City of Bellevue v. Hellenthal, No. 69881-3, (Slip Op., August 2, 2001).Aug. 2001 CITY OF BELLEVUE v. HELLENTHAL 1 Cause No. 69881-3 [No. 69881-3. En Banc.] Argued March 17, 2001. Decided August 2, 2001. CITY OF BELLEVUE, ) No. 69881-3 ) Petitioner, ) ) v. ) En Banc )DEE HELLENTHAL and TREVIANNA CHILLIES, ) ) Respondents. ) _____ ) Filed: August 2, 2001. JOHNSON, SANDERS, and SMITH, JJ., dissent by separate opinion. Trial Court: Superior Court, King County,No. 99-2-13965-8, Michael J. Trickey, J. Jeffrey D. Torrey, for petitioner. G.W. Shaw, for respondents. MADSEN, J. -- The City of Bellevue urges that a certificate authenticatinga radar speed measuring device need not be prepared by a police officer tobe admissible under IRLJ 6.6(b), and that the trial court may considersuch a certificate in a contested hearing on a traffic infraction in theabsence of a prosecuting attorney. We agree, and accordingly reverse theKing County Superior Court and reinstate the trial court findings that therespondents committed traffic infractions of speeding. FACTS On September 26, 1998, Officer Deaner of the Bellevue Police Departmentobtained a radar-measured reading that Dee Hellenthal's vehicle wastravelling 48 miles per hour in a posted 35 mile per hour zone and issueda notice of infraction for speeding. On October 9, 1998, Bellevue PoliceDepartment Officer Hershberger obtained a radar-measured reading that Ms.Hellenthal's vehicle was travelling 45 miles per hour in a posted 35 mileper hour zone and issued a notice of infraction for speeding. Thenotices were filed in Bellevue District Court. Each had attached to itand incorporated by reference a certificate by radar expert Ed Cole whichstated his place of business, included a recitation of his training inrepair, maintenance, and calibration of radar units, and stated that Colehad accumulated approximately 7,000 hours experience in the field. Eachcertificate also included information about the testing program and alist of radar units tested, including the units used by the officers inMs. Hellenthal's cases. Both infraction cases were set for a contested hearing. At thehearing, Ms. Hellenthal did not request the presence of the citingofficer or a speed measuring device expert in either case. Noprosecuting attorney was present. Hellenthal moved to strike evidenceconcerning use of radar, arguing in each case that the only evidence toauthenticate the radar was Cole's certificate, and that thiscertification was inadmissible because it was not prepared by a policeofficer. She also said that the certificate could not be incorporated byreference where the officer had no personal knowledge of the informationin it. She maintained that the only way the court could consider thecertificate would be to offer it into evidence, which would place thecourt in the role of prosecutor and violate the separation of powersdoctrine. The district court denied the motions in each case, and foundthe infractions committed. Hellenthal appealed. On November 5, 1998, Officer Demetre of the Bellevue PoliceDepartment obtained a radar-measured reading that Trevianna Chillies'vehicle was travelling 44 miles per hour in a posted 30 mile per hourzone and issued a notice of infraction for speeding. The notice wasfiled in Bellevue District Court, with Ed Cole's certificate attached andincorporated by reference (with the same information as in Hellenthal'scase, and also referencing the radar used by Officer Demetre). Chillies waived the presence of the citing officer and the presenceof a speed measuring device expert. At her contested hearing there wasno prosecuting attorney present. Chillies moved to strike the officer'sstatement regarding the use of radar, on the grounds that Ed Cole was nota police officer. She also argued that the court's consideration of thecertificate violated the separation of powers doctrine and due process.The court denied the motion and found that the infraction was committed.Chillies appealed. The King County Superior Court consolidated the appeals, reversedthe district court's findings and dismissed the cases. This courtgranted discretionary review. /1 ANALYSIS The King County Superior Court held that IRLJ 6.6(b) does not allow acivilian radar expert to prepare a certificate authenticating the accuracyof speed measuring devices, and that IRLJ 3.3, IRLJ 6.6(b), and RCW46.63.080 together allow only the written declaration of the citingofficer and do not allow a speed measuring