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DECLARATION AGAINST PENAL INTEREST RECOGNIZED
AS EXCEPTION TO HEARSAY RULE

People v. Edwards, 396 Mich. 551, 242 N.W.2d 739 (1976)

In *People v. Edwards*,¹ the Michigan Supreme Court adopted a declaration against penal interest exception to the hearsay rule because such out-of-court statements were inherently trustworthy.

The defendant Edwards, on trial for murder, repudiated his prior confession of guilt,² presented an alibi,³ and attempted to introduce testimony that one Chester Blake, since deceased, admitted to a defense witness that he, not Edwards, was the murderer.⁴ The trial judge excluded this testimony because it violated the hearsay rule,⁵ and the defendant was convicted of second degree murder.⁶ The appellate court affirmed,⁷ but the Michigan Supreme Court reversed and *held*: An out-of-court statement by a declarant, since deceased, made against his penal interest was inherently trustworthy and admissible as an exception to the hearsay rule.⁸

In the American criminal justice system, few rights are more fundamental than that of the accused to present witnesses in his own defense.⁹ But in the exercise of this right, the accused must comply with the rules of procedure and evidence¹⁰ established to ensure the fair and reliable¹¹

1. 396 Mich. 551, 242 N.W.2d 739 (1976).

2. *Id.* at 554 n.4, 242 N.W.2d at 740 n.4.

3. *Id.* at 554, 242 N.W.2d at 740.

4. *Id.* at 555, 242 N.W.2d at 740.

5. *Id.* at 553, 242 N.W.2d at 739.

6. *Id.* at 552-53, 242 N.W.2d at 739.

7. 47 Mich. App. 307, 209 N.W.2d 527 (1973), *rev'd*, 396 Mich. 551, 242 N.W.2d 739 (1976).

8. 396 Mich. 551, 566-67, 242 N.W.2d 739, 746 (1976).

9. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (denial of due process whenever inflexible evidence rules bar admission of critical exculpatory third-party declarations of criminal responsibility); *see, e.g., Webb v. Texas*, 409 U.S. 95 (1972) (denial of due process where judge threatens sole defense witness until he refuses to testify); *Washington v. Texas*, 388 U.S. 14 (1967) (denial of due process where state law bars coparticipant in same crime from testifying for defense); *In re Oliver*, 333 U.S. 257 (1948) (denial of due process where person is summarily convicted of perjury before grand jury without opportunity to offer any defense).

10. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

11. *Id.* *See People v. Spriggs*, 60 Cal. 2d 868, 874, 389 P.2d 377, 381, 36 Cal. Rptr. 841, 845 (1964) (evidence rules must facilitate, rather than hinder, the search for truth); *People v. Lettrich*, 413 Ill. 172, 179, 108 N.E.2d 488, 492 (1952) (hearsay rule

determination of guilt or innocence. The exclusion of hearsay evidence, out-of-court statements offered to prove the truth of the matter asserted,¹² is one of the most widely recognized of these rules.¹³ Its purpose is to exclude evidence, the credibility of which cannot be tested by the traditional courtroom devices: testimony given under oath,¹⁴ the personal presence and demeanor of the witness,¹⁵ and cross-examination.¹⁶ Rigid application of the hearsay rule, however, would often result in the exclusion of highly probative and reliable evidence. Courts, therefore, have created numerous exceptions to admit hearsay evidence when the declarant is unavailable to testify and there is a circumstantial probability of its trustworthiness.¹⁷ Declarations against pecuniary and proprietary interest qualify as an exception to the hearsay rule on the theory that a person is unlikely to fabricate declarations contrary to

should apply "except in cases where justice demands a departure"). See also Ansel, *Constitutional Law—Evidence*, 62 ILL. B.J. 158 (1973) (hearsay rule application must not only be consistent and predictable, but also flexible to meet due process requirements).

