

1 Nobody has to admit they made a tape in order to say
2 that that was what occurred in that conversation, that that
3 tape of that conversation is an accurate representation of
4 what, in fact, was said and my client declines the
5 invitation to waive his privilege and be subjected to
6 arrest on another felony.

7 I do not represent his mother, but she has told me
8 that she is not going to waive her privilege, although I
9 have told her I'm not her lawyer and she cannot accept
10 advice from me on that point.

11 THE COURT: Yes, ma'am?

12 MS. LEVINE: Judge, I think it's interesting that in a
13 lawyer's office, Mr. Markus seeks you to believe that what
14 goes on there is not private and even a subjective person
15 would not think would be private.

16 Certainly in a lawyer's office having a conversation
17 with the lawyer, with the mother, with the defendant, one
18 would believe that would be private. In fact, if the
19 police were to tape such a conversation, they would
20 certainly need a warrant, so I don't know why their
21 semblance of expectation is because they were in a lawyer's
22 office.

23 That's pretty private and, in fact, it's the most
24 sacred place that a person is going to speak to their
25 lawyer. It's different if they were in a coffee shop and

1 maybe I would be hard pressed, but clearly whatever it was
2 appeared to be in an office.

3 I don't know if I have the, as I told you, the entire
4 conversation and that's why I honestly do not believe that
5 Mr. Hirsch could authenticate that piece of evidence at all
6 because he was unaware of it.

7 And number two, he doesn't remember whether or not
8 that was the entire conversation and whether things were
9 edited. He couldn't testify to it being in the same
10 condition as when it was taped and that's exactly why we
11 have these laws.

12 In Atkins versus State, 930 So. 2nd 678, the
13 prohibition against these items being placed into evidence
14 is absolute. At 934.06, there is a prohibition of this
15 being used as evidence. It's illegally gotten evidence.

16 You can't even use it in domestic cases when the woman
17 tries to tape her husband saying he was going to kill her.
18 You can't use it and what better place for that to be used
19 and we don't allow it to be used.

20 And unless and until he establishes that there was a
21 crime of fraud or some kind of crime that occurred and no
22 matter what there is no crime here, there is no crime that
23 Mr. Hirsch committed or alleged to have committed by having
24 a discussion with your client about going some where or
25 about the charges disappearing because that's testimony

1 that's uncontroverted.

2 Mr. Casey says he doesn't remember whether or not it
3 was the charge disappearing, the circumstances disappearing
4 or him disappearing. Mr. Hirsch says he remembers saying
5 he wishes it would disappear for him, so it's
6 uncontroverted; therefore, no crime, no ability to use this
7 tape without the defendant and/or his mother getting on the
8 stand and somehow authenticating it and telling us it has
9 not been doctored in any way.

10 MR. MARKUS: Judge, I don't think the issue is
11 location specific. If you're at a lawyer's office talking
12 about a cocaine deal, just because you're in a lawyer's
13 office doesn't mean you have a reasonable expectation of
14 privacy in your conversation not being taped, according to
15 these cases.

16 THE COURT: You're talking about a lawyer or the
17 client?

18 MR. MARKUS: I think both. I think that--

19 THE COURT: So Milton Hirsch was sitting in his office
20 minding his own business, client comes in with other people
21 and the next thing you know, there is a tape recording
22 introduced claiming to be a verbatim recording of words
23 said by the lawyer, some innocuous words, perhaps some
24 suggestion of criminal activity, perhaps some suggestion of
25 advice that lawyers give and that's just fair game?

1 MR. MARKUS: Not--

2 THE COURT: No lawyer can ever, they have to pat down
3 the client every time they walk through the door?

4 MR. MARKUS: No, but if a lawyer discusses a criminal
5 act under these cases, he doesn't have a reasonable
6 expectation of privacy and what we can do in this case is
7 Ms. Levine and I can cue the tape up to the point that we
8 both are talking about and it would take about a minute to
9 listen to it.

