

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 5, 2019 12:11 PM
To: Tracy, Mary
Subject: FW: Comments on CrR .3.7, 3.8, 3.9, 4.7, 4.11

From: Ken Masters [mailto:ken@appeal-law.com]
Sent: Friday, April 5, 2019 12:10 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on CrR .3.7, 3.8, 3.9, 4.7, 4.11

Dear Justice Johnson & Supreme Court Rules Committee:

As the Court knows, I am no criminal law expert, but I do have some rules-making experience. I have read these proposals and many of the unusual number of comments, pro and con. The defense-side proponents and their allies mostly seem to state laudable aspirational goals. The prosecutors and their allies mostly seem to state concrete, practical problems. It is a classic conflict.

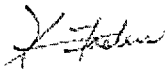
On balance, these proposals seem to create more problems than solutions. The problems arise from imposing bright-line bars and/or requirements in circumstances that require thoughtful analysis and balanced decision making, not to mention case-specific factfinding. Again, a classic rules-making conundrum.

The problems with eye-witness identifications are undeniable. The virtue of recorded statements is apparent. But these proposals make the perfect the enemy of the good. As Lenell Nussbaum correctly notes, our legal system is all too human. You cannot improve it, however, by dehumanizing it.

Stephanie Sato's comments explain the practical problems in detail. Judge Costello's comments do too. I find them largely persuasive.

The Court should move cautiously here. Crime victims could be seriously adversely affected by these changes, yet I don't see much input from them. In my rules-making experience, there is always a risk that their soft voices may be lost in the din of lawyersplaning. I know that this Court is not deaf to their weary lamentations.

Best,



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