device certificate as anattachment to the officer's statement. The first issue is whether IRLJ 6.6(b) requires that certificatesauthenticating radar devices be prepared by law enforcement officers.Respondents contend that under the rule, only a law enforcement officercan prepare the certificate allowed by the rule. The City of Bellevuemaintains that the rule does not require that the expert preparing thecertificate be a law enforcement officer. IRLJ 6.6(b) provides that [i]n the absence of proof of a request to produce an electronic speed measuring device (SMD) expert served on the prosecuting authority and filed with the clerk of the court at least 30 days prior to trial or such lesser time as the court deems proper, a certificate in substantially the following form is admissible in lieu of an expert witness in any court proceeding in which the design and

construction of an electronic speed measuring device (SMD) is an issue: Certification Concerning Design and Construction of Electronic Speed Measuring Devices I, _____ do certify under penalty of perjury as follows: I am employed with _____ as a _____. I have been employed in such a capacity for _____ years and hold the rank of _____. Part of my duties include supervising the purchase, maintenance, and repair of all electronic speed measuring devices (SMD's) used by my agency. This agency currently uses the following SMD's: [List all SMD's used and their manufacturers.] I have the following qualifications with respect to the above stated SMD's: [List all degrees held and any special schooling regarding SMD's listed above.] Our agency maintains manuals for all of the above stated SMD's. I am personally familiar with those manuals and how each of the SMD's are designed and operated. All initial testing of the SMD's was performed under my direction. The units were evaluated to meet or exceed existing performance standards. Our agency maintains a testing and certification program. This program requires: [State the program in detail.] Based upon my education, training, and experience and my knowledge of the SMD's listed above, it is my opinion that each of these pieces of equipment is so designed and constructed as to accurately employ the Doppler effect in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator. _____ Signature Dated: _____ Respondents maintain that references to holding "the rank of" andreferences to "my" "this" and "our" "agency" indicate that thecertificate must be prepared by a police officer. Id. When we interpret court rules we apply the same principles we apply whendetermining the meaning of statutes drafted by the Legislature. Statev. Greenwood, 120 Wn.2d 585, 592, 845 P.2d 971 (1993); City ofBellevue v. Mociulski, 51 Wn. App. 855, 858, 756 P.2d 1320 (1988).The cardinal principle is that we ascertain and carry out the intent ofthe drafting body. State v. Radan, 143 Wn.2d 323,329-30, 21 P.3d 255 (2001); State v. Chapman, 140 Wn.2d 436, 450,998 P.2d 282, cert. denied, 121 S. Ct. 438 (2000). If thelanguage of the rule is clear on its face, we give effect to its plainmeaning and assume the rule means exactly what is intended. SeeRadan, <D<95>> 143 Wn.2d at 330 ; Chapman,140 Wn.2d at 450. IRLJ 6.6(b) does not state that a police officer must complete thecertification form. Moreover, the rule provides only that thecertification form must be "substantially" in the form shown. Plainly,variation from the example shown is permissible, provided the substanceof the rule's requirements are contained in the form used. The rule is intended to allow for authentication of a speed measuringdevice without the necessity of the expert appearing in the courtproceeding. Thus, the substance of the rule is authentication. As theCourt of Appeals correctly stated in Mociulski, authenticationfor a speed measuring device involves a compound determination: Before the machine is deemed reliable, the witness testing the machines or monitoring the testing must first show his/her qualifications to make and/or evaluate the tests. The witness must first qualify as an expert via knowledge, skill, experience, training, or education. ER 702. After the witness has qualified as an expert, he/she must show that the machines passed the requisite tests and checks. Only then can the speed measuring devices be deemed reliable.Mociulski, 51 Wn. App. at 860-61. Thus, the certificate must provide sufficient information, substantiallyas set out in IRLJ 6.6(b), to enable the