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April 30, 2019

Sent Via Email
supreme@courts.wa.gov

Dear Members of the Court,

I am an attorney who has practiced criminal law in Washington state courts since October of 1983. I was a public defender for 16 years at the Whatcom County Public Defender's Office. I have been in private practice since leaving that office in 2003.

I write to urge the Court to enact the rules proposed by WACDL.

I will not comment regarding any proposed rules other than CrR 4.11 and CrRLJ 4.11. I am in favor of their adoption, but other commenters have set forth the reasons for their adoption more eloquently than I can.

With respect to the recording of witness interviews, it perplexes and surprises me that there is an objection to such an authorization to audio record witness interviews in a criminal case. In my experience, most witnesses have no problem with it, prosecutors encourage it, it speeds up the process and keeps an accurate record of what was said by all speakers, including the attorneys. Since formal depositions are authorized in criminal cases only in unusual situations, it is in informal witness interviews that much, if not most, of the discovery in a criminal case takes place. To authorize a verbatim audio recording of such an interview makes sense.

I have read comments against the proposed rules that seem to say that witnesses feel like they are being victimized by being recorded. Such an assertion doesn't make sense. If anything would emotionally affect a witness, it might be the experience of having to talk about the minutiae of a previously traumatizing event. Having a digital recorder on should be incidental. Additionally, concerns about the dissemination of recordings is addressed by section (b) of the proposed rules.

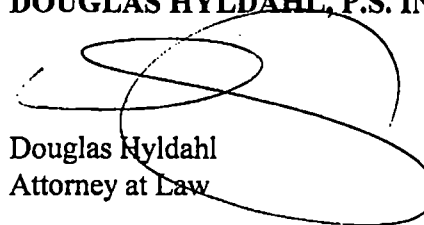
I have experienced my inability to record an interview used to abuse the process. In a case where the lead detective recorded my client and the complaining witness extensively, he was one of the few witnesses who refused to have his own interview recorded. During trial, transcripts of recorded interviews were brought up in examination of the witnesses. When my turn to cross

examine the detective came, I asked him about a statement he had made in our non-recorded interview. He responded to the effect of "Well, counsel, perhaps if you could show me a transcript of the interview, it would refresh my memory". He knew full well he had refused to be recorded, but sought to blunt the effect of my cross by quibbling about what he had previously said. I did, of course, remind him that he had refused to be recorded and there was no transcript.

It has always seemed odd to me that in cases where liberty and life are at stake, the rules don't authorize depositions and some of the other discovery tools available in civil cases. Authorization to audio record witnesses in criminal cases is long overdue. I urge the adoption of the rules.

Sincerely,

DOUGLAS HYLDAHL, P.S. INC.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a loop at the end.

Douglas Hyldahl
Attorney at Law

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 2:14 PM
To: Tracy, Mary
Subject: FW: Letter from Douglas Hyldahl
Attachments: Letter to Washington Supreme Court 4.30.19.pdf

From: Tara Vincent-Maloney [mailto:tara@Hyldahl-Law.com]
Sent: Tuesday, April 30, 2019 2:14 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Letter from Douglas Hyldahl

Douglas Hyldahl asked me to email to the Washington Supreme Court the attached letter.

Thank you,

Tara Vincent-Maloney
Legal Assistant

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