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IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO  
CASE NO. 95-CR-696  
CASE NO. 96-CR-599

STATE OF OHIO )  
 )  
Plaintiff ) HEARING ON MOTION TO  
 )  
-vs- ) VACATE JUDGMENT OF CONVICTION  
 )  
ANTHONY CIOFFI, JR. ) AND TO WITHDRAW GUILTY PLEA  
 )  
Defendant )

BE IT REMEMBERED, that on Thursday, January 31,  
2002, these proceedings came on to be heard before  
one of the Judges of this Court, John M. Stuard,  
in Courtroom No. 2, on High Street, Warren, Ohio,  
before the case heretofore filed herein.

Mary Ann Mills, RPR  
Official Court Reporter  
Trumbull County, Ohio

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A P P E A R A N C E S

On Behalf of The State of Ohio:  
Thomas Wrenn, Ass't. Prosecuting Attorney  
Charles Morrow, Ass't. Prosecuting Attorney

On Behalf of the Defendant:  
Mark B. Marein, Attorney at Law  
Steven L. Bradley, Attorney at Law

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1 Thursday, January 31, 2002 at 1:20 p.m.:  
2 Hearing to Vacate Judgment of Conviction and  
3 to Withdraw Guilty Plea:

4 THE COURT: We're here today on  
5 motion to withdraw plea of guilty and to set aside  
6 judgment. Are there any opening remarks before you  
7 present your evidence?

8 OPENING STATEMENT BY MR. BRADLEY:

9 MR. BRADLEY: Actually, yes, on  
10 behalf of the defense. We have obviously filed a  
11 written motion that I think sets forth our position  
12 quite clearly, but I would like to take a few  
13 minutes and summarize our position.

14 We have filed a motion to vacate the  
15 judgment of conviction and withdraw the guilty  
16 pleas in two cases that were resolved in December  
17 of 1996. The basis of our motion is that the  
18 Defendant at the time, Anthony Cioffi, Junior, did  
19 not have the information available to him  
20 concerning the evidence available from the  
21 prosecution, and the evidence available to  
22 formulate a defense. He did not have that

1 information available to him at any time prior to  
2 him entering a guilty plea. Let me put it in  
3 context if I can. There's two cases here. One is  
4 the 1995 case number, that was actually on your  
5 docket and scheduled for trial on December 3. A  
6 second case was the 1996 case number, was scheduled  
7 for trial in Judge Shaker's Court, piggybacked  
8 right after yours. Scheduled where the case on  
9 your docket would proceed and whenever it was  
10 concluded, the parties were scheduled to proceed  
11 right into trial on the second case. Mr. Cioffi at  
12 the time was represented by Attorney Tom Zena in  
13 both cases. Mr. Zena had engaged in considerable  
14 pre-trial discovery, primarily with respect to the  
15 1995 case that was scheduled for trial on your  
16 docket. We expect and intend to present the  
17 testimony of Mr. Zena here today, what you will  
18 essentially hear from him is that regarding the  
19 second case that was piggybacked, the 1996 case  
20 number that was scheduled in Judge Shaker's, he was  
21 not prepared to proceed to trial. And he will also  
22 tell you that he had not had an adequate

1 opportunity to evaluate the merits of the State's  
2 case, nor had he had the opportunity to evaluate  
3 the merits of any potential defense. And  
4 specifically, and what is most significant here,  
5 and essentially why we believe that there's a  
6 manifest injustice here is that there were records  
7 provided to Mr. Zena through the discovery process  
8 from the Prosecutor, family counseling records  
9 essentially, that Mr. Zena never reviewed, and in  
10 fact, at the time I entered the plea, wasn't even  
11 aware that he had them in his custody and  
12 possession.

13           The accusations, without going too deep  
14 into the nature of the accusations in the case that  
15 was before Judge Shaker was essentially that  
16 Mr. Cioffi had sexually molested and raped his two  
17 young minor children, and these records contain  
18 extensive information, suggesting -- not  
19 suggesting, point blank stating that these are  
20 enormously troubled and emotionally and mentally  
21 handicapped children that were interviewed on a  
22 number of occasions, by various agencies, and that

1 the records are clear that they had for years  
2 repeatedly been interviewed and had repeatedly and  
3 consistently denied that there was any sexual  
4 activity that ever took place involving their  
5 father. They denied all of that. So, Mr. Zena  
6 never had the opportunity to put himself in a  
7 position of trial preparation, and never had the  
8 chance to review all of these records, and  
9 consequently, could not have been in the position  
10 to evaluate the merits of the defense, particularly  
11 as it relates to case number two.

12 And when they show up for trial on  
13 December 3, in case number one, Mr. Cioffi, I'm  
14 sure you are going to hear testimony, summoned his  
15 attorney, who was meeting in your chambers to  
16 address some pre-trial matters, and indicated that  
17 he was desirous of entertaining the possibility of  
18 a plea to resolve both cases. Because he was  
19 scared to death at the thought that if he was  
20 convicted in case number two, he could face a  
21 potential life imprisonment sentence. And Mr. Zena  
22 and Mr. Cioffi had some opportunity to discuss the

1 terms of the proposed plea, and after somewhere  
2 between 30 to 60 minutes, a decision was made to  
3 enter into a plea agreement to resolve both cases.

