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**Date:** Tuesday, December 14, 2021 4:12:45 PM

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**From:** Mark Dynan [mailto:mdynan@dynamassociates.com]  
**Sent:** Tuesday, December 14, 2021 4:03 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** proposed changes to CR 39

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I am writing in response to the proposed changes to CR 39. I have been in practice for 40 years, extensively doing litigation. I have tried three cases in the past year virtually. I cannot support the proposed changes.

Many years ago J. Scalia pointed out problems with video testimony. Those problems still exist. The jurors are not given an effective method to determine the character of the witness. Missing are the various clues through body language.

There are technical problems as well as distractions. In one case during voir dire a prospective juror simply walked away from the camera never to return. This would also cut down on our jury pool as not all of the populous has access to the internet. And then there is the inability of the jurors to interact and become a cohesive group making a decision. I certainly did not feel I was reaching all the jurors via video. I have tried another live trial since and still favor that method.

I am certain there are times for video hearings and possibly trials. But that should not be imposed upon our clients by a judge. Yes, it is somewhat more efficient in jury selection but many problems arise during the trial itself. And yes, I have seen jurors have to go answer the door for the Amazon delivery person or let the dog out. There was even a cat that crawled across a keyboard. This all detracts from the decorum of the courtroom and the seriousness of the proceedings.

It seems that imposing this method without say is violative of the client's constitutional rights. The right to a jury includes having the jury weigh all the evidence and judge the witnesses. I cannot say that that happens in a virtual trial. While this may be a necessary tool at times, it should not be imposed on the parties.

And one last comment; the various court staff are not all equal in their abilities to have

the trial go forward. I saw a wide spectrum of JAs and their mastery (or lack thereof) of the Zoom experience. This can create even more work for all involved in the trial. And it seemed every court had a different set of rules for how the trial would be conducted. There would need to be uniformity when this method is used.

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