't belong there and that is the hammer.  
25 What does Scharf say about the hammer? Now

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1 remember, you have to take all of this, all of it as a  
2 whole, it's just not there's a hammer in the car  
3 because a hammer in the car doesn't speak to you. A  
4 hammer in the trunk doesn't speak to you. This is what  
5 must speak to you. On this day of all days in the  
6 context of the relationship that you know, on the night  
7 that his wife tragically, according to him, falls off a  
8 cliff to her death, he just happened on that same day,  
9 that very same day had to fix a drawer, a kitchen  
10 drawer.

11 Now I don't think that anything you have  
12 heard suggests to you that Mr. Scharf was a man who was  
13 so concerned about such matters, but isn't it indeed a  
14 coincidence that on this day of all days under all the  
15 circumstances that you know there's a hammer not in the  
16 trunk, not even on the floor in the rear, but it's in  
17 with the wine, the blanket, the candle, and the gift.

18 That weapon I will suggest to you when you  
19 see this case and you see it from all perspectives that  
20 was why the blanket, the wine, the candle, the gift, et  
21 cetera, they're in the car, but he and she are on the  
22 cliffs. He needed his hands free. And that weapon was  
23 either, I suggest to you, a weapon of either coercion  
24 or ultimately insurance just in case. And, yes,  
25 there's no doubt there's no blood on it, but that

1 doesn't mean it didn't have a purpose, that just  
2 doesn't mean -- and, again, remember it starts with  
3 Scharf.

4 He says he just had to fix this drawer. You  
5 heard the testimony of Ernest. Ernest says I don't  
6 know, this guy starts telling me about this drawer. He  
7 starts telling me he fixed this drawer. I looked at  
8 the drawer, there's nothing wrong with the drawer. And  
9 you know what, even if it had something wrong with it  
10 which it did who's to say when it was fixed, who fixed  
11 it, how it was fixed. And there's nobody going to tell  
12 you that.

13 So, yes, the drawer wasn't taken and that  
14 comes down to a so what. It tells you nothing. What's  
15 important about the drawer is what he says, that on  
16 this day of all days he had to fix that drawer, forgot  
17 about the hammer in terms of where to put it, like not  
18 just leave it wherever it was. But somehow he manages  
19 to walk out the door with the hammer obviously in his  
20 hand because he says he put it there. Nobody else.  
21 Wasn't Jodie. It was him. How do we know it? He said  
22 it. He puts the hammer in that bag.

23 And I tell you they say if a gun be shown in  
24 the first act of a play it must be used the third. I  
25 tell you when you look at this case from all the

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1 evidence you will say that hammer had a use. And you  
2 may not know exactly how, but it was there for a reason  
3 and the reason was all bad.

4 The spot on the ledge, let's remember --  
5 let's remember this. First of all, remember Wecht who  
6 said he wasn't a big guy, wasn't a muscular guy, well,  
7 yeah, okay. See this is -- this is one of the problems  
8 of -- of time, see. You're looking at Scharf today.  
9 To decide this case especially you must go back in  
10 time. This is the Scharf you must see. You think he's  
11 well built, you think he's muscular? Don't forget  
12 that.

13 This is the photo of Scharf, a different side  
14 of Scharf. This is the side that Scanlon, Scofield,  
15 and woman after woman including unfortunately his wife  
16 saw. This is the man who manipulated -- that is the  
17 man -- the face of the man who could kill and did.  
18 Remember, this spot, the edge of the cliff, it is not  
19 their spot, it is his spot. Why is it his spot?  
20 Because only this spot works.

21 Remember, defense witness, what did he say on  
22 cross-examination, he's an engineer, he understands  
23 what? Physics -- distance. He's also something else.  
24 He's special forces trained and all that implies, to  
25 include he is able to negotiate areas such as this --

1 why does it have to be that spot? Why must it be this  
2 and no other?

3 Think about this. You're a man. Your  
4 marriage is now in shatters. Your wife has filed a  
5 complaint for divorce. You're facing an expensive  
6 legal custody, asset battle. You have taken out a  
7 500,000-dollar policy on your wife's life, 200 of which  
8 is an accidental death benefit. And she goes off the  
9 cliffs of the Palisades when she's with you.

10 You can't tell the police she's somewhere  
11 else because somewhere else just isn't believable. And  
12 that's why this is the spot that he tells the police.  
13 Indeed, Mr. Bilinkas is absolutely right, many people  
14 break the rules, cross the ropes, walk on the cliffs.  
15 Many people I am sure have gone to this exact same  
16 spot. But this woman died there. This is the spot  
17 that he wants to say is their spot for this romantic  
18 interlude because there can be no other. It has to be  
19 there. How could he have any other place?

20 And then ask yourself apart from the fact  
21 that he doesn't take her to a romantic dinner in any  
22 one of God knows how many restaurants in Morris county  
23 or Warren county or any other county in New Jersey or  
24 for that matter in the City or a weekend or so forth,  
25 they end up here.

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1 Let's assume just for one brief moment, one  
2 brief moment that he goes to the Rockefeller Lookout  
3 with her and his story is to reconcile. You've been  
4 there. You've seen it. Why are they not at the south  
5 end? Why are they not at the area where people  
6 congregate? Why are they not where the binoculars are,  
7 where there are benches, where there is safety? Why  
8 they're not at any points in between? Why are they all  
9 the way away from everyone on the north end? And then  
10 why in God's name do they end up, according to him, at  
11 this point?

12 And you know that photograph -- I know Mr.  
13 Bilinkas discussed with you that "well worn path."  
14 It's of no moment. That's not the point. The point is  
15 what this place looked like in September in the dark.  
16 That's the point. Yeah. You also know that as you  
17 walk down at this point, now you've been there, you've  
18 seen it, as you walk down there's that incline into the  
19 woods. Three steps, you can't see the parking lot and  
20 nobody can see you. That in military terms is called  
21 good cover. In criminal terms it's a -- the beginning,  
22 a killing.

23 All of that says that the stories that he  
24 tells to the police are preposterous on their own.  
25 They virtually, virtually ask you to suspend your

1 common sense and your intelligence. Don't let that  
2 happen.

3 The physical evidence in the story doesn't  
4 make any sense. There's no blood on the ledge.  
5 There's no blood on the cliff face to the ledge.  
6 There's no blood on the ledge. There's no blood on the  
7 rocks where the pocketbook is found. There's nothing  
8 on there except what we find is a purse and two of its  
9 contents which the police missed.

10 Well, they weren't looking for a compact and  
11 a credit card. What they were looking for was how to  
12 find a body that went off the cliff supposedly at this  
13 point according to her husband. They're looking for  
14 blood. They're looking for a debris path. They can't  
15 find any. What does that tell you? What it tells you  
16 is she didn't pass that way.

17 The photographs that you saw, one of which  
18 was shown to you by Mr. Bilinkas, what's important  
19 about them? First of all, they show you where the  
20 witnesses have identified the location of the  
21 pocketbook. But what's most important about them is  
22 there's no blood there. And next those photographs  
23 were taken the next day. Lynom and Pagan are both at  
24 the cliff edge the next day. Photographs are taken by  
25 Lynom the next day of that cliff edge and ledge.

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1 There's no blood anywhere.  
2 She, according to Scharf, fell from that  
3 edge. They rappel down. There's no debris path. And  
4 they're looking every which way to find a debris path.  
5 Remember, apart from any mistake or lapse in judgment  
6 that Mr. Bilinkas would like to suggest to you  
7 occurred, at this moment in time they are trying to  
8 find a human being who fell from the cliffs. And those  
9 two boys, they know what that means. And one thing  
10 they know is they know the cliffs.  
11 And they're looking, they're looking to find  
12 a way, did she pass by this way, time is running. And  
13 there's nothing, nothing. They get to the base of the  
14 cliff, they drop down. There's no body. There's no  
15 body in the rocks coming down the cliff. Oh and, by  
16 the way, you saw that wonderful, the high scan lasers  
17 that Shorr (phonetic) showed you, the machine that  
18 cost, I don't know, he said a couple of hundred  
19 thousand dollars, wonderful exhibit. Okay. You saw  
20 the rocky promontories, she's not on any of those.  
21 She's not on the ledge where the pocketbook  
22 was. She's not anywhere on the cliffs. And you see  
23 the photos of the cliffs and the base of the cliffs,  
24 how the rocks jut upward toward the face. She's not  
25 anywhere there, not the ledge, not the promontories,

1 not anywhere in between, and most importantly, she's  
2 not at the bottom of the cliff where she was supposed  
3 to have fallen. Something is wrong here.  
4 They look for her. And, by the way, it  
5 wasn't 15 minutes. I think it was about 33, but I  
6 won't quibble too much about that. That's how long it  
7 takes them to get down there and start to look.  
8 They're looking for a human being. They're not looking  
9 for a washing machine. They're not looking for a  
10 trinket. They're looking for a human being to save.  
11 You think they looked hard?  
12 But they can't find anything, nothing at the  
13 base of the cliffs, until they see her at the tree.  
14 And, by the way, let me end this one right here. Let  
15 me borrow -- there's been a whole trial, it's pretty  
16 clear to me that all the experts, all the evidence,  
17 everything pointed to this is the tree, but now in last  
18 moment summation Mr. Bilinkas asked this question,  
19 well, how do we know it's the right tree? Well, folks,  
20 take a look at 267 which you're pretty familiar with I  
21 think.  
22 This is the tree. Now he indicates was it  
23 another tree? Well, exactly what other tree would that  
24 be? You see, to the south it's even further away.  
25 Can't be that tree. Can't be the tree on the left,

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1 it's even further away. You want to make it that tree,  
2 Mr. Bilinkas, I'm all good with that because that makes  
3 even less sense because you have to be traveling  
4 southbound, way away from where she should be.