10 I'm not seeking to introduce the whole conversation
11 which occurred in that tape. I'm only seeking to introduce
12 that comment.

13 THE COURT: Let me ask you a quick question here.
14 This Jatar case talks about somebody-- and I'm assuming
15 it's the lawyer making some extortion threats.

16 MR. MARKUS: Correct.

17 THE COURT: To the client.

18 MR. MARKUS: Right.

19 THE COURT: Okay. As opposed to a lawyer giving
20 advice to a client that may or may not be criminal in
21 nature. I don't know what the crime would be except
22 perhaps aiding and abetting a bail jumping charge or
23 something like that.

24 How is that the same thing as a threat, if you will,
25 or a criminal act toward the client versus a conclusionary

1 type of advice?

2 MR. MARKUS: I think it's a difference without
3 distinction because I think what the case is saying is that
4 when you talk about a crime under this statute, you don't
5 have a reasonable expectation of privacy regardless of what
6 the crime is.

7 THE COURT: What is the crime, in your opinion?

8 MR. MARKUS: I think if a lawyer tells a client to
9 flee the jurisdiction, it is aiding and abetting. It's
10 obstruction of justice. I think it's a criminal act.

11 Can I tell you off the top of my head exactly what it
12 is? No. But can I expect if I did that, I would be in
13 serious trouble? Yes.

14 MS. LEVINE: It's none of that.

15 THE COURT: Hang on for a second. Serious trouble
16 with the Florida Bar or the State of Florida?

17 MR. MARKUS: The State of Florida.

18 THE COURT: Stop shaking your head. State of Florida
19 law enforcement officials or the State?

20 MR. MARKUS: Gail Levine, the State attorney. And I
21 can't believe that the State is going to take the position
22 that a lawyer, forgetting about the disputed facts in this
23 case, but as a black letter law, that a lawyer who tells
24 his client to flee the jurisdiction and not go to court
25 commits no crime. Is that really what their position is?

1 THE COURT: Well, I don't know. Assuming that that's
2 all that's said as opposed to furnishing money, furnishing
3 tickets.

4 MR. MARKUS: Nobody is alleging that anybody did that
5 in this case.

6 THE COURT: You said it's none of those.

7 MS. LEVINE: It's not. It's not a crime. He has to
8 do something in order to make an overt act and there is no
9 overt act. Actually, I was agreeing with you because you
10 said when an attorney does that, you can have a problem
11 with the Bar.

12 Sure, it's a totally different scenario. But what
13 happened, number one, we don't allege that that happened
14 and without the authentication of that tape, even that one
15 portion, I think it's very unfair because you got a whole
16 part that isn't very clear.

17 I want to talk about that case with the "I" that I
18 can't seem to pronounce the last name. Would it be all
19 right if Ms. Zayas spoke to you about that case?

20 THE COURT: Sure.

21 MS. ZAYAS: Judge, I would just point out I think our
22 bigger concern is this. If I may, counsel is placing great
23 faith in Jatar versus Lamaletto. And in Jatar, he went to
24 Lamaletto's office.

25 While in Lamaletto's office, Lamaletto taped the

1 conversation and this Court held that there was no
2 legitimate expectation of privacy in that extortion threat
3 that Jatar was making in Lamaletto's office and I would
4 just point out there was a big difference between that case
5 and this case.

6 Number one, the State is not in any way, shape or form
7 suggesting or conceding there is a crime taking place in
8 the first place, which is what Defense counsel seems to be
9 suggesting did occur in this case.

10 But more importantly, here the defendant and his
11 mother went to-- and again, we're speculating at this point
12 since both the defendant and his mother pled the fifth and
13 refuse to discuss the circumstances under which that tape
14 was made.

15 We can only assume for the purposes of this argument
16 and this discussion that either the defendant and/or his
17 mother taped the conversation between Mr. Hirsch and the
18 mother and the defendant. They did so illegally and in
19 contradiction to chapter 934.03 and 934.06 which says that
20 the use of that illegally obtained evidence is prohibited.