12. See *Pauling v. News Syndicate Co.*, 335 F.2d 659, 664 (2d Cir. 1964), cert. denied, 379 U.S. 968 (1965); *People v. Lee*, 391 Mich. 618, 642, 218 N.W.2d 655, 666 (1974); *In re Earle*, 355 Mich. 596, 602, 95 N.W.2d 833, 836 (1959); *People v. Fell*, 65 Mich. App. 543, 549, 237 N.W.2d 550, 552 (1975); *People v. Jones*, 48 Mich. App. 102, 106, 210 N.W.2d 145, 148 (1973); FED. R. EVID. 801, 802; N.J.R. EVID. 63. See also C. McCORMICK, *HANDBOOK OF THE LAW OF EVIDENCE* §§ 245-46 (2d ed. 1972); 2 F. WHARTON, *CRIMINAL EVIDENCE* § 265 (13th ed. 1972); 5 J. WIGMORE, *EVIDENCE* § 1361 (rev. ed. Chadbourne 1974).

13. See *Chambers v. Mississippi*, 410 U.S. 284, 298 (1973); C. McCORMICK, *supra* note 12 § 246; 5 J. WIGMORE, *supra* note 12 § 1361; 29 AM. JUR. 2d *Evidence* § 493 (1967).

14. *Chambers v. Mississippi*, 410 U.S. 284, 298 (1973) (an oath impresses upon the declarant the solemnity of his declaration); *Donnelly v. United States*, 228 U.S. 243, 273 (1913); *Hines v. Commonwealth*, 136 Va. 728, 743, 117 S.E. 843, 847 (1923); see C. McCORMICK, *supra* note 12 § 245, at 582; 5 J. WIGMORE, *supra* note 12 § 1362, at 7; Ladd, *The Hearsay We Admit*, 5 OKLA. L. REV. 271 (1952).

15. C. McCORMICK, *supra* note 12 §§ 245, 253; Note, *Appropriate Foundation Requirements for Admitting Computer Printouts into Evidence*, 1977 WASH. U.L.Q. 59, 64-65.

16. *Chambers v. Mississippi*, 410 U.S. 284, 298 (1973) (cross-examination tests the truth of declarant's statements and allows the jury to assess his demeanor and credibility); accord, *Donnelly v. United States*, 228 U.S. 243, 273 (1913); *People v. Chambers*, 279 Mich. 73, 78, 271 N.W. 556, 558 (1937); *People v. Fell*, 65 Mich. App. 543, 549, 237 N.W.2d 550, 552 (1975); *People v. Rea*, 38 Mich. App. 141, 142, 195 N.W.2d 809, 810 (1972); *Hines v. Commonwealth*, 136 Va. 728, 743, 117 S.E. 843, 847 (1923); see C. McCORMICK, *supra* note 12 § 245, at 583-84; 5 J. WIGMORE, *supra* note 12 § 1362, at 3. See also Ladd, *supra* note 14, at 272; Morgan, *Hearsay Dangers and the Application of the Hearsay Concept*, 62 HARV. L. REV. 177, 188 (1948); Tribe, *Triangulating Hearsay*, 87 HARV. L. REV. 957, 968 (1974).

17. 5 J. WIGMORE, *supra* note 12 § 1455, at 923.

his economic interest.¹⁸ Until recently, courts have been unwilling to extend this theory to declarations against penal interest.¹⁹

As early as 1844, English courts distinguished declarations against pecuniary and proprietary interest from declarations against penal interest.²⁰ These courts emphasized that statements which subject the declarant only to criminal liability and loss of liberty are not sufficiently trustworthy to be admissible at trial.²¹ Although most American courts adopted this distinction²² with little attention to the underlying rationale,²³ several courts justified the exclusion of hearsay declarations

