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April 28, 2011

Clerk of the Court  
Washington State Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

Dear Madam Clerk and Members of the Court:

I am writing this letter in support of proposed Superior Court Criminal Rule CrR 4.11: Interviews of Witnesses.

I am a Professor of Psychology at the University of Washington where I have both taught about and conducted research on human perception and human memory since my arrival here in 1972. I have written numerous journal articles and books on human perception and memory. I have served on the editorial boards of numerous journals including *Journal of Experimental Psychology: General*; *Journal of Experimental Psychology: Learning, Memory & Cognition*, and *Psychological Science*. I have served as editor of *Memory & Cognition*, and associate editor of *Cognitive Psychology*. I am currently serving on the editorial board of *Psychological Review*.

I currently conduct research in human perception and memory. This research, which has been funded by the National Science Foundation and/or the National Institutes of Health since 1973, is oriented around human perception and memory issues. In recent years, my research has focused largely on issues that are relevant to the legal system in general and to the accuracy of eyewitness testimony in particular.

This shift of my research to legally-relevant issues has come about largely because of my increasing involvement as a consultant and expert witness in the legal system. In particular, I have been consulted in approximately 1,000 legal cases. Over the past 27 years I have testified as an expert in human perception and memory in over 275 court cases. These cases have been in state courts thirteen states, in federal courts in eleven cities, in military court at a U.S. Naval court martial in Italy, and in Canadian court in Winnipeg, Manitoba.

I support the proposed Rule 4.11 because audio recording interviews is a better method of preserving a witness's memory of an event than non-verbatim note-taking. Recording a witness statement is crucial because failure to adequately document a witness's recollections results in complete reliance on human memory which is known to change and become distorted in systematic and often biased fashion.

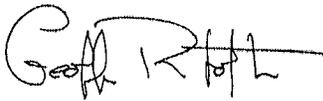
Scientific research has repeatedly demonstrated that human memory is a complex process that changes over time. Information may become lost as a witness unconsciously strips away pieces of data that seem unimportant to the witness or which are inconsistent with other beliefs of information held by the witness. While such lost information may not be important to the witness, it may have critical legal merit to the prosecution and/or to the defense. Further, a witness may erroneously add data to his or her

memory which comes not from the witness's original observations, but which is based on *post-event information* i.e., information that the witness either makes him- or herself via inferences, or obtains from outside sources such as friends, other witnesses, police interviews, media coverage of the relevant event. When a witness is exposed to post-event information, the witness has been observed to store the additional information in memory as if it were true. Such integration of post-event information into a witness's memory has two consequences. First, because of the changeable nature of memory, the new information is incorporated into the recollection seamlessly and the witness is later unable to differentiate between his original memory and the altered memory tainted by post-event information. Second, the post-event information itself may well be inaccurate, in which case, the witness's memory becomes— unbeknownst to the witness— concomitantly inaccurate.

Because court cases can remain unresolved for years, they present great risk for memory deterioration. Accordingly, providing attorneys with a means of documenting the witness's original recollection via a verbatim record is an essential component of the fair administration of justice.

Because the rule provides the best method for preserving a witness's recollections, I strongly support the adoption of proposed Rule CrR 4.11. I appreciate the Board of Governors consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoff R. Loftus". The signature is stylized with a large initial "G" and a long horizontal stroke extending to the right.

Geoffrey R. Loftus