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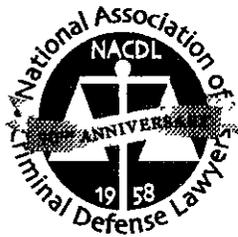
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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

February 16, 2009

Peter G. McCabe, Secretary
 Standing Committee on Rules of Prac. and Proc. 08-CR-009
 Judicial Conference of the United States
 Administrative Office of the U.S. Courts
 Thurgood Marshall Federal Judiciary Bldg. 08-EV-005
 One Columbus Circle, N.E., suite 4-170
 Washington, DC 20002

COMMENTS OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS Concerning Proposed Amendments to the Federal Rules of Criminal Procedure and Federal Rules of Evidence Published for Comment in August 2008

Dear Mr. McCabe:

The National Association of Criminal Defense Lawyers is pleased to submit our comments with respect to the proposed changes in the Federal Rules of Criminal Procedure and of Evidence. Our organization has more than 12,500 members; in addition, NACDL's 79 state and local affiliates, in all 50 states, comprise a combined membership of more than 35,000 private and public defenders. NACDL, which recently celebrated its 50th Anniversary, is the preeminent organization in the United States representing the views, rights and interests of the defense bar and its clients.

In the following pages, we address the proposed amendments to implement the Crime Victims Rights Act, the proposed amendment to Fed.R.Crim.P. 15, and the proposed amendment to Fed.R.Evid. 804(b)(3). In addition, we endorse the views of our colleagues at the Federal Public and Community Defenders, previously submitted with respect to the proposed amendment of Fed.R.Crim.P. 32.1.

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VICTIMS' RIGHTS AMENDMENTS

The proposed amendments to Rules 5, 12.3 and 21 "reflect the Advisory Committee's continuing focus on the Crime Victims' Rights Act ('CVRA'), codified as 18 U.S.C. § 3771." Report of the Advisory Committee on Criminal Rules, December 12, 2007 (revised June 16, 2008) ("Report"), at 1.

The proposed amendment to Rule 5, "Initial Appearance," would add the following sentence to subdivision (d)(3): "In making th[e] decision [whether to detain or release a defendant in a felony case], the judge must consider the right of any victim to be reasonably protected from the defendant." The proposed Committee Note explains that "[t]his amendment draws attention to a factor that the courts are required to consider under both the Bail Reform Act and the Crime Victims' Rights Act."

This proposed amendment is outside the legal authority conferred on the Judicial Conference by the Rules Enabling Act, 28 U.S.C. § 2072(b). A directive to a judge as to what he or she must "consider" is not procedural; it is plainly substantive in nature. For this reason alone, the proposal must be withdrawn. It would hardly be possible to incorporate into the Rules governing various proceedings and stages of proceedings all the substantive matters which a judge is required by law -- not to mention by common sense or prudence -- to "consider." Articulation of this one consideration in this one place would have no effect other than to trigger reasonable arguments of "*expressio unius est exclusio alterius*." The published proposal should simply be dropped.

From a pragmatic perspective, the amendment would have little consequence other than to create the unfortunate public perception that the Committee's work is biased and value-driven, thus legitimately subjecting it (and ultimately the Judicial Branch, if the proposal were adopted) to counterproductive and harmful criticism. The amendment would "draw[] attention to a factor that the courts are [already] required to consider" to the exclusion of all the other factors a court must or should consider. The only suggested justification given for why this one factor should receive singular attention is that the "Committee concluded ... it would be desirable to highlight the victim's right to reasonable protection in the text of Rule 5." The Committee acknowledges that the Rule already incorporates this requirement and does not suggest there is any evidence, anecdotal or otherwise, that judges need to have this factor highlighted. In our experience, judicial officers are highly solicitous of victims' and witnesses' safety in determining whether to detain or release a defendant and in setting the conditions of release, as they should be whenever that factor is made relevant by law, as under 18 U.S.C. § 3142(c)(1),(e), and do not need to have that factor highlighted to the exclusion of all others. Amending a rule that already incorporates what the amendment would require and singles out one factor to the exclusion of all others in the absence of any indication or claim that the singular emphasis on that factor is necessary would undermine the respect and authority the Rules receive, and deserve, for their neutrality. For these reasons, the proposed amendment should be withdrawn.

