

**Restyled Federal Rules of Evidence**

John Scott to: Rules_Comments

Cc: "Joe Kimble"

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For starters, I have to say I am a huge fan of the restyled rules in general, and especially so of a few in particular. I was a trial lawyer for a few years before I entered academe in 1978, and I have taught an average of three sections of Evidence a year since 1987, so I know firsthand the difficulties that students and less experienced lawyers (and even a few judges) have understanding some of our current rules. I am a faculty colleague of Prof. Joe Kimble, the principal draftsman of the revisions, and no one is a bigger fan of Joe's work than I am.

My favorite restyled rule is 801(c). I applaud the Committee for retaining the added three words at the end of the timeless, sacred phrase so that it becomes a much more manageable "truth of the matter asserted by the declarant." The matter asserted has always been problematic for a lot of rule-readers, and now that it is plain that the matter asserted is simply the contents of the declarant's statement, I'm confident there will be less confusion.

In that same vein, I'd like to strongly encourage the Committee to add four words to the last provision of 405(a). I'd like it to read "on cross examination of the character witness," because, despite all the contextual "clues," that is absolutely not obvious to everyone. Many students and more than a few less experienced lawyers think the provisions of 405(a) are somehow severable, and that one can cross examine anyone about the defendant's (or victim's) relevant specific instances of conduct once the defendant has opened that door. They think one can cross the defendant about those instances of conduct if he elects to testify about the facts of the case. And the confusion all stems from the lack of my proposed additional four words tacked onto "cross examination." I have heard that this proposal has been preliminarily rejected as "too obvious," but if the standard is whether a lawyer without specific familiarity with the subject could be expected to get it mostly right after just reading the rules, then at present we fall short of the standard. It is NOT obvious to most that the cross examination of which the rule speaks is of the character witness. I know, it should be -- but it isn't. Four words will correct that condition.

I think the ACTL is right that the current revision of Rule 410(a)(3) seems to misunderstand the rule. The current "statement about either of these pleas" is not the equivalent of "statement made in the course of any proceedings."

My best wishes for passage of the revisions. I can't wait to see the difference in student understanding when I get to teach out of them.

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