5 Well, there's one other big tree here, north.  
6 The problem with that for Mr. Bilinkas and the defense  
7 is that tree is even further away than the tree that  
8 you know that there is no doubt I am sure in your mind  
9 is the tree. There's a strand of only three and two of  
10 the three are even further and in exact wrong  
11 directions for a fall from this point. And that's a  
12 fact. And I'm sure you will find it is so.

13 But now go back to that tree. We heard much  
14 from Mr. Bilinkas about blood, tissue, hair. Well, you  
15 know, truth -- truth isn't sometimes -- sometimes so  
16 easy. Sometimes you have to look, you have to  
17 understand, you have to understand the facts in a  
18 context. Police officers testified before you that  
19 they saw blood and tissue and, yes, Officer Pagan said  
20 -- he termed it brain tissue.

21 Well, Officer Pagan is certainly not a  
22 medical examiner. And I know you appreciate that.  
23 What he said was he saw tissue that he called brain  
24 tissue and maybe he was wrong, but maybe he wasn't  
25 wrong about tissue. And he's definitely not wrong

1 about blood. You see, it's the blood smear that I  
2 think was described as about three feet downward  
3 because that is the X that marks the spot. That is  
4 where Mrs. Scharf ended her life.

5 And you don't go off the cliff, tumble down  
6 the cliff, or -- and we'll get to this -- in Wecht's  
7 terms being propelled by a rock off the cliff, you  
8 don't go down, land on the bottom, and then get up and  
9 hit your head on the tree six feet up. That doesn't  
10 happen ever. And it especially isn't going to happen  
11 with a passive fall as Mr. Scharf described to police.

12 And that begins -- you see, when Scharf puts  
13 the point of fall where you have seen it at that  
14 precipice and the body is 52 feet from the cliff edge  
15 something is wrong. It is a riddle that baffled, that  
16 baffled and baffled for years investigators and police.  
17 Why is she here? If she falls down these cliffs why  
18 isn't she somewhere in the -- as Wright (phonetic)  
19 referred to it -- the shoots, the rugged edges of the  
20 cliffs? Why isn't she there?

21 Why isn't she at the base of the cliff? What  
22 is she doing 52 feet out? That's what's wrong. It  
23 cannot be innocent. What they don't understand is how  
24 -- right from Washington state where there are  
25 mountains is enlisted. They do what we now know to be

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1 -- let's call it sandbag test. What's important about  
2 those tests? This is what's important.  
3 Number one, every bag tossed hit the cliffs  
4 as it was going down, every one. The second thing  
5 that's important, no bag ended up 52 feet from the  
6 cliff edge. The only bag that came relatively close  
7 was the last toss, Bag 4, you actually saw this point  
8 in your view of the cliffs. See, Bag 4 goes off here,  
9 you see, much lower, much lower and much closer to the  
10 tree.  
11 But that doesn't make it -- and if you  
12 remember you can in your mind's eye see Detective  
13 Wright just do this at the cliff edge at that point,  
14 just rolls it over. Doesn't come anywhere near the  
15 tree, but it's closest.  
16 Now in a moment I'm going to go to the  
17 science, but before I do remember in my opening I said  
18 to you look at the insurance, I said to you. There's a  
19 500,000-dollar policy. He has a ten-year-old child and  
20 he never, never, never makes a claim for that money.  
21 And I said to you then and I say to you now there is no  
22 reason, none consistent with innocence for that.  
23 For those of you who have children, those who  
24 do not, brothers, sisters, moms, dads, what is  
25 insurance about? Insurance is about replacing loss.

1 Insurance about replacing lost income. He's got a ten-  
2 year-old boy. And he doesn't make a claim for the  
3 money.  
4 In his opening Mr. Bilinkas said something  
5 along the lines of there's an answer for that. I'm  
6 sorry, I didn't hear any answer to that, did you? You  
7 know why? Because there is no good answer to that.  
8 That father should have been at that insurance  
9 company's door the next day.  
10 That father should have gone to that company  
11 and said give me the money. That father should have  
12 gone to that insurance company and said give me that  
13 money, I have a ten-year-old boy to take care of.  
14 Well, he didn't. And that in the world of the criminal  
15 jury trial is called consciousness of guilt. Why he  
16 didn't do it, Jonathan told you. He said to Jonathan I  
17 didn't take it because it would give the police a  
18 motive. And indeed, it would and does.  
19 But of course we know that many years later  
20 when perhaps he thought the trail was cold, the hounds  
21 had left, and the entity known as the unclaimed trust  
22 -- property trust fund sends notices, then he takes the  
23 money, but not immediately. That had to be pondered,  
24 but he did. And now the money is good enough, but not  
25 when he had a boy -- and now we come to the last piece,

1 the science of the piece.

2 Now you know by the testimony that you've  
3 heard that a cold case review began in or about 2004,  
4 that witnesses are checked, rechecked, information is  
5 reviewed, et cetera, et cetera, that the medical  
6 examiner Maryann Clayton will now begin her review of  
7 this particular case. Back in 2005 she indeed does  
8 meet with Dr. Baden.

9 And, by the way, at this point let me say  
10 this. I think after hearing the testimony of Maryann  
11 Clayton and actual seeing her in the flesh and  
12 listening to her testimony and watching her reactions  
13 to suggestions that somehow her opinion was co-opted by  
14 Dr. Baden is patent nonsense.

15 She goes back to the scene. This time she  
16 gets a different perspective, you see, because to  
17 understand this case you do have to have that  
18 perspective. You have to see this. And she reviews  
19 all of this and she amends the death certificate to  
20 homicide.

21 And she tells you this is a single blunt  
22 force injury, that this constellation of injury was the  
23 result of an enormous impact against a fixed object,  
24 that her, if you will, insides exploded. Every rib is  
25 fractured, left and right, front and back. Her sternum

1 is fractured. Her clavicles are fractured. She  
2 suffered massive skull fractures, facial fractures, the  
3 globe of her right eye severed. Her head torn apart.

4 The skull fractures are complex fractures.  
5 They could not be caused by a passive fall from about  
6 10 feet, 11 feet, cannot be, cannot be. Those injuries  
7 are from here to here. It was as if a freight train  
8 hit her except she hit something. And that something  
9 is the tree.

10 What's important about the testimony of the  
11 medical examiner is what is not seen. There are no  
12 fractures to her extremities, no fractures of the  
13 hands, forearms, upper arms, legs, feet, toes. Her  
14 back is clean. What happened to this woman? The only  
15 thing that now makes sense after she puts together all  
16 that is found at postmortem examination and that which  
17 is not found and after having the opportunity to see  
18 the scene, the scene, she says this cannot be. It  
19 cannot be a passive fall. She could not have passively  
20 fell and tumbled. She had to have been propelled. It  
21 is a case of homicide.

22 Now interposed by the defense is the  
23 testimonies of Shorr, the engineer, and the celebrated  
24 Dr. Cyril Wecht. And what does Shorr tell you? It's  
25 really very simple. Shorr tells you that you cannot go

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1 from Point A, the precipice, to Point B, 52 feet from  
2 the cliff precipice, cannot go from Point A to Point B  
3 unimpeded meaning -- that is a statement of physics.  
4 And it is a statement of physics, science, and I agree  
5 with it. You cannot go from Point A to Point B,  
6 Engineer 1, Becker said so, no question about it.  
7 Shorr says so, no question about it. And I agree.  
8 Remember where this all started, right here.  
9 That's the chair that started it all. But you see,  
10 Shorr who gave a very interesting presentation, in fact  
11 I think I remarked upon it, Shorr's testimony means  
12 something in one respect and one only. If she went off  
13 Point A she can't get to Point B unimpeded, but do you  
14 remember my examination with him on cross? If you  
15 change Point A your theory is of no consequence. And  
16 what did he say? You're right. Move it 30 feet it's a  
17 whole different ballgame.

18 And that's all his testimony means, which is  
19 to say it really doesn't mean anything in terms of your  
20 deliberation. But if you noticed there was one little  
21 thing that Mr. Shorr said, one little thing he said  
22 near the end of his testimony. He's a smart fellow who  
23 knows Wecht is involved. He's a smart fellow. He  
24 said, well, you see -- one thing he just kind of threw  
25 out and he said, well, what I can't say is if she

1 struck something what might happen. Does that sound  
2 familiar?