If the Committee goes forward with the proposed amendment, it should be modified to include within the text of the Rule all the factors a court must consider, and a reminder that release not detention is mandatory unless "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety and the safety of any other person or the community." Id.(e). That statutory mandate, which implements the fundamental right guaranteed by the Eighth Amendment, is the factor which judicial officers at arraignments and detention hearings most often need to be reminded to "consider," and not a single, subsidiary factor to the exclusion of all others.

The proposed amendment to Rule 12.3, "Notice of a Public-Authority Defense," would alter the government's reciprocal discovery obligation by not requiring it to disclose automatically the address and telephone number of a witness on whom it intends to rely to oppose a public authority defense if the witness qualifies as a "victim." If the defendant establishes "a need for the victim's address and telephone number," the amended Rule would allow, but not require, a court to order the government to provide that information "to the defendant or the defendant's attorney," or "fashion a reasonable procedure that allows for preparing the defense and also protects the victim's interests." According to the Committee Note, the amendment would implement the provisions of the CVRA that state "victims have the right to be reasonably protected from the accused, and to be treated with respect for the victim's dignity and privacy." See 18 U.S.C. § 3771(a)(1) & (8).

The amendment would have little practical impact, because it is unlikely the government would rely on a person who qualifies as a "victim" to rebut a public authority defense. Proof of a public authority defense will generally consist of evidence showing that a person in a position of governmental authority approved certain conduct, and evidence offered to rebut the defense is unlikely to come from "a person directly and proximately harmed as a result of the commission" of the offense. 18 U.S.C. § 3771(e). While the amendment would accomplish little from a practical perspective, its adoption and existence would further endorse and legitimize the view reflected in the corresponding amendment to Rule 12.1, Notice of an Alibi Defense, that information necessary and helpful in preparing for trial must be withheld from lawyers who represent accused persons in order for a victim to be "reasonably protected" from the defendant.

Most accused persons pose no threat to any witness against them, including victims. Thus, in all but a few cases, withholding a victim's address and telephone number from the defendant is unnecessary for a victim to be reasonably protected from the accused. The rule should reflect that reality. Moreover, access to a witness's address and telephone number is needed not only to contact that person in hopes of obtaining a statement -- and certainly not to harass or intimidate that person -- but rather to conduct essential investigation of relevant facts in order to ensure fairness and accuracy in the verdict at trial. The Rule should not provide for withholding the address and telephone number of a victim-witness when other witnesses' addresses and numbers are disclosed, unless the "victim" or the attorney for the government can establish a special need for secrecy.

A procedure that placed the burden on the government to justify the need for secrecy in any particular case would be more than sufficient to ensure that an alleged victim was protected in the rare case where such protection might be needed. The opposite procedure set up by the proposed Rule -- in which a defendant must establish a need for the information -- is cumbersome and addresses the wrong issue. The need for the information is established by its nature -- investigation of a witness the opposite party is going to rely upon to oppose an affirmative defense. The defense will always have a need for the address and telephone number of the rebuttal witness to conduct that investigation. (In many instances, that information is publicly available, or could be obtained by reasonable and lawful investigation. But it cannot be that to establish "need" for the information, the Committee intends that the defense be required to show it has been unable to deduce the information from other sources. That would imply that the purpose of the proposed amendment is to ensure that defense investigation is not made easy, and would in no way constitute a "procedure" to implement any right created by the CVRA.) The real question of course is whether that information, otherwise disclosable, must be withheld in order for an alleged victim to be "reasonably protected from the accused." The prosecution is in a position to make that showing, not the defense.

