

JON H. GUTMACHER, P.A.

Attorney at Law
634 N. Federal Highway
Ft. Lauderdale, FL 33304
Phone: (305) 760-7505

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May 25, 1989

The Honorable Ben F. Overton
Justice, Florida Supreme Court
Supreme Court Building
Tallahassee, Florida 32399-1925

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CLERK, SUPREME COURT

By _____
Deputy Clerk

Dear Justice Overton:

I have just finished reading the Opinion of The Florida Supreme Court dated May 3, 1989 regarding criminal discovery depositions, and am absolutely appalled. Basically, The Florida Supreme Court has traded off "justice" -- for the appeasement of fiscal considerations.

As an attorney who handles a significant number of DUI cases, and as Chairman of the Traffic Court Rules Committee,¹ I would say that this Court is so detached from the actual realities of a DUI trial that the Rule changes are an insult to rationality, intelligence, and fundamental fairness. They are: arbitrary, unfair, and unreasonable.

The complexity of most DUI trials are the easy equivalent of many second degree felonies. Moreover, the motivation for an officer's mistakes/perjury are more prevalent in a DUI trial than almost any other type of situation -- and the need for effective cross-examination is crucial! This is especially true as there are quotas, promotional incentives, and even informal contests between DUI Task Force personnel going on at all times! Trial of a DUI without the deposition of the arresting officer is absurd!

¹ I hereby resign my Chairmanship in protest of your decision.

I personally handle approximately two hundred (200) DUIs per year as well as a number of major felonies. Out of the two hundred DUI cases -- only around twenty (20) are deemed worthy enough to be "trial cases". Of these twenty (20), at least another five (5) will be pled because of the outcome of depositions. The balance consist of totally irreconcilable conflicts between police testimony, the evidence, and the defense witnesses. Depositions clarify these facts, and are the only effective means of challenging the arresting and back-up officers before the jury.

If police complain about the number of depositions being taken -- please let me complain about the number of worse-than-marginal cases that the State takes to trial -- and the almost consistent refusal of the State Attorney's Office to plea bargain doubtful and/or good defense cases -- even when the arresting officer agrees with the breakdown! This is the reality of the practice today. M.A.D.D. runs the prosecutor's side of the Courtroom.

While an officer's time can be tied up in depositions -- I do not think the amount of time spent is out of line with the huge amount of arrests made (over 100 per week in Broward County). Moreover, I do not think it is out of line with the tremendous amount of funds generated by DUI penalties and fines, Court costs, community service hours, etc.

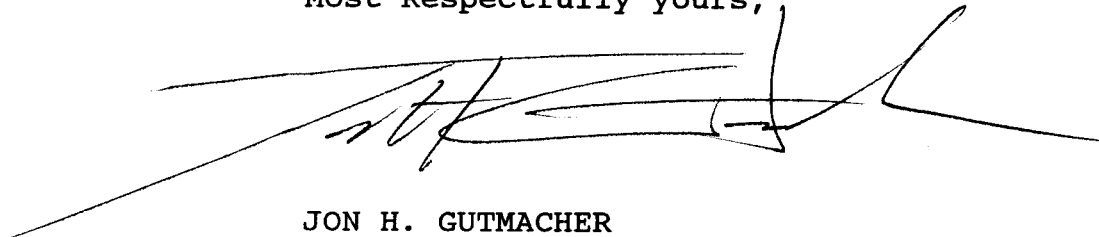
But isn't the real crux of the matter -- the "trade off" this Court is making to the ability of the ordinary citizen to defend, perhaps, the only criminal case they will ever be involved with? And, while the penalties will ordinarily involve only what this Court may conveniently deem as "minor" jail time -- the actuality of "minor" jail time to the ordinary citizen is catastrophic!. A DUI conviction can mean loss of job, income, lifestyle, and driver's license,² however, in Florida this apparently does not matter. Justice is for everyone -- EXCEPT DUIs!

² The fact of the matter is -- it is easier to get a favorable plea on a third degree felony than it is on a DUI.

I am ashamed of your decision. I protest your decision. I outcry the basis of your decision -- and characterize it as a sellout to the very concepts of basic justice.³

I write this letter because I have to. My conscience would not rest if I did not.

Most Respectfully yours,



JON H. GUTMACHER

JHG/cab

cc: Honorable Gerald Kogan
Justice, Florida Supreme Court
Supreme Court Building
Tallahassee, Florida 32399-1925

Honorable Leander J. Shaw, Jr.
Justice, Florida Supreme Court
Supreme Court Building
Tallahassee, Florida 32399-1925

Honorable Rosemary Barkett
Justice, Florida Supreme Court
Supreme Court Building
Tallahassee, Florida 32399-1925

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Chief Justice, and remaining Justices

³ I also object to your inconsistency. How can you say: "We agree with the State Attorneys that there is no reason to treat Misdemeanor cases in a manner different from Felony cases", and then do just the opposite? See, Re: Amendment to Rule 3.191, 14 FLW 240 (May 4, 1989).