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THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: December 16

December 10, 1975

Potes 12/13

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

Enrolled Bill H.R. 9915 - Amendments to the Federal Rules of Procedure and

the Rules of Criminal Procedure

Attached for your consideration is H.R. 9915, sponsored by Representative Hungate and three others, which would correct numerous grammatical imperfections and incorrect references, and make conforming changes in the Federal Rules of Evidence, Federal Rules of Criminal Procedure and related provisions of titles 18 and 28 of the U.S. Code.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

#### RECOMMENDATION

That you sign H.R. 9915 at Tab B.





#### EXECUTIVE OFFICE OF THE PRESIDENT

#### OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 8 1975

#### MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 9915 - Amendments to the Federal

Rules of Evidence and the Rules of Criminal

Procedure

Sponsor - Rep. Hungate (D) Missouri and 3 others

#### Last Day for Action

December 16, 1975 - Tuesday

#### Purpose

To make both technical and conforming amendments to the Federal Rules of Evidence, Federal Rules of Criminal Procedure, and related provisions of titles 18 and 28 of the U.S. Code.

#### Agency Recommendations

Office of Management and Budget

Approval

Department of Justice Administrative Office of U.S. Courts Approval No objection

#### Discussion

The enrolled bill would both correct numerous grammatical imperfections and incorrect references, and make conforming changes in the Federal Rules of Evidence, in certain provisions of titles 18 and 28 of the U.S. Code related to the Rules of Evidence, and in the Federal Rules of Criminal Procedure. The conforming changes are as follows:

-- Rule 410 of the Rules of Evidence is replaced by the language of recently enacted (July 31, 1975) Rule 11(e)(6) of the Federal Rules of Criminal Procedure. This does not change the substance of



the existing rule, which deals with the admissibility of guilty pleas in civil or criminal actions, but merely conforms its language to that contained in the Rules of Criminal Procedure. Full conformity is desirable because certain pleas or statements made in connection with this evidence rule are equally relevant to the Rules of Criminal Procedure.

- -- Sections 3491 and 3492 of title 18, U.S. Code, which deal with the admissibility of foreign documents in criminal trials, is amended by striking existing cross-references to a repealed statute and inserting appropriate references to the Federal Rules of Evidence.
- -- Rule 16 of the Federal Rules of Criminal Procedure, which deals with the pretrial discovery of evidence, is amended by striking certain sections which are now unnecessary because of recent amendments to the Federal Rules of Criminal Procedure by P.L. 94-64.

Since the enrolled bill would remedy certain technical deficiencies in existing law, we recommend approval.

Assistant Director for Legislative Reference

Enclosures



# EXECUTIVE OFFICE OF THE PRESIDENT OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 8 1975

#### MEMORANDUM FOR THE PRESIDENT

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The enrolled bill would both correct numerous grammatical imperfections and incorrect references, and make conforming changes in the Federal Rules of Evidence, in certain provisions of titles 18 and 28 of the U.S. Code related to the Rules of Evidence, and in the Federal Rules of Criminal Procedure. The conforming changes are as follows:

-- Rule 410 of the Rules of Evidence is replaced by the language of recently enacted (July 31, 1975) Rule 11(e)(6) of the Federal Rules of Criminal Procedure. This does not change the substance of



ASSISTANT ATTORNEY GENERAL

## Department of Justice Washington, D.C. 20530

December 4, 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 9915, "To make technical amendments to the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and to related provisions of titles 18 and 28 of the United States Code."

At present, the federal statutes referred to in the title of the bill contain numerous grammatical imperfections, incorrect references, and superfluous provisions. All these would be eliminated by the bill, thus achieving a useful clarification of the law.

Accordingly, the Department of Justice recommends Executive approval of this bill.

Sincerely,

Michael M. Uhlmann

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## ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SUPREME COURT BUILDING WASHINGTON, D.C. 20544

ROWLAND F. KIRKS

WILLIAM E. FOLEY
DEPUTY DIRECTOR

December 3, 1975

James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Frey:

Reference is made to your enrolled bill request of December 2, 1975 requesting views and recommendations on H.R. 9915, an Act "To make technical amendments to the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and to related provisions of titles 18 and 28 of the United States Code."