Even if the amendment could be justified on grounds that not automatically disclosing the information to defendants is necessary for an alleged victim to be "reasonably protected" from the accused, that would not justify automatically withholding the information from defense counsel. Disclosure of the information to defense counsel can be allowed without any consequence to any victim's right to be reasonably protected by requiring defense counsel not to disclose the details of the information to the accused without obtaining prior authorization, premised on a constitutional right, such as effective assistance of counsel or the right to compulsory process and otherwise to present a defense.¹

¹ See, e.g., Calif Penal Code § 1054.2 ("Disclosure of address or telephone number of victim or witness; prohibition; exception"), which provides as follows:

- (a)(1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054 1, unless specifically permitted to do so by the court after a hearing and a showing of good cause.
- (2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

* * * *

Nor does section 3771's vaguely articulated protection for "privacy" entitle a victim-witness to be free from professionally conducted efforts at defense investigation. Of course, no witness is required to speak with any investigator before trial, whether the investigator be a government agent or a member of the defense team. But the mere fact that a witness is also a designated "victim" does not justify protecting that person from even being approached, in a lawful manner, for purposes of pretrial investigation and preparation. As noted in the comments of the proposed amendment to Rule 5, there is already a statutory provision allowing the government to obtain a TRO to bar harassment of any victim or other witness. See 18 U.S.C. § 1514. It is a crime to threaten or harm any witness, *id.* § 1512(a), or to attempt to "corruptly persuade" a witness to withhold testimony or absent themselves from the proceedings. *Id.* § 1512(b). Nothing in the CVRA specially requires an amendment to Rule 12.3. Instead, to apply the rather general terms of the Act in the manner proposed will cause more issues to arise than is justified by any slight good that might be accomplished. This amendment should also be withdrawn.

The proposed amendment to Rule 21(b), "Transfer for Trial," would, add the word "any victim" to paragraph (b) of Rule 21, which presently provides that upon the "defendant's motion," the court may transfer the case, or one or more severed counts, to another district "for the convenience of the parties and witnesses, and in the interest of justice." The Committee Note states that this amendment would "require[] the court to consider the convenience of victims ... in determining whether to transfer all or part of the proceeding to another district for trial."

The Committee does not cite any provision of the CVRA that the proposed amendment is intended to implement, and there is none. The CVRA does not purport to establish a victim's right to attend the proceedings, much less a right to do so without inconvenience. The only right of an alleged "victim" conferred by the CVRA in regard to attending court is conferred by subsection (a)(3), and as stated there, it is only a right not be excluded. Accordingly, the amendment would create a novel substantive right, not establish a procedure, and is thus invalid under the Rules Enabling Act.

In addition, the proposed amendment would not change the fact that a motion of this kind can only be made by the defendant. (The reason for this is clear: the government has already selected the district in which to bring the charges in the first instance, subject to the limitations of the Article III and Sixth Amendment venue clauses. If, as a matter of law, venue was not proper in that district, the defendant could and would move to dismiss, not to transfer. Thus, this Rule applies only when venue might lie in more than one district or where the defendant elects to waive his/her venue right, and in either case seeks transfer in order to obtain a more convenient forum.) Under the wording of the Rule, however, although the defendant makes the motion, the court may not grant the motion simply because it finds the defendant's motivating reasons persuasive. Rather, the defendant's motion may be granted only if the court concludes that doing so would, in the judge's view, be "in the interests of justice" and in the collective interests (presumably, on balance) of the parties and the witnesses. As worded, and notwithstanding the Advisory Committee Note, the

amendment would appear to require a great deal more than the committee suggests. The court would have to do more than merely consider the convenience of victims in determining whether to transfer the proceeding. Instead, the motion could be granted, or so a court might well read it, only if transfer were not only convenient to the parties and in the interest of justice, but also if the transfer was also "convenient" for any alleged victim, even one who will not appear as a witness.

Since the convenience of witnesses is already covered in the Rule, this amendment would apparently require the trial court to allow the convenience of a would-be spectator to override the combined interests of the defendant, the government, all the witnesses and the "interests of justice." Such an amendment could only make the Judiciary look foolish.

A court's authority under existing Rule 21(b) to consider the "interests of justice" in deciding whether to grant a defendant's motion to transfer the proceedings already adequately enables the court to take into account the convenience (or inconvenience) to a non-witness victim. The potential for mischief implicated in this proposal can be readily seen when one contemplates even a moderately complex financial fraud case, or a child pornography downloading case, either of which may involve dozens if not hundreds of non-witness "victims," each of whose asserted preferences as to the place for trial would become a mandatory consideration for the judge addressing a defendant's motion for transfer of venue under Rule 21. The Committee itself acknowledges that a court already "has substantial discretion to balance any competing interests in determining the appropriate venue" and does not suggest that this discretion has proved insufficient to insure the convenience to a victim is properly considered. In sum, the proposed amendment exceeds the scope of the Rules Enabling Act, is poorly drafted, and is unnecessary. It should not be adopted.