21 This discussion I think is a red herring to discuss no
22 expectation of privacy in the crime. Is Defense counsel
23 who represents other criminal defendants, is counsel
24 suggesting that because there is a crime taking place in a
25 house or in an office, that the police can freely tape or

1 enter in any way, shape or form the office merely because
2 the crime is taking place?

3 I would suggest that's not the case. There is a whole
4 body of fourth amendment laws that tells us the opposite.
5 Regardless of what's going on in that office, if there is a
6 legitimate expectation of privacy in the office, you don't
7 look to the activity taking place in the office.

8 You do in order to obtain the warrant in order to
9 establish probable cause to get a warrant to get the proper
10 entry, but you don't say, well, the end justifies the means
11 if there is illegal activity going on because the argument
12 that's being advanced today would throw the fourth
13 amendment out the window and would throw all of the fourth
14 amendment law requiring, all of the statutes requiring the
15 warrants, the police officers to get a warrant would be
16 thrown out the window because on that theory there is a
17 crime taking place, I'm allowed to go in.

18 That's wrong. That's absolutely wrong. And with
19 regards to the Inciarrano case, 473 So. 2nd 1272, it talks
20 about whether there is an expectation of privacy that
21 society is willing to recognize as reasonable and I would
22 respectfully submit that most people, society in general,
23 almost without exclusion is willing to recognize and expect
24 legit any expectation of privacy in an attorney's office
25 and Mr. Hirsch most definitely had an expectation of

1 privacy, a reasonable expectation of privacy in his office
2 on the date he met with the defendant and his mother.

3 THE COURT: Anything else?

4 MR. MARKUS: Yes, Judge. The analysis does not turn
5 where the conversation occurs. I think everybody got side
6 tracked. The analysis itself turns, according to the Jatar
7 case, the reasonable expectation of privacy fails whereas
8 here the intent of the speaker does not justify such an
9 expectation.

10 So whether it's a Bar problem or whether it's a
11 criminal problem I don't think is different either because
12 this Court isn't going to say that, well, if you're
13 discussing a crime, you don't have an expectation of
14 privacy. But if you're discussing a violation of the code
15 of responsibility, professional responsibility, you do.

16 What this case is saying is that if you're having the
17 kind of discussion that is such that we're not going to
18 protect it, we're not going to hold that 934 prohibit it
19 from being taped and the kind of discussion here in these
20 two cases are criminal in nature.

21 I would suggest to you that this type of discussion,
22 even if it's not a crime-- and I don't necessarily concede
23 that it isn't. Even if it is, at most it's a serious Bar
24 breach of the code of professional responsibility.

25 I don't think that's the kind of conversation that

1 society is prepared to recognize as justifying an
2 expectation of privacy. Now if Mr. Hirsch is minding his
3 own business doing his job as a lawyer and giving legal
4 advice, of course that's the kind of conversation that
5 society is going to say deserves an expectation of privacy.

6 But when you stray away from a legitimate conversation
7 to a criminal conversation, these two cases I have cited
8 say 934 doesn't give you a reasonable expectation of
9 privacy any more and I think that at worst we're in the
10 middle, which is to the area of a conversation that's in
11 violation of the code of professional responsibility.

12 So I don't think there is a legitimate expectation of
13 privacy in that very limited portion of the conversation.

14 THE COURT: Okay. I find that this lawyer had an
15 expectation of privacy and I don't think when he
16 entertained the client and the client's mother, that in the
17 giving of advice, whatever the advice might have been,
18 short of truly aiding and abetting in some criminal
19 nefarious deed, that he would ever expect that people were
20 recording surreptitiously his conversation, his advice and
21 his offering of options to people.

22 I mean, lawyers do that all the time. That's what
23 they do and then people have to decide which option they
24 want to take. I think this was illegally recorded and but
25 for the fact that both of these people took the fifth

1 amendment as to their participation in the recording of
2 this conversation, clearly illegally, that they would be
3 facing charges themselves.