trial court to readily make thiscompound determination of authenticity. Whether the person making thecertificate is a police officer or not is irrelevant to thisdetermination. We conclude that a certification made under IRLJ 6.6(b)need not be made by a law enforcement officer. However, even if we found the language of the rule ambiguous, in lightof the references to "rank" and "agency" in the example form, we wouldreach the same result. When a statute is ambiguous we resort tolegislative history and other aids to construction. Cockle v. Dep'tof Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001);Kadoranian v. Bellingham Police Dep't, 119 Wn.2d 178, 185, 829P.2d 1061 (1992). The form in IRLJ 6.6(b) is identical to that appearingin CrRLJ 6.13(d). As the Task Force Comment to CrRLJ 6.13 explains,section (d) resulted from the holding in City of Seattle v.Peterson, 39 Wn. App. 524, 693 P.2d 757 (1985) that radar evidenceis inadmissible unless the device was designed and constructed so that itwould give accurate readings when properly calibrated and operated. 4BLewis H. Orland & Karl B. Tegland, Washington Practice, RulesPractice, CrRLJ 6.13, task force cmt.at 560 (5th ed. 1997). Thecertificate set forth in section (d) is based on a form suggested by theWashington State Patrol. Id. Given this origin of the form, itis not surprising that it contains the terms "rank" and "agency." Neither the language nor the history of the rule dictates that onlylaw enforcement personnel are qualified to act as radar experts, nor dothey dictate that only law enforcement personnel are qualified as expertsfor purposes of

preparing the certificate allowed for by CrRLJ 6.13(d).It follows that the same is true of IRLJ 6.6(b). Mr. Cole's certificates are in substantially the form as that appearingin IRLJ 6.6(b) and contain the information necessary for authentication.Each describes Mr. Cole's employment with a company retained by the Cityof Bellevue to maintain, repair, calibrate and certify electronic speedmeasuring devices. The certificates state that Cole engages in theseactivities. Each describes his education, experience, and qualificationswith respect to these activities and states that he has accumulatedapproximately 7,000 hours in repairing, maintaining, calibrating andcertifying speed measuring devices. Each certificate states that Cole'scompany is an authorized service center for all radar makes used by theCity of Bellevue's Police Department and that the company maintainsservice manuals with schematics on these radar instruments. Each statesthat Cole is personally familiar with these manuals and states that themanuals are available for inspection on request for any contestant of anotice of traffic infraction issued by the City. Each certificate statesthat through education and experience Mr. Cole is personally familiarwith the design, construction, and operation of the speed measuringdevices used by the City's police department and that these instrumentsare designed and constructed to accurately employ the Doppler principle.Each certificate also states that the company maintains a qualityassurance testing, calibration, and certification program and that eachspeed measuring device is tested approximately each twelve months. Eachcertificate describes the testing program in detail and lists thespecific radar instruments submitted to the company for evaluation.Finally, each includes Cole's expert opinion that based on his education,training, experience, and knowledge of the speed measuring deviceslisted, each device is designed and constructed to accurately andreliably employ the Doppler effect so as to give accurate measurements ofthe speed of motor vehicles when properly calibrated and operated by atrained operator. The respondents complain, however, that the certificates do not includeCole's attestations that he supervised the purchase of the devices aspart of his duties, nor that his duties include supervising the initialtesting of all speed measuring devices used by the Bellevue PoliceDepartment. For these additional reasons, respondents argue, thecertificates are not substantially in the form set out in IRLJ 6.6(b). We disagree. Supervision of purchase and of initial testing is notcritical to authentication, provided that the witness who has qualifiedas an expert shows that the devices have passed the tests and checksnecessary to establish that they meet or exceed the relevant performancestandards. The next issue