Although the proposed legislation has not been the subject of comment by the Judicial Conference of the United States, the bill purports to make only technical amendments to the Federal Rules of Evidence and the Federal Rules of Criminal Procedure and in the circumstances, no objection to Executive approval is interposed.

Sincerely,

William E. Foley

Deputy Director

#### THE WHITE HOUSE

WASHINGTON

December 11, 1975

MEMORANDUM FOR:

JIM CAVANAUGH

FROM:

MAX L. FRIEDERSDORF W. J.

SUBJECT:

H.R. 9915 - Amendments to the Federal Rules of Evidence and the Rules of Criminal Procedure

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

#### THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO .:

1281

Date: December 8

Time: 600pm

FOR ACTION: Dick Parsons

Max Friedersdorf M Ken Lazarus

cc (for information):

Jack Marsh Jim Cavanaugh Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date:

December 10

Time:

noon

SUBJECT:

H.R. 9915 - Amendmements to the Federal Rules of Evidence and the Rules of Criminal Procedure

#### ACTION REQUESTED:

Agency .	B.T			77 1	
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For Your Recommendations

\_ Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

#### REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

## PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR. For the President

LOG NO .:

1281

Date: December 9

Time: 600pm

FOR ACTION:

Dick Parsons

Max Friedersdorf

Ken Lazarus

co (for information):

Jack Marsh Jim Cavanaugh Warren Hendriks

FR	MO	THE	STAFF	SECRET.	BRY.
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Time: DUE: Date: 500pm December 10

SUBJECT:

H.R. 9915 - Amendmements to the Federal Rules of Evidence and the Rules of Criminal Procedure

ACTION REQUESTED:

For Your Recommendations .\_\_\_ For Necessary Action

Prepare Agenda and Brief \_\_\_\_ Draft Reply

For Your Comments \_\_\_\_ Draft Remarks

Please return to Judy Johnston, Ground Floor West Wing

#### PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Scaretary immediately.

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### ACTION REQUESTED:

For Necessary Action	For Your Recommendations
Prepare Agenda and Brief	Draft Reply
X For Your Comments	Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 12/10/75

#### PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Wor the Proceeding

3.5

MAKING TECHNICAL AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE, THE FEDERAL RULES OF CRIMINAL PROCEDURE, AND TO RELATED PROVISIONS OF TITLES 18 AND 28 OF THE UNITED STATES CODE

OCTOBER 30, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Hungate, from the Committee on the Judiciary, submitted the following

#### REPORT

[To accompany H.R. 9915]

The Committee on the Judiciary, to whom was referred the bill (H.R. 9915) to make technical amendments to the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and to related provisions of titles 18 and 28 of the United States Code, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, strike out lines 4 through 6 and insert in lieu thereof the following:

(4) In the table of contents, by amending the item relating to rule 410 to read as follows:

Rule 410. Inadmissibility of pleas, offers of pleas, and related statements.

Page 2, strike out lines 19 and 20, and insert in lieu thereof the following:

(9) By amending Rule 410 to read as follows:

Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding

against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

Purpose

The purpose of this legislation is to make spelling, punctuation, and conforming changes in the Federal Rules of Evidence, in certain provisions of titles 18 and 28 of the United States Code related to the Federal Rules of Evidence, and in the Federal Rules of Criminal Procedure.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

#### SECTION 1

The first section of H.R. 9915 contains 14 numbered paragraphs that make amendments to the Federal Rules of Evidence.

Paragraph (1) corrects a wrong word in the Table of Contents

entry for Rule 106.

Paragraph (2) conforms the Table of Contents entry for Rule 301 with the actual title of that rule.

Paragraph (3) conforms the Table of Contents entry for Rule

405(a) with the actual title of that rule.

Paragraph (4) conforms the Table of Contents entry for Rule 410 with the actual title of that rule. See discussion below of paragraph (9).