18. See *Chambers v. Mississippi*, 410 U.S. 284, 299 (1973); *Donnelly v. United States*, 228 U.S. 243, 273 (1913); *Dieke v. Great Atl. & Pac. Tea Co.*, 3 Ariz. App. 430, 432, 415 P.2d 145, 147 (1966); *People v. Spriggs*, 60 Cal. 2d 868, 874, 389 P.2d 377, 381, 36 Cal. Rptr. 841, 845 (1964); *State v. Leong*, 51 Haw. 581, 587, 465 P.2d 560, 564 (1970); *Alexander v. State*, 84 Nev. 737, 741, 449 P.2d 153, 155 (1968); *Rau v. First Nat'l Stores*, 97 N.H. 490, 493, 92 A.2d 921, 923 (1952); *State v. Sejuelas*, 94 N.J. Super. 576, 581, 229 A.2d 659, 661 (App. Div. 1961); *Hines v. Commonwealth*, 136 Va. 728, 741, 117 S.E. 843, 846 (1923); *Sussex Peerage Case*, 8 Eng. Rep. 1034, 1045 (1844); *FED. R. EVID. 804(a)(3)* (1975); *N.J.R. EVID. 63(10)*; 5 J. WIGMORE, *supra* note 12 § 1457, at 329; *MODEL CODE OF EVIDENCE* rule 509(1) (1942).

19. *C. McCORMICK, supra* note 12 § 278; *Jefferson, Declarations Against Interest: An Exception to the Hearsay Rule*, 58 HARV. L. REV. 1, 39-43 (1944). Several jurisdictions, however, have recognized declarations against social interests as exceptions to the hearsay rule in their statutory rules of evidence. See *CAL. EVID. CODE* § 1230 (*Deering* 1966); *KAN. STAT. ANN.* § 60-460(j) (*Vernon* 1964); *NEV. REV. STAT.* § 51.315 (1971); *FED. R. EVID. 804(a)(3)* (1975); *N.J.R. EVID. 63(10)*; *UTAH R. EVID. 63(10)*. See also *MODEL CODE OF EVIDENCE* rule 509(1) (1942); *UNIFORM RULE OF EVIDENCE 63(10)*; *C. McCORMICK, supra* note 12 § 278, at 675; *Jefferson, supra* at 39-43 (equating penal interests and social interests under the hearsay rules).

Uniform Rule 63(10) defines declarations against social interests as those declarations which make the declarant "the object of hatred, ridicule, or social disapproval in the community."

20. *E.g.*, *Sussex Peerage Case*, 8 Eng. Rep. 1034, 1045-46 (1844).

21. See, *e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 299-300 (1973) ("confessions of criminal activity are often motivated by extraneous considerations"); *Brown v. State*, 99 Miss. 719, 55 So. 961 (1911) (unavailable declarant may have been motivated by desire to free his brother, the accused, rather than by compulsion of guilt). See also *Donnelly v. United States*, 228 U.S. 243, 273 (1913); *Brennan v. State*, 151 Md. 265, 271, 134 A. 148, 150 (1926); *State v. Johnson*, 60 Wis. 2d 334, 340, 210 N.W.2d 735, 738 (1973); *Sussex Peerage Case*, 8 Eng. Rep. 1034, 1045-46 (1844) (these courts were concerned with declarant's motivation in making declaration against interest).

22. *Donnelly v. United States*, 228 U.S. 243, 273 (1913); *People v. Spriggs*, 60 Cal. 2d 868, 870, 389 P.2d 377, 378, 36 Cal. Rptr. 841, 842 (1964); *Hines v. Commonwealth*, 136 Va. 728, 743, 117 S.E. 843, 847 (1923); *C. McCORMICK, supra* note 12 § 278; 5 J. WIGMORE, *supra* note 12 § 1476.

23. *E.g.*, *State v. Larson*, 91 Idaho 42, 49, 415 P.2d 685, 691 (1966); *People v. Lettrich*, 413 Ill. 172, 178, 108 N.E.2d 488, 491-92 (1952); *People v. Sartori*, 168 Mich. 308, 317, 134 N.W. 200, 203 (1912). See *Annot.*, 162 A.L.R. 446, 447 n.5 (1946).

against penal interest by noting that the likelihood of collusion between declarant and defendant was greater in the case of statements against penal interest.²⁴

More recently, an increasing number of commentators and courts have vigorously criticized the English rule,²⁵ claiming that declarations against penal interest are as inherently trustworthy as those against pecuniary and proprietary interest.²⁶ Initially, many courts maintained that a person was unlikely to fabricate statements against his penal interest and thereby subject himself to possible criminal conviction, imprisonment, and especially economic loss.²⁷ Other courts have begun

The general rule of law for exculpatory declarations against penal interest is succinctly stated in 22A C.J.S. *Criminal Law* § 749, at 1115 (1961) as follows:

The extrajudicial declarations of a person other than accused, confessing or tending to show that he committed the crime, are generally held not to be competent for accused, for, although the latter may exculpate himself by proving, if he can, that someone with whom he was not connected committed the crime with which he is charged, he cannot do so by hearsay.