3 Shorr is in the defense team. Shorr is the  
4 setup man for Wecht. See, Shorr says if you go from  
5 Point A you can't get to Point B unimpeded, but if you  
6 hit something, well, maybe you can, but then again  
7 maybe you can't. But he says maybe you can. So he's  
8 the setup man for Wecht.

9 And now enter Dr. Wecht. Dr. Wecht, no  
10 question, is superbly credentialed. Well, so is Dr.  
11 Baden. Mr. Bilinkas says he's world class. So is Dr.  
12 Baden. But here we have a divergence of opinions,  
13 don't we? What does Wecht tell you? You know what,  
14 before I ask you what does Wecht tell you, let me ask  
15 you to just remember for a moment what I said now so  
16 long ago in opening, am I asking you to believe Dr.  
17 Baden because he's Dr. Baden? No.

18 I'm asking you to believe the opinion because  
19 it feels right to you here, because it comports with  
20 your common sense, because it makes sense to you.  
21 That's what opinion is premised on. The Judge is going  
22 to instruct you, you can take or leave the opinion of  
23 any expert. You can assign it any worth or none as you  
24 will. And all I ask is when you think about this case  
25 and you think about the science in this case, I ask you

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1 to think about it from the perspective of what makes  
2 sense to you. And this is what the esteemed Dr. Wecht  
3 told you.

4 Number one point, on cross he must admit that  
5 his theorem of accident is a push, a tie, with  
6 propelling from a cliff. In short, he must admit that  
7 the injury pattern he perceived and testified to exists  
8 whether it was the result of a push or a passive  
9 accidental fall. So of what value is he to you?  
10 Because if it could have happened in the Wecht's schema  
11 either by accident or by push, then you're back where  
12 you should be. And that is common sense and that is  
13 all of the facts in this case taken together.

14 And I pushed him a little further and I said,  
15 okay, now we agree, Doctor, finally -- he was initially  
16 you'll recall reluctant to because he saw, he saw what  
17 was coming -- we agree that all you said about injuries  
18 could be the result of a push or an accident, we agree  
19 that the fall that you've described could be the result  
20 of a push or an accident. Tell me your scientific  
21 basis upon which you say to a reasonable degree of  
22 medical certainty it was an accident.

23 At first you recall he didn't have an answer.  
24 Then he caught his sea legs and he said, okay, she was  
25 a one-two and it was dark and it was a ledge. Okay.

1 That's your scientific basis. She was a one-two.  
2 Someone could push a person who's one-two. It was  
3 dark. Someone could push a person one-two in the dark.  
4 It was a ledge. Someone could push a person who's one-  
5 two in the dark on a ledge. That's his scientific  
6 basis for his opinion. Remember, it's his opinion this  
7 was an accident.

8 And then he tells you the beginnings of what  
9 I think truly stress -- stretch credulity to the  
10 ultimate. He tells you she fell passively, okay,  
11 passively and she was, his word, impaled, impaled on  
12 what we now are calling I guess it's Rock B. Rock B.  
13 Now he says next at about that simultaneous moment her  
14 head is impinged between Rocks C and D. All right.

15 He wants you to believe that first she fell  
16 passively, somehow injured her lower extremities  
17 meaning scrapes, bruising that you see on her legs, on  
18 that ten-foot sheer edge. I want you to think about  
19 that. According to him, remember the little  
20 demonstration that was given, she's on the precipice,  
21 she falls forward, head forward, and somehow she  
22 injures her legs on that cliff face.

23 Ask yourself how does that happen as she  
24 falls over the ledge? And remember, you know, this is  
25 a human being who according to Mr. Scharf is on this

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1 point, she is falling off this precipice into the  
2 abyss. Doesn't make a sound. And somehow she manages  
3 to fall in such a way to be flush against the cliff  
4 face and at the same time impale her chest on Rock B.  
5 That requires a geometry that the human body cannot  
6 adapt to.

7 But there's more, there's more. He says at  
8 the very same time she has her head impinged, impinged,  
9 caught between Rocks C and D. If that isn't a one in a  
10 billion I don't know what is. Goes off the edge  
11 against the sheer face, impaled on the chest, head  
12 impinged between the rocks. Okay. If she was impaled  
13 why isn't she there? If at the same time she was  
14 impaled and her head was caught between these two  
15 rocks, why isn't she on there on the ledge?

16 Look at that head injury. And remember, both  
17 sides. Does that look like it's consistent with what  
18 Dr. Wecht has told you and your common sense? Look at  
19 the chest injury. You think she suffered those  
20 injuries just falling passively? By the way, as she  
21 fell passively I guess she didn't even try to break her  
22 fall. Does that make sense to you?

23 Now the measurement nonsense. Well, there's  
24 a nine-inch chest wound. Wecht says he measured B and  
25 found it to be nine inches. Well, we don't know how he

1 measured it. There's no memorialization, no photograph  
2 extant of his measurement. Thumb to thumb, quarter  
3 inch can make a big difference depending on how you  
4 measure, depending on the edge you measure and how you  
5 measure it.

6 We had the high definition laser scan,  
7 nothing there. No measurement there. We have the head  
8 injury which he claims is the result of an impingement.  
9 I don't remember any measurements being taken there. I  
10 don't remember any testimony about measurements that  
11 matched precisely. And I don't have any  
12 memorialization of any of that either.

13 But, most importantly, where's the blood? If  
14 she struck that ledge in the manner described by Wecht,  
15 forget about the chest wound, the head which --  
16 exploded, look at that. I hate to show it to you.  
17 Look at that. And that's just the right side.  
18 Remember all injuries are right-sided, except there it  
19 tears the scalp asunder. There would be blood all  
20 over, but there's no blood.

21 Back to the chest wound. He says -- and I --  
22 Mr. Bilinkas very cleverly, very artfully referred to  
23 that Rock B as a sharp edged rock. If she was impaled  
24 in the manner described by Wecht on that sharp edged  
25 rock, where's the tear in the clothing? Now we don't

1 have the clothes. That is true. But we do have these  
2 photographs.

3 There's the blue sweater, the crocheted vest,  
4 the outer white jacket. Where's the tear from that  
5 sharp edged rock which impaled her on her chest, which  
6 managed to impale her in such a way as to blow out her  
7 rib cage, front, back, left, right, sternum? Where's  
8 the tear? Don't see it because it isn't there because  
9 it didn't happen that way.

10 Here you see -- what you can tell by this  
11 photograph apart from the horrible injury is the outer  
12 jacket, the innermost garment being the blue, the  
13 crocheted vest over the blue. Look at -- does it not  
14 look just like someone who hit a tree at an enormous  
15 velocity and as they hit it and slid down the clothes  
16 are down.

17 In short, Wecht can't be trusted, cannot be.  
18 Your common sense will solve that riddle. He says,  
19 well, the purse was on the ledge. Well, guess what,  
20 the purse could have been -- and I suggest to you you  
21 will find was placed on the ledge by Mr. Scharf. Did  
22 we retrieve that compact? No. Might it have had print  
23 evidence? Maybe.

24 But he didn't need to touch it after all, did  
25 he? He could have just simply -- it. And his prints

1 on his wife's pocketbook, well, that's not terribly  
2 unusual I think -- nor would it mean anything to you.  
3 But I'll tell you this. When you're done looking at  
4 all the evidence in this case you will conclude that  
5 that purse didn't just end up on that ledge. And, by  
6 the way, exactly what was she doing on that ledge with  
7 a purse under all the circumstances that you now know?

8 Wecht says to you no scream. Well -- well,  
9 that's easily explained -- she was .12. Well, what  
10 does that mean, she was a .12? She can't scream? One  
11 might even argue that would exacerbate her reactions.  
12 But I tell you this. If you fall off a cliff you will  
13 scream. But the ultimate, the ultimate Wecht insult to  
14 your common sense is his theory which is she was first  
15 impaled chest, simultaneously or just about her head is  
16 impinged between two rocks.

17 Then he uses the word -- I still do not  
18 believe a scientist said -- she was catapulted,  
19 catapulted, that's his word, out into the abyss where  
20 she struck the tree some 52 feet from the base of the  
21 cliff. That is so so contrary to any notion of common  
22 sense, much less medical science, that she struck a  
23 rock -- remember, by the way, in terms of the sandbag  
24 test, there was one bag struck a rock and what happened  
25 to it, it exploded. That's a sandbag. The bag filled

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1 with sand hit a rock, exploded.

2 Mrs. Scharf isn't a sandbag, not a sandbag.  
3 If she hit in the manner Wecht said, we would have  
4 found her on that ledge. But he wants you to believe,  
5 he wants you to believe that she fell passively ten  
6 feet, was impaled, impaled, her head was impinged,  
7 impinged, and she was catapulted out. Of course his  
8 analysis ends there because he doesn't say anything  
9 else about what happened then.

