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April 26, 2016

Honorable Susan L. Carlson
Acting Supreme Court Clerk
P.O. Box 40929
Olympia, WA 98504-0929

supreme@courts.wa.gov

Re: Proposed Rules CrR 8.10 and CrRLJ 8.13

Dear Clerk Carlson:

The Washington Association of Prosecuting Attorneys (WAPA) oppose both proposed rule CrR 8.10 and proposed rule CrRLJ 8.13.

These proposed rules are contrary to the spirit of article I, section 10 of the Washington Constitution, which requires that justice be "administered openly." "[T]he open administration of justice ... promotes confidence in the judiciary." *In re Detention of Morgan*, 180 Wn.2d 312, 325 ¶ 27, 330 P.3d 774 (2014). The proposed rules take the opposite view – that public confidence will be impaired if jurors learn what really happened in their cases. That view should be rejected.

One of the benefits of the jury system is the knowledge it provides to citizens who participate in jury service. Our justice system is often surrounded by myth, exaggeration, and urban legend. Jury service allows citizens to see the reality. They can then defend aspects of the system that they agree with, or seek to change aspects that they disagree with.

Proponents of the proposed court rules argue there is a "prejudicial effect on the system of justice" when jurors learn they were deprived of reliable evidence. This reasoning bears a disturbing resemblance to the practice of totalitarian regimes. Those regimes usually believe that they can maintain public confidence by depriving their citizens of information about government practices. Democracies believe the opposite – that public confidence can only be maintained if citizens understand the truth about their governments. This view is reflected in article I, section 10 and in the Public Records Act. *See* RCW 42.56.020 ("The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain

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Letter to Acting Supreme Court Clerk Susan Carlson
April 26, 2016
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control over the instruments that they have created.”).

The exclusionary rule is one of the most distinctive aspects of the U.S. criminal justice system. It is also one of the aspects that is most subject to myth, exaggeration, and urban legend. Citizens who have served as jurors have a particular need to understand the truth of how that rule operates. If the rule is operating properly, those citizens can respect the benefits that it achieves, despite the negative impact on individual cases. If the rule is not operating properly, those citizens can acquire the knowledge that is needed to advocate and support beneficial changes.

Once a juror has completed service in a particular case, he or she should be allowed to learn what happened in proceedings that occurred in open court. Prosecutors should not be punished for telling those jurors the truth.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Beth Loginsky". The signature is written in black ink and is positioned above the typed name.

Pamela B. Loginsky
Staff Attorney

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 26, 2016 3:45 PM
To: Tracy, Mary
Subject: FW: Comment letter re proposed court rules CrR 8.10 and CrRLJ 8.13
Attachments: Comment letter re CrR 810 and CrRLJ 813.pdf

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]
Sent: Tuesday, April 26, 2016 3:44 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment letter re proposed court rules CrR 8.10 and CrRLJ 8.13

Dear Clerk--

Attached is a letter setting out my organization's position regarding proposed court rules CrR 8.10 and CrRLJ 8.13.

Please do not hesitate to contact me if you should encounter any difficulty in opening the attached document.

Sincerely,

Pam Loginsky
Staff Attorney
Washington Association of Prosecuting Attorneys
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Olympia, WA 98501

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