4 The first case was resolved with a plea  
5 to the primary offense of a felony of the second  
6 degree, a kidnapping charge that carried a maximum  
7 term of 15 years. The second case was resolved  
8 also with an indefinite sentence that had a maximum  
9 term incarceration of 25 years.

10 THE COURT: Had he gone to trial, he  
11 would have been facing a life term, is that right?  
12 That was a plea bargained from the life?

13 MR. BRADLEY: That is correct. In a  
14 nutshell, this is our position. Tony Cioffi had no  
15 idea that there existed reams of paper that were in  
16 the custody of the Prosecutor's office, that were  
17 generated by various family counseling service  
18 agencies that contained information where these  
19 children, Mr. Cioffi's own children denied that  
20 there was any, ever any improper sexual activity,  
21 and that these records documented that these  
22 children have enormous mental and emotional



1 problems, and as a consequence, without that  
2 information available to him, or quite frankly,  
3 without even his attorney even considering that  
4 information, it is our position that it was a  
5 practical impossibility for Tony Cioffi to stand in  
6 front of a judge, and indicate that he was prepared  
7 to tender a knowing, voluntary and intelligent  
8 plea.

9           Now, if you review the transcript from  
10 the plea hearing, you will see that lip service is  
11 given to the notion that, yes, is this a knowing,  
12 voluntary and intelligent plea. Yes, but it is  
13 just lip service, because the fact of the matter is  
14 that he plead himself to a 25 year prison sentence,  
15 without knowing all of the information contained in  
16 these records, and by definition, it can't be a  
17 knowing and intelligent decision to enter a plea of  
18 guilty.

19           That is essentially our position and what  
20 we expect to present to you, will be the testimony  
21 of his Attorney, Tom Zena, that essentially, I'll  
22 paraphrase and keep this moving, he's going to tell

1 you that he's known Tony Cioffi and represented him  
2 prior to these two cases. He's had interaction  
3 with him. And he will tell you that particularly  
4 as it relates to case number one, he met with the  
5 Prosecutor on countless times and he met with Tony  
6 Cioffi on countless times. He's going to tell you  
7 all of that. And he's also going to tell you that  
8 all of these records that I am referancing in  
9 regard to case number two, he never looked at. And  
10 obviously never had the opportunity to share all of  
11 that with his client.

12 We're also, besides the testimony of Mr.  
13 Zena, we're going to present the testimony of a  
14 licensed psychologist that within a year or so of  
15 these guilty pleas being entered, he interviewed,  
16 subjected Mr. Cioffi to a number of battery of  
17 psychological tests, and his psychologist will  
18 testify and explain to you that Tony Cioffi is a  
19 man of extremely limited cognitive abilities. That  
20 he has organic brain disorders that put him in a  
21 position where he more than anybody, more than just  
22 your average defendant in a criminal case, needs to

1 rely heavily upon his Attorney to guide him in the  
2 decision making process. And that coupled with his  
3 limited cognitive abilities, coupled with his  
4 complete lack of understanding of what information  
5 was out there available to help him defend this  
6 case, forms the predicate for our assertion that he  
7 could not have tendered a knowing voluntary and  
8 intelligent plea, and that is why we're asking that  
9 the Court recognize that, and allow us to vacate  
10 the judgment of convictions, withdraw his pleas of  
11 guilty, and essentially put us back to square one  
12 where we can then utilize these records and  
13 information to defend this man against both of  
14 these charges. Thank you.

15 THE COURT: Thank you.

16 OPENING STATEMENT BY MR. MORROW:

17 MR. MORROW: Just briefly. What is  
18 of interest is that we sit here nearly five years  
19 after the fact in this matter, and given enough  
20 time, and given sufficient resources and sufficient  
21 access to any number of records, it is easy to look  
22 back in hindsight and pick out little things that

1 five years later could be magnified and  
2 intensified.

3 As we sit here and review this and as the  
4 Court takes that into consideration, that is one of  
5 the actions that the Court of Appeals often  
6 discusses is that no case is perfect. And I can  
7 dare say that there's any attorney that can tell  
8 you that they have ever tried a perfect case, that  
9 they have ever done absolutely everything humanly  
10 possible in order to prepare a case for trial.  
11 They work within the limits of the time  
12 constraints. They work within the limits imposed  
13 by speedy trial. They work within the time limits  
14 imposed by the Court. And taking all of those  
15 items into consideration, they do the best that  
16 they can. But most importantly, they work within  
17 the dictates of what their clients are instructing  
18 them to do. And when directed by a client  
19 undertaking certain actions, which they may feel is  
20 not in the best interest of their clients, which  
21 they may feel they haven't had an opportunity to  
22 fully develop, is nonetheless the wishes of the

1 clients, and that is who the attorney is ultimately  
2 responsible to representing that client. And in  
3 those situations where as the client, that that  
4 demands something proceed forward, the attorney is  
5 obligated to accept that client's wishes. And I  
6 think what you are going to find out is in this  
7 indication, that Mr. Cioffi made the decision to go  
8 forward with the plea in both cases. One on the  
9 day of trial, as this case was proceeding, and  
10 second, to preclude Judge Shaker from hearing his  
11 other case. And I think what you are going to find  
12 out is that Mr. Zena did what his client wanted to  
13 do and that was to plead him to a substantially  
14 reduced, to substantially reduced charges and  
15 substantially reduced sentencing, consequently had  
16 he been convicted, to say that other witnesses may  
17 have come forward and to say that other matters  
18 should have been looked at, beliees what Mr. Cioffi  
19 wanted to have done in this case.