24. See, e.g., *Chambers v. Mississippi*, 410 U.S. 284, 301 n.21 (1973) (example of hypothetical scheme between accused and declarant); *State v. Larson*, 91 Idaho 42, 49, 415 P.2d 685, 692 (1966) (temptation for accused to produce false confessions by unavailable declarants); *State v. Gervals*, 317 A.2d 796, 802-03 (Me. 1974); *Brennan v. State*, 151 Md. 265, 271, 134 A. 148, 150 (1926); *State v. English*, 201 N.C. 295, 298-300, 159 S.E. 318, 319-20 (1931); *Davis v. State*, 8 Okla. Crim. 515, 521-22, 128 P. 1097, 1099 (1913). See also 5 J. WIGMORE, *supra* note 12 § 1477, at 358-59; REPORT OF THE NEW JERSEY SUPREME COURT COMMITTEE ON EVIDENCE, Rule 63(10), Comment at 717 (1963).

25. See, e.g., *People v. Spriggs*, 60 Cal. 2d 868, 870, 389 P.2d 377, 378, 36 Cal. Rptr. 841, 842 (1964); *Sutter v. Easterly*, 354 Mo. 282, 295-97, 189 S.W.2d 284, 289-90 (1945); *Alexander v. State*, 84 Nev. 737, 743, 449 P.2d 153, 157 (1968) (Thompson, J., dissenting); *People v. Brown*, 26 N.Y.2d 88, 92, 257 N.E.2d 16, 17-18, 308 N.Y.S.2d 825, 827-28 (1970); *Hines v. Commonwealth*, 136 Va. 728, 743-44, 117 S.E. 843, 847 (1923); C. McCORMICK, *supra* note 12 § 278; 5 J. WIGMORE, *supra* note 12 §§ 1476-77; Wack, *Evidence—Admissibility of Dying Declarations*, 28 J. CRIM. L.C. & P.S. 760 (1938); Note, 21 MINN. L. REV. 181 (1936); Note, 11 U. KAN. L. REV. 275 (1962); Comment, 16 WASH. & LEE L. REV. 126 (1959).

26. E.g., *People v. Spriggs*, 60 Cal. 2d 868, 874-75, 389 P.2d 377, 381, 36 Cal. Rptr. 841, 845 (1964) (penal interest could implicate pecuniary interest because conviction of a crime usually entails economic loss); accord, *State v. Leong*, 51 Haw. 581, 588, 465 P.2d 560, 564 (1970); *People v. Brown*, 26 N.Y.2d 88, 92, 257 N.E.2d 16, 18, 308 N.Y.S.2d 825, 828 (1970). See also *Weber v. Chicago, R.I. & P. Ry.*, 175 Iowa 358, 393-94, 151 N.W. 852, 864 (1915) (declaration against penal interest accepted as trustworthy where crime admitted was a tort, subjecting declarant to civil liability for damages); *G.M. McKelvey Co. v. General Cas. Co.*, 166 Ohio St. 401, 405, 142 N.E.2d 854, 856-57 (1957); *Aetna Life Ins. Co. v. Strauch*, 179 Okla. 617, 619-20, 67 P.2d 452, 455 (1937).

