



SCHOOL OF  
LAW

January 24, 2011

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

CLERK

RECORDED  
SUPERIOR COURT  
STATE OF WASHINGTON  
2011 JAN 26 AM 8:14  
C. M. CALDER, CLERK

Dear Ms. Faulk:

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

I am an Associate Professor of Law at Seattle University School of Law where I have taught Criminal Procedure, Criminal Law, and litigation subjects including Constitutional Law, Evidence, and Criminal Trial Advocacy since the late 1970s. I have served on the Executive Committee of the WSBA Criminal Law Section for more than 30 years. I am also a former prosecutor, public defender and have been in private practice in addition to my tenured position at Seattle University School of Law since the late 1970s. I write in support of the proposed CrR 4.11 in my capacity as a professor of Criminal Procedure and Criminal Law and as a result of my concern for increasing the accuracy of criminal investigation and litigation for both prosecution and defense.

I support the proposed Rule because taping protects witnesses as well as the parties from false or mistaken accusations and/or erroneous impeachment based on what was said in an interview. Whether it is a defendant who has waived their Fifth Amendment rights, a witness, or a victim who is being interviewed, the proper functioning of our system of justice depends on the accuracy of the recording of such interviews. Examples of inaccurately recorded interviews which result in erroneous impeachment, mistaken credibility choices between the interrogator and the interviewee, and the resultant difficulty for judges and juries to resolve such disputes, mandate recording of interviews to minimize these difficulties and increase the accuracy and fairness of the litigation process in criminal cases. The alternatives to recording,

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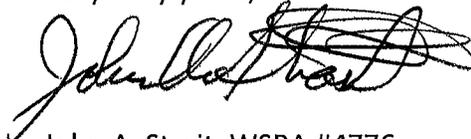
including verbatim hand-written notes or memory, are simply historically unreliable and generate needless controversy under difficult circumstances for a finder of fact to resolve.

The concerns for the integrity and accuracy of the investigative phase of a criminal case and the subsequent concerns for easier credibility and dispute resolution in litigation for the trier of fact far outweigh any nominal impact that recording has on witnesses. The experience of police agencies in other jurisdictions where a mandatory recording rule was adopted convinced these agencies, which originally opposed adoption, of the desirability of the rule. Police officers were no longer being challenged on the accuracy of their hand-written recording of what a witness told them because the tapes revealed what was actually said.

While some interviews are indeed traumatic, including victim interviews, there is no increase to that trauma by the requirement of accurate recordation, particularly where, as the current proposal does, there are dissemination limitations to minimize the fear of unauthorized or improper use of the recordings.

I strongly support the adoption of proposed Rule CrR 4.11 and appreciate the Supreme Court's consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Strait", with a stylized flourish at the end.

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