20 THE COURT: Thank you. Do you want  
21 to call your first witness?  
22

ATTORNEY TOM ZENA

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being duly sworn according to law, on his oath,  
testified as follows:

DIRECT EXAMINATION BY MR. BRADLEY:

Q. Good afternoon, Mr. Zena.

A. Good afternoon.

Q. It is my intention to quite frankly cut right  
to the heart of this matter, but before I  
do so, it obviously is necessary to  
create a record and establish a little  
basic foundational information. If you  
haven't already done so, would you state  
your full name for the record?

A. Thomas Zena.

Q. And what is it that you do for a living?

A. Practice law.

Q. And could you briefly describe to the Court  
your educational background?

A. I am a graduate of Ursuline High School,  
Youngstown State University and Case  
Western University School of Law.

Q. And when did you graduate from Case?

1 A. 1973, 1972 or 1973.

2 Q. And did you immediately then take the Bar exam  
3 and passed the Bar and begin practicing  
4 law?

5 A. I took the Bar exam in November -- I'm sorry,  
6 July of the year I graduated, passed the  
7 Bar exam, that Bar exam and practiced law  
8 in Cleveland before I came back home with  
9 the law firm I was with through law  
10 school.

11 Q. A lot of years going back from 1973, if you  
12 could give us some idea of your  
13 professional experience since you passed  
14 the Bar?

15 A. I was a public defender in a very small  
16 misdemeanor public defender program in  
17 Mahoning County, which only lasted a  
18 couple of years. I also practiced law  
19 while I was doing that. That was a  
20 part-time position. I then became a  
21 part-time Mahoning County Prosecutor in  
22 the felony division where I did that for

1 I'm going to say seven years. Also  
2 practicing law, having a full private  
3 practice on the outside, except for  
4 criminal. Since that time, I have been  
5 in the private practice of law  
6 exclusively, so I have always had a  
7 private law practice, but those are the  
8 only two jobs I had, except a short  
9 Magistrate, as a domestic Magistrate,  
10 when one of them passed on and they  
11 needed someone to fill in for 90 days and  
12 I did it as a favor.

13 Q. How long have you been practicing law  
14 exclusively without being employed as a  
15 Prosecutor?

16 A. I think I stopped the prosecution in 1984 or  
17 1985.

18 Q. So, roughly 17 years?

19 A. Since then --

20 Q. Over the last 17 years, what is the general  
21 nature of your practice?

22 A. I do some bankruptcy, criminal, both felony



1           and misdemeanor, personal injury, and I  
2           do domestic relations, quite a bit more  
3           of that now than before.

4    Q.    Looking back say over the last say, we'll go  
5           back to roughly 1994, eight years or so,  
6           which would take us immediately before  
7           you undertook the representation in the  
8           two cases we're here for, has the nature  
9           of your practice changed or stayed pretty  
10          much consistent with what you described?

11   A.    I think the domestic end of my practice has  
12          gotten significantly larger. That would  
13          be the only significant change I could  
14          tell.

15   Q.    Back in the relevant time period that we're  
16          dealing with here, where you were  
17          defending Tony Cioffi in the two cases,  
18          can you give us an approximation in terms  
19          of what percentage of your practice was  
20          devoted to criminal defense?

21   A.    At all levels, I would say I would be  
22          comfortable with somewhere around let's

1                    say 35 in that range.

2        Q.        Percent?

3        A.        Yes.

4        Q.        Roughly one-third of your practice was devoted  
5                    to criminal defense?

6        A.        I would say so.

7        Q.        And did you, I presume over the course of your  
8                    career you have had the opportunity to  
9                    represent criminal defendants that would  
10                   proceed through verdict in a Jury trial?

11      A.        Correct.

12      Q.        And can you give us an approximate idea of the  
13                   number of Jury trials you have tried  
14                   criminally throughout the course of your  
15                   career?

16      A.        I would honestly tell you it would be a guess,  
17                   six or seven death penalty, maybe eight  
18                   or nine death penalty, plus I don't know,  
19                   50, 100 felonies. I'm just throwing a  
20                   figure out there. Several.

21      Q.        A substantial number?

22      A.        Yes.

1 Q. And besides those clients that you have  
2 represented through the conclusion of a  
3 trial, you have obviously represented  
4 probably an expeditiously greater number  
5 of people that resolve their case by a  
6 plea or something short of a trial?

7 A. Far greater number.

8 Q. And I take it then you have, over the course  
9 of your experience, represented people  
10 that were accused of crime, you have run  
11 across the wide spectrum of people in  
12 terms of their level of intelligence and  
13 things like that?

14 A. Yes, I would say that is a fair statement.

15 Q. And have you ever represented anybody that was  
16 found to be incompetent to proceed to  
17 trial?

18 A. Yes, Sir.

19 Q. And has it been your experience that every  
20 defendant is unusual and he brings his  
21 own life experience and intelligence to  
22 the table?

1 A. Yes, Sir.

2 Q. And when you are dealing with somebody that  
3 you have recognized to be of less than  
4 average intelligence, I'll call it, do  
5 you approach that situation any different  
6 than where versus a situation where you  
7 have got a rather intelligent, articulate  
8 client?

