

O/a 4-18-89

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James H. Woodard ✓

ATTORNEY AT LAW

1999 SOUTHWEST 27TH AVENUE

MIAMI, FLORIDA 33145

(305) 856-4559

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FILED

SID J. WHITE

APR 7 1989

CLERK, SUPREME COURT

By *[Signature]*
Deputy Clerk

Clerk of the Supreme Court
Of Florida
Tallahassee, Florida 32399-1927

RE: Depositions
Supreme Court Case # 73,734

Your Honor:

I am aware that the FDLE, other Police Agencies, and the Florida Prosecuting Attorney's Association are vigorously pursuing an attempt to abolish the discovery deposition. It would appear that the motive and objectivity of these organizations could easily be likened to asking Ted Bundy his thoughts on the death penalty as a deterrent. Although I do not pretend to be objective, I pass the following along for your consideration.

As a former prosecutor with the Dade State Attorney's Office for twelve years, I cannot recall ever losing a legitimate prosecution case on the basis of defense deposition tactics. To the contrary, well taken depositions tend to alert the prosecutor to potential problems that await him at trial.

Now, as a private attorney whose sole practice has been limited to criminal defense for the past eight years, I find that there are important reasons to continue the deposition process. Although it is readily believed, and possibly true, that the majority of people accused of a crime actually committed that crime, there are significant numbers of people who stand accused of crimes they never committed. Many times the only thing standing in the way of a free ride to prison is the information learned and developed in the deposition.

My thoughts always revert to one of my earlier defense cases as one of the best examples of the threat to the individual, and the system, that is hidden in the cry for the abolition of depositions. In September of 1983, a Miami lawyer, Jack Weiss, and his wife, Caroline, reported to the Miami Police Department that they had been awakened to the presence of a burglar in their bedroom. The shadowy figure fled upon discovery. Minutes later an oft arrested black man by the name of Ramond Paul was seen walking through Coconut Grove by a Miami Police Department officer who detained him investigating the Weiss burglary.

When Mrs. Weiss was brought to where Ramond was being detained, she first told the police that she could not identify Raymond as the burglar. Upon further prodding she made a "positive" identification. No other evidence linked Ramond to the burglary.

Since Ramond was indigent, he remained in the Dade County Jail awaiting trial, during which time a line up was scheduled by the State to objectively test Mrs. Weiss' ability to recognize the burglar. Mrs. Weiss did, in fact, positively identify Ramond in the line up.

With the paper case against Ramond just about air tight, I began checking into Ramond's bizzare account that prior to the line up a man, representing himself as an attorney checking on the alibi of his client , interviewed Ramond in the Dade County Jail and, at that time, caused a "private investigator" to take Ramond's photo. Since Ramond did not know the attorney's client I checked jail visitor logs and found that Miami Attorney Stephen Tarr and Private Investigator Ed Brumby had signed in to see Ramond. When contacted by phone Tarr denied knowing anything of the matter.

Deposition subpoenas were directed to Tarr, Brumby, Mr. Weiss and Mrs. Weiss. During their deposition all four denied under oath appearing at the jail, taking the photograph, seeing the photograph, or the use of the photograph to "enhance" Mrs. Weiss' identification. Only after the existence of the jail records were revealed, and afer the depositions were concluded, did each later recant their sworn deposition testimony in order to avoid an impending perjury prosecution sought by a justifiably outraged Assistant State Attorney.

During the days that followed it was revealed that Weiss had caused his friend, Mr. Tarr, to carry out his plan to convict Ramond for a felony he did not commit. Before the charade was uncovered Weiss smugly rejected reports provided to the State Attorney that Ramond had taken, and passed, a polygraph that supported his claim of innocence.

of innocence.

Were it not for the discovery depositions, Ramond would just now be getting out of prison. Perhaps those at the FDLE would like to calculate the cost of imprisoning an innocent man for five years compared to the cost of taking the discovery depositions in question.

The persons responsible for this subversion of justice were never prosecuted due to the fact that they recanted their lies before charges could be filed. (See Affidavit of Mrs. Weiss enclosed) An attempt to have the principals held in contempt of court did not result in any punishment for those responsible for these acts. (See copy of Suggestion and Petition for Rule to Show Cause attached). This case is by no means unique.

All jurisdictions which with I am familiar, including federal, sanction discovery depositions in civil cases that drag on for years and where the greatest penalty is the loss of money or property. I have never heard a hue and cry for the abolition of civil depositions, perhaps because civil defendants are more like you and me than Ramond Paul is. My thoughts are drawn to the comments of Justice Holmes who said:

It cannot be that safeguards of the person, so often and so rightly mentioned with solemn reverence, are less than those that protect from a liability in debt.

U.S. v. Oppenheimer, 242 US 85.

Sincerely,


James H. Woodard

JHW:cc
Encl.