is whether the trial court properly considered thecertificates when they were appended to the citing officers' statementsand there was no prosecuting attorney present to offer them intoevidence. Initially, we agree with respondents that the certificates arenot admissible by reference as part of the citing officers' writtenreports because there is no indication that the police officersthemselves had personal knowledge of the information contained in thecertificates. However, even though the certificates were not properly part of theofficers' testimony, the trial court still properly considered them.IRLJ 3.3(b) provides that in a contested hearing on a traffic infractionthe plaintiff shall be represented by counsel when a local court rulerequires this. RCW 46.63.080 similarly provides that in such proceedingsthe attorney representing the state, county, city, or town may appear butneed not do so, notwithstanding any statute or court rule to thecontrary. (There is no argument here that a local rule required thepresence of a prosecuting attorney in these cases.) As noted, IRLJ6.6(b) provides for the certificate's admission in lieu of the expert'spresence, unless the defendant timely requests that the expert appear.Finally, IRLJ 3.3(c) provides that "[t]he court may consider the noticeof infraction and any other written report made under oath submitted bythe officer who issued the notice or whose written statement was thebasis for issuance of the notice in lieu of the officer's personalappearance" unless the defendant secures the officer's presence in accordwith the rule's procedures. See also RCW 46.63.090. These rules are designed to facilitate an expeditious system fordisposing of traffic infractions. See IRLJ 1.1(b) (theInfraction Rules for Courts of Limited Jurisdiction "shall be construedto secure the just, speedy, and inexpensive determination of everyinfraction case"); see also RCW 46.63.010. The rulescontemplate that a contested hearing may proceed without a prosecutingattorney and without the citing officer's presence. They also allow acertificate to stand in the stead of the expert witness on speedmeasuring devices. Requiring a prosecuting attorney's presence for thepurpose of offering the expert's certificate into evidence, asrespondents suggest is necessary, runs contrary to the entire scheme.Court rules relating to each other, like statutes relating to each other,should be read as complementary, rather than

in conflict. SeeChapman, 140 Wn.2d at 448; In re Personal Restraint of Yim,139 Wn.2d 581, 592, 989 P.2d 512 (1999). Accordingly, we read IRLJ6.6(b) as allowing not only for admissibility of the certificate, but forits consideration by the court as well. /2 Lastly on this issue, we note that the certificates are not objectionableon the grounds of hearsay. ER 802 states that "[h]earsay is not admissibleexcept as provided by these rules, by other court rules, or bystatute." (Emphasis added.) IRLJ 6.6(b)'s certificate is an exception tothe hearsay rule. The next issue is raised by the respondents, who claim that the trialcourt's consideration of the certificates amounts to the court havingoffered the certificates into evidence itself in violation of due processand the separation of powers doctrine. Respondents maintain that thecourt assumed the role of the prosecuting attorney. We disagree. We are aware of no authority for the proposition that a trial court'snotice of authentication evidence like that at issue here, admissiblewithout the expert's presence pursuant to court rule or statute,constitutes violation of due process or the separation of powersdoctrine. The cases cited by respondents relating to fairness primarilyare cases where the court affirmatively called or examined witnesses onbehalf of a party to the litigation or literally acted as both judge andprosecutor. E.g., Figueroa Ruiz v. Delgado, 359 F.2d 718 (1stCir.1966); Giles v. City of Prattville, 556 F. Supp. 612 (M.D.Ala.1983); Wounded Knee v. Andera, 416 F. Supp. 1236 (D.S.D.1976); People v. Martinez, 185 Colo. 187, 523 P.2d 120 (1974);People v. Cofield, 9 Ill. App. 3d 1048, 293 N.E.2d 692 (1973).The court in these infraction cases clearly did not assume the role ofprosecutor when considering the radar expert's certificates as authorizedby court rule. Nor was there any violation of the separation of powers doctrine. Theinquiry is whether the trial court's actions here "threaten[] theindependence or integrity or invade[] the