## Tracy, Mary

**From:** OFFICE RECEPTIONIST, CLERK
**Sent:** Wednesday, February 20, 2019 8:13 AM
**To:** Tracy, Mary
**Subject:** FW: Objection to Court Proposals

**From:** Michael Szilagyi [mailto:Michael.Szilagyi@bothellwa.gov]
**Sent:** Wednesday, February 20, 2019 7:51 AM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Objection to Court Proposals

To the Supreme Court of the State of Washington,

I am writing in regards to proposed CrR 3.7, 3.8, and 3.9, and to express my sincere and grave concern.

**Concerning Ccr 3.7 and 3.8**: Both of these proposals are based on the assumption that law enforcement officers are inherently untrustworthy. The profession is rooted and based on integrity, and forcing the courts to operate under this assumption undermines everything a police officer does. It, in fact, would invalidate all the work conducted by the law enforcement officer. These proposals also place an undue burden on police agencies, most of whom do not have the recording capabilities that would be required. The retention requirements for the quantity of video that would be recorded would require extreme monetary and time expenditures, both in order to store the massive amount of data, and in personnel to handle public records requests and management of these systems. Few agencies have the capacity or budget to handle this burden.

Investigation of crimes, especially for first responders, is usually a confusing and rapidly evolving process. The requirement that any "persons under investigation for any crime" be audio/video recorded may seem clear to someone sitting in an office or reviewing reports after the fact, but for those arriving on scene it is rarely clear cut. It often is not clear who the suspect is, or even if a crime has occurred, until well into an investigation. This raises a complicated and litigious question of when the officer knew, or should have known, when the person was under investigation. Further, many people would refuse to be recorded. The requirement that such refusal be recorded is a catch-22 situation, clearly designed to undermine an investigation.

The proposal that any unrecorded statement not meeting the exceptions be inadmissible goes against ample case law and constitutional rulings. It seems the entire design of these proposals are to undermine law enforcement and prosecutions, and place such undue burden on the state so that few convictions would be possible. While video/audio evidence can assist in determining the facts of a case, the assumption that they are a requirement is baseless and extreme.

The basic assumption seems to be that if it wasn't recorded, it didn't happen. It also assumes the un-impeachability of recordings. I think we have all seen recordings which have been misleading, either because they were edited for that purpose or because any recording only contains the information available to the lens/microphone. Viewing a recording, even unedited and in its entirety, is not the same as being present. If

we are operating under the assumption that police officers are inherently untrustworthy, how can we trust a recording made by such an individual? The logic is flawed and undermines the entire fact-finding process.

**CcR 3.9** seems to be based on no sound reasoning. It would preclude nearly all in-court identifications and is in fact the exact opposite procedure already decided in case law in which in-court identifications may be precluded if a previous identification process has already been completed. Why should it be assumed that a witness cannot identify a subject in court simply because an identification process has not previously been completed? Doesn't this line of thinking invalidate any identification process?

I urge the court to reject these proposals.

Thank you.

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