FOREIGN DEPOSITIONS IN ABSENCE OF DEFENDANT

The proposed amendment to Rule 15, "Depositions," would add a new subdivision (c)(3) entitled "Taking Depositions Outside the United States Without the Defendant's Presence." The subdivision would allow a deposition to be taken without the defendant being present where the person to be deposed is outside the United States and is either unwilling to be deposed in the United States or unable to travel to the United States, and the defendant is either not allowed to travel to the location of the deposition by the court or is prevented from entering the country where the deposition is to occur. In addition, the court would have to find the person's testimony "could provide substantial proof of a material fact," that "there is a substantial likelihood that the witness's attendance at trial cannot be obtained," and "the defendant can meaningfully participate in the deposition through reasonable means." Proposed Rule 15(c)(3)(A),(B)&(E).

The Committee views the amendment as merely establishing "procedures to procure testimony from foreign witnesses who may be located beyond the reach of the federal subpoena power," and adds that "[i]t is not the intent of the Committee to create any new rights by enactment of this rule" (Proposed) Committee Note, at 5. If by "rights" the

Committee means governmental power, the Note is incorrect. (So far as actual rights are concerned, the only impact would be to restrict the defendant's rights, not to create any.) The effect of the amendment is plainly to create new governmental authority, not merely to describe and regulate the procedure for implementing an existing power authorized by statute or treaty. Moreover, the amendment would create a novel opportunity to obtain and introduce testimony that is presently unavailable and inadmissible, all while working a fundamental, even revolutionary change in the purpose of the Rule. Such a change is substantive in nature, not procedural, again in violation of the Rules Enabling Act.

The purpose of Rule 15 as currently drafted is to preserve the testimony of a witness who may be unavailable at the time in the future when the trial occurs. It assumes the witness is presently available to testify at trial. See Rule 15(a)(1) ("A party may move [to depose a witness] ... in order to preserve testimony for trial."). If amended as proposed, the Rule would no longer simply provide a means of preserving the testimony of a witness who is currently available to testify, but would also provide a means of obtaining testimony for use at trial of a witness who is currently unavailable to testify (as unavailability is defined by Fed.R.Evid. 804(a)), and is expected to remain unavailable when the trial occurs.

Moreover, by virtue of authorizing trial depositions without the defendant being present, the amendment would, in conjunction with Criminal Rule 26 and Evidence Rule 804(b)(1), create a new opportunity to admit testimony at trial against the accused that has not been subject to confrontation.² The real significance of the amendment is not that it would expand the circumstances in which depositions may be taken, as the Committee Note suggests, but that it enables the prosecution to present testimony at trial that has not been subject to confrontation. Because the amendment would establish a means and a corresponding opportunity (what the Committee calls a "right") to introduce testimony that is presently inadmissible, the amendment exceeds the scope of the Rules Enabling Act, 28 U.S.C. § 2072, and is properly within the jurisdiction of Congress. See, e.g., 18 U.S.C. § 3509 (authorizing depositions outside the defendant's physical presence in certain cases involving child victims and witnesses).

The practical effect of the amendment would be to accomplish indirectly what the proposed amendment to Rule 26 in 2002 sought to accomplish directly -- dispense with the constitutional right of the accused to confront any witnesses who are unwilling or unable to

² Criminal Rule 26 requires that "[i]n every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a statute or by rules adopted under 28 U.S.C. §§ 2072-2077," and Fed.R.Evid. 804(b)(1) provides that former testimony is not made inadmissible by the rule against hearsay if, inter alia, the testimony "at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law" (emphasis added). Rule 15 currently requires that the defendant be present at any deposition. Absent the proposed amendment to Rule 15, testimony at a deposition at which the defendant was not present would thus be inadmissible, because it would not have been given "in a deposition taken in compliance with law . . ." Any attempt to have this testimony admitted would of course also be subject to a clear challenge on Sixth Amendment Confrontation Clause grounds

testify in person at trial. The current amendment goes even further, as it does not even require "virtual" confrontation as did the failed 2002 proposed amendment to Rule 26.