9 A. If I find somebody that I recognize to be --  
10 well, I think the spectrum goes a little  
11 deeper than less than average  
12 intelligence. It would have to be  
13 somebody that is inhibited above the  
14 level of retardation, not that I  
15 qualitatively look at that, yes, I would  
16 say, we all should, yes.

17 Q. Here's my point. If you are dealing with  
18 somebody that you found is of less than  
19 average intelligence, are you going to  
20 spend more time?

21 A. Yes, I might have somebody else there for a  
22 lot of things.

1 Q. Do you know Anthony Cioffi, Junior?

2 A. I knew Anthony Cioffi, Junior.

3 THE COURT: Let me stop at this  
4 point. I notice from the deposition that was  
5 previously taken by counsel of Mr. Zena, which is  
6 attached to the motion and also from conversation  
7 with both sides in-chambers, up to this point,  
8 earlier, that there was, it is accepted as fact by  
9 all parties that there was a release given  
10 concerning any ethical problems of divulging  
11 confidential information. Is that correct?

12 MR. BRADLEY: That is accurate.

13 THE COURT: I further understand  
14 that that actual written release that was --  
15 there's testimony in the deposition was delivered  
16 to Mr. Zena has been lost with the entire file  
17 while down in Columbus; is that correct? Anyone  
18 disagree with that?

19 MR. MAREIN: I do not disagree with  
20 that and if I may supplement what was just stated  
21 on the record, my understanding is that Mr. Cioffi  
22 sent Mr. Zena an authorization to release

1 information, particularly the file, and to  
2 cooperate with me relative to investigating the  
3 background and the resolution of these files. It  
4 is my representation for the record that I do not  
5 personally have that authorization, because I  
6 believe the original was sent to Mr. Zena, but I do  
7 know and I think Mr. Zena will verify this, that  
8 the file itself, the Tony Cioffi file that was in  
9 possession of Mr. Zena, from what Mr. Zena could  
10 best recollect, was misplaced. It could have been  
11 in Columbus, could have been in his office. He  
12 can't find it. He can't locate the authorization,  
13 but I can as an officer of the Court, respectfully  
14 state to the Court that I have personally spoken to  
15 my client, Mr. Cioffi, that I have countless  
16 letters from Mr. Cioffi wherein he indicates that I  
17 am authorized to speak to Mr. Zena, relative to the  
18 circumstances of Mr. Zena's representation, and  
19 that Mr. Zena is in point of fact authorized to  
20 answer in Court relative thereto. So just so the  
21 record is clear, nobody would be suggestive that  
22 there's anything unethical or subjecting one to

1 some disciplinary action by virtue of the answering  
2 of counsel's inquiry here today.

3 THE COURT: I thank you for that.

4 THE WITNESS: Thank you.

5 THE COURT: Let's proceed.

6 Q. (By Mr. Bradley) Do you know Anthony Cioffi,  
7 Junior?

8 A. I knew him. I haven't seen Anthony for years,  
9 but yes, I knew him.

10 Q. Can you tell the Judge basically how it is  
11 that you first came to be introduced to  
12 him?

13 A. Anthony saw me for legal matters prior to the  
14 legal matters that we're here about  
15 today. When, where, I don't know, but it  
16 was some years before.

17 Q. Besides the matters that we're talking about  
18 here today, you have represented his  
19 legal interests in some matter that you  
20 have no specific recall about?

21 A. I think there may have been a misdemeanor  
22 matter and I know there was at least one

1           small civil matter.

2       Q.    And if we're talking about the cases that  
3           we're here on today, in 1995, can you  
4           tell us approximately when you originally  
5           came to know Tony?

6       A.    I would say maybe -- maybe three years prior  
7           to these matters, maybe a few more years  
8           prior, I don't know.

9       Q.    And during the course of that representation  
10           that we're talking about, did you have an  
11           opportunity to interact often or  
12           frequently with Tony?

13      A.    I really don't believe so, because I believe  
14           those matters were handled quickly. They  
15           were not real significant and they were  
16           resolved, but I did interact with him to  
17           the extent necessary, but not over an  
18           extended period of time in those matters.

19      Q.    And there came a time again where you  
20           represented his legal interests in  
21           connection with a criminal matter; is  
22           that correct?



1 A. These matters, yes, Sir.

2 Q. And can you tell us the circumstances of how  
3 that came about?

4 A. Well, I was originally contacted and again I'm  
5 not running behind a tree here, I am  
6 relying on memory. And if you have  
7 documents, of course, I would be glad to  
8 look at those since I don't have the  
9 file. I believe I was originally  
10 contacted about the matter relating to  
11 the issue of the young lady whose child  
12 was making complaints, a former  
13 girlfriend that he had lived with.  
14 During the course of that representation,  
15 I believe, is when the other matter  
16 involving his own children came to light.  
17 I believe they were staggered. They did  
18 not start together, and I believe the one  
19 happened in Niles, I believe was first --  
20 or Girard.

21 Q. And was this a situation where he picked up  
22 the telephone and called and said, "I

1           have been charged with a crime, I want  
2           you to represent me"?

3       A.    He may have talked to me, he may have made an  
4           appointment. He may have called me to  
5           get him out of jail. I don't remember.  
6           I was contacted.

7       Q.    At some point, you were retained to represent  
8           his legal interests in connection with  
9           that?