Paragraph (5) conforms capitalization of the Table of Contents entry for Rule 501 with the usage in the rest of the Table of Contents.

Paragraph (6) conforms the Table of Contents entry for Rule

608(a) with the actual title of that rule.

Paragraph (7) conforms the Table of Contents entry for Rule 1101(c) with the actual title of that rule.

Paragraph (8) conforms the Table of Contents entry for Rule

1101(c) with the actual title of that rule.

Paragraph (9) conforms the language of Rule 410 with the language of recently enacted (July 31, 1975) Rule 11(e)(6) of the Federal Rules of Criminal Procedure. When the Federal Rules of Evidence were before the 93d Congress, the House and Senate passed different versions of Rule 410, which relates to the use of statements made during plea negotiating. The conference committee recommended, and the Congress agreed, that this matter should be explored in greater detail during Congressional consideration of proposed amendments to the Federal Rules of Criminal Procedure. See Report No. 93–1597, at 6–7. This was accomplished by providing that Rule 410 would be superseded by the relevant Federal Rules of Criminal Procedure. With the enactment of the Federal Rules of Criminal Procedure Amendments Act (Public Law 94–64), Rule 410 has been

superseded by Rule 11(e)(6) of the Federal Rules of Criminal Procedure. Paragraph (9), therefore, changes the language of Rule 410 to conform to the language of Rule 11(e)(6) of the Federal Rules of Criminal Procedure.

Paragraph (10) corrects a wrong word in Rule 606(b).

Paragraph (11) inserts a comma in the title of Rule 803 (23) to conform to usage elsewhere in rules.

Paragraph (12) conforms the punctuation of the title of Rule 804

with the punctuation of the title of Rule 803.

Paragraph (13) corrects a spelling error in the title of Rule 804. Paragraph (14) corrects a spelling error in the text of Rule 804 (b) (3).

#### SECTION 2

Section 2 of H.R. 9915 amends section 2076 of title 28, United States Code, which establishes a method of amending the Federal Rules of Evidence. The amendment inserts a period at the end of the final sentence of section 2076.

#### SECTION 3

Section 3 of H.R. 9915 amends section 3491 of title 18, United States Code, which deals with the admissibility of foreign documents in criminal trials. Section 3491 makes a cross-reference in its text to section 1732 of title 28 of the United States Code. Section 1732 was repealed by Public Law 93–595 and replaced by provisions in the Federal Rules of Evidence. Section 3, therefore, changes the cross-reference in section 3491 of title 18, United States Code, so that it will refer to the provisions of the Federal Rules of Evidence.

#### SECTION 4

Section 4 of H.R. 9915 amends section 3492 of title 18, United States Code. Section 3492 deals with authenticating foreign documents for use in criminal trials. Section 3492, like section 3491 discussed above, makes a cross-reference in its text to section 1732 of title 28, United States Code. For the reason set forth above, section 5 amends section 3492 of title 18, United States Code, so that it refers to the provisions of the Federal Rules of Evidence.

#### SECTION 5

Section 5 of H.R. 9915 amends Rule 16 of the Federal Rules of Criminal Procedure, which deals with pretrial discovery of evidence. It was originally proposed to amend Rule 16 to require that both the prosecution and the defense provide the opposing party with a list of its witnesses prior to trial. Rules 16(a) (4) and 16(b) (3) provide that a party cannot comment upon his opponent's failure to call a witness whose name was on the witness list. Public Law 94-64 struck the provisions of Rule 16 that required pretrial disclosure of witness lists, making Rules 16 (a) (4) and (b) (3) unnecessary. Section 5, therefore, strikes both from the Federal Rules of Criminal Procedure.

#### COST ESTIMATE

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the committee estimates that no new cost to the United States is entailed by H.R. 9915.

#### NEW BUDGET AUTHORITY

H.R. 9915 creates no new budget authority.

#### INFLATION IMPACT STATEMENT

H.R. 9915 will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

#### STATEMENT OF THE BUDGET COMMITTEE

No statement on this bill has been received from the House Committee on the Budget.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No statement on this bill has been received from the House Committee on Government Operations.

