

*Meeting*

Third Supplement to Memorandum No. 19(1961)

Subject: Study No. 34(L) - Uniform Rules of Evidence (Rule 63(10))

The Southern Section of the State Bar Committee has suggested that the phrase "Except as against an accused in a criminal proceeding" be added at the beginning of the subdivision. Its reasons are as follows:

It seemed to the members of the Southern Section that in the absence of language which would operate to prevent subdivision (10) from applying to an accused in a criminal proceeding, subdivision (10) would open a possible back door that would let in the declarations of co-conspirators without the safeguards that so carefully have been set up in subdivision (9)(b). The specific evil that concerns the Southern Section is that any statement made by a conspirator in the course of conspiracy may be admissible under subdivision (10) because it subjects the declarant to the risk of prosecution, and yet admitting such declarations under subdivision (10) would completely circumvent the safeguards that have been set up in subdivision (9).

The staff believes that the amendment suggested by the Southern Section is too broad. There is merit to the Southern Section's objection, however, and the defect can be corrected by a more modest limitation such as "(10) Subject to the limitations of subdivision (9)(b), . . . ."

Respectfully submitted,

Joseph B. Harvey