10      A.    Yes.

11      Q.    And it is your recollection that the first  
12           matter, that initial matter, was the  
13           matter that was the subject of his  
14           live-in girlfriend and the live-in  
15           girlfriend's child?

16      A.    That is my recollection.

17      Q.    And if I indicated to you that that was the  
18           matter that was the subject of criminal  
19           case number 95-CR-696 you would have no  
20           recollection to believe that was not  
21           accurate?

22      A.    I have no reason to think that wasn't true.

1 Q. Can you very briefly describe for the Court  
2 your best recollection, just about the  
3 general nature of the accusations?

4 A. I believe she accused Anthony of being, of  
5 committing acts that were in the nature  
6 of gross sexual imposition or thereof,  
7 with her daughter. Something about the  
8 daughter sleeping downstairs, Anthony  
9 coming in late, she came downstairs and  
10 caught them, caught Anthony hovering over  
11 her, doing something to her. Argument  
12 ensues, police come, Anthony may have  
13 left before the police came, may not  
14 have. That is what comes to my mind.

15 Q. And can you very briefly describe what you did  
16 in the defense of those accusations in  
17 terms of pre-trial discovery, meeting  
18 with the Prosecutor?

19 A. Pre-trial discovery, went to the Prosecutor's  
20 office to the felony division, was given  
21 pre-trial discovery. Made at least one  
22 attempt, I don't know if I was successful

1 in talking to the mother of the child.  
2 Talked to Anthony. Anthony was compliant  
3 and always appearing at the office,  
4 either by his own volition, sometimes  
5 unannounced, sometimes by appointment.  
6 If you ever needed Anthony, he was  
7 there -- police reports, all of those  
8 kinds of things. As I remember, there  
9 was really no physical evidence as we see  
10 sometime in those type of cases, evidence  
11 of combat. DNA was not prevalent during  
12 that time. Evidence of sperm -- it  
13 wasn't one of those kinds of cases. It  
14 was as I described. That is the best I  
15 can do.

16 Q. You received a formal written discovery  
17 response from the Prosecutor's office?

18 A. If I didn't do that, I went over to the  
19 Prosecutor's office and reviewed  
20 discovery, which I have done in several  
21 cases in the Trumbull County Prosecutor's  
22 office, by making personal trips there.

1 Q. And you spoke directly to an Assistant  
2 Prosecutor handling that specific trial?

3 A. Yes, I have. That was Tom Wrenn, but I do not  
4 know if that was him from the beginning.  
5 Tom Wrenn took over this case somewhere  
6 along. If he wasn't there from the  
7 beginning, for the purposes as we  
8 proceeded to trial. Tom Wrenn was  
9 involved.

10 Q. And did you in fact talk with and/or meet with  
11 Mr. Wrenn on more than several occasions  
12 regarding the case, the 1995 case number,  
13 the one you were just referencing?

14 A. I think there were pre-trials where Mr. Wrenn  
15 and I would talk. I am really not  
16 sure -- Mr. Wrenn was the first lawyer on  
17 it -- I don't recall if anybody else was.  
18 Mr. Wrenn and I would talk at pre-trials.  
19 I know for a fact, I met with Mr. Wrenn  
20 at least once at the Prosecutor's office,  
21 because I went there especially when the  
22 other case broke. That is the best I can

1 do.

2 Q. And you indicated that you met with Tony, your  
3 client on a number of occasions?

4 A. Several.

5 Q. Throughout the course of time, I take it then  
6 you shared with him the information that  
7 was learned by you through pre-trial  
8 discovery including your conversation  
9 with the Prosecutor?

10 A. Yes, Sir.

11 Q. Now, there came a time when a second  
12 indictment was returned by the Grand  
13 Jury, naming Anthony Cioffi, Junior as a  
14 Defendant, correct?

15 A. Yes, Sir.

16 Q. And did you represent his legal interests in  
17 connection with that matter?

18 A. Yes, Sir.

19 Q. Do you know when in relation to the time of  
20 the first indictment was returned,  
21 approximately when the second indictment  
22 was returned?

- 1 A. No, Sir, but I would not disagree with any  
2 documentation you had on that. It was  
3 definitely before we were called to trial  
4 on the first one and the second one was  
5 assigned to a different Court.
- 6 Q. The first case was assigned to Judge Stuard?
- 7 A. Yes.
- 8 Q. And the second case was assigned to?
- 9 A. Mitchell Shaker.
- 10 Q. Now, if I told you that the trial in the first  
11 case before Judge Stuard's docket was  
12 scheduled for December 3 of 1996, would  
13 that be consistent with your recall?
- 14 A. No, but I would not contest it. I have no  
15 recall of the date.
- 16 Q. Do you recall how long you represented  
17 Mr. Cioffi in the second case prior to  
18 your being scheduled for trial in the  
19 first case?
- 20 A. No, Sir, I do not.
- 21 Q. Do you recall the very general nature of the  
22 accusations regarding the second case?

1 A. If I'm not mistaken, of course, everything  
2 precludes that. It was a much more  
3 serious case. I believe it was rape. I  
4 believe it was a life offense, because of  
5 the age of the child. I think.

6 Q. I don't know if you said this or not, the  
7 nature of the charges were rape?

8 A. I said I believe it was a rape.

9 Q. And in fact, there were two named victims in  
10 that indictment?

11 A. I believe his children.

12 Q. And meaning Tony Cioffi's minor children?

13 A. That is correct.

14 Q. And can you briefly describe what efforts you  
15 made in terms of the preparation of the  
16 defense in connection with that second  
17 case?