4 So the long and short of this is that the Court is not
5 going to allow this evidence to be admitted and is not
6 going to consider any surreptitiously recorded conversation
7 by Mr. Hirsch, by Dr. Rappaport, by anybody, in making the
8 decision as to whether or not the defendant freely and
9 voluntarily entered the plea in this case, number one; and
10 number two, whether or not as to the motion to suppress,
11 that there was actions by the attorney that proved him to
12 be incompetent and therefore not representing the defendant
13 properly so that the plea would be overturned. So that
14 piece of evidence is not coming in. Let's talk about what
15 we have heard so far here today.

16 MR. MARKUS: Yes, Judge. With respect to the first
17 point in the motion dealing with the advice or lack of
18 advice as the Court sees it to flee the country, I'm not
19 going to expound on that.

20 The Court has heard two different versions. The Court
21 is going to make a credibility determination and do what it
22 believes is correct in terms of who to believe and not to
23 believe.

24 If the Court believes that that advice was not given,
25 the motion obviously should be denied. And if the Court

1 believes that that advice was given, I believe it should be
2 granted and I'm not going to make any further argument on
3 that.

4 I would like to turn, though, to the second point and
5 that is the decision not to call Mr. Casey to the stand and
6 the motion to suppress, and frankly I think it's a far more
7 powerful argument than the first.

8 The Court has received a copy of the Third District
9 opinion and the Court can only read this opinion one way
10 and that is that there was no disputed issue of fact
11 presented at the hearing on the motion to suppress that all
12 the police officers' testimony was consistent and that
13 Judge Trawick simply just didn't believe them and granted
14 the motion on that basis and Mr. Hirsch indicated that he
15 believed that Mr. Casey would not add anything and that's
16 why he didn't call him.

17 Notwithstanding Mr. Hirsch's perception of the
18 litigation, the Court is constrained by what the Third
19 District said. And notwithstanding Mr. Hirsch's
20 incredulity at the conclusion that they reached, the Court
21 is constrained by what they said and what they said was
22 that the lawyer in this case did not perfect the record by
23 calling any witnesses so that the Court would have a
24 disputed fact to decide and make a decision after
25 considering the versions of an incident.

1 And it cited a long line of cases from the Third
2 District Court of Appeal starting in the late 80's that we
3 all know that basically says that a Court is required to
4 accept evidence which has not been impeached, discredited,
5 contraverted, contradictory within itself or physically
6 impossible and that's how the Court, the Third District
7 described the evidence in this case.

8 That being said, Mr. Hirsch was well aware that if he
9 didn't do anything, if he didn't put on any evidence, if he
10 didn't call any witnesses, that the Moreno case and the GH
11 case cited within the Sean case, the Third District Court
12 of Appeal opinion would compel Judge Trawick to accept as
13 true the police officers' testimony and notwithstanding
14 Judge Trawick's willingness to say that he didn't believe
15 them, Mr. Hirsch should have been aware of this case law
16 and should have called Mr. Casey to contradict what the
17 officers were saying so that there would be a record basis
18 for Judge Trawick to decide the way he did and I think that
19 was an error on his part.

20 And if you read this opinion, it can only suggest that
21 had that been done, the result might have been different
22 and it's a difficult thing to criticize an attorney for
23 because I think what occurred here is Mr. Hirsch saw that
24 the judge from his body language, his reactions, whatever,
25 got a sense or a reading from the judge that this judge

1 just wasn't buying what these officers were saying and
2 perhaps thought that Mr. Casey, the difficult client that
3 he is, that can never as you have seen, he can't answer a
4 question in a succinct and direct manner.

5 He's constitutionally incapable of doing that and
6 Mr. Hirsch saw that and decided not to put Mr. Casey on the
7 stand perhaps afraid that Mr. Casey would snatch defeat
8 from the jaws of victory and I have done that myself.