The Committee grudgingly acknowledges that if the amendment were approved, it "may give rise to potential challenges" to the admissibility of any testimony secured pursuant to its provisions. (Proposed) Committee Note. It not only "may" be challenged, but will be challenged, and there is not merely a "potential" for challenge, at least not insofar as that expression suggests that the grounds for the challenge are speculative or unknown. The framework and foundation for the challenge are already clear, and they are powerfully supported by the Supreme Court's landmark decision in Crawford v. Washington, 541 U.S. 36 (2004). The likelihood as to whether the challenge will succeed may be subject to reasonable debate, but it can hardly be disputed that the constitutionality of this proposal is at best doubtful. See Letter of Federal Public Defender Richard A. Anderson on behalf of the Federal Public and Community Defenders, January 13, 2009, with which we wholeheartedly agree. See also Giles v. California, 554 U.S. --, 128 S.Ct. 2678 (2008) (government's burden to justify overcoming Confrontation Clause rights is heavy).

Given the certainty that the admissibility of any testimony the amendment would authorize will be challenged on constitutional grounds, and the undeniable potential that challenge has to succeed, the Committee should await "the development of case law" under § 3509, under any similar state-law innovation, or under judge-granted authority (as in the cases cited in the Committee's Note) before amending the Rule. To amend first, and then allow "the development of case law" to see if the entire exercise was a costly mistake with irremediable harm, as the Committee Note proposes to do, seems much less desirable, given the deliberate pace that the Rules Enabling Act imposes on any future corrective amendment. Awaiting the development of extra-Rule case law is also more appropriate for institutional reasons. To approve the amendment at this time, when the continued viability of the case law authority on which it rests is subject to vigorous dispute, would be to take a position on the constitutional debate.

In addition to being outside the scope of the Rules Enabling Act, and facilitating the procurement of evidence that is quite possibly constitutionally inadmissible, the amendment offers a solution that is worse than the problem it is intended to solve. It also far broader than necessary, the safeguards it proposes are practically unenforceable and it would encourage the use of depositions at trial.

The amendment is intended to address "problems arising in the prosecution of transnational crimes" which the government has reportedly encountered when "critical witnesses lived in, or had fled to, other countries," and are thus "beyond the subpoena power of the federal courts." But nothing in the words of the proposed amendment would limit its application to transnational crimes, or to critical witnesses, or to evidence without which the government would be unable to prove an element of its case. The amendment does not even attempt to provide a partial substitute for the Constitutional right of confrontation it trades away for this enhancement of prosecutorial power to obtain substantial proof of a material fact, such as virtual confrontation with two-way transmission. The requirement that the defendant be able

to "meaningfully participate in the deposition through reasonable means" does nothing to address the lack of confrontation, and its terms are so vague and subjective that it does not even insure the defendant would be allowed to view and listen in real-time and consult confidentially with counsel.

Similarly, the requirement that "there is a substantial likelihood that the witness's attendance at trial cannot be obtained," and that "the witness's presence for a deposition in the United States cannot be obtained," are both satisfied by the request itself -- every covered witness is outside the United States and is thus beyond the subpoena power of the court. While counsel may be required to ask the witness to voluntarily appear in the United States, the simple truth is that the nature and extent of the effort that will be made to persuade a witness to agree to voluntarily appear in the U.S. for a deposition or a trial will vary dramatically if it is not necessary for the evidence to be obtained and admitted. The ease with which this requirement can be satisfied instead will encourage the use of depositions for witnesses outside the U.S. and may even encourage the deportation of noncitizen witnesses presently inside the United States, whenever a prosecutor believes the United States might gain an advantage by deposing that witness away from a courtroom, perhaps with the aid of some other government's coercive influence, and outside the defendant's presence.

The lack of safeguards and limitations are all the more troubling given the witnesses who are to be deposed -- witnesses who are only willing to provide testimony if they can do so outside the U.S., including witnesses who have fled from justice in this country. The willingness of witnesses to provide testimony only under those circumstances raises obvious and legitimate questions about their credibility and the reliability of their testimony. That is especially so given that the oath is likely to have no practical significance as a result of the conditions the witness places on giving testimony, which give that same witness impunity from punishment for any perjury.