10 See, because one of the untidy problems for  
11 that science is what is not seen, what is not seen  
12 which are the lack of injuries to the backside of Mrs.  
13 Scharf which says what, she didn't tumble. Nobody  
14 tumbles down those cliffs and has a back that looks  
15 like that. She had no injuries to her hands, arms,  
16 legs, feet, nothing because she didn't tumble down  
17 anywhere.

18 But here is the final piece -- Wecht. Where  
19 is Shorr? Where is the engineer, the expert in physics  
20 on this? He's not to be found. Shorr offers no  
21 evidence on this. Why isn't Shorr who understands  
22 physics, the mechanics of falling objects, distance,  
23 vectors, trajectory change, why isn't Shorr telling us  
24 this is how it happened? Because he knows like you  
25 know that when you hit rocks like that you don't gain

1 energy, you lose energy. He knows like you know you  
2 don't get catapulted out by hitting those rocks.

3 You cannot if your chest is impinged --  
4 impaled, your head is impinged from a passive fall be  
5 catapulted out. In Shorr's terms the physics don't  
6 work, period. Wecht has created nothing more than a  
7 disingenuous construct for you to bite on. And the  
8 facts tell you otherwise. Your common sense tells you  
9 otherwise.

10 If she went off at that point and she went  
11 off in the manner Wecht describes she would have struck  
12 the cliff face on multiple times just as the sandbags  
13 did. And she would have sustained a whole series and  
14 panoply of injuries that she did not sustain. He wants  
15 you to believe she was a rubber ball bouncing off the  
16 cliffs. And that's wrong.

17 Finally, someone who I submit to you makes  
18 sense and that's Dr. Baden. And I'm not going to be  
19 long with this because you have the testimony, it is  
20 recent, and it is simple. He tells you what? I can't  
21 tell you how this happened in one measure, but it  
22 didn't happen the way he said it did. And I may not be  
23 able to tell you exactly how it happened, but I don't  
24 have to. You will hear no instruction from the Court  
25 that I have to prove how it happened. I just have to

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1 prove that it happened, that he killed her.  
2 He will tell you -- he says, small point, but  
3 note .12. When you're asking yourself how did this  
4 happen, how did he get her to this point of jeopardy on  
5 those cliffs and it's not that ledge? .12, what did he  
6 say? At that level might her ability to assess a  
7 threatening situation be impaired? Yes, it might. And  
8 you know in your experience that is what happened here.  
9 Remember, seeing in your mind's eye that  
10 lookout, come in from the south portal, the safe area,  
11 the binoculars, go to the north end where he parked.  
12 See the rocks where that picture was taken. It says --  
13 take three steps into those woods, is it safe? It is  
14 not safe. Cannot see the parking lot. You can't be  
15 seen.  
16 Baden tells you it could not happen the way  
17 he said it did, he said look at the injuries, look at  
18 the constellation of injuries from waist to head. She  
19 virtually exploded. He says look at what is not seen.  
20 No broken extremities, the back is clean. She did not  
21 tumble down those cliffs. She had to be propelled.  
22 The injuries to her head are massive, massive complex  
23 fractures. She had to be propelled. And his opinion  
24 says it can't be the way he says.  
25 And when you deliberate among all the

1 evidence you have look at these cliffs. Listen to all  
2 you have heard. And you will say it could not happen  
3 the way he says because if she fell from this point she  
4 should either be on that ledge through these shoots to  
5 at least one of several promontories and at the very  
6 least straight down to the base, but she's not there  
7 because she didn't go off that point. She went off  
8 another point. And I can't tell you precisely where or  
9 how, but I can tell you that is all that makes sense of  
10 this because this does not make sense -- his story.  
11 I said to you in my opening that this really  
12 wasn't in some ways really wasn't a police -- that it  
13 really is the cliffs versus Scharf. Agatha Christie  
14 once ended one of her murder mysteries with it could  
15 have happened no other way. This case is a bit of a  
16 turn on that phrase. It could not have happened the  
17 way he said it did. And if he lied, if he lied, which  
18 he did, which you know, then he is a killer. And it is  
19 the cliffs that tell you he has lied.  
20 It was no accident. And, in fact, he has  
21 told you it was no accident. You see, long ago,  
22 September 22nd, 1992, at 27 Nob Hill Road, as police  
23 from Bergen county were conducting a search of his home  
24 he has a conversation, a conversation with a rather  
25 engaging fellow, Ted Ehrenberg. And that conversation

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1 is witnessed by Sergeant, now Captain Gundersdorf.

2 There are no Bergen authorities around. It's  
3 just Ehrenberg and Scharf. And in that one moment in  
4 time, in that one instant, in that one conversation  
5 Ehrenberg -- and as he talked -- and the balance sheet  
6 of life Scharf says to him you don't believe me, they  
7 hadn't been discussing -- before. Ehrenberg says I  
8 believe you. It was an accident, wasn't it? Scharf  
9 says with his head bowed no.

10 When you think about that conversation  
11 remember the testimony of Gundersdorf. And this is  
12 what -- what a trial is about. It's not just paper.  
13 It's not just reports. It's not just words. It's not  
14 just pictures. It's live people. Do you remember how  
15 Gundersdorf told you how he said it wasn't an accident?  
16 Gundersdorf to this day almost came out of the witness  
17 stand and said I couldn't believe my ears. I thought  
18 he was going to go for it all right then and there.

19 It wasn't an accident. And that statement by  
20 Scharf tells you it wasn't an accident. It could not  
21 have happened the way he said. He has lied to the  
22 police. He has lied. And if he has lied then he must  
23 be by force of logic a killer.

24 And he killed her because he could, because  
25 it was the ultimate act of spousal abuse, because it

1 was the ultimate act of the control of a human being,  
2 because it was the ultimate act of control of a human  
3 being who meant nothing to him, who was worth more dead  
4 than alive, who in his consciousness of that guilt did  
5 not make a claim for the money that insured his wife's  
6 life.

7 He is a killer we have proved. And I think  
8 when you go back to the jury room and put it all  
9 together you will say, yes, Mr. Scharf, it was no  
10 accident. Yes, it could have happened the way you said  
11 it did. Yes, you are a killer -- your wife. You are  
12 guilty.

13 THE COURT: Thank you, Mr. Mello. We're  
14 going to take a short break, five, ten minutes. I'm  
15 going to give you the legal instructions following  
16 that. And I'll probably let you go home for the  
17 evening. You'll start your deliberations in the  
18 morning. Okay. Ten-minute break and we'll --

19 (Recess)

20 (Jury enters courtroom)

21 THE COURT: Ladies and gentlemen of the jury,  
22 the evidence in this case has been presented and the  
23 attorneys have completed their summations. Before we  
24 get started, if there are any people out in the hall  
25 that wish to come in tell them that during the charging

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1 conference they will not be able to enter the  
2 courtroom. Okay.  
3 We now arrive at that time when you as jurors  
4 are to perform your final function in this case. At  
5 the outset let me express my thanks and appreciation to  
6 you for your attention to this case.  
7 I would like to commend counsel for the  
8 professional manner in which they have presented their  
9 respective cases and for their courtesy to the Court  
10 and jury during the course of this trial.  
11 Before you retire to deliberate and reach  
12 your verdict, it is my obligation to instruct you as to  
13 the principles of law applicable to this case. You  
14 shall consider my instructions in their entirety and  
15 not pick out any particular instruction and  
16 overemphasize it.  
17 You must accept and apply this law for this  
18 case as I give it to you in this charge. Any ideas you  
19 have of what the law is or what the law should be or  
20 any statements by the attorneys as to what the law may  
21 be must be disregarded by you if they are in conflict  
22 with my charge.  
23 During the course of the trial I was required  
24 to make certain rulings on the admissibility of the  
25 evidence either in or outside of your presence. These

1 rulings involved questions of law. The comments of the  
2 attorneys on these matters were not evidence.  
3 In ruling I have decided questions of law and  
4 whatever the ruling may have been in any particular  
5 instance, you should understand that it was not an  
6 expression or opinion by me on the merits of the case.  
7 Neither should my other rulings on any other aspect of  
8 the trial be taken as favoring one side or the other.  
9 Each matter was decided on its own merits.  
10 When I use the term evidence I mean the  
11 testimony you have heard and seen from this witness box  
12 and the exhibits that have been admitted into evidence.  
13 Any testimony that I may have had occasion to strike is  
14 not evidence and shall not enter into your final  
15 deliberations. It must be disregarded by you. This  
16 means even though you may remember the testimony you  
17 are not to use it in your discussions or deliberations.  
18 Further, if I gave a limiting instruction as  
19 to how to use certain evidence the evidence must be  
20 considered by you for that purpose only. You cannot  
21 use it for any other purpose.  
22 As jurors it is your duty to weigh the  
23 evidence calmly and without passion, prejudice, or  
24 sympathy. Any influence caused by these emotions has  
25 the potential to deprive both the State and the