27. *People v. Spriggs*, 60 Cal. 2d 868, 874-75, 389 P.2d 377, 381, 36 Cal. Rptr. 841, 845 (1964) (criminal conviction causes loss of wages, thus declaration is also against economic interest); *Weber v. Chicago, R.I. & P. Ry.*, 175 Iowa 358, 383, 394, 151 N.W.

to recognize that a declarant's interest in avoiding criminal prosecution alone is sufficient to ensure "the veracity of his statement made against that interest."²⁸

Focusing on the likelihood of collusion and fabricated testimony by in-court defense witnesses, a number of courts have been willing to recognize the exception only in special circumstances that diminish the probability of fraud. Thus, if the prosecution's case is based solely on circumstantial evidence,²⁹ if the defense offers admissible evidence corroborating the hearsay declaration,³⁰ or if the defense proves that the declarant had personal knowledge of the crime,³¹ the declaration against penal interest may be admissible. The Federal Rules of Evidence adopted this hybrid approach, requiring corroborating evidence to ensure the reliability of the defense witness' testimony about the out-of-court statement.³² This limited exception may be constitutionally

852, 861, 864 (1915) (criminal conviction exposes declarant to civil liability and consequent economic loss); *G.M. McKelvey Co. v. General Cas. Co.*, 166 Ohio St. 401, 405, 142 N.E.2d 854, 856 (1957) (confession of embezzlement renders declarant civilly liable for return of money taken); *Aetna Life Ins. Co. v. Strauch*, 179 Okla. 617, 620, 67 P.2d 452, 455 (1937) (confession of murder precluded declarant from collecting life insurance proceeds and rendered him civilly liable).

28. *People v. Spriggs*, 60 Cal. 2d 868, 874, 389 P.2d 377, 381, 36 Cal. Rptr. 841, 845 (1964); *Brennan v. State*, 151 Md. 265, 273, 134 A. 148, 151 (1926); *Osborne v. Purdome*, 250 S.W.2d 159, 163 (Mo. 1952); *Sutter v. Easterly*, 354 Mo. 282, 295-96, 189 S.W.2d 284, 289-90 (1945); *People v. Brown*, 26 N.Y.2d 88, 94, 257 N.E.2d 16, 19, 308 N.Y.S.2d 825, 829 (1970); *Commonwealth v. Nash*, 457 Pa. 296, 302, 324 A.2d 344, 346 (1974); KAN. STAT. ANN. § 60-460(j) (*Vernon* 1964); N.J.R. EVID. 63(10); UTAH R. EVID. 63(10). For an excellent discussion of the rationale behind finding declarations against penal interest trustworthy, see *Sutter v. Easterly*, 354 Mo. at 295-96, 189 S.W.2d at 289-90.

29. *Cammeron v. State*, 153 Tex. Crim. 29, 31, 217 S.W.2d 23, 24 (1949); *Hines v. Commonwealth*, 136 Va. 728, 740, 117 S.E. 843, 848 (1923); *Jefferson*, *supra* note 19, at 41-43.

30. *People v. Fletcher*, 546 P.2d 980, 985-86 (Colo. Ct. App. 1975); *State v. Larson*, 91 Idaho 42, 49, 415 P.2d 685, 692 (1966); *People v. Craven*, 54 Ill.2d 419, 429, 299 N.E.2d 1, 6 (1973); *State v. Higgenbotham*, 298 Minn. 1, 4, 212 N.W.2d 881, 883 (1973); *State v. Gorden*, 356 Mo. 1010, 1014, 204 S.W.2d 713, 715 (1947); *Blocker v. State*, 55 Tex. Crim. 30, 33, 114 S.W. 814, 815 (1908); *State v. Gardner*, 13 Wash. App. 194, 199, 534 P.2d 140, 142 (1975); WIS. STAT. § 908.045(4) (Cum. Supp. 1977-78). See also *Commonwealth v. Nash*, 457 Pa. 296, 302-03, 324 A.2d 344, 346-47 (1974); NEV. REV. STAT. § 51.315(1)(a) (1973); *Prince*, *Policy Considerations and Changes in the Hearsay Rules: A Comment*, 19 N.Y.L.F. 761, 769 (1975).

