## Tracy, Mary

**From:** OFFICE RECEPTIONIST, CLERK
**Sent:** Wednesday, April 24, 2019 4:03 PM
**To:** Tracy, Mary
**Subject:** FW: Comment for the July 2018 - Proposed Rules Published for Comment

**From:** Frei, Nathanial [mailto:nfrei@kingcounty.gov]
**Sent:** Wednesday, April 24, 2019 4:02 PM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Comment for the July 2018 - Proposed Rules Published for Comment

Dear Clerk of the Supreme Court,

I currently practice in King County District Court. I am deeply concerned about the July 2018 proposed changes to the court rules. Many of the changes seem both impractical and unnecessary. I will address each proposed rule individually.

**Regarding CrRLJ 3.7:** This proposed rule requiring police agencies to record and maintain both custodial and non-custodial interrogation is impractical. Although many of our cases in District Court involve vehicle stops with patrol cars equipped with dash cameras, many do not. Since this proposed rule change does not provide the means to fund either the purchase of recording equipment or storage space for the large quantity of data that would be required, it would wipe out crucial evidence for the vast majority of our cases. Even if this proposal is the next logical step in police investigations, without funding provided, enacting this rule seemingly oversteps into the realm of the legislature and would lead to unjust results for victims of crime.

Further, this new rule adds an evidentiary layer not present in similar situations. It is the jury's duty to determine the credibility of evidence. By requiring recording, this rule implies that police are inherently untrustworthy and removes the fact-finder's ability to weigh relevant evidence.

**Regarding CrRLJ 3.8:** This proposed rule also creates a recording requirement without providing the means to fund the equipment necessary to comply with its terms. Further, it adds requirements that should go to the weight of an eyewitness identification procedure, not its admissibility. Missing details regarding an eyewitness identification are factual determinations that can be fully explored during direct and cross examination. Requiring a judge to decide what "important details" are lacking before deciding whether an identification is admissible invades the fact finder's ability to decide the weight of an eyewitness identification.

**Regarding CrRLJ 3.9:** This proposed rule is too vague. It does not establish what it means to be "unknown." It invites the judge to make an arbitrary determination regarding whether enough time has elapsed for a person to be "known" to the witness. For example, is a thirty-minute bus ride enough time for a victim to "know" a defendant who assaulted the victim? Further, as above, the fact-finder should be given the opportunity to weigh whether the identification is credible.

**Regarding CrRLJ 4.7(a):** This proposed rule creates an obligation to monitor State's witnesses indefinitely in order to satisfy the "ongoing" duty portion. Given that prosecutors have an obligation to provide any newly discovered evidence that points to a defendant's innocence, this proposed rule is not only impractical, it is unnecessary.

**Regarding CrRLJ 4.11:** This proposed rule seemingly violates the constitutional requirement that witnesses be informed of their ability to refuse recording. Additionally, given that many witnesses agree to be recorded, this rule seems unnecessary.

For the foregoing reasons, I respectfully request that the Court reject these proposed changes to the court rules.

Respectfully,
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Nathan Frei
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