prerogatives of" the executivebranch. See Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173(1994) (quoting Zylstra v. Piva, 85 Wn.2d 743, 750, 539 P.2d 823(1975)). The trial court's consideration of Mr. Cole's certificatesfalls within the activities historically and traditionally engaged in bythe judicial branch. The trial court properly denied respondents' motions to strike theexpert radar testimony in the form of the certificates prepared accordingto IRLJ 6.6(b). We reverse the King County Superior Court and reinstatethe trial court's findings that respondents committed the infractions. ALEXANDER, C.J., IRELAND, BRIDGE, CHAMBERS and OWENS, JJ., concur._____ 1 The City of Bellevue moves to strike portions of respondents'brief on the basis that it refers to matters not in the record. We grantthe motion in part and deny it in part. An appendix consisting of aDepartment of Licensing manual is not part of the record and is stricken.See RAP 10.3(a)(7). Reference to a trial brief that was not made part ofthe record on appeal is stricken. References at page 6 of the brief tothe trial court having offered and admitted Mr. Cole's certificates intoevidence are not factual statements, but are instead part of respondents'argument. Although they are misplaced, we do not strike the challengedstatements. We also do not strike portions of respondents' statement offacts referring to the transcripts of the electronic records and othercourt documents, as these materials are found in the Clerk's Papers.Respondents should have cited to the record, however. Our analysis ofthis case has not involved consideration of the portions of the briefwhich are stricken. 2 We note that IRLJ 6.6 has been amended to provide that thecertificate allowed by the rule can be filed with the court as a publicrecord, and will be available for inspection by the public, with copiesmade on request. The amendment also expressly provides that the courtmay take judicial notice of the fact the document has been filed with thecourt, and that evidence will not be suppressed merely because norepresentative of the prosecuting authority is present to actually offerit. IRLJ 3.3(b). The rule now makes explicit what was implicit before -that the court may judicially notice the certificate authorized by therule, specifically in light of the fact that the certificate can now befiled as a public record.Aug. 2001 CITY OF BELLEVUE v. HELLENTHAL (dissent) 1 Cause No. 69881-3-Author- JOHNSON-Opinion- JOHNSON, J. (dissenting) -- Traffic court is often the only exposureWashington citizens will have to the judicial branch. For thesecitizens, traffic court forms the basis for their understanding of dueprocess. Due process is founded upon an impartial tribunal and theappearance of impartiality is essential to judicial credibility. Yet, inthe face of these considerations, the majority chooses to erode theappearance of judicial impartiality in favor of efficiency. Theappearance of justice is lost, even where a just result is achieved, whenthe State's only representative at a contested traffic hearing is thejudge who moves evidence into the record on the State's behalf. TheUnited States Supreme Court has recognized that "to perform its highfunction in the best way `justice must satisfy the appearance ofjustice.'" In re Murchison, 349 U.S. 133, 136, 75 S. Ct.

623, 99L. Ed. 942 (1955) (quoting Offutt v. United States, 348 U.S.11, 14, 75 S. Ct. 11, 99 L. Ed. 11 (1954)). The majority compromisesthis appearance of justice in Washington. I respectfully dissent. The majority's holding must be evaluated against the existinglandscape of due process jurisprudence because it concerns the ability ofa trial court judge to consider evidence not offered by a party to thedispute. The principle of impartiality is as old as the courts. It is afundamental idea and it is the acknowledged inviolability of thisprinciple that gives credibility to judicial decrees. State ex rel.Barnard v. Bd. of Educ., 19 Wash. 8, 17-18, 52 P. 317 (1898).Common law, as well as due process under both the federal and stateconstitutions, guarantees to every defendant a trial before a fair andimpartial judge. The law requires more than an impartial judge; itrequires the judge to appear to be impartial. State ex rel. McFerranv. Justice Court, 32 Wn.2d 544, 202 P.2d 927 (1949); Diimmel v.Campbell, 68 Wn.2d 697, 414 P.2d 1022 (1966). A trial judgeadvocating on behalf of one party to a dispute denies due process of law.See, e.g., Figueroa Ruiz v. Delgado, 359 F.2d 718 (1stCir. 