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April 26, 2011

Clerk of the Supreme Court
Temple of Justice
Post Office Box 40929
Olympia, Washington
98504-0929

RE: Comments on CrR 4.11 and CrRLJ 4.11

Dear Justices of the Supreme Court,

I am writing to urge the Supreme Court to reject the proposed criminal rules which would allow a witness interview to be recorded over the witness's objection.

I echo the comments provided by the Washington Association of Prosecuting Attorneys. The recording of an interview is not a requirement for a successful witness interview; is not essential in providing counsel access to the witness; or essential to provide for responsiveness by the witness to questions. In my opinion it will hinder both access to, and quality of, witness interviews.

Washington law currently requires two party consent for the electronic recording of conversations through RCW 9.73.030(1)(b). Furthermore, Article I, Section 35 of the Washington State Constitution, demands that crime victims be afforded "due dignity and respect." State Statutes instruct prosecutors and judges that we should protect the rights of crime victims "in a manner no less vigorous than the protections afforded criminal defendants." See RCW 7.69.010. I don't believe these public policies are congruent with the proposed court rules.

In addition, the Supreme Court has previously considered the necessary regulations for and the appropriateness of recording witness interviews when it promulgated the rules for depositions under CrR 4.6 and CrRLJ 4.6. "Any depositions may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as witness..." CrR 4.6(d).

While the proponents of the rule state that there are sufficient safeguards restricting access to the recordings, the rule also directs that copies of the recordings are to be provided to all

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parties. I have real concerns that disclosure will hinder victim participation due to fears of public release of the interview, and/or the defendant reliving the victimization. Additionally, law enforcement has a real interest in preventing the voice prints of undercover officers from being disseminated out in the public.

For these reasons I urge you to reject proposed rules CrR 4.11 and CrRLJ 4.11.

Respectfully,

A handwritten signature in black ink, appearing to read 'Matt L. Newberg', written over a horizontal line.

Matt L. Newberg
Prosecuting Attorney