18 A. At least one attempt that Tony arranged  
19 through somebody else to talk to the  
20 mother of the children, was not  
21 successful in doing that. At least one  
22 on my own to do that, and very similar to



1 the previous comments that I had  
2 regarding the first case along the very  
3 same lines. Concern was evident in this  
4 case and it may be somewhat unresponsive,  
5 but it had to do with the preparation.  
6 If I recall, the cases were piggy backed.  
7 One was to finish and Judge Shaker was to  
8 start thereafter by his own proclamation.

9 Q. You are referencing the trials?

10 A. Yes, that is right.

11 Q. Was there ever any -- and I'm not talking  
12 about the date of trial, which would have  
13 been December 3, 1996. Prior to that  
14 date, was there ever any discussion  
15 between your client at the time and  
16 yourself regarding plea bargain  
17 agreements?

18 A. Yes.

19 Q. Could you describe when those conversations  
20 took place?

21 A. No, but there were more than a couple. I  
22 don't want to mislead you. You spoke in

1 terms of the general term plea  
2 bargaining, there are discussions of  
3 those sometimes initiated by me on any  
4 case.

5 Q. And what was Tony Cioffi's position regarding  
6 those plea bargain discussions?

7 A. Well, I always -- this has to be answered more  
8 in the sense of what I would do at the  
9 time. I like to let people know what the  
10 options are. If they are going to trial,  
11 they have got to know the best thing they  
12 are turning down. So, I would have  
13 discussed the possibility with Tony  
14 Cioffi of entering into a plea bargain,  
15 does he want to, what are his concerns,  
16 those kinds of things. It is my belief  
17 in these cases that Tony Cioffi was not  
18 interested in entering into a plea  
19 bargain. That was my general feeling  
20 even though those discussions were had.  
21 Sometimes I tell clients, you may not  
22 want to, but I want you to just listen to

1           what is being offered, because you have  
2           to know choices, and then we move on from  
3           there.

4   Q.    Would I be correct that in this case and all  
5           cases where you are representing  
6           criminally accused, that it is certainly  
7           one of your many functions, however, to  
8           ensure that those decisions that are made  
9           by your clients regarding plea bargain  
10          agreements or anything of that nature,  
11          any decision in regard to a criminal  
12          case, it is your job to see that it is a  
13          well informed decision; is it not?

14   A.    I like it to be, sure. I think that is  
15           important, sure.

16   Q.    It is certainly your function as a criminal  
17           defense lawyer, to share with your  
18           client, all of the information that you  
19           have learned and received through  
20           pre-trial discovery, correct?

21   A.    Yes.

22   Q.    And you would strongly discourage a client

1           making a meaningful decision in  
2           connection with his criminal case without  
3           having critical information regarding  
4           either the nature of the State's case  
5           or --

6           MR. MORROW: At this point, I'm  
7           going to object. We're getting to the point that  
8           defense counsel is now testifying for Mr. Zena. I  
9           don't mind some degree of leading, but at a point  
10          in time where he wants to testify --

11          THE COURT: It is a rather rotund  
12          question, but I think it is proper. He's not  
13          testifying. He's suggesting things that Mr. Zena  
14          can agree or disagree with. Go ahead.

15          Q.     In the course of your representing persons  
16                  accused of crimes, certainly it is your  
17                  responsibility to share with them all of  
18                  the information that you have available  
19                  to you regarding the merits of any  
20                  defense or the strengths of the State's  
21                  case against that person, fair to say?

22          A.     Yes.

1 Q. And certainly you would not -- for example,  
2 you would strongly discourage any clients  
3 making a decision regarding the  
4 disposition of a criminal case without  
5 that client being fully informed because  
6 of the relevant information about that  
7 case, correct?

8 A. I would discourage anybody from making a  
9 decision that didn't know everything that  
10 I knew about the case. There may be  
11 things a Defendant knows that I don't  
12 know, but yes, at least what I know.

13 Q. Now, I would like to hand you what has been  
14 marked for purposes of identification as  
15 Defendant's Exhibit A. I would ask that  
16 you take a moment, read through that. It  
17 is three pages of a letter from the D & E  
18 Counseling Center. If you could take a  
19 minute and read through that. This is an  
20 identical copy so you can follow along  
21 through that.

22 MR. MORROW: What is your date on

1 that?

2 MR. BRADLEY: October 1, 1996.

3 THE COURT: Have you seen this  
4 letter before?

5 A. I don't recall that I had. If I have, my  
6 client would have a copy of it. That is  
7 my standard practice.

8 Q. As you sit here today, do you have any  
9 specific recollection of having seen that  
10 letter before today?

11 A. No, Sir.

12 Q. And you have had an opportunity to review the  
13 letter?

14 A. I have reviewed Defendant's Exhibit A.

15 Q. Could you essentially summarize for me what is  
16 in the letter?

17 A. The letter would deeply call into question any  
18 issues related to the allegations of the  
19 children of Anthony Cioffi or Matthew  
20 Cioffi regarding their father.

21 Q. And that would have been, when you reference  
22 Matthew and Anthony Cioffi, those were

1           the two alleged victims that were the  
2           subject of the case that was pending  
3           before Judge Shaker's docket, is that  
4           correct?