9 THE COURT: That's usually called a strategy move.

10 MR. MARKUS: It is, but it's not a reasonable strategy
11 move and it's not a reasonable strategy move because Judge
12 Trawick in the absence of hearing anything from the
13 Defense's side, had no choice under this case law but to
14 accept that police officers' testimony.

15 And the mere fact that Judge Trawick made an incorrect
16 ruling and was willing to sign an order that backed up an
17 incorrect ruling doesn't relieve the lawyer of the
18 obligation to make sure that the record evidence gets into
19 the hearing so that the Appellate Court has a basis with
20 which to rule in his favor and I don't think-- maybe it was
21 a strategy decision, but not a reasonable strategy decision
22 in light of these cases.

23 THE COURT: Do you have a copy of the original motion
24 that was filed and litigated?

25 MR. MARKUS: No, I don't. I have gone to the clerk

1 several times and I never get that particular volume.

2 THE COURT: Anybody have a copy of that? Because
3 Mr. Hirsch in his testimony indicated that the issue was
4 not physical or verbal threat by police officers. That
5 never became an issue.

6 That might very well be a point of controversy between
7 the officer saying no he didn't and the defendant saying
8 yes you did. His testimony, if I recall correctly, was
9 that the issue was whether or not the officers tricked the
10 defendant or used some sort of a subterfuge to speak with
11 him and apparently there was no contest that that actually
12 happened. That's what Mr. Hirsch said.

13 So I would just like to see what the motion alleges
14 because if the motion alleges that area--

15 MR. MARKUS: The motion doesn't allege coercion, if
16 that's what you're asking.

17 THE COURT: Right. So the issue was, was he tricked
18 and/or deceived into talking about a homicide investigation
19 versus a stolen car and whether or not from a legal
20 standpoint, assuming that that was done, would it be
21 legally okay.

22 MR. MARKUS: But that's not what the opinion says.

23 THE COURT: I didn't say that. I'm just asking.

24 MR. MARKUS: I mean, perhaps I'm as in the dark as
25 Mr. Hirsch as to why this opinion says what it does.

1 THE COURT: I don't have a good answer for you. I
2 wasn't at the litigation and I don't know what the
3 witnesses testified to. All I know is what Mr. Hirsch said
4 the issue was and Mr. Hirsch talked with the client,
5 according to his testimony here, and made a strategic
6 decision that the client would add nothing to it.

7 And as you said, it goes into a lawyer's thinking how
8 is my client going to hurt himself by taking the witness
9 stand and snatching defeat out of the jaws of potential
10 victory here?

11 I don't know. I wasn't there. See, that's the
12 problem that we have.

13 MR. MARKUS: Well, that's why I suggest that the Court
14 take some judicial notice of the testimony and the motion.

15 THE COURT: Testimony and the motion? You mean from
16 the--

17 MR. MARKUS: From the motion to suppress hearing.

18 THE COURT: I don't know that that's written anywhere
19 here. Maybe the AG's office has it. Yes, ma'am?

20 MS. LEVINE: I'll address that issue first, if you
21 want.

22 THE COURT: I think he's done.

23 MR. MARKUS: I am done.

24 MS. LEVINE: First of all, I think what's really
25 telling and almost kind of sad is that Mr. Markus didn't

1 read the motion to suppress. He couldn't possibly have
2 read the motion to suppress and put forth the allegation
3 that he had his client sign.

4 If the police are treating you as a victim and you are
5 not really a victim in the police's mind but you're the
6 suspect in a case and they're getting you to talk because
7 they're treating you like a victim, then they are wrong in
8 getting the information without reading you your
9 constitutional rights if they're not going to allow you to
10 leave after you give your victim story. You understand
11 what I'm saying?

12 So what Mr. Hirsch's allegation was was that the cops
13 had a guise. They fooled him into believing he was a
14 victim because he never asked for a lawyer and all he
15 thought he was doing was giving information about an auto
16 theft, but in effect what they were doing was gathering
17 information for their homicide investigation and they had
18 no intentions of letting him leave.

