

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Tuesday, April 30, 2019 9:39 AM  
**To:** Tracy, Mary  
**Subject:** FW: SUPPORT OF PROPOSED RULE CHANGES

**From:** Stephen Ritchie [mailto:sritchie@snocopda.org]  
**Sent:** Tuesday, April 30, 2019 9:39 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** SUPPORT OF PROPOSED RULE CHANGES

Good Morning,

I am a staff attorney in the felony unit at the Snohomish County Public Defender Association. I am writing this letter to offer my robust support for the proposed criminal rules changes, specifically: CrR 3.7 (recording interrogations), CrR 3.8 (recording eyewitness identification procedures), CrR 3.9 (preventing in court eyewitness identification) and CrR 4.7 (reinforcing the state's Brady obligations and permitting smoother redaction policies for defender offices with respect to discovery to clients).

Although our office director is writing a letter in support of these proposed changes on behalf of our entire office, which consists of approximately 65 defense attorneys, I felt the need to write my letter individually to underscore the absolute importance of these rules changes. The bottom line is: although these rule changes might be an inconvenience to law enforcement, they are absolutely necessary to preserving and protecting the integrity and truth-seeking function of our criminal justice system.

Law enforcement officers are human beings just like the rest of us. They make mistakes. They don't always follow best practices and policies. They forget things. And, like the rest of us—they sometimes outright lie to cover up a mistake or other misconduct. It is understandable that state attorneys and judicial officers have a hard time accepting that law enforcement routinely misremembers or lies while testifying. It is natural to want to have absolute and abiding trust in the law enforcement officers who are employed to serve and protect each of our communities. It is also a natural instinct to want to believe that those who serve to protect us are "superhuman" in their abilities. This is simply not the case, and the current court rules give their faulty memories and other shortcomings far too much weight. Furthermore, as social science studies tell us, law enforcement also sometimes have a faulty memory of following a best practice or policy after the fact even though they did not do so. Therefore, even when law enforcement sincerely believe they have done something, because they are trained to do it, we know that this memory is sometimes faulty and the best practice was actually not followed.

The proposed rules with respect to recording interrogations and recording eyewitness ID procedures address these shortcomings by preserving what ACTUALLY happened instead of relying on law enforcement's memory of what happened. I am not saying that law enforcement is always lying when they later testify about these issues (although that certainly also happens). However, they do not always record important details about ID procedures and interrogations in their reports. Accordingly, they are often called upon to rely on a faded memory when recalling these details months and sometimes years later while testifying. In fact, aside from very serious cases, details about interrogations and ID procedures are scant, at best, and often times missing all together. Why put such reliance on an imperfect memory when a recording can preserve exactly what happened, as it happened?

Additionally, sometimes law enforcement messes up, and forgets to follow practices and procedures (reading Miranda, for example). They know they are in hot water if they forget some of these fundamental tasks and, wanting to cover their mistakes, sometimes fudge the facts. Although it is hard to acknowledge that this happens—it is important that those adopting rules for our system of justice take notice that this, in fact, does occur. We can safeguard against this by requiring law enforcement to record these events for later judicial review and to have consequences for their failure to do so.

Wrongful convictions occur because these important pre-charging events (ID procedures and confessions) are not sufficiently documented and it is high time that our state take action to protect against this. As a defense attorney, I acknowledge that there are great cops out there. Cops who just want to do the right thing and almost always follow best practices and procedures. Even these well-intentioned officers make mistakes or have false memories about following a best practice they did not actually follow. These proposed rules will ensure an accurate record of what happened, and not rely solely on an officer's potentially faulty memory. This rule will also protect against less well-intentioned officers, who are either lazy in their report-writing to preserve critical facts, or worse, those officers who outright lie to ensure a conviction for what they perceive to be justice. This state has every reason to ensure an accurate recording of important pre-charging events and little reason not to safeguard against these perils.

Concerning the amendments to CrR 4.7, all the defense is asking the Court to do is incorporate well-established case law concerning a prosecutors obligations under Brady into the actual Court Rule. We are not asking for an expansion of Brady obligations, merely that the Court rule reflect the years of jurisprudence in this area to serve as a more salient reminder to prosecutors as to what their obligations actually are. This should not be a controversial request.

With respect to the redaction issue, a criminal defendant should have speedy access to the documents and other evidence the state wants to offer as evidence against him/her. The current process can sometimes result in weeks or months-long delays, which not only prevent a defendant from speedy access to discovery, but also slows down the speed at which cases can resolve because continuances result while clients are merely waiting for redacted discovery. Often times, clients want to review this prior to a client meeting. When client meetings are delayed, more continuances on the case are necessary and it delays the commencement of defense investigation, etc. Accordingly, this proposed rule change not only serves to provide speedy access of discovery to criminal defendants, it also serves the interests of judicial economy.

For the reasons cited herein, I hereby respectfully request that those in charge of adopting and amending court rules adopt the proposed new rules and amendments to existing rules.

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