

Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Tuesday, April 30, 2019 9:17 AM  
**To:** Tracy, Mary  
**Subject:** FW: Proposed Rule Changes Provide small step towards equality

**From:** Nidal Dirini [mailto:ndirini@snocopda.org]  
**Sent:** Tuesday, April 30, 2019 9:13 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed Rule Changes Provide small step towards equality

To whom it may concern,

I have been a public defender in Washington State for approximately 3 years. I've practiced in superior and district court in Benton and Snohomish counties. And during that time period I've tried 25 jury trials to verdict. In my opinion the proposed rule changes are another small step forward towards transparency, fairness, and equality in the criminal justice system.

In Washington state, at least 8 persons in WA have been convicted due to witness misidentification. And in fact, witness misidentification is the leading cause of wrongful convictions and a factor in 70% of post-conviction DNA exoneration cases. <https://www.innocenceproject.org/causes/eyewitness-misidentification/>. Creating a presumptive rule that excludes in-court identification without a proper out-of-court identification process is another safe guard to prevent wrongful convictions.

While working in Benton County, there were many times that we did not have the funding/resources to have an investigator at every witness interview. If witnesses did not agree to the recording there was no way for me to impeach the witness with prior inconsistent statements without making myself a witness to the case. Having a full record of the interview remedies that issue that many smaller counties/defense offices face and provides more transparency to police investigations.

Finally, it should surprise no one that many of our State's prosecutors will speak out against these rules. The prosecutor is the most powerful player in the criminal justice system. They decide what charge to file, whether to offer an amendment down in exchange for a plea, whether my clients are accepted in a therapeutic court or given a lengthy incarceration sentence... But the most powerful tool they wield is that they have all of the evidence. They know all of the cards in the deck usually prior to my clients arraignment. Unfortunately, time and time again we see prosecutors abuse this power. And rarely, if ever, do prosecutors face significant sanctions to deter others from committing similar acts. It is our clients who pay the price with years of their lives spent incarcerated, or unwarranted criminal records that prevent them from becoming functioning members of society.

These rules provide much needed transparency and reinforce their duty to provide defense with exculpatory material. They remind prosecutors that your duty is not to "win" cases but to do justice for the community. A community that includes the defendants they are accusing.

Thank you,

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