Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, April 30, 2019 1:55 PM
To: Tracy, Mary
Subject: FW: Comment on proposed changes to the criminal rules.

From: Scudder, Thad [mailto:Scudder.Thad@co.cowlitz.wa.us]
Sent: Tuesday, April 30, 2019 1:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed changes to the criminal rules.

Washington Supreme Court Rules Committee
P.O. Box 40929
Olympia, WA 98504-0929, or
VIA EMAIL: supreme@courts.wa.gov

Re: Comment in support of proposed amendments to CrR 3.7, 3.8, 3.9, 4.7, and 4.11

Dear Honorable Supreme Court Justices:

I am writing to urge the court to adopt the proposed changes to CrR 3.7, 3.8, 3.9, 4.7, and 4.11. I am a public defender in Cowlitz County. I have been a public defender for 27 years. I represent clients in Superior Court. Our office appears in all of the Cowlitz County courts.

CrR 3.7- This rule preserves for the fact finder what occurred in an interrogation setting. This furthers the truth finding function of the court. In *Miranda v. Arizona*, 384 U.S. 436, 448, 86 S. Ct. 1602, 1614, 16 L. Ed. 2d 694 (1966), the court stated a concern about interrogations that can be mitigated by a recording requirement:

> Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. As we have stated before, 'Since *Chambers v. State of Florida*, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.' *Blackburn v. State of Alabama*, 361 U.S. 199, 206, 80 S.Ct. 274, 279, 4 L.Ed.2d 242 (1960). **Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.**

Miranda v. Arizona, 384 U.S. 436 (emphasis added.)

CrR 3.8 and 3.9 Despite advances in this area, misidentification remains a leading cause of erroneous convictions. I urge the court to adopt proposals in 3.8 and 3.9.

CrR 4.7 In Cowlitz County despite efforts to make discovery obligations set out in *Kyles v Whitley* 514 U.S. 419 (1995) part of the landscape, the reaction of local prosecutors to frequent Kyles based requests has ranged from a lack of knowledge of the requirement of *Kyles v Whitley*, to disagreement with the decision, to grudging understanding and acknowledgment, but not always compliance. *Kyles* was decided in 1995 and over 20 years later, I see a lack of awareness among local prosecutors that they have a duty to disclose anything more than what they in their own file. The current language of CrR4.7(a)(4) limiting the state's obligations to information within the "knowledge,

possession or control of members of the prosecuting attorney's staff" only fosters this lack of understanding. It is contrary to *Kyles*. I specifically urge the court to adopt the changes to CrR4.7(a)(4).

I also urge the court to adopt the balance of the proposed changes to CrR 4.7. The biggest problem we face with redacted discovery is that once we send it to the State for approval, it varies from deputy prosecutor to deputy prosecutor as to how long it takes to get it back. When former clients request their discovery, they may be facing deadlines associated with a personal restraint petition. Current clients have legitimate needs to review discovery and delays in providing discovery can have a negative impact on case preparation and the attorney client relationship. The proposed rule would help eliminate a significant barrier in the process.

Thank you for your time and attention.

Sincerely,

Thad Scudder, Director
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