31. *State v. Leong*, 51 Haw. 581, 587, 465 P.2d 560, 564 (1970); *People v. Riccardi*, 73 Misc. 2d 19, 22, 340 N.Y.S.2d 996, 999 (Sup. Ct.), *aff'd*, 40 App. Div. 1083, 338 N.Y.S.2d 598 (1972), *cert. denied*, 414 U.S. 827 (1973); CAL. EVID. CODE § 1230 (*Deering* 1966).

32. FED. R. EVID. 804(a)(3).

required. The Supreme Court in *Chambers v. Mississippi*³³ held that the defendant's due process right to a fair trial compelled the admission of such out-of-court declarations when the evidence was crucial to the defendant's case and there was a substantial guarantee of its trustworthiness.³⁴

Prior to *Edwards*, Michigan courts adhered to the English rule³⁵ and excluded third party confessions regardless of whether they were supported by corroborative evidence.³⁶

The *Edwards* court reviewed the history of the exclusionary rule for declarations against penal interest and concluded that courts excluded them not because they believed that such statements were inherently untrustworthy, but because they feared that in-court witnesses would fabricate such statements to establish the defendant's innocence.³⁷ The court noted, however, that a defense witness testifying to a hearsay confession was no more likely to commit perjury than a defendant testifying to an alibi and thus his testimony should not be excluded.³⁸ Traditional courtroom devices of testimony under oath, cross-examination, and the threat of prosecution could solve the problem of perjured testimony. In view of these safeguards, the jury is capable of determining the weight to be given this evidence.³⁹ For these reasons, the Michigan court rejected any qualifications on the admission of declarations against penal interest, adopting instead a broad exception to the hearsay rule.⁴⁰ By placing its holding on common law grounds, the court did not consider the circumstances under which the admission of declarations against penal interest might be constitutionally required by due process.⁴¹

The dissent, adopting the hybrid approach of the Federal Rules of Evidence,⁴² argued that declarations against penal interest should be admissible only if the declarant is unavailable and there is a circumstantial

33. 410 U.S. 284 (1973).

34. *Id.* at 302-03; *Commonwealth v. Nash*, 457 Pa. 296, 302, 324 A.2d 344, 346 (1974); see *Dutton v. Evans*, 400 U.S. 74, 80-83 (1970) (allowed admission of coconspirator's out-of-court declaration made during concealment phase of conspiracy without regard to his availability). See also Krey, *Chambers v. Mississippi: Due Process and the Rules of Evidence*, 35 U. PITT. L. REV. 725, 734-35 (1974).

35. *People v. Edwards*, 47 Mich. App. 307, 309-10, 209 N.W.2d 527, 528 (1973), *rev'd*, 396 Mich. 551, 242 N.W.2d 739 (1976).

36. *People v. Sartori*, 168 Mich. 308, 134 N.W. 200 (1912).

37. 396 Mich. 551, 561, 242 N.W.2d 739, 744 (1976).

38. *Id.* at 564-65, 242 N.W.2d at 744-45.

39. *Id.*

40. *Id.* at 566, 242 N.W.2d at 745-46.

41. *Id.* at 567, 242 N.W.2d at 746-47.

42. See note 32 *supra* and accompanying text.

probability of trustworthiness.⁴³ In *Edwards*, there was insufficient corroborative evidence.⁴⁴

There are two potential limitations on the court's holding: First, because the third-party declarant was dead, not simply unavailable, the court did not consider whether the confession of a third party who merely fled from the jurisdiction would be sufficiently against his interest to come within the exception.⁴⁵ In addition, the court noted parenthetically that other evidence admissible at trial tended to corroborate the third-party declaration.⁴⁶ It did not discuss the importance of this evidence to its holding.

The Michigan Supreme Court's adoption of an unqualified exception to the hearsay rule for declarations against penal interest is commendable. A defendant is entitled to present his best defense to the trier of fact, and the adoption of this hearsay exception facilitates that goal. Surely when a defendant is on trial for his life, principles of justice and equity demand the admission of third-party confessions against the declarant's penal interest that tend to establish the defendant's innocence as well as the statements against the declarant's proprietary or pecuniary interest.⁴⁷ The United States Supreme Court has suggested that, under certain circumstances, due process requires no less.⁴⁸

Although the court's result is admirable, its reasoning is less so. By focusing on the judicial fear of perjured in-court testimony and concluding that the oath, cross-examination, and threat of prosecution

43. *Id.* at 568, 242 N.W.2d at 748.