1966); Giles v. City of Prattville, 556 F. Supp. 612 (M.D.Ala. 1983); Wounded Knee v. Andera, 416 F. Supp. 1236 (D.S.D.1976); People v. Martinez, 185 Colo. 187, 523 P.2d 120 (1974);People v. Cofield, 9 Ill. App. 3d 1048, 293 N.E.2d 692 (1973).The need for an impartial judge applies to a civil setting. "The DueProcess Clause entitles a person to an impartial and disinterestedtribunal in both civil and criminal cases." Marshall v. Jerrico,Inc., 446 U.S. 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980).Where the impartiality of a judge reasonably may be questioned, the Codeof Judicial Conduct requires the judge's disqualification. Canon 3(D)(1). The majority misstates the limitations on judicial conduct necessaryto preserve due process. It does so by suggesting the cases cited byrespondents relating to fairness stand for the limited proposition thatdue process is lost only where a judge affirmatively calls witnesses oris assigned a prosecutorial role. The majority then summarily concludesthat the trial judge in these traffic infraction cases "clearly did notassume the role of prosecutor." Majority at 11. However, these cases donot stand for this limited proposition. None turn on whether a judgeactively called witnesses or was the designated prosecutor. Instead, allfocus on the disadvantaged party's lost due process protections when thejudge advocated the opposing party's position. In FigueroaRuiz, the Court of Appeals struck down a Puerto Rican courtprocedure requiring trial judges to advocate by admitting documents (likethe speed measuring device (SMD) certification) and questioningdefendants (like respondents). Figueroa Ruiz, 359 F.2d at 722.In Giles, the district court found a court procedure allowingtrial judges to prosecute misdemeanor offenses (similar to the trafficinfractions here and for some of the same considerations) violated dueprocess. Giles, 556 F. Supp. at 617. In Wounded Knee,the district court reached the same conclusion upon reviewing a similarscheme practiced in a tribal court. In its analysis, the court noted,"it is impossible [for the tribe] to try someone without a voice toelicit evidence for the tribe." Wounded Knee, 416 F. Supp. at1241. Where the judge assumed the role of the tribe's voice, thejudicial role was cast aside and due process was lost. Id. at1241. In Martinez, the Colorado Supreme Court, found a trialjudge had acted as an advocate rather than a judge, in violation of dueprocess, by admitting a prehearing transcript and questioning witnesses.Martinez, 185 Colo. at 189. Similarly, in Cofield, theIllinois court of appeals held a trial judge had departed from the roleof judge when the judge advocated the State's position by questioningwitnesses, even though a prosecutor was present at the trial.Cofield, 9 Ill. App. 3d at 1051. The high standards of judicial impartiality from the above cases areno less firmly protected by our prior decisions and the Code of JudicialConduct. For example, in the past when violations of the traffic codestill constituted a criminal matter, it was proper for a justice of thepeace to transfer venue when the judge believed impartiality could not bemaintained. We found the judge's actions were essential to the dueadministration of justice. McFerran, 32 Wn.2d at 549-50.Similarly, in Diimmel, the trial judge in a quiet title actionproperly avoided the appearance of unfairness by granting a new trialafter entering an impartial judgment upon learning the decision mightappear to have been influenced by a former law partner. We found thejudge's actions conformed to the highest standards of judicial conductbecause they avoided the suspicion of irregularity in the discharge ofthe judge's duties. Diimmel, 68 Wn.2d at 699. Canon 3 of theCode of Judicial Conduct establishes that this is the high standardnecessary to protect judicial impartiality. Under this standard, eventruly impartial judges who find their impartiality "might reasonably bequestioned" should disqualify themselves. Canon 3(D)(1). The comment toCanon 3(A)(5) explains the appearance of bias "impairs the fairness ofthe proceeding and brings the judiciary into disrepute." Canon 3(A)(5)cmt. The majority's