#### OVERSIGHT

The committee makes no oversight findings in connection with this bill.

#### COMMITTEE VOTE

H.R. 9915 was reported out of committee on October 28, 1975, by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### FEDERAL RULES OF EVIDENCE

AN ACT To establish rules of evidence for certain courts and proceedings

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following rules shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act. These rules apply to actions, cases, and proceedings brought after the rules take effect. These rules also apply to further procedure in actions, cases, and proceedings then pending, except to the extent that application of the rules would not be feasible, or would work injustice, in which event former evidentiary principles apply.

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ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope. Rule 102. Purpose and construction.

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Rule 103. Rulings on evidence:

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(2) Offer of proof.(b) Record of offer and ruling.

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(a) Questions of admissibility generally.

(b) Relevancy conditioned on fact.

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(d) Testimony by accused.

(e) Weight and credibility. Rule 105. Limited admissibility.

Rule 106. Remainder of or related writings [on] or recorded statements.

#### ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301. Presumptions in general in civil actions and proceedings.

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Rule 401. Definition of "relevant evidence".

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible

Rule 403. Exclusion of relevant evidence on grounds on prejudice, confusion, or waste of time.

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes:

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(3) Character of witness.

(b) Other crimes, wrongs, or acts. Rule 405. Methods of proving character:

(a) Reputation or opinion.

(b) Specific instances of conduct.

Rule 406. Habit; routine practice.

Rule 407. Subsequent remedial measures.

Rule 408. Compromise and offers to compromise.

Rule 409. Payment of medical and similar expenses.

Rule 410. Offer to plead guilty; nolo contendere; withdrawn plea of guilty. Rule 410. Inadmissibility of pleas, offers of pleas, and related statements.

Rule 411. Liability insurance.

#### ARTICLE V. PRIVILEGES

Rule 501. General Rule Rule.

#### ARTICLE VI. WITNESSES

Rule 601. General rule of competency.

Rule 602. Lack of personal knowledge.

Rule 603. Oath or affirmation.

Rule 604. Interpreters.

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Rule 606. Competency of juror as witness:

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Rule 615. Exclusion of witnesses.

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4000

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(e) Rules applicable in part.

Rule 1102. Amendments.

Rule 1103. Title.

#### ARTICLE IV. RELEVANCY AND ITS LIMITS

## Rule 410. Offer To Plead Guilty; Nolo Contendere; Withdrawn Plea of Guilty

Except as otherwise provided by Act of Congress, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer. This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.

[This rule shall not take effect until August 1, 1975, and shall be superseded by any amendment to the Federal Rules of Criminal Procedure which is inconsistent with this rule, and which takes effect after the date of the enactment of the Act establishing these Federal Rules of Evidence.]

#### Rule 410. Inadmissibility of Pleas. Offers of Pleas, and Related Statements

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

#### ARTICLE VI WITNESSES

### Rule 606. Competency of Juror as Witness

(a) At the trial.—A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment.—Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of

the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

## ARTICLE VIII. HEARSAY

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) \* \* \*

(23) Judgment as to personal, family, or general history, or boundaries.—Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

Rule 804. Hearsay Exceptions [:]; Declarant Unavailable

(a). \* \* \* \* \* \* \* \* \*

(b) Hearsay exceptions.—The following are not excluded by the

hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony.—Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death.—In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be

his impending death.

(3) Statement against interest.—A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have

made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not [admissable] admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history.—(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

