

PERJURY STATUTE UPDATE: A NEW SUPREME COURT INTERPRETATION OF MATERIALITY By Douglas Rallo

In "Civil Depositions, Lies and Perjury", an article appearing in the February 1994 edition of *The Docket*, analysis was made of the materiality requirement in the Illinois perjury statute, as interpreted by the Appellate Court in *People v. Mason*, 60 Ill.App.3d 463 (1978). In *Mason* the defendant gave an evidence deposition that was important to the State's case in a separate criminal proceeding. The defendant, however, was not called as a witness and his deposition was never introduced at the criminal proceeding. The State later attempted to prosecute the defendant for allegedly false statements in his deposition. He was convicted of perjury and appealed. The Appellate Court in *Mason* reversed the conviction because it found that the false deposition testimony was not "material". The court believed that materiality depended on whether the "false testimony has a natural tendency to influence the trier of fact." Since the deposition was neither used at trial nor influenced the trier of fact in the criminal proceeding, those deposition statements were not deemed "material" and the defendant's conviction, therefore, could not stand.

In *People v. Davis*, 164 Ill.2d 309, 207 Ill.Dec. 484 (1995), (a case originating in Lake County), the Illinois Supreme Court gave new meaning to the word "material", in the perjury statute.

The Illinois perjury statute states that:

(a) A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law such oath or affirmation is required, he makes a false statement, material to the issue or point in questions, whether he does not believe to be true.

In *Davis*, the defendant filed a civil libel suit against Keystone Printing Service and Adrienne Drell, alleging that false statements about defendant's sexual activities were published in Keystone newspaper articles written by Drell. Reverend Davis claimed in the civil case that the articles falsely accused him of homosexual activities with members of his congregation. In his sworn discovery deposition in the libel case, Davis was asked eight questions about his past sexual conduct and he answered by denying any sexual misconduct. It was these denials under oath in the civil discovery deposition which formed that basis of the perjury charges.

The libel suit was settled and, in later proceedings to dismiss the perjury indictment. Judge Stephen Walter testified that while presiding over the civil libel suit he did not rely on Davis' discovery deposition in making any rulings in that case. Since sworn deposition testimony was not relied on by the trier of the fact in the civil suit, the perjury charges were dismissed. The Appellate Court affirmed, based on the reasoning of *Mason*.

On further review of the *Davis* case, the Illinois Supreme Court held that:

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. The law only requires that the statements be given under oath or affirmation in any type of matter where the law requires an oath or affirmation; that they be false; that they be material to the issue or point in question and that the person making the statements believes them not to be true. (emphasis added).

The dismissal of the indictment for perjury was, therefore, reversed.

Justice McMorrow wrote a concurring opinion wherein she explained that "the pertinent inquiry is not whether the fact finder was actually affected by the perjurious statement, but whether the statements could have influenced the finder of fact. Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case... Thus, the crime of perjury is complete when the oath is taken and the false statement is made with the necessary intent." As Justice McMorrow sees it, this is the prevailing view in federal courts and the decisions from other states. Justice McMorrow also expressed here belief that *Mason* should be expressly overruled, which was not done by the majority.

Chief Justice Bilandic dissented, premising his opinion on public policy concerns. According to Justice Bilandic, it appeared that this matter was not initiated by the State after its own investigation, but that a civil litigant, dissatisfied with the outcome of litigation, informed the prosecuting attorney of an opponent's allegedly false deposition statements and requested a perjury prosecution. Justice Bilandic perceived that:

In the future, disgruntled litigants who are dissatisfied with the outcome of particular litigation will search interrogatories and depositions in closed cases for possibly perjurious statements, and then rush to the State's Attorneys office to demand perjury prosecutions against opposite parties and hostile witnesses. As a matter of public policy, I conclude that the valuable prosecutorial resources and court time should not be wasted in prolonging a dispute that formed the basis of a civil action which was closed pursuant to a settlement agreement between the parties.

He also felt that since the allegedly perjurious statements were contained in a discovery, rather than an evidence, deposition and were not admissible as substantive evidence in the libel suit, a criminal prosecution was not warranted.

Nevertheless, the law in Illinois does not now require that the false statement be presented to a trier of fact, and perjury prosecutions are viable even if the offending conduct is brought to the attention of the prosecuting authorities by external sources of information.