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Jury Charge

142

1 defendant of what you promised them, a fair and  
2 impartial trial by fair and impartial jurors. Also,  
3 speculation, conjecture, and other forms of guessing  
4 play no role in the performance of your duty.  
5 The defendant stands before you on an  
6 indictment returned by the grand jury charging him with  
7 the following offense, the grand jurors of the State of  
8 New Jersey for the County of Bergen upon their oaths  
9 present that Stephen Scharf on or about September 20th,  
10 1992, in the Borough of Englewood Cliffs in the County  
11 of Bergen and within the jurisdiction of this Court did  
12 purposely and/or knowingly cause the death or serious  
13 bodily injury resulting in the death of Jodie Ann  
14 Scharf, contrary to the provisions of N.J.S.A. 2C:11-  
15 3(a)(1) and N.J.S.A. 2C:11-3(a)(2), and against the  
16 peace of this state, the government and dignity of the  
17 same.  
18 The indictment is not evidence of the  
19 defendant's guilt on the charge. An indictment is a  
20 step in the procedure to bring the matter before the  
21 Court and jury for the jury's ultimate determination as  
22 to whether the defendant is guilty or not guilty on the  
23 charges stated in it.  
24 The defendant has pleaded not guilty to the  
25 charge. The defendant on trial is presumed to be

Jury Charge

143

1 innocent. And unless each and every essential element  
2 of an offense charged is proved beyond a reasonable  
3 doubt, the defendant must be found not guilty of that  
4 charge.  
5 The burden of proving each element of a  
6 charge beyond a reasonable doubt rests upon the State  
7 and that burden never shifts to the defendant. The  
8 defendant in a criminal case has no obligation or duty  
9 to prove his innocence or offer any proof relating to  
10 his innocence.  
11 The prosecution must prove its case by more  
12 than a mere preponderance of the evidence, yet not  
13 necessarily to an absolute certainty. The State has  
14 the burden of proving the defendant guilty beyond a  
15 reasonable doubt.  
16 Some of you may have served as jurors in  
17 civil cases where you were told that it is necessary to  
18 prove only that a fact is more likely true than not  
19 true. In criminal cases the State's proof must be more  
20 powerful than that. It must be beyond a reasonable  
21 doubt.  
22 A reasonable doubt is an honest and  
23 reasonable uncertainty in your minds about the guilt of  
24 the defendant after you have given full and impartial  
25 consideration to all of the evidence. A reasonable

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Jury Charge

144

1 doubt may arise from the evidence itself or from a lack  
2 of evidence. It is a doubt that a reasonable person  
3 hearing the same evidence would have.

4 Proof beyond a reasonable doubt is proof, for  
5 example, that leaves you firmly convinced of the  
6 defendant's guilt. In this world we know very few  
7 things with absolute certainty. In criminal cases the  
8 law does not require proof that overcomes every  
9 possible doubt.

10 If, based on your consideration of the  
11 evidence, you are firmly convinced that the defendant  
12 is guilty of the crime charged, you must find him  
13 guilty. If, on the other hand, you are not firmly  
14 convinced of the defendant's guilt, you must give  
15 defendant the benefit of the doubt and find him not  
16 guilty.

17 In my preliminary charge when we started this  
18 case I explained to you that you are the judges of the  
19 facts and as judges of the facts you are to determine  
20 the credibility of the various witnesses as well as the  
21 weight to be attached to their testimony.

22 You and you alone are the sole and exclusive  
23 judges of the evidence, of the credibility of the  
24 witnesses, and the weight to be attached to the  
25 testimony of each witness. Regardless of what counsel

Jury Charge

145

1 said or I may have said recalling the evidence in this  
2 case, it is your recollection of the evidence that  
3 should guide you as judges of the facts.

4 Arguments, statements, remarks, openings, and  
5 summations of counsel are not evidence and must not be  
6 treated as evidence. Although the attorneys may point  
7 out what they think important in this case, you must  
8 rely solely upon your understanding and recollection of  
9 the evidence that was admitted during the trial.

10 Whether or not the defendant has been proven  
11 guilty beyond a reasonable doubt is for you to  
12 determine based on all of the evidence presented during  
13 the trial. Any comments by counsel are not  
14 controlling. It is your sworn duty to arrive at a just  
15 conclusion after considering all the evidence which was  
16 presented during the course of the trial. Thank you.

17 The function of the Court is separate and  
18 distinct from the function of the jury. It is my  
19 responsibility to determine all questions of law  
20 arising during trial and to instruct the jury as to the  
21 law which applies in this case. You must accept the  
22 law as given to you by me and apply it to the facts as  
23 you find them to be.

24 I have sustained objections to some questions  
25 asked by counsel which may have contained statements of

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973-283-0196 FAX 973-492-2927

Jury Charge

146

1 certain fact. The mere fact that an attorney asks a  
2 question and inserts facts or comments or opinions in  
3 that question in no way proves the existence of those  
4 facts. You will only consider such facts which in your  
5 judgment have been proven by the testimony of witnesses  
6 or from exhibits admitted into evidence by the Court.

7 The fact that I may have asked questions of a  
8 witness in the case must not influence you in any way  
9 in your deliberations. The fact that I asked such  
10 questions does not indicate that I hold any opinion one  
11 way or the other as to the testimony given by the  
12 witnesses. Any remarks made by me to counsel or by  
13 counsel to me or between counsel are not evidence and  
14 should not affect or play any part in your  
15 deliberations.

16 The parties have agreed to certain facts and  
17 I will get into that in a little -- little bit. The  
18 facts the jury should -- should treat these facts as  
19 undisputed. For example, the parties agree that these  
20 facts are true. As with all other evidence, undisputed  
21 facts can be accepted or rejected by the jury in  
22 reaching a verdict.

23 Evidence may be either direct or  
24 circumstantial. Direct evidence means evidence that  
25 directly proves a fact without an inference and which

Jury Charge

147

1 in itself, if true, conclusively establishes that fact.  
2 On the other hand, circumstantial evidence means  
3 evidence that proves a fact from which an inference of  
4 the existence of another fact may be drawn.

5 You may recall the earlier example where  
6 direct testimony would be the witness actually saw the  
7 snow falling as opposed to circumstantial evidence  
8 where there's no snow on the ground, the witness goes  
9 to sleep, and in the morning the ground is snow  
10 covered.

11 An inference is a deduction of fact that may  
12 logically and reasonably be drawn from another fact or  
13 group of facts established by the evidence. Whether or  
14 not inferences should be drawn is for you to decide  
15 using your own common sense, knowledge, and everyday  
16 experiences. Ask yourselves is it probable, logical,  
17 and reasonable?

18 It is not necessary that all the facts be  
19 proven by direct evidence. They may be proven by  
20 direct evidence, circumstantial evidence, or by a  
21 combination of direct and circumstantial evidence. All  
22 are acceptable as a means of proof. In many cases,  
23 circumstantial evidence may be more certain,  
24 satisfying, and persuasive than direct evidence.  
25 However, direct and circumstantial evidence should be

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Jury Charge

148

1 scrutinized and evaluated carefully.  
2 A verdict of guilty may be based on direct  
3 evidence alone, circumstantial evidence alone, or a  
4 combination of direct evidence and circumstantial  
5 evidence, provided of course that it convinced you of a  
6 defendant's guilt beyond a reasonable doubt.  
7 The reverse is also true. A defendant may be  
8 found not guilty by reason of direct evidence,  
9 circumstantial evidence, a combination of the two, or a  
10 lack of evidence, if it raises in your mind a  
11 reasonable doubt as to the defendant's guilt.  
12 As judges of the facts you are to determine  
13 the credibility of the witnesses and in determining  
14 whether a witness is worthy of belief and, therefore,  
15 credible, you may take into consideration the  
16 following: the appearance and demeanor of the witness;  
17 the manner in which he or she may have testified; the  
18 witness's interest in the outcome of the trial, if any;  
19 his or her means of obtaining knowledge of facts.  
20 The witness's power of discernment, meaning  
21 their judgment, understanding; his or her ability to  
22 reason, observe, recollect, and relate; the possible  
23 bias, if any, in favor of the side for whom the witness  
24 testified; the extent to which, if at all, each witness  
25 is either corroborated or contradicted, supported or

Jury Charge

149

1 discredited by other evidence.  
2 Whether the witness testified with an intent  
3 to deceive you; the reasonableness or unreasonableness  
4 of the testimony the witness has given; whether the  
5 witness made any inconsistent or contradictory  
6 statement; and any and all other matters in the  
7 evidence which serve to support or discredit his or her  
8 testimony.  
9 Through this analysis as the judges of the  
10 facts you weigh the testimony of each witness and then  
11 determine the weight to give to it. Through that  
12 process you may accept all of it, a portion of it, or  
13 none of it.  
14 If you believe that any witness or party  
15 willfully or knowingly testified falsely to any  
16 material facts in the case with intent to deceive you,  
17 you may give such weight to his or her testimony as you  
18 may deem it is entitled. You may believe some of it or  
19 you may in your discretion disregard all of it.  
20 The indictment charges the defendant with  
21 murder. It states that Stephen Scharf on or about  
22 September 20th, 1992, in the Borough of Englewood  
23 Cliffs in the County of Bergen and within the  
24 jurisdiction of this Court did purposely and/or  
25 knowingly cause the death or serious bodily injury