5    A.    That is correct.

6    Q.    And it is those two individuals that were the  
7           alleged victims of the rape that carried  
8           with it the life specification?

9    A.    That is correct.

10   Q.    Now, you had been representing Mr. Cioffi for  
11           some considerable period of time with  
12           respect to the case pending before Judge  
13           Stuard's docket prior to trial?

14   A.    Well, prior to the trial of that case, sure.

15   Q.    You testified you had the opportunity to  
16           engage in discovery and have  
17           conversations with the Prosecutor and  
18           discuss this matter with your client?

19   A.    Sure.

20   Q.    And the record would reflect that that case  
21           was scheduled to proceed for trial on  
22           December 3 of 1996. Were you in your

1           mind prepared to go forward with the  
2           trial regarding the case pending on Judge  
3           Stuard's docket?

4    A.    Yes.  Well, there were some unresolved issues  
5           that we were resolving that morning, but  
6           based on what I had from the information  
7           I had ascertained, yes.  But we were in  
8           the process that morning of going over  
9           issues related to records from Children  
10          Services, and any other records involving  
11          that case or anything related to that  
12          child.

13   Q.    And those records were not yet available to  
14           either you or the Court, that particular  
15           morning of trial, is that right?

16   A.    My understanding is they were either here and  
17           about to be reviewed or on their way.

18   Q.    But regardless of which alternative it was,  
19           you had not personally reviewed them and  
20           to the best of your knowledge --

21   A.    I had not seen them.

22   Q.    And to the best of your knowledge, the Court



1 had not reviewed them either?

2 A. I don't know that.

3 Q. Now regarding the second case that was I think  
4 you testified was scheduled to piggy  
5 back; in other words, once the trial was  
6 concluded with respect to the case in  
7 Judge Stuard's docket, you were to  
8 immediately roll into the trial that was  
9 on the docket of Judge Shaker, is that  
10 correct?

11 A. Yes, that is what the intention was of that  
12 Judge.

13 Q. Scheduled. And regarding that particular  
14 case, the case on Judge Shaker's docket,  
15 were you prepared to go to trial?

16 A. No. I don't think so. There would have been  
17 more things I wanted to do. I think I  
18 even mentioned to my client that whatever  
19 it took, I would not have allowed that to  
20 happen, even if it involved me  
21 personally.

22 Q. I'm not following you.

1 A. The piggy backing of that case allowed Judge  
2 Shaker to call that case to trial in that  
3 amount of time, up to the point where I  
4 would have stood, made tremendous  
5 objections in the record, even calling  
6 into question the representation during  
7 the trial. I told Tony that. I made  
8 that clear. We had known what we were  
9 going to say if we went into the  
10 Courtroom.

11 Q. What were you going to say?

12 A. I was going to stand up and tell the Judge  
13 that I needed more time to investigate  
14 that case. I needed more time involved  
15 in that case. That was a very serious  
16 accusation and I had just got done  
17 preparing for one and proceeding with  
18 that case and that I would have needed  
19 more time. Judge Shaker was fairly  
20 insistent at the last pre-trial, that he  
21 was going to proceed with that case. I  
22 was fairly insistent that he was not.

1 Q. And in addition to what you just described  
2 regarding your state of unpreparedness,  
3 you also have no recollection of ever  
4 receiving Defendant's Exhibit A as part  
5 of a discovery, written discovery  
6 response provided by the Prosecutor's  
7 office?

8 A. No. And again, I'm trying to be as honest and  
9 open as I can in answer to these  
10 questions. That letter seems to be  
11 significant. Obviously, when I get  
12 information like that in any case from  
13 any outside source, I have worn out more  
14 client's copy stamps than anybody. I  
15 stamp it, I hand it to the client. I  
16 give it to the client. I don't recall  
17 reading that. I don't recall seeing it.  
18 If I would have, Tony would have a copy  
19 of it. As I sit here today, I do not  
20 recall that.

21 Q. Besides that, do you have any recollection of  
22 discussing with Tony Cioffi the contents

1 of this particular letter, namely that is  
2 identified as Defendant's Exhibit A?

3 A. Well, the content of the letter itself, no.  
4 Tony's allegations that the children were  
5 making up anything they said about him,  
6 yes, but it wouldn't be arising out of  
7 this letter.

8 Q. Specifically, for example, in basically the  
9 middle of the first paragraph, this is a  
10 just, if I can describe for the record --

11 A. I think I can tell you nothing that is  
12 specifically drawn to this letter would  
13 have been discussed with Tony. I have no  
14 recollection doing that.

15 Q. So, for example, things like the letter  
16 writer's statement, in fact, there's  
17 specific reference to Matt denying being  
18 a victim of sexual abuse. You have no  
19 recollection of having that information  
20 or sharing that with Tony?

21 A. Nothing within this letter at all from  
22 beginning to end.

1 Q. I would like to hand you Defendant's Exhibits  
2 B and C. If you could just review those  
3 and then describe for the record what it  
4 is those Exhibits are?

5 A. Okay.

6 Q. With respect to Defendant's Exhibit B, could  
7 you -- the Judge does not have a copy of  
8 that, could you briefly describe to him  
9 what that reflects?

10 A. It is a psychological consultation report of  
11 the Western Reserve Care System, done by  
12 a Ph.D. in psychology on a referral for  
13 Matthew Cioffi, 3-31-95, is either the  
14 dictation or the date of the test. It  
15 doesn't say in the body of the letter.  
16 And well -- no, the dictation date is  
17 4-3-95, so the test date must have been I  
18 think 3-31-95.

