

Faulk, Camilla

From: Doug Hyldahl [doug@lesterhyldahl.com]
Sent: Thursday, December 30, 2010 10:51 AM
To: Faulk, Camilla
Subject: CrR 4.11

Dear Members of the Court:

I write in support of the proposed new CrR 4.11 which would allow the recording of witness interviews in criminal cases.

I have practiced criminal law my entire career. As a law student, I was surprised to find out that discovery in civil cases was much more extensive and formalized than in criminal cases, where life and liberty were at stake instead of money. I later came to realize that there are many criminal cases and they move quickly, and perhaps the formal mechanisms of civil discovery were not well suited to the criminal arena. As a public defender, I was interested to learn that in some states, e.g., Florida, depositions were routinely conducted in criminal cases. As a grayer and more experienced attorney, I was exasperated to learn that certain groups opposed the tape recording of witness interviews. I cannot understand why anyone would object, in the context of criminal discovery, to accurately and economically preserving a record of what is said in an interview in an economical way.

Some commenters have argued that witnesses should have the right not to be recorded because those accused are endowed with rights. But this is mixing apples and oranges. The rights of the accused stem largely from the state and federal constitutions, and to a lesser extent from statute and court rule. Witnesses and victims are endowed with certain rights as well. Those rights are found in RCW 7.68, 7.69, 7.69A and 7.69B, Article 1, Section 35 of the Washington State Constitution, and in cases such as *State v Hofstetter*, 75 Wn.App. 390 (1994). The rights of the accused and the rights of witnesses are not coextensive, nor should they be. They serve different goals.

No person should have a right to compromise the accuracy of criminal investigations, whether those investigations are conducted on behalf of the state or the accused. Should a defendant lie to the police about a material matter, he can be charged with making a false or misleading statement to a public servant under RCW 9A.76.175 or obstructing a law enforcement officer under RCW 9A.76.020. And the jury will most likely be told about his prevarication. It is certainly no more burdensome to a witness to be tape recorded during an interview so that an accurate record of what is said, by the witness and by his or her questioners.

Some have argued that to record a witness is a second violation of a victim. First, describing a witness as a victim prior to conviction in most cases gets the cart before the horse: there has been no determination of the accused's guilt. Secondly, to describe tape recording as victimization is something more than an exaggeration. Although some attorneys may foolishly try to intimidate or bully a witness in an interview, which indeed could be a victimization, recording interviews should deter such conduct.

In an overburdened criminal justice system which takes more and more of the judiciary's time, and delays the resolution of civil disputes, it is hard to understand why the Court would reject a rule which accurately, efficiently and economically moves proceedings forward.

I urge adoption of CrR 4.11.

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