holding retreats from the standard of impartiality wehave previously affirmed. In these "contested" traffic hearings, theonly state official present to contest the citizens' versions of eventswas the trial judge. In these contests, both judges offered SMDcertification evidence by taking judicial notice of documents that had noother way of entering the records. The trial judges elicitedtestamentary evidence as well. The judges questioned witnessesunfavorable to the State's position that the infractions had occurred,asking for speedometer readings, specific locations of the violations,and awareness of the police officer's presence. These questions were notimpartial. The questions advanced the State's cases that respondents hadcommitted speeding infractions. These trial judges acted as stateprosecutors in violation of common law and due process protectionsafforded by the federal and state constitutions. Having improperly dismissed the constitutional claims presented, themajority proceeds to rewrite the rules of evidence. The rules of evidenceshall apply to traffic infractions. IRLJ 3.3(c). However, the majority'sanalysis does not trace a logical path through the evidence rules. First,the majority identifies the SMD certification as an authenticatingdocument. Majority at 7. Next, the majority concedes had a police officerdirectly offered evidence of the SMD certification, it would fail for lackof personal knowledge under ER 602. Majority at 9. Both statements arecorrect, so far as they go. But, the majority then makes an illogical leapby characterizing the SMD certification as the subject of a hearsayexception under ER 802. Majority at 11. This characterization implies thata determination of admissibility is no different than admitting thedocument. But cf. ER 104(a); 5 Karl B. Tegland, WashingtonPractice: Evidence Law and Practice § 104.5, at 98 (4th ed. 1999).This is incorrect. ER 104(a) is not a rule for admitting evidence by thecourt. ER 104(a) allows the court to consider otherwise inadmissibleevidence to determine the admissibility of evidence offered by one of theparties. Nor does a determination of admissibility confer the statusreserved for adjudicative facts. Cf. ER 201(b). Under the rulesof evidence, hearsay is an out-of-court statement offered to prove thetruth of the matter asserted. ER 801(c). Even the most liberal reading ofIRLJ 6.6(b) will not excuse the basic procedure for admitting evidence.The State had no proponent to offer the SMD certification so that it mightbe subject to a hearsay exception. Nor was the SMD certification a matterof public record so that it could have been a matter for judicial notice.There was no evidentiary basis for the trial court to consider the SMDcertification. Finally, after incorrectly analyzing the constitutional issue and failingto apply the rules of evidence, the majority misstates the principles ofstatutory construction. In its analysis of court rule interpretation, themajority cites State v. Greenwood, /1 but then ignores thestatement that "a material change in the language of the original act ispresumed to indicate a change in legal rights." Greenwood,120 Wn.2d at 592-93 (citing 1A Norman A. Singer, StatutoryConstruction § 22.30 (4th ed. 1985)). The addition of a newsubsection to a court rule is a material change. The majority misstatesthe effect of the amendment to IRLJ 6.6 that occurred after the contestedtraffic hearings. Amended IRLJ 6.6 makes the SMD certification a publicdocument that may be judicially noticed but that shall besuppressed if it has not been filed as required. IRLJ 6.6(d). Theamendment does not demonstrate that the SMD certification was implicitlyavailable for judicial notice before its revision. Majority at 10 n.2. Onthe contrary, it demonstrates that the SMD certification was not theproper subject of judicial notice. As a matter of statutory construction,this amendment refutes the majority's position. The majority focuses on the need for efficiency in resolving contestedtraffic hearings, thereby disregarding due process protections. Far from amatter to be disposed of lightly, the appearance of justice in a trafficcourt setting is particularly important. Citizens often stand aloneagainst the arrayed representatives of the State's authority in contestedtraffic infractions. This setting frequently represents a citizen's onlyexposure to the judicial process. Under these circumstances, it is more,not less, important that the appearance of justice is preserved. Thesuperior court correctly analyzed the issues presented in these casesunder our existing jurisprudence. I would affirm the superior court. SANDERS, and SMITH, JJ., concur in the dissent.