19 It was, in effect, a custodial interrogation. That's
20 what it was. This defendant couldn't have said anything
21 otherwise because he had always maintained to his attorney
22 I thought I was a victim of an auto theft. I didn't think
23 I was in custody. I didn't think I couldn't answer their
24 questions. I was trying to make a report about my stolen
25 car and that's what was elicited in the motion to suppress.

1 What Judge Trawick found was that he felt that the
2 police in their mind had him in custody and the police had
3 testified we didn't think he was in custody until we walked
4 back in after he gave the statement and we saw the glass.

5 That's when he became the suspect in the case. That's
6 what Judge Trawick didn't believe. Judge Trawick didn't
7 believe they changed their mind when they walked back in
8 after he had given the statement and after they saw the
9 glass.

10 That's what they're talking about. That's why the
11 glass got suppressed because they went in allegedly
12 voluntarily to see if the person that stole the car came
13 back to the apartment. So when you read the testimony--

14 THE COURT: It also sounds to me, without reading the
15 transcript, the judge may have been somewhat offended by
16 the officers' conduct in the deception, if you will.

17 MS. LEVINE: I think you're right, but that wasn't
18 something the defendant could have actually said anything
19 about.

20 THE COURT: I didn't say it was.

21 MS. LEVINE: So that's the point. Should the
22 defendant have been allowed to take the stand, certainly an
23 attorney talking about I have gotten everything I got out
24 on cross examination, it sounds like they've given me the
25 answers that I want, my client can't give me anything

1 except to say I thought I was the victim.

2 That was a given. The cops said that we told him he
3 was a victim of an auto theft. So what could the defendant
4 have said? That's outrageous that Mr. Casey lies and he
5 lies once again by signing a document and swearing in court
6 that there was physical threats of violence.

7 That's what Mr. Casey is. He's a liar. Whatever
8 helps him at the time. So now somebody tells him to sign
9 that you should have said physical threat of violence, but
10 when he testifies he's going to say no. He was just a big
11 cop.

12 That's indicative of everything that Mr. Casey does.
13 When he sees that he might have an advantage, he goes with
14 it and he swears to it. So now he says I should have been
15 put on the stand. But back in 2001, this was not his
16 thought and Mr. Hirsch told you he never told me this.

17 If Mr. Hirsch would have put him on the stand, he
18 wouldn't have directed him in any manner to answer
19 questions that would have answers to this allegation of
20 physical threats of violence. So that's why he loses on
21 that count. Because that wasn't what was said and that was
22 just, again, I don't like it. I don't want to say that
23 Mr. Hirsch told me to leave because he didn't do anything
24 for me. He didn't do anything to really help me except he
25 said something to the effect of disappear, but I have been

1 telling Dr. Rappaport since day one, since day one. I see
2 Dr. Rappaport and I say to him I could live in another
3 country. I speak a different language. I like the way
4 they treat me there. Maybe I shouldn't come back. He's
5 talking to Dr. Rappaport. This isn't Mr. Hirsch's idea.

6 This is his own idea and now he wants to again place
7 the blame on someone else. The evidence is uncontraverted
8 that Mr. Hirsch did anything in any way to get him to leave
9 the jurisdiction. He loses on that count too because there
10 is absolutely no credible evidence that Mr. Hirsch and
11 Mr. Haber who were his lawyers or Dr. Rappaport did
12 anything to assist him in leaving.

13 This was his doing. He's a very very intelligent guy,
14 knows how to get more than one passport, knows what to say.
15 I lost it. He's armed, he's ready to go, and he talks
16 about it.

17 He talks about it. He breaks his psychiatrist
18 privilege by indicating in his motion and Dr. Rappaport has
19 to get on the stand and say Milton never told me that.
20 This guy has been telling me this from day one. I'm trying
21 to get him through the litigation.

