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To whom it may concern:

I am writing to voice my strong opposition to the proposed new Superior Court Criminal Rule 4.11, Recording Witness Interviews. This is done notwithstanding the claim that many of the concerns about recordings being intimidating have been "alleviated". Apparently the concerns of prosecutors and victim's advocates have been lightly dismissed in favor of making things more convenient for defense attorneys (rather than having a defense investigator present). Both prosecutor and defense attorneys have seen police report after police report where witnesses at the scene were willing to make statements to police but refuse to let their statements be recorded. I can tell you from firsthand experience seeing the fear and stress demonstrated by witnesses at the beginning of witness interviews when they are asked if the interview can be recorded (whether or not they ultimately agree to have it recorded).

This issue is particularly important in the context of prosecuting gang violence. Part of gang culture is such that other members of the gang will attempt to intimidate or commit acts of violence against potential witnesses. What is often required to get fellow gang members to act is to provide them what they call "paperwork". "Paperwork" is the discovery materials that show who is talking to the police and what they are saying. With such documentary proof in hand, fellow gang members are more easily recruited to instill fear against witnesses and attempt to derail the State's case. This if often discussed amongst gang members when talking on the jail phone system. Just today I was listening to a jail call in which the jailed gang member facing murder charges discussed a girl that had "narc'd" and how she had "fucked up" by saying that he had done it. In response to that discussion the gang member on the outside immediately told him to get the discovery from his attorney. He then told him "don't trip man, the bitch will be handled." But most such conspiracies for witness intimidation are not discovered.

When you look at this proposed rule change, it shouldn't be viewed in a vacuum. One should also look at the 2007 changes to CrR 4.7 that added:

> "Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court."

The judges in my jurisdiction are treating this rule change very liberally. The court will order that redacted copies be given to defendant unless we have something more than speculation or generalizations. I can envision even more gang get-togethers in which they read transcripts or play recordings of witness interviews. It's happens and our witnesses know it. Last week a witness to a shooting refused to have the interview recorded for that very reason. The defense attorney then brought in an investigator to take notes and witness the interview. It was a bit of an inconvenience to all of us, but it was also an inconvenience for the witness when he had to relocate out of fear of retaliation by the defendant's gang.

The bottom line is that there is real fear, intimidation, and potential for violence associated with recording of many witness interviews. Particularly in the context of gang cases there are real consequences when witness recordings and transcripts make it into the hands of a defendant. This proposed rule change in the context of the discovery rules will ultimately impair many prosecutions and endanger potential witnesses. This proposed rule should be rejected.

Sincerely Yours,

Gary Hintze
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