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February 8, 2011

Sent Via E-mail  
Washington State Supreme Court

RE: **Proposed Criminal Rule 4.11**

Dear Justices:

The purpose of this letter is to urge the Court to adopt proposed CrR 4.11. This rule would allow attorneys to obtain accurate records of witnesses interviews in criminal cases.

Handwritten summaries of witness interviews have been the traditional method to record them in criminal cases. However, they are wholly inadequate to the task of accurately recording and preserving what witnesses say in pretrial interviews. No competent attorney in a civil case would rely on them for this purpose.

CrR 4.11 was submitted to the Court several years ago. The Court did not adopt it at that time. However, tape recording of witness interviews since then has grown in popularity with all parties. None of the problems predicted by opponents have come to pass. In fact, trial prosecutors who handle serious felony prosecutions in King County have come to prefer recording as the most accurate method of memorializing witness interviews.

The following are further reasons the Court should adopt this rule: First, the rule does not *require* tape recording of witness interviews. It *allows* taping *or* the use of a court reporter to memorialize them. Thus for the witness who does not want to have his or her voice recorded, a court reporter can be used to accurately memorialize the interview stenographically.

Second, taping does not violate the Privacy Act. That is because the Privacy Act only requires two-party consent for *private* conversations. Witness interviews are not private conversations under the meaning of that law. See *St. v. Mankin*, (Division II, Docket No. 38977-1, Oct. 19, 2010). Additionally, if someone still has concerns about taping, a court reporter can be used instead.

Third, taping protects witnesses as well as parties from false or misleading accusations about what was said in interviews. It also encourages professionalism in both the tone and substance of the interview. It allows juries to resolve disputes about witnesses' prior statements with accurate records of those statements rather than the essentially unresolvable assertions of two adverse witnesses.

Fourth, it has been said that recording or use of a court reporter is somehow traumatic for witnesses. While the interview itself may be unpleasant for some, the recording or use of a court reporter is not. In this age of You Tube, Twitter, Face Book and reality TV shows, to assert that

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audio taping or using a court reporter to accurately memorialize interviews is traumatic or violates someone's rights is just not accurate. See the attached letter from Ms. Jennifer Thompson-Cannino urging passage of CrR 4.11. She is a famously mistaken rape victim from North Carolina.

Some have argued that even though they personally favor accurate records of witness interviews, ultimately witnesses should be allowed to decide whether they are made. However, it turns the concept of a fair trial on its head to allow a witness who may have an interest in the outcome or who may be mistaken, uncertain, or lying, to prevent the finder of fact from learning from an accurate source of these problems and inconsistencies with the witness's testimony.

Sexual assault victims are usually the witnesses of choice for those who oppose accurate records of witness interviews. However, it is important to note that:

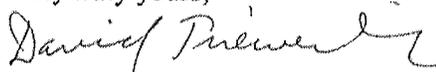
- Most witnesses in criminal cases are law enforcement officers who have been professionally trained in how to testify;
- Most of the remaining witnesses are not victims;
- Most victims are not sexual assault victims.
- Sexual assault cases have the highest rate of false or mistaken allegations. See the attached recent article from [Newsday.com](http://Newsday.com);
- Even true victims can be honestly mistaken, biased, or confused about the identity of the person who assaulted them. The history of false convictions in this country is replete with sincere, but mistaken, eyewitness identifications of suspects. Therefore, to minimize false convictions, it is just as important to accurately memorialize the claims of real victims as other witnesses.

A new claim has recently surfaced that tapes and transcripts of witness interviews will have to be disclosed by prosecutors under a Public Records Act request. While that has not been a problem to date, it is untrue because the proposed rule prohibits such release. Additionally, the Public Records Act allows agencies not to disclose records where a) necessary to effective law enforcement; b) necessary to protect a person's privacy; or, c) prohibited by other law (such as CrR 4.11).

We must never forget that the purpose of a criminal trial is to determine, with a very high level of certainty, whether the accusations against a person are true. It is not a mere ceremony to publically confirm the allegations of the complaining witness, police or prosecutors.

Accurate preservation of witness interviews is a procedural issue that will enhance the truth finding function of the court in criminal cases. It does not violate the substantive rights of any witnesses. Therefore, I urge the court to adopt CrR 4.11.

Very truly yours,



David A. Trieweiler

DAT  
Enclosures

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Re: Proposed Court Rule on Electronic Recording of Witness Interviews in Criminal Cases

Dear Sirs and Madams;

My name is Jennifer Thompson-Cannino. I was the victim of a violent sexual assault many years ago. Unfortunately, I sincerely, but mistakenly, accused the wrong man of this assault. He then spent many years in prison for this crime. Fortunately, he was later freed as the result of new DNA evidence. This experience taught me that our criminal justice system is far from perfect and needs additional safeguards to protect innocent persons from being convicted.

I understand that your state is considering a proposed court rule that would allow attorneys for either party to electronically record pretrial witness interviews with or without the witnesses' consent. We have such a rule in my home state of North Carolina. I am writing this letter to urge you to adopt this rule.

The purpose of the criminal justice system is to protect the innocent as well as punish the guilty. The more facts a jury can learn about a case, including what witnesses and victims have previously said, the better chance it will have of determining the truth.

Recording pretrial interviews is not traumatic for witnesses or victims. As the victim of a violent rape, I found it unpleasant to have to recount the details of this crime to lawyers. However, the recording of my pretrial interview, by itself, did not add to this or traumatize me in any way. In fact, recording protects victims and witnesses from false or mistaken accusations later about what was said in their interviews.

I came to learn, in a way I hope no one else ever has to, that a sincerely held belief about the identity of a crime's perpetrator can nevertheless be a mistaken one. The more facts the jury can learn about witnesses' and victims' knowledge and prior statements, the better the jury's ability will be to ferret out the truth. Consequently, I urge Washington to adopt a court rule that will permit all parties to accurately record all pretrial witness interviews.

Jennifer Thompson-Cannino





<http://www.newsday.com/news/new-york/cops-meteorologist-faked-assault-claim-1.2546370>

## Cops: Meteorologist faked assault claim

December 16, 2010 by The Associated Press



A meteorologist on ABC's local New York station was suspended Wednesday after police said she made up claims she was assaulted in Central Park.

Heidi Jones of WABC-TV told police Nov. 24 that a man had tried to rape her a month earlier as she ran in Central Park. She said the same person harassed her outside her apartment Nov. 21 at 7:50 a.m.

Police investigated, speaking to possible witnesses and canvassing the area for a person matching description she gave of her alleged attacker: a stocky, Hispanic man dressed in a black jean jacket and blue jeans, about 5 feet 9 inches tall. Police said Jones admitted fabricating the story when investigators went back to her to discuss the case.

She was given a desk appearance ticket for false reporting, which is akin to a traffic violation and does not require the suspect be taken into custody. The charge is a misdemeanor and she was scheduled to appear in court Jan. 15. If convicted, she could face a year in prison and fines.

Jones' attorney, Paul Callan, told The Associated Press that his client would plead not guilty to any charges.

"Ms. Jones has had a distinguished career as a broadcast journalist and urges all concerned to refrain from jumping to conclusions about the unproven charges

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against her being discussed in the press,"  
Callan said.

Jones also fills in on "Good Morning America." WABC said Wednesday that Jones has been suspended pending an internal investigation. She worked previously in Billings, Mont., and Houston and has been with WABC for about five years.

She has a blog centered on running, where she talks about her love of the sport and her time spent running in Central Park and other locations. Her motto, according to the site, is "if you knew you wouldn't fail, what would you try?"

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