22 That's what this is about and so much so that he flees
23 in the face of his own plea colloquy which we all sat here,
24 we all heard with time, lots of time and care, a man that
25 conducts himself in business throughout the world, a man

1 that has a Masters Degree from the foreign service school
2 at Georgetown University, a highly reputable school.

3 He's not an ignorant person. He knows what's going on
4 and he tells you I had plenty of time to discuss it with my
5 lawyers. Nobody promised me anything. Nobody promised me
6 any time. Nobody promised me that, nobody told me I could
7 have a defense.

8 This is not a man that's afraid to speak up for
9 himself. This is a man that doesn't like the end result
10 because he heard it in the jail that someone else got a
11 better deal.

12 I don't know whether that somebody had the exact same
13 circumstances and did the exact same thing this defendant
14 did, but he wants a second bite at the apple. That's what
15 he wants and he will do anything for that.

16 I'm pretty sure he might have even come up and taken
17 the third degree felony on the tape if someony told him to
18 do it and then we will be back here and he will say
19 somebody gave him bad advice for that too because he's
20 desperate and he will do anything he can and this whole
21 thing just shows his desperation.

22 Just this morning himself signing that document and
23 swearing to that document goes to show he will do and say
24 anything. So his credibility is completely negated by the
25 credibility of the attorney who said undoubtedly he would

1 never have told him to go out of town.

2 He went back to court with him every time. He comes
3 to court with the jury consultant. He has boxes for trial.
4 He's ready. He's taken depositions. This is not somebody
5 unprepared saying throw all caution to the wind and maybe
6 we'll try it or maybe we'll get a plea.

7 That's not how it went down that day. He's
8 disappointed. He wishes it didn't happen, just like he
9 wishes he wasn't behind the wheel. He was. He's got to
10 take responsibility and the responsibility starts now and
11 we ask that you deny this motion.

12 MR. MARKUS: With respect to the motion to suppress,
13 Mr. Casey testified that he felt intimidated by these
14 officers and he would have testified that he felt he was in
15 custody and that was the issue in the motion to suppress,
16 whether or not he was in custody.

17 The police were trying to say, no, we tricked him so
18 successfully that he was not in custody, but he felt he was
19 in custody because he was intimidated by these officers.
20 The fact they come to his house early in the morning, the
21 fact it was so many of them, that's what he would have
22 testified to had he been given the opportunity.

23 And had he done so, the Third District would have had
24 a basis for which to rule that Judge Trawick's order had
25 record support.

1 THE COURT: What do you think the reason I go through
2 such a protracted plea dialogue with the defendant is for?

3 MR. MARKUS: I know the reason.

4 THE COURT: Just for me to practice?

5 MR. MARKUS: No. I know the reason.

6 THE COURT: So can't we rely on these things? I mean,
7 shouldn't we be able to rely on these things? And when I
8 say to a person as an example about the credit time served,
9 I go through the details of everybody has to agree on the
10 exact amount of days so we don't have to do post trial
11 litigation on how many days the judge said I was going to
12 get and how many days the Department of Corrections
13 actually gave me.

14 How about the part where I talk about has anybody,
15 including any lawyer, promised you exactly to the day, the
16 week, the month, the year, when you would be released from
17 the Department of Corrections or how much gain time they
18 may award you?

19 I even use the word the prosecutor or the Defense
20 lawyer, nobody can promise you exactly how much gain time,
21 if any, the Department of Corrections will award you. They
22 process you, they assign it and that's the way it is.

23 Shouldn't we be able to rely on this or should I just
24 do what they used to do years ago when some of my
25 predecessors used to say, how do you feel today? Pretty

1 good. Do you want to take this plea? Yeah. Anybody put a
2 gun to your head? No. Satisfied with your lawyer? Yeah.
3 Enter a plea of guilty.

