

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

16-EV-A

SUSAN P. GRABER  
UNITED STATES CIRCUIT JUDGE



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(503) 833-5370

January 21, 2016

**RECEIVED**

FEB - 1 2016

HON. JEFFREY S. SUTTON  
U. S. CIRCUIT JUDGE

The Honorable Jeffrey S. Sutton  
United States Court of Appeals  
260 Joseph P. Kinneary U.S. Courthouse  
85 Marconi Boulevard  
Columbus, OH 43215

*Jeff*  
Dear Judge Sutton:

At the last meeting, the Advisory Committee on the Federal Rules of Evidence made clear that they were taking a hard look at the hearsay rule, Rule 803. If the committee does not do away with Rule 803 altogether, it might consider clarifying Rule 803(22), which pertains to judgments of conviction.

Because hearsay concerns reliability, it makes no sense—to me at least—to distinguish among types of final judgments. A judgment of conviction has a certain level of reliability no matter the type of proceeding that led to the judgment—trial, plea of guilty, or plea of nolo contendere. It is no more or less necessary to call as a witness the clerk of the court for one type of judgment compared to another. Other rules—substantive in nature—properly distinguish among types of pleas. See, e.g., Rule 410 (admissibility of plea agreements).

As a matter of policy, Rule 803(22) may make good sense. But, because the policy that the rule advances has nothing to do with reliability of the document, its inclusion in the hearsay rule should be reconsidered. If you think it would be helpful to send this thought on to the Evidence Committee, please do so.

Best regards,

A handwritten signature in cursive script, appearing to read "Susan", written in black ink.

Susan P. Graber