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Jury Charge

150

1 resulting in the death of Jodie Ann Scharf.  
2 The statute upon which this count of the  
3 indictment is based states in pertinent part the  
4 defendant is guilty of murder if he purposely or  
5 knowingly caused death or serious bodily injury  
6 resulting in death.  
7 In order for you to find the defendant guilty  
8 of murder the State must prove the following elements  
9 beyond a reasonable doubt. One, that the defendant  
10 caused the death or serious bodily injury that then  
11 resulted in Jodie Ann Scharf's death; and, two, that  
12 the defendant did so purposely or knowingly.  
13 The first element that the State must prove  
14 beyond a reasonable doubt is that the defendant caused  
15 Jodie Ann Scharf's death or serious bodily injury  
16 resulting in death. Serious bodily injury means bodily  
17 injury that creates a substantial risk of death. A  
18 substantial risk of death exists where it is highly  
19 probable that the injury will result in death.  
20 The second element that the State must prove  
21 beyond a reasonable doubt is that the defendant acted  
22 purposely or knowingly. A person acts purposely if it  
23 is the person's conscious object to cause death or  
24 serious bodily injury resulting in death. A person  
25 acts knowingly when the person is aware that it is

Jury Charge

151

1 practically certain that his conduct will cause death  
2 or serious bodily injury resulting in death.  
3 The nature of the purpose or knowledge with  
4 which the defendant acted toward Jodie Ann Scharf is a  
5 question of fact for you, the jury, to decide. Purpose  
6 and knowledge are conditions of the mind which cannot  
7 be seen and can only be determined by inferences from  
8 conduct, words, or acts.  
9 It is not necessary for the State to produce  
10 a witness or witnesses who could testify that the  
11 defendant stated, for example, that his purpose was to  
12 cause death or serious bodily injury resulting in death  
13 or that he knew that his conduct would cause death or  
14 serious bodily injury resulting in death.  
15 It is within your power to find that proof of  
16 purpose or knowledge has been furnished beyond a  
17 reasonable doubt by inferences which may arise from the  
18 nature of the acts and the surrounding circumstances.  
19 Such things as the place where the acts occurred, the  
20 weapon used, the location, number and nature of wounds  
21 inflicted, and all that was done or said by the  
22 defendant preceding, connected with, and immediately  
23 succeeding the events leading to the death of Jodie Ann  
24 Scharf are among the circumstances to be considered.  
25 Although the State must prove that the

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Jury Charge

152

1 defendant acted either purposely or knowingly, the  
2 State is not required to prove a motive. If the State  
3 has proven the essential elements of the offense beyond  
4 a reasonable doubt, the defendant must be found guilty  
5 of that offense regardless of the defendant's motive or  
6 lack of motive.

7 If the State, however, has proven a motive,  
8 you may consider that insofar as it gives meaning to  
9 other circumstances. On the other hand, you may  
10 consider the absence of motive in weighing whether or  
11 not the defendant is guilty of the crime charged.

12 As I previously advised you, in order to  
13 convict a defendant of murder the State must prove  
14 beyond a reasonable doubt that the defendant purposely  
15 or knowingly caused the victim's death or serious  
16 bodily injury resulting in death.

17 In order for you to find the defendant guilty  
18 of purposeful -- purposeful serious bodily injury  
19 murder the State must prove beyond a reasonable doubt  
20 that it was the defendant's conscious object to cause  
21 serious bodily injury that then -- that then resulted  
22 in Jodie Ann Scharf's death; that the defendant knew  
23 that the injury created a substantial risk of death;  
24 and that it was highly probable that death would  
25 result.

Jury Charge

153

1 In order for you to find the defendant guilty  
2 of knowing serious bodily injury murder, the State must  
3 prove beyond a reasonable doubt that the defendant was  
4 aware that it was practically certain that his conduct  
5 would cause serious bodily injury that then resulted in  
6 Jodie Ann Scharf's death, that the defendant knew that  
7 the injury created a substantial risk of death, and  
8 that it was highly probable that death would result.

9 Whether the killing was committed purposely  
10 or knowingly causing death or serious bodily injury  
11 resulting in death must have been within the design or  
12 contemplation of the defendant.

13 All jurors do not have to agree unanimously  
14 concerning which form of murder is present, so long as  
15 all believe that it was one form of murder or the  
16 other. However, for a defendant to be found guilty of  
17 murder all jurors must agree that the defendant either  
18 knowingly or purposely caused the death or serious  
19 bodily injury resulting in the death of Jodie Ann  
20 Scharf.

21 If you find that the State has proven every  
22 element of murder beyond a reasonable doubt then you  
23 must find the defendant guilty. If you find that the  
24 State has failed to prove any element of murder beyond  
25 a reasonable doubt, then you must find the defendant

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1 not guilty of murder.  
2 As you know the defendant elected not to  
3 testify at trial. It is his constitutional right to  
4 remain silent. You must not consider for any purpose  
5 or in any manner in arriving at your verdict the fact  
6 that defendant did not testify. That fact should not  
7 enter into your deliberations or discussions in any  
8 manner at any time. The defendant is entitled to have  
9 the jury consider all evidence presented at trial. He  
10 is presumed innocent whether or not he testifies --  
11 whether or not he chooses to testify.  
12 There is for your consideration in this case  
13 oral statements allegedly made by the defendant. It is  
14 your function to determine whether or not the  
15 statements were actually made by the defendant and, if  
16 made, whether the statements or any portion of them are  
17 credible.  
18 In considering whether or not an oral  
19 statement was actually made by the defendant and, if  
20 made, whether it is credible, you should receive,  
21 weigh, and consider this evidence with caution based on  
22 the generally recognized risk of misunderstanding by  
23 the hearer or the ability of the hearer to recall  
24 accurately the words used by the defendant.  
25 The specific words used and the ability to

1 remember them are important to the correct  
2 understanding of any oral communication because the  
3 presence or absence or change of a single word may  
4 substantially change the true meaning of even the  
5 shortest sentence. You should, therefore, receive,  
6 weigh, and consider such evidence with caution.  
7 In considering whether or not the statement  
8 is credible you should take into consideration the  
9 circumstances and facts as to how the statement was  
10 made as well as all other evidence in this case  
11 relating to this issue.  
12 If after you -- if after consideration of all  
13 these factors you determine that the statement was not  
14 actually made or that the statement is not credible,  
15 then you must disregard the statement completely. If  
16 you find that the statement was made and that part or  
17 all of the statement is credible you may give what  
18 weight you think appropriate to the portion of the  
19 statement you find to be truthful and credible.  
20 Testimony has been admitted into evidence  
21 regarding statements purportedly made by Jodie Ann  
22 Scharf to various individuals about her fear of  
23 defendant, her abuse by the defendant, her intention to  
24 divorce the defendant, and her fear of heights.  
25 You must first determine whether or not Jodie

Jury Charge

156

1 Ann Scharf made these statements. If you find that she  
2 made these statements then you may consider them only  
3 for the purpose of determining her state of mind at the  
4 time those statements were made and for no other  
5 reason.

6 Stipulations, the parties have agreed to  
7 certain facts, namely that fingernail clippings and  
8 scrapings were obtained from the victim at the  
9 postmortem examination and submitted to the New Jersey  
10 State Police Laboratory for examination. No tissue was  
11 detected. Also, the hammer, S-228 in evidence, was  
12 submitted to the New Jersey State Police Laboratory for  
13 analysis. The analysis revealed that the hammer was  
14 negative for blood.

15 The jury should treat these facts as  
16 undisputed. For example, that the parties agree that  
17 these facts are true. And as I indicated earlier, as  
18 with all other evidence undisputed facts can be  
19 accepted or rejected by the jury in reaching a verdict.

20 As a general rule witnesses can only testify  
21 as to facts known by them. This rule ordinarily does  
22 not permit the opinion of a witness to be received as  
23 evidence, however, an exception to this rule exists in  
24 the case of an expert witness who may give his or her  
25 opinion as to any matter in which he or she is versed

Jury Charge

157

1 which is material to this case.

2 In legal terminology, an expert witness is a  
3 witness who has some special knowledge, skill,  
4 experience, or training that is not possessed by the  
5 ordinary juror and who, thus, may be able to provide  
6 assistance to the jury in understanding the evidence  
7 presented and determine the facts of the case.

8 In this case you have heard the testimony of  
9 Dr. Maryann Clayton, the Bergen County Medical  
10 Examiner, and Dr. Michael Baden, both forensic  
11 pathologists. Both were witnesses who testified for  
12 the State. You have also heard the testimony of Steven  
13 M. Shorr, an engineer, and Dr. Cyril Wecht, a forensic  
14 pathologist. Both were called as experts for the  
15 defense.