4 We go through this because the post trial litigation
5 taught us that we have to cross the T's two and three
6 times, now maybe even four, and dot the I's five or six
7 times and maybe we just cannot rely upon this.

8 But see, I do because I take the time and I go through
9 the trouble at the front end in the hopes we won't have to
10 deal with it at the back end where people say, I was just
11 following orders because that's essentially what your
12 client said. I was just following orders.

13 Had my attorney told me, listen, it would be in your
14 best interest to jump off the building and avoid trial in
15 this case, come on. That didn't happen. Okay? There were
16 any number of opportunities for this defendant, his mother,
17 anybody who wanted to say anything that they wanted about
18 how this event took place, how he was dealt with by the
19 lawyers that were representing him, you know, people just
20 have to take responsibility for their own actions and the
21 Court gave him every opportunity, certainly didn't shut him
22 down.

23 No lawyer did. You had to have been here to see how
24 this worked out. His mother was so thankful that there was
25 a plea discussion taking place in this case. She had an

1 opportunity to speak.

2 You know, these are not foolish people. These are not
3 unsophisticated people. These are people that probably
4 have been in business to some degree, have gotten to a
5 point in life where they just didn't do it on good looks.

6 They did it on the way they dealt with people and
7 their sophistication in life and for him to testify that I
8 was just following orders because he was my lawyer and no
9 matter what he said-- even though he didn't use these
10 words-- I would have done because he's the lawyer, he's the
11 best in Miami-Dade County, Florida, that really doesn't
12 ring true.

13 What we have here I think is true case of buyer's
14 remorse. Oh, I love that car. I want to buy that car.
15 Give me the car. How much are the payments? No problem.
16 Where do I sign? And then you go home and you take out
17 your check book and say, I can't do this. Can I give the
18 car back?

19 Do you know of any car dealers that will give the car
20 back to you? No, sir. They're not. We're not giving this
21 plea back to him either. We're not giving this case back
22 to him. Put your hand down, please.

23 We went through the long detailed plea colloquy about
24 satisfaction with the lawyers. If there was any caviot,
25 yes, I'm satisfied with the lawyer, but I got to tell you

1 I'm not happy about this part, people say that all the time
2 here.

3 You and I have been doing this business for a long
4 time and you have seen plea colloquies where the client
5 says, you know, my lawyer told me this that and the other
6 thing and we deal with it. If we can resolve it, we do.
7 And if we can't, the plea doesn't happen.

8 But I ask this for a reason so we don't have to deal
9 with these later on and I expect people accept the benefit
10 of the bargain they got and that's what he's going to have
11 to do because there is no evidence here that leads me to
12 believe that this plea was involuntarily taken or that he
13 was coerced into taking this plea or he was misadvised by
14 his lawyers or he didn't have the opportunity to have the
15 advice of more than competent but excellent lawyers in
16 their representation of this defendant and I just have a
17 real difficult time dealing with it when they have that
18 buyer's remorse and come back and say I just didn't feel I
19 could have said anything.

20 Please. Please. That just didn't happen here. As to
21 the motion that was filed to vacate the conviction and
22 sentence in case number 01-7975 filed November 6th, 2006,
23 the Court is going to deny the motion and the Court will
24 provide a written order as well outlining some of the
25 points, but more importantly a written order so if you want

1 to take an appeal of it, you can, and you have thirty days
2 in which to appeal the Court's order denying the motion to
3 vacate the plea.

4 MR. MARKUS: Judge, I don't think he has any further
5 funds at this point within which to take an appeal. Would
6 the Court appoint the Public Defender for him?

7 THE COURT: No, not at this time. So we'll ask that
8 the Department of Corrections take Mr. Casey back to state
9 prison. And if there is nothing further on his case, we
10 will be in recess. Thank you.

11 (Thereupon, the proceedings were concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DADE)

I, YESENIA HABEYCH, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 10th day of February, 2007.

YESENIA HABEYCH
Shorthand Reporter and
Notary Public

My Commission Expires: February 18, 2007