### ARTICLE XI. MISCELLANEOUS RULES

Rule 1101. Applicability of Rules

(e) Rules applicable in part.—In the following proceedings these rules apply to the extent that matters of evidence are not provided for in the statutes which govern procedure therein or in other rules prescribed by the Supreme Court pursuant to statutory authority: the trial of minor and petty offenses by United States magistrates; review of agency actions when the facts are subject to trial de novo under section 706(2)(F) of title 5, United States Code; review of orders of the Secretary of Agriculture under section 2 of the Act entitled "An Act to authorize association of producers of agricultural products" approved February 18, 1922 (7 U.S.C. 292), and under sections 6 and 7(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and revocation of naturalization under sections 310-318 of the Immigration and Nationality Act (& U.S.C. 1421-1429); prize proceedings in admiralty under sections 7651-7681 of title 10, United States Code; review of orders of the Secretary of the Interior under section 2 of the Act entitled "An Act

authorizing associations of producers of aquatic products" approved June 25, 1934 (15 U.S.C. 522); review of orders of petroleum control boards under section 5 of the Act entitled "An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes", approved February 22, 1935 (15 U.S.C. 715d); actions for fines, penalties, or forfeitures under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581-1624), or under the Anti-Smuggling Act (19 U.S.C. 1701-1711); criminal libel for condemnation, exclusion of imports, or other proceedings under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301-392); disputes between seamen under sections 4079, 4080, and 4081 of the Revised Statutes (22 U.S.C. 256-258); habeas corpus under sections 2241-2254 of title 28, United States Code; motions to vacate, set aside or correct sentence under section 2255 of title 28, United States Code; actions for penalties for refusal to transport destitute seamen under section 4578 of the Revised Statutes (46 U.S.C. 679); actions against the United States under the Act entitled "An Act authorizing suits against the United States in Tadmirality admiralty for damage caused by and salvage service rendered to public vessels belonging to the United States, and for other purposes", approved March 3, 1925 (46 U.S.C. 781-790), as implemented by section 7730 of title 10, United States Code. \* \* \* \*

#### SECTION 2076 OF TITLE 28, UNITED STATES CODE

#### § 2076. Rules of evidence

The Supreme Court of the United States shall have the power to prescribe amendments to the Federal Rules of Evidence. Such amendments shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session of Congress but not later than the first day of May, and until the expiration of one hundred and eighty days after they have been so reported; but if either House of Congress within that time shall by resolution disapprove any amendment so reported it shall not take effect. The effective date of any amendment so reported may be deferred by either House of Congress to a later date or until approved by Act of Congress. Any rule whether proposed or in force may be amended by Act of Congress. Any provision of law in force at the expiration of such time and in conflict with any such amendment not disapproved shall be of no further force or effect after such amendment has taken effect. Any such amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by act of Congress.

## TITLE 18, UNITED STATES CODE \* \* \* \* \* \* \* \*

### § 3491. Foreign documents

Any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever

form, as well as any copy thereof equally with the original, which is not in the United States shall, when duly certified as provided in section 3494 of this title, be admissible in evidence in any criminal action or proceeding in any court of the United States if the court shall find, from all the testimony taken with respect to such foreign document pursuant to a commission executed under section 3492 of this title, that such document (or the original thereof in case such document is a copy) satisfies the requirements of section 1732 of title 28 authentication requirements of the Federal Rules of Evidence, unless in the event that the genuineness of such document is denied, any party to such criminal action or proceeding making such denial shall establish to the satisfaction of the court that such document is not genuine. Nothing contained herein shall be deemed to require authentication under the provisions of section 3494 of this title of any such foreign documents which may otherwise be properly authenticated by law.

## § 3492. Commission to consular officers to authenticate foreign documents.

(a) The testimony of any witness in a foreign country may be taken either on oral or written interrogatories, or on interrogatories partly oral and partly written, pursuant to a commission issued, as hereinafter provided, for the purpose of determining whether any foreign documents sought to be used in any criminal action or proceeding in any court of the United States are genuine, and whether the Trequirements of section 1732 of Title 28 authentication requirements of the Federal Rules of Evidence are satisfied with respect to any such document (or the original thereof in case such document is a copy). Application for the issuance of a commission for such purpose may be made to the court in which such action or proceeding is pending by the United States or any other party thereto, after five days' notice in writing by the applicant party, or his attorney, to the opposite party, or his attorney of record, which notice shall state the names and addresses of witnesses whose testimony is to be taken and the time when it is desired to take such testimony. In granting such application the court shall issue a commission for the purpose of taking the testimony sought by the applicant addressed to any consular officer of the United States conveniently located for the purpose. In cases of testimony taken on oral or partly oral interrogatories, the court shall make provisions in the commission for the selection as hereinafter provided of foreign counsel to represent each party (except the United States) to the criminal action or proceeding in which the foreign documents in question are to be used, unless such party has, prior to the issuance of the commission, notified the court that he does not desire the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