16 You are not bound by such expert's opinion,  
17 but you should consider each opinion and give it the  
18 weight to which you deem it is entitled, whether that  
19 be great or slight or you may reject it. In examining  
20 each opinion you may consider the reason given for it,  
21 if any, and you may also consider the qualifications  
22 and credibility of the expert.

23 It is always within the special function of  
24 the jury to determine whether the facts on which the  
25 answer or testimony of an expert is based actually

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Jury Charge

158

1 exist. The value or weight of the opinion of the  
2 expert is dependent upon, it is no stronger than the  
3 facts on which it is based. In other words, the  
4 probative value of the opinion will depend upon whether  
5 from all of the evidence in the case you find that  
6 those facts are true.

7 You may in fact determine from the evidence  
8 in the case that the facts that form the basis of the  
9 opinion are true, are not true, or are true in part  
10 only. And in light of such findings you should decide  
11 what effect such determination has upon the weight to  
12 be given to the opinion of the expert.

13 Your acceptance or rejection of the expert  
14 opinion will depend, therefore, to some extent on your  
15 findings as to the truth of the facts relied upon. The  
16 ultimate determination of whether or not the State has  
17 proven defendant's guilt beyond a reasonable doubt is  
18 to be made only by the jury.

19 Evidence, including a witness's statement or  
20 testimony prior to the trial showing that at a prior  
21 time a witness has said something which is inconsistent  
22 with the witness's testimony at trial may be considered  
23 by you for the purpose of judging the witness's  
24 credibility.

25 It may also be considered by you as

Jury Charge

159

1 substantive evidence, that is as proof of the truth of  
2 what is stated in the prior contradictory statement.  
3 Evidence has been presented showing that at a prior  
4 time a witness has said something or has failed to say  
5 something which is inconsistent with the witness's  
6 testimony at trial.

7 This evidence may be considered by you as  
8 substantive evidence or proof of the truth of the prior  
9 contradictory statement or omitted statement. However,  
10 before deciding whether the prior inconsistent or  
11 omitted statement reflects the truth, in all fairness  
12 you will want to consider all of the circumstances  
13 under which the statement of -- or failure to disclose  
14 occurred.

15 You may consider the extent of the  
16 inconsistency or omission and the importance or lack of  
17 importance of the inconsistency or omission on the  
18 overall testimony of the witness as bearing on his or  
19 her credibility. You may consider such factors as  
20 where and when the prior statement or omission occurred  
21 and the reasons, if any, therefore.

22 The extent to which such inconsistencies or  
23 omissions reflect the truth is for you to determine.  
24 Consider their materiality and relationship to the  
25 witness's entire testimony and all the evidence in the

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Jury Charge

160

1 case, when, where, and the circumstances under which  
2 they were said or omitted and whether the reasons he or  
3 she gave you, therefore, appear to you to be believable  
4 and logical. In short, consider all that I have told  
5 you about prior inconsistent statements or omissions.

6 You will of course consider other evidence  
7 and inferences from other evidence, including  
8 statements of other witnesses or acts of the witness  
9 and others disclosing other motives that the witness  
10 may have had to testify as he or she did, that is  
11 reasons other than which he or she gave us.

12 Perhaps a hypothetical example will help you  
13 to understand what constitutes a prior contradictory  
14 statement and, more importantly, how it may be used by  
15 you. Assume at the trial the witness testifies the car  
16 was red. In cross-examination of that witness or at  
17 some other point in the trial it is shown that at an  
18 earlier time the witness testified or said the car was  
19 blue.

20 Well, you may consider the prior  
21 contradictory statement the car was blue as a factor in  
22 deciding whether or not you believe that the statement  
23 made at trial that the car was red. You may also  
24 consider the earlier statement that the car was blue as  
25 proof of the fact or evidence that the car was blue.

Jury Charge

161

1 The State has introduced evidence that the  
2 defendant had girlfriends during his marriage and that  
3 he abused the victim. Normally such evidence is not  
4 permitted under our rules of evidence. Our rules  
5 specifically exclude evidence that a defendant has  
6 committed other crimes, wrongs, or acts when it is  
7 offered only to show that he has a disposition or  
8 tendency to do wrong and, therefore, must be guilty of  
9 the charged offenses.

10 Before you can give any weight to this  
11 evidence you must be satisfied that the defendant  
12 committed the other crime, wrong, or act. For example,  
13 you must be certain that the defendant actually had  
14 girlfriends during his marriage and/or abused the  
15 victim. If you are not so satisfied you may not  
16 consider it for any purpose.

17 However, our rules do permit evidence of  
18 other crimes, wrongs, or acts when the evidence is used  
19 for certain specific narrow purposes. In this case the  
20 evidence of defendant's infidelity and/or abusive  
21 relationship with the victim was admitted for the  
22 limited purpose of refuting defendant's contention that  
23 Jodie Ann Scharf accidentally fell off the cliff.

24 Ladies and gentlemen of the jury, I caution  
25 you that you may only use this evidence for the limited

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Jury Charge

162

1 purpose of determining whether Jodie Ann Scharf's death  
2 was an accident. This is the only purpose for which  
3 this other crimes, wrongs, or bad acts evidence may be  
4 used.

5 Whether this evidence -- whether this  
6 evidence does in fact demonstrate that Jodie Ann Scharf  
7 did not -- did not accidentally fall off of the cliff  
8 is for you to decide. You may decide that the evidence  
9 does not demonstrate that defendant pushed Jodie Ann  
10 Scharf and is not helpful at all. In that case you  
11 must disregard the evidence. On the other hand, you  
12 may decide that the evidence does demonstrate that  
13 defendant pushed Jodie Ann Scharf off of the cliff and  
14 you may use it for that specific purpose and that  
15 specific purpose only.

16 However, you may not use this evidence to  
17 decide that the defendant has a tendency to commit  
18 crimes or that he is a bad person. That is you may not  
19 decide that just because the defendant has committed  
20 other crimes, wrongs, or acts he must be guilty of the  
21 present crime.

22 I have admitted the evidence only to help you  
23 decide the specific question of whether Jodie Ann  
24 Scharf accidentally fell to her death. You may not  
25 consider it for any other purpose and may not find the

Jury Charge

163

1 defendant guilty now simply because the State has  
2 offered evidence that he committed other crimes,  
3 wrongs, or acts.

4 May I see the attorneys at sidebar?  
5 (Sidebar)

6 THE COURT: Any objections to any of the  
7 charge?

8 (Sidebar concluded)

9 THE COURT: That concludes my instructions as  
10 to the principles of law regarding the offenses charged  
11 in the indictment. There is nothing different in the  
12 way a jury is to consider proof in a criminal case from  
13 that in which all reasonable persons treat any  
14 questions depending upon the evidence presented to  
15 them.

16 You are expected to use your own good common  
17 sense, consider the evidence for only those purposes  
18 for which it has been admitted, and give it a  
19 reasonable and fair construction in the light of your  
20 knowledge of how people behave. It is the quality of  
21 the evidence, not simply the number of witnesses, that  
22 control.

23 Anything that has not been marked into  
24 evidence cannot be given to you in the jury room, even  
25 though it may have been marked for identification.

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1 Only those items marked in evidence can be given to  
2 you.  
3 Very shortly you will go into the jury room  
4 to start your deliberations. I remind you that during  
5 deliberations and in fact any time that you are in the  
6 jury deliberation room you must keep any cell phone,  
7 pager, or other communication device you may possess  
8 turned off.  
9 You are to apply the law as I have instructed  
10 you to the facts as you find them to be for the purpose  
11 of arriving at a fair and correct verdict. The verdict  
12 must represent the considered judgment of each juror  
13 and must be unanimous as to the charge. This means all  
14 of you must agree if the defendant is guilty or not  
15 guilty on the charge.  
16 It is your duty as jurors to consult with one  
17 another and to deliberate with a view to reaching an  
18 agreement if you can do so without violence to  
19 individual judgment. Each of you must decide the case  
20 for yourself, but do so only after an impartial  
21 consideration of the evidence with your fellow jurors.  
22 In the course of your deliberations do not  
23 hesitate to reexamine your own views and change your  
24 opinion if convinced it is erroneous, but do not  
25 surrender your honest conviction as to the weight or

1 effect of evidence solely because of the opinion of  
2 your fellow jurors or for the mere purpose of returning  
3 a verdict. You are not partisans, you are judges,  
4 judges of the facts.  
5 As indicated, your verdict, whatever it may  
6 be as to the crime charged in the indictment, must be  
7 unanimous. Each of the 12 members of the deliberating  
8 jury must agree as to the verdict.  
9 Now with respect to the verdict sheet, a  
10 verdict sheet has been prepared and it mirrors the  
11 indictment. And basically the verdict sheet has been  
12 prepared in order to assist you in reporting your  
13 verdict. You will have this with you in the jury room.  
14 MR. MELLO: Judge, may we be heard at  
15 sidebar?  
16 THE COURT: Sure.  
17 (Sidebar)  
18 MR. MELLO: I --  
19 THE COURT: I did.  
20 MR. MELLO: You did.  
21 THE COURT: I specifically --  
22 (Sidebar concluded)  
23 THE COURT: The verdict form is not evidence.  
24 Now jury question, if during your deliberations you  
25 have a question or feel that you need further

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14 Boonton Avenue, Butler, New Jersey 07405

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Jury Charge

166

1 assistance or instructions from me, you'll write your  
2 question on a sheet of paper, use the buzzer, give it  
3 to the sheriff's officer, who will in turn give it to  
4 me. I will then go over the question with the lawyers,  
5 you know, we'll try to answer it as quickly as  
6 possible. Please be patient.

