

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF EVIDENCE<sup>1</sup>**

1 **Rule 804. Exceptions to the Rule Against Hearsay—**  
2 **When the Declarant Is Unavailable as a**  
3 **Witness**

4 \* \* \* \* \*

5 **(b) The Exceptions. \* \* \***

6 **(3) *Statement Against Interest.*** A statement that:

7 **(A)** a reasonable person in the declarant’s  
8 position would have made only if the  
9 person believed it to be true because,  
10 when made, it was so contrary to the  
11 declarant’s proprietary or pecuniary  
12 interest or had so great a tendency to  
13 invalidate the declarant’s claim  
14 against someone else or to expose the  
15 declarant to civil or criminal liability;  
16 and

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<sup>1</sup> New material is underlined in red; matter to be omitted is lined through.

17                   **(B)**    if offered in a criminal case as one  
18    that tends to expose the declarant to  
19    criminal liability, is supported by  
20    corroborating circumstances that  
21    clearly indicate its trustworthiness;~~if~~  
22    ~~offered in a criminal case as one that~~  
23    ~~tends to expose the declarant to~~  
24    ~~criminal liability~~ after considering  
25    the totality of circumstances under  
26    which it was made and evidence, if  
27    any, corroborating it.

#### **Committee Note**

Rule 804(b)(3)(B) has been amended to require that in assessing whether a statement is supported by corroborating circumstances that clearly indicate its trustworthiness, the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence corroborating or contradicting it. While most courts have considered corroborating evidence, some courts have refused to do so. The rule now provides for a uniform approach, and recognizes that the existence or absence of corroboration is relevant to, but not dispositive of, whether a statement that tends to expose the declarant to

criminal liability should be admissible under this exception when offered in a criminal case. A court evaluating the admissibility of a third-party confession to a crime, for example, must consider not only circumstances such as the timing and spontaneity of the statement and the third-party declarant's likely motivations in making it. It must also consider corroborating information, if any, supporting the statement, such as evidence placing the third party in the vicinity of the crime. Courts must also consider evidence that contradicts the declarant's account.

The amendment is consistent with the 2019 amendment to Rule 807 that requires courts to consider corroborating evidence in the trustworthiness inquiry under that provision. It is also supported by the legislative history of the corroborating circumstances requirement in Rule 804(b)(3). *See* 1974 House Judiciary Committee Report on Rule 804(b)(3) (adding “unless corroborating circumstances clearly indicate the trustworthiness of the statement” language and noting that this standard would change the result in cases like *Donnelly v. United States*, 228 U.S. 243 (1912), that excluded a third-party confession exculpating the defendant despite the existence of independent evidence demonstrating the accuracy of the statement).