19 Q. Have you ever seen that particular document?

20 A. I have no recall of seeing this document  
21 before.

22 Q. Do you have any recollection of ever

1           discussing with Tony Cioffi at any point  
2           in time, the contents of this particular  
3           Exhibit?

4       A.    No, Sir.

5       Q.    Could you describe for the Court, basically  
6           just read to him the last sentence on the  
7           first page?

8       A.    "Matthew describes possible physical abuse by  
9           a babysitter in the past, but denies  
10          being a victim of sexual abuse."

11      Q.    Referencing, and I take it then that is  
12           nothing that you ever shared with Tony  
13           Cioffi to the best of your recollection?

14      A.    It is nothing I have seen to the best of my  
15           recollection and likewise did not share.

16      Q.    Referencing Defendant's Exhibit C, have you  
17           had an opportunity to review that?

18      A.    I scanned it, sure, just now.

19      Q.    Could you just briefly describe for the  
20           Court's benefit what Defendant's Exhibit  
21           C is?

22      A.    It appears to be a letter signed by Louis

1           Wainwright, the supervisor of the case  
2           unit, Lanore Blanton, who I know to be  
3           members of the Mahoning County Children  
4           Services, directed to the Trumbull County  
5           Children Services regarding Lisa Cioffi,  
6           Anthony Cioffi and Matthew Cioffi, and it  
7           is a letter directed specifically to  
8           Darlene Shope, whoever she was at the  
9           time and I don't know.

10           MR. MAREIN: May I interrupt? I am  
11           sitting here, I'm concentrating on what the witness  
12           is saying, and I understand that people have to  
13           interact. Could you please advise the people in  
14           the back of the Courtroom not to talk? I can't  
15           hear.

16           THE COURT: I would ask anyone who  
17           is observing these proceedings to please not  
18           interrupt in any way. That is not proper to do  
19           that.

20           MR. MAREIN: Thank you.

21           Q.     Have you ever seen before today the letter  
22                   that is identified as Defendant's Exhibit

1 C?

2 A. I have no recollection of seeing this letter  
3 in the past. And therefore, I would have  
4 no recollection of ever discussing it at  
5 all with Mr. Cioffi.

6 Q. The letter, as you can see, references that  
7 Anthony and Matthew were interviewed on  
8 two occasions regarding these  
9 allegations, March 15 of 1991 and March  
10 22, 1991. Do you see that there?

11 A. Yes.

12 Q. And I take it that your having never seen this  
13 letter before today, you took no action  
14 to secure the records that relate to the  
15 March 15 and March 22, 1991 interviews of  
16 the two victims or alleged victims  
17 regarding the accusations that were the  
18 subject of the 1996 case?

19 A. Not up until then. But I wouldn't have known  
20 about it because I didn't see the letter,  
21 and especially, would give the client a  
22 copy of a letter that had any direct



1           accusation against him as this letter  
2           does.

3       Q.    So besides the records that you currently have  
4           in front of you, there's referenced in  
5           those records, additional records that  
6           were generated by the Mahoning County  
7           Children Services that would contain  
8           information regarding interviews  
9           conducted with the two children, Matthew  
10          and Anthony, regarding the specific  
11          accusations?

12       A.   That is correct. Well, I mean that is what it  
13          says.

14       Q.    And you never had the opportunity to secure  
15           those records, learn what was in those  
16           records and share what was in those  
17           records with Tony?

18       A.    No.

19                        THE COURT: Thomas, may I see those?

20                        THE WITNESS: Yes, Your Honor.

21       Q.    (By Mr. Bradley) So, if I can just take you  
22           back now to the date of the scheduled

1 trial regarding the case pending before  
2 Judge Stuard's docket?

3 A. Yes.

4 Q. And see if I can create a little bit of mental  
5 picture and see if it is accurate based  
6 upon your recollection?

7 A. Yes.

8 Q. You are there in Judge Stuard's chambers  
9 discussing some pre-trial issues and  
10 ready to proceed to trial, and you feel  
11 you are prepared to proceed to trial with  
12 respect to that case on Judge Stuard's  
13 docket, correct?

14 A. Yes.

15 Q. And at least --

16 A. I'm sorry. Now understand we were about to  
17 face some issues related to records that  
18 I had not seen yet so, to that extent,  
19 yes.

20 Q. Which may have contained information that was  
21 potentially exculpatory that would  
22 potentially require you to ask for a

1                   continuance to explore that?

2       A.       I would hope that if I had information that  
3                   was exculpatory that other people had  
4                   been seen that it would have been turned  
5                   over to me pursuant to the rules that  
6                   apply, yes.

7       Q.       The point is, other than those records that  
8                   you had not yet had the opportunity to  
9                   review, in your own mind, based upon your  
10                  experience as a criminal defense  
11                  attorney, you felt prepared to proceed to  
12                  trial with respect to the case in Judge  
13                  Stuard's Court?

14      A.       Yes.

15      Q.       And with respect to the second case that  
16                  carried the possible life imprisonment  
17                  sentence, it is your position that you  
18                  were not in a state of trial  
19                  preparedness?

20      A.       Yes.

21      Q.       And what exactly does that mean? Not in a  
22                  state of trial preparedness?