If the government's real concern is obtaining essential evidence from critical witnesses in order to prosecute transnational crimes, it should direct its efforts at securing reciprocal subpoena power through mutual legal assistance treaties, similar to the interstate compact which allows the same sort of "extraterritorial" power to be exerted for state cases. That would avoid setting up a false dichotomy, already resolved by the Framers in the Bill of Rights, between the government's interest in obtaining evidence and the constitutional rights of the accused.

EVIDENCE RULES: STATEMENTS AGAINST PENAL INTEREST

The proposed amendment to Evidence Rule 804(b)(3), the "statement against interest" exception to the rule against hearsay, would extend the provision in the current Rule that precludes admission of a statement against penal interest that is "offered to exculpate the accused ... unless corroborating circumstances clearly indicate the trustworthiness of the statement," to all statements against penal interest offered in a criminal case. The purpose of the amendment is to guard against "unreliable hearsay ... [being] admitted against an accused." Report of the Advisory Committee on Evidence Rules, at 2.

We commend the Committee for recognizing the need to protect against unreliable hearsay being admitted against an accused under the penal interest exception, and support amending the Rule to achieve that objective. We supported that same objective in 2003 when the Committee proposed amending the Rule to make the additional showing of trustworthiness a condition of admission for all statements against penal interest in both criminal and civil proceedings. We believe, however, as we did in 2003, that the stated purpose of the amendment -- that of guarding against unreliable hearsay being admitted against the accused -- is not best achieved by subjecting all statements against penal interest in criminal cases to the additional showing of reliability now required only if they are offered to exculpate the accused.

The admissibility of a statement against penal interest offered to exculpate an accused should not depend on satisfying any additional requirements beyond those necessary to come within the traditional hearsay exception. Those requirements are sufficiently rigorous to provide an adequate guarantee of reliability for such statements to be received by the jury, and no legal reason or factual basis supports subjecting this defense-favorable evidence to a more stringent standard. Due process requires a verdict in favor of the criminal defendant when there is reasonable doubt about guilt. Excluding evidence favorable to the defendant which our common legal history has treated as admissible runs counter to that Constitutional norm. Admission of statements against penal interest offered by the prosecution to inculpate an accused, on the other hand, should be conditioned upon a showing of reliability beyond what is required to meet the general hearsay exception. Conditioning the admission of such statements on a specific showing of reliability is warranted as a matter of fact by the inherently suspect nature of self-incriminating statements (those who speak ostensibly against penal interest) implicating others in wrongdoing, given the powerful incentives that exist for making such statements in today's federal criminal justice system. Such statements, by definition, must have been made outside the courtroom but not as a co-conspirator. In other words, they will be the sort of bragging, self-aggrandizing, and merely narrative statements that are made by criminals about others but not during and in furtherance of joint criminal activity. (Otherwise the statement would come in under Rule 801(d)(2)(E).) The need for this additional guarantee of trustworthiness is especially important now, given that as the Committee notes, the requirements of the penal interest exception mean that such a statement will be nontestimonial (otherwise, it would be excluded under the Confrontation Clause) and thus quite likely the product of an informal setting where the demands of the

criminal culture may outweigh any impulse to truthfulness, or else will be blameshifting statements made by a confidential informer to an agent in casual conversation. After Crawford, "the Confrontation Clause provides no protection against unreliable hearsay if that hearsay is nontestimonial." Report, p.2, citing Whorton v. Bockting, 549 U.S. 406 (2007).

For these reasons, the kind of asymmetry seen in the present Rule should be maintained, but the direction of the asymmetry should be reversed. Statements against penal interest offered by the prosecution to inculcate the accused should be subject to the additional showing of reliability that the Rule now applies to statements against penal interest offered to exculpate the accused. Statements favoring the accused should be admissible if they meet the ordinary requirements of Rule 804(b)(3).

The National Association of Criminal Defense Lawyers is grateful for the opportunity to submit its views on these important and difficult issues. We look forward to continuing to work with the Committee in the years to come.

Very truly yours,

s/Peter Goldberger
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