

Faulk, Camilla

From: Dressler, Dennis [DDRESSLER@spokanecounty.org]
Sent: Wednesday, April 27, 2011 4:13 PM
To: Faulk, Camilla
Cc: 'felony@lists.defensenet.org'
Subject: comment concerning right to record victim statements - proposed CrR 4.11

Please accept the following comment concerning the adoption of victim/witness statements as proposed in CrR4.11:

Allowing defense attorneys to record the statements of victims and witnesses is very important in order to preserve accurately what is said at interviews. The interviews are, at least in my county, set up through the prosecutor's office and with the presence of the prosecutor, a victim's advocate and a paralegal for the prosecutor and often times the lead investigator. Routinely it is not the witness or the victim that is against the recording but the prosecutor. In the case of interviews of law enforcement it is both the LEO and the prosecutor who object.

By allowing the interview to be recorded neither side has to wonder if the interview is memorialized accurately. I don't know how many times I have had some one being interviewed later claim that "that is not what I said" necessitating my calling either my paralegal or my investigator to impeach their statement (although the state is always fast to point out that they work for me, implying that they are biased and not worthy of the jury trusting them. If the interview is recorded there is no disputing what was said by any party.

Some would say that recordings are traumatic but that is generally the sort of thing that one puts on their roses to make sure they grow well. What can be traumatic is being asked to repeat something several times, slowly to make sure I got it correct; and rest assured I will do that until I have the statement as accurate as possible if I am not allowed to record.

Others have said that by recording I, the defense attorney would be trying to intimidate the witness and/or victim but that is also fodder for the growth of roses. There is no way a person can be truly intimidated if their comments are accurately recorded. My having to have them repeat the statements over and over to get it right would be more intimidating.

Finally, I have heard the complaints that by asking to record the statements of victims or witnesses that I am trying to strip the rights of victims or otherwise make them subservient to my client's constitutional rights. How can that be, you might ask? You would be right to do so. It doesn't. I cannot even frame a legitimate argument to that as it is so specious as to be beyond the pale.

It would seem that the prosecutors have forgotten that they are charged with doing right by all parties, including the defendant. It would also appear that LEO's don't like being trapped by their own words like they try to do with my clients.

I make these comments far from lightly. I started in the prosecutor's office nearly 21 years ago. I wore a badge for over seven years. I have been a proud defender of my clients rights (even the one's the State calls technicalities but the rest of us call the constitution for all but the first two months of my legal career.

Dennis

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