## SECTION 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

#### Rule 16. Discovery and Inspection

- (a) Disclosure of Evidence by the Government.
- **(**4) Failure to Call Witness. The fact that a witness' name is on a list furnished under this rule shall not be grounds for comment upon failure to call the witness.

(b) DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

(1) \* \* \*

[(3) Failure to Call Witness. The fact that a witness' name is on a list furnished under this rule shall not be grounds for comment upon a failure to call a witness.]

## Minety-fourth Congress of the United States of America

#### AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

## An Act

To make technical amendments to the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and to related provisions of titles 18 and 28 of the United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Rules of Evidence (Public Law 93-595; 88 Stat. 1926 et seq.) are amended as follows:

(1) In the table of contents, in the item relating to rule 106, by striking out "on" and inserting "or" in lieu thereof.

(2) In the table of contents, in the item relating to rule 301, by inserting "in" immediately after "general".

(3) In the table of contents, in the item relating to rule 405(a), by inserting "or opinion" immediately after "Reputation" but before the

(4) In the table of contents, by amending the item relating to rule

410 to read as follows:

"Rule 410. Inadmissibility of pleas, offers of pleas, and related statements.".

- (5) In the table of contents in the item relating to rule 501, by striking out "General Rule." and inserting "General rule." in lieu thereof.
- (6) In the table of contents, in the item relating to rule 608(a), by striking out "Reputation" and inserting "Opinion and reputation" in lieu thereof.
- (7) In the table of contents, in the item relating to rule 901(b)(8), by striking out "compilations" and inserting "compilation" in lieu thereof.
- (8) In the table of contents, in the item relating to rule 1101(c), by striking out "Rules" and inserting "Rule" in lieu thereof.

(9) By amending rule 410 to read as follows:

"Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

"Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel."

(10) In the final sentence of rule 606(b), by striking out "what" and

inserting "which" in lieu thereof.

(11) In the catchline of rule 803(23) by inserting a comma immediately after "family".

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(12) In the catchline of rule 804, by striking out the colon and inserting a semicolon in lieu thereof.

(13) In the final sentence of rule 804(b) (3), by striking out "admissable" and inserting "admissible" in lieu thereof.

(14) In rule 1101(e), by striking out "admirality" and inserting "admiralty" in lieu thereof.

Sec. 2. Section 2076 (relating to rules of evidence) of title 28 of the United States Code is amended by inserting a period at the end

United States Code is amended by inserting a period at the end

SEC. 3. Section 3491 (relating to authentication of foreign documents) of title 18 of the United States Code is amended by striking out "the requirements of section 1732 of title 28" and inserting "the authentication requirements of the Federal Rules of Evidence" in lieu thereof.

SEC. 4. Section 3492(a) (relating to authentication of foreign documents) of title 18 of the United States Code is amended by striking out "the requirements of section 1732 of title 28" and inserting "the authentication requirements of the Federal Rules of Evidence" in lieu

SEC. 5. The Federal Rules of Criminal Procedure (as amended by the Federal Rules of Criminal Procedure Amendments Act of 1975) are further amended by striking out paragraph (4) of rule 16(a) and paragraph (3) of rule 16(b); by changing the reference to rule 4(b) (1) in rule 9(b) (1) to rule 4(c) (1); and by changing the reference to rule 4(c) (1), (2), and (3) in rule 9(c) (1) to rule 4(d) (1), (2), and

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

### December 4, 1975

Dear Mr. Director:

The following bill was received at the White House on December 4th:

H.R. 9915

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely, .

Robert D. Linder Chief Executive Clerk

The Honorable James T. Lynn Director Office of Management and Budget Washington, D. C.