

**SCHROETER
GOLDMARK
& BENDER**

Email: robinson@sgb-law.com

April 29, 2011

Washington State Supreme Court
415 12th Avenue SW
P.O. Box 40929
Olympia, Washington 98504-0929

SENT VIA EMAIL ONLY

500 Central Building
810 Third Avenue
Seattle, WA 98104

Phone (206) 622-8000
Toll free (800) 809-2234
Fax (206) 682-2305

Re: ***Proposed New Criminal Rule 4.11 - Recording Witness Interviews***

Attorneys
Adam J. Berger
Joseph A. Campagna
Martin S. Garfinkel
Kathy Goater
M. Lorena González
James D. Halley
Lindsay Halm
Kristin Houser
Anne Kysar
Angela Macey-Cushman
Janet L. Rice
Jeffery P. Robinson
Rebecca J. Roe
Colette Tvedt
Sandra E. Widlan

Members of the Court:

I urge you to adopt the proposed CrR 4.11 which would give defense counsel the right to use a tape recorder or court reporter during witness interviews. This rule would absolutely advance the interest of justice.

I have been a criminal defense lawyer for over 29 years, have tried cases in state, local, and federal courts. In order to fulfill the obligation to provide effective assistance of counsel it is absolutely necessary to do thorough investigation of the facts when representing a client charged with a crime. Witness interviews are critical part of necessary preparation to defend a criminal case.

Law enforcement agencies routinely tape-record statements of defendants so that the court and potential jurors can hear exactly what the defendant said, and the tone of voice used by the defendant and the law enforcement officers conducting the interview. This avoids the problem presented at trial when the defendant might claim that police officers are lying about what he said or that they intimidated him during the interrogation. A tape recording (and some agencies both video and tape-record) provides a permanent record of exactly what was said by all of the parties involved in the interview. There is no reason that this tool should only be available to the prosecution.

It is a common occurrence that witnesses have told me things in a defense interview and then denied saying them on the witness stand. I am then left with calling an investigator who has taken handwritten notes to testify about what the witness said during the interview. Prosecutors routinely try to impeach the investigator by saying "your notes are not word for word what was said" or "you could have made a mistake taking your notes."

Of Counsel:
Croll Anderson
Mark A. Burke
William Rutzick

Since 1969

Washington State Supreme Court
April 29, 2011
Page 2

The lack of a permanent record of exactly what was said during the interview allows witnesses, including police officers, to take the witness stand and deny things that they said during an interview. This in no way promotes the interest of justice.

A court reporter or tape recording of an interview does not violate any rights of any witness. If the witness does not want to be tape-recorded, a court reporter can be used. There is virtually no difference between a court reporter and an investigator taking notes, except for the fact that the court reporter can provide a verbatim transcript of exactly what was said. Why would anyone object to such a record being created?

Using a court reporter or a tape recording also makes the interviews shorter, because counsel does not have to wait for an investigator to try to write down everything that was said before asking another question. It encourages good behavior on the part of all involved, because there is a permanent record of what is said by every person involved in the interview. If the tape recording is used, it also preserves the tone of voice used by both witnesses and lawyers, and whether or not the witness and the lawyer conducting the interview are being forthright and fair during the interview process.

For these reasons, I urge you to adopt the proposed CrR 4.11. Thank you for your consideration.

Very truly yours,



JEFFERY P. ROBINSON