7 If you do send out a question please, please  
8 do not disclose where you stand on your deliberations.  
9 Do not tell us, for example, it is ten to two or eight  
10 to four on a particular -- on a charge. If you have  
11 reached a unanimous verdict on the charge, use the  
12 buzzer, let the sheriff's officer know, and we will  
13 bring you into court as soon as possible to receive  
14 your verdict.

15 Now next part is extremely important. You  
16 see that we have a panel of 16 people given the fact  
17 that this trial covered a period of time seven weeks.  
18 There are different things that happen, all kinds of  
19 things that are unforeseeable. We had four additional  
20 people, four people who will now be alternates.

21 And in order to make you appreciate the  
22 extent to which we treat this with such seriousness,  
23 we're going to use the rotary, put it out here. The  
24 attorneys will inspect the numbers. And I also want  
25 the jurors obviously to see that these numbers are

Jury Charge

167

1 being picked at random. Four people will be selected  
2 and they will become alternates.

3 I know all of you have been paying very, very  
4 close attention, but this is the process in order to  
5 ensure that we have sufficient jurors. The 12  
6 remaining jurors will then be the deliberating jury.  
7 We will now reduce the jury to 12. The alternates will  
8 be selected at random.

9 Place the numbers on the top counter. I  
10 would ask that the attorneys come forward, inspect the  
11 numbers. And the court clerk is directed upon  
12 completion to place the numbers into the rotary and to  
13 select four jurors at random.

14 THE CLERK: Juror No. 15, Juror No. 12, Juror  
15 No. 8, Juror No. 14.

16 THE COURT: All right. If you would please  
17 step out of the jury box and have a seat in the first  
18 row. Carlene Wilson (phonetic), you are the foreperson  
19 of the jury because of your position in the jury box.  
20 You will preside over the deliberations and tell us the  
21 verdict when reached.

22 Your vote carries no greater weight than that  
23 of any other deliberating juror. It is your  
24 responsibility to lead deliberations. It is also your  
25 responsibility to tell us what the verdict is when the

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1 jury has reached it.  
2 When you come out with your verdict please  
3 resume the seats that you now have. We will make  
4 certain everyone is here. We will then ask the  
5 foreperson to stand to confirm that you have arrived at  
6 a verdict. And then we will read the charge and ask  
7 the foreperson what the verdict is. The foreperson  
8 will answer. And we will then poll each of the  
9 deliberating jurors to confirm his or her agreement  
10 with the verdict announced by the foreperson.  
11 As soon as the officers are sworn you will  
12 proceed to the jury room, but do not begin your  
13 deliberations until the jury verdict form and/or  
14 exhibits have been delivered to you.  
15 Counsel, you had the opportunity before  
16 moving certain items of evidence, if you would please  
17 review the evidence and also the verdict sheet. You've  
18 done so prior to, during, and at this time if you could  
19 indicate whether the evidence and the verdict sheet are  
20 in order. And if so please state so on the record.  
21 MR. MELLO: Yes, sir, they are.  
22 MR. BILINKAS: Yes, they are, Judge.  
23 THE COURT: As to the alternates, you are not  
24 excused as jurors. You must be kept in a separate  
25 location in case it becomes necessary to substitute one

1 or both of you for another juror or jurors. You should  
2 not, therefore, discuss this case with anyone or  
3 between the two of -- between the four of you.  
4 Normally we would have two alternates.  
5 If it becomes necessary to substitute an  
6 alternate I will give you and the remaining  
7 deliberating jurors further instructions of law at that  
8 time. If there is a question or verdict we will bring  
9 you back into the courtroom so that you may hear it.  
10 Now place the sheriff's officers under oath.  
11 (Officers sworn)  
12 THE COURT: Just a couple of other things if  
13 I may. Basically it's -- we've completed the  
14 instructions, we've completed everything, you would  
15 start your deliberations. It's been a long day.  
16 You've been here all day and what I'm going to do is to  
17 send you home now and in the morning you will come in  
18 and you'll start your deliberations. You report the  
19 same as you did to the jury room.  
20 Just a couple of announcements. Number one,  
21 I've spoken to the attorneys, New Jersey is among those  
22 states that allows any portion of the Judge's jury  
23 instructions to be sent into the jury room for review  
24 by the jurors. There are certain types of questions  
25 that come back almost immediately and I call them

1 definitional questions.  
2 By having the jury instructions, first of  
3 all, this material is developed by a committee on jury  
4 instructions and -- comprised of attorneys and even  
5 amongst attorneys there can be certain questions. So  
6 we realize that as lay people it's somewhat difficult  
7 to listen to this information and to absorb all of  
8 this.  
9 We have different types of presentations that  
10 we use. We might have a Powerpoint presentation. And  
11 depending on what happens, if something is read to you  
12 experience has shown that a certain percentage of that  
13 material is understood. For example, if it's read to  
14 you you may retain 30 percent. If you read it, if you  
15 have it in front of me that comprehension rate could  
16 jump to 60, 70, 80, 100 percent.  
17 Most importantly, that information will allow  
18 you to be better jurors. You'll have the information  
19 available. So what I'm going to do, I was talking to  
20 the attorneys about this, I'll have a package, they'll  
21 look over the instructions before they go in, but  
22 basically I'll ask in the morning that you take the  
23 instructions, read through the instructions first  
24 before starting your deliberations.  
25 I think the types of questions that you will

1 have will probably be more focused questions because  
2 they won't be definitional -- as I said, New Jersey is  
3 among the majority of the states that allows this  
4 practice. And I'm exercising that responsibility --  
5 because I think it will assist the jury in better  
6 performing your duties.  
7 Secondly, in the morning, I've spoken to  
8 Judge Venezia, basically you'll be deliberating. He'll  
9 be here in the morning. I have to be outside the  
10 courthouse for a short period of time. I will be back  
11 by 12:30. He has agreed to sit in for me basically to  
12 take attendance in the morning to allow you to go  
13 inside and to start your deliberations. He'll be  
14 available in case any jury questions come back. And  
15 then I will resume with you at 1:30.  
16 But with that understanding, basically we've  
17 completed the testimony, we've completed closing  
18 arguments, we've completed all aspects other than the  
19 deliberations. Now once again, I told you there will  
20 be increased press coverage at each -- each and every  
21 day. I think you can understand that these  
22 instructions were very important when I gave them to  
23 you at the very beginning. They're even more important  
24 now.  
25 We don't want anything to intrude or

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Jury Charge

172

1 influence your ability to be able to fairly and  
2 impartially judge this case. You still have not  
3 started your deliberations. I would ask you go home,  
4 get a good night's rest because tomorrow you'll be  
5 starting anew at 9 a.m. And then you'll be able to  
6 start your deliberations.  
7 I want to thank you. From what I can see and  
8 I've been doing this for 15 years you've been paying  
9 very close attention. I could see that you not only  
10 have shown a dedication and cooperation, but on behalf  
11 of all of the parties I would like to thank you. As  
12 the attorneys indicated, it's not easy to be here for  
13 this length of time and we appreciate your efforts.  
14 And now we've reached that threshold where you're about  
15 to begin your deliberations.  
16 So all the instructions I gave you, don't  
17 have any conversations concerning the case with anyone.  
18 Don't watch any news related items. Don't listen or  
19 read any news related items. Don't watch any law  
20 related programs. Just don't do any of the things that  
21 I've mentioned each and every day. Don't Google  
22 anything in terms of trying to get research done or  
23 doing anything.  
24 Basically everything that you're going to use  
25 to decide this case you've heard and seen in this

Colloquy

173

1 courtroom, other than your good common sense and  
2 experience. You'll return tomorrow 9 a.m. Judge  
3 Venezia will greet you. And then I will see you again  
4 at 1:30. Again, I want to thank you and I'm going to  
5 allow you to leave at this point. We'll resume  
6 tomorrow at 9 a.m. Have a good evening and thank you  
7 again.

(Proceedings concluded)

CERTIFICATION

I, REGINA Z. MONAGHAN, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Bergen County Superior Court on May 24, 2011, digitally recorded, Time Index from 9:20:58 - 4:59:31, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

/s/ Regina Z. Monaghan

Regina Z. Monaghan AOC #467  
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April 30, 2013