44. *Id.*

45. Compare *Deike v. Great Atl. & Pac. Tea Co.*, 3 Ariz. App. 430, 432, 415 P.2d 145, 147 (1966), with *People v. Spriggs*, 60 Cal. 2d 868, 875, 389 P.2d 377, 381, 36 Cal. Rptr. 841, 845 (1964), and *FED. R. EVID.* 803, 804, and *C. McCORMICK*, *supra* note 12 § 253, and 5 J. WIGMORE, *supra* note 12 § 1456, and 29 AM. JUR. 2D *Evidence* § 618 (1967).

46. 396 Mich. 551, 567, 242 N.W.2d 739, 746 (1976).

47. Justice Roberts, concurring in *Commonwealth v. Nash*, 457 Pa. 296, 324 A.2d 344 (1974), noted:

A statement that subjected the declarant to possible criminal sanctions could hardly be considered anything but against interest. The limitation of the exception to declarations against pecuniary and proprietary interests is grounded in the belief that they are less likely to be motivated by extraneous considerations and provide less inducement to perjury. This reasoning is unsound. If the object of the present lawsuit were a \$100,000,000 judgment, can one doubt that there would be any less incentive to swear falsely?

Id. at 308, 324 A.2d at 349.

48. See *Chambers v. Mississippi*, 410 U.S. 284 (1973).

provide sufficient safeguards to allow the admission of declarations against penal interest,⁴⁹ the court failed to discuss the crucial preliminary questions of whether and why these statements are as trustworthy and therefore as admissible as declarations against pecuniary and proprietary interest.⁵⁰ Implicitly, the court held that a person who risks his liberty and subjects himself to criminal liability by making an out-of-court confession is just as likely to tell the truth as a person who makes statements contrary to his economic interest. The trustworthiness of the confession is ensured equally whether one risks his economic interest or his liberty. Unfortunately, the court did not make this equation explicit and thereby escaped the necessity of explaining its holding and distinguishing those jurisdictions that declined to equate declarations against penal interest with declarations against pecuniary and proprietary interest.⁵¹

The court's focus on the fear of perjured testimony by defense witnesses also enabled it to avoid a discussion of the possible limitations on its holding. For example, the unavailable declarant was dead and there was independent evidence tending to corroborate his confession. The *Edwards* opinion did not consider the importance of these factors in ensuring the inherent trustworthiness of the statement because the court was primarily concerned with the possibility of perjury by the in-court witness. Nevertheless, the court's implicit holding that declarations against nonpecuniary interests are inherently trustworthy is likely to hasten its admission in the future of declarations against social interest.⁵² The same noneconomic interests in life, liberty, and honor which underlie the penal interest exception, and seem to ensure its inherent trustworthiness, underlie the social interest exception as well; a declarant risks the hatred, ridicule, and social disapproval of his community when he confesses against his social interest.⁵³ The Michigan Supreme Court would have anticipated and addressed such implications if it had focused on the trustworthiness of the out-of-court declarant as well as the likelihood of fabricated testimony by defense witnesses.

49. See Notes 38-39 *supra* and accompanying text.

50. See Notes 20-28 *supra* and accompanying text.

51. See Notes 20-36 *supra* and accompanying text.

52. *United States v. Dovico*, 261 F. Supp. 862, 871-72 (S.D.N.Y. 1966), *aff'd*, 380 F.2d 325 (2d Cir.), *cert. denied*, 389 U.S. 944 (1967); *State v. Alcorn*, 7 Idaho 599, 609-10, 64 P. 1014, 1017-18 (1901); Fine, *Declarations Against Penal Interest in New York: Carte Blanche?*, 21 SYRACUSE L. REV. 1095, 1107-09 (1970); Morgan, *Declaration Against Interest*, 5 VAND L. REV. 451, 475 (1952).

53. See Jefferson, *supra* note 19, at 39-40.