Admissions and Confessions

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“It would be as if without knowing how to play chess, I was to try to make out what the word ‘mate’ meant by observation of the last move of some game of chess.”
- Ludwig Wittgenstein

“...the concept of ‘trump card’ incorporates... all the extra complexities which constitute what we have to learn in order to be able to operate in games of bridge with the term ‘trump’.”
- Gilbert Ryle

Professors Ryle and Wittgenstein note that terms like “checkmate” and “trump” do not refer to a specific and particular move or set in a game, respectively. The terms are not exhaustively identified with the last or winning move or call of the game. Rather, there is an array of moves and sets that would yield the appropriate uttering of “checkmate” or “trump” and such true or false declarations are made possible by the rules of the respective games.

In ordinary discourse, admitting to something and confessing to the same thing would likely signify no significant, substantive difference, if any difference at all. That is, the report that one confessed to driving negligently would seem redundant with a report that one admitted to driving negligently.

The relaxed interchange of the two concepts found in ordinary discourse is apparently not duplicated in evidence law. There, the two concepts are used quite differently and are alleged to be more or less at home, as it were, in different areas of the law. Nevertheless, the exact difference between the two concepts is not altogether easy to discern nor why each might be thought more appropriate in one area of the law than in another.

To that end, Section I of this paper will introduce the problem that concerns the proper use of these two concepts in various areas of law. Section II will cover what various legal scholars have noted about the use of and relationship between the two concepts. Section III will be concerned with a federal rule-based analysis of admissions and
Section IV will be devoted to an analysis of confessions by way of contrast with admissions. Section V will express some tentative conclusions about the relationship between confessions and admissions.

As the term “guilt” suggests criminal, as opposed to a civil, transgression, the term “confession” has similarly suggested such a limiting reference. Indeed, according to Black’s Law Dictionary, a confession is “a criminal suspect’s oral or written acknowledgement of guilt, often including details about the crime.” According to this definition, it might be reasonably inferred that one cannot confess to a civil wrong. While both concepts may refer to the same sort of speech act by the speaker, an admission is to be used in reference to civil litigation whereas a confession is to be implemented in reference to criminal litigation. A defendant, who takes responsibility for breaching a standard of due care and causing harm thereby, is making an admission, not a confession. A defendant, who takes responsibility for breaking and entering the dwelling of another, at night and with the intention of committing a felony therein, is making a confession, not an admission. Thus, the difference between the two concepts rests not with the speech acts themselves but with the legal context within which the speech acts are employed. To state the differences differently, according to the above, the distinction between an admission and a confession is not intrinsic to the act of assuming responsibility but rather to what sort of responsibility is being assumed.

Yet Black’s definition that confessions might only be properly employed with reference to specific speech acts of criminal defendants does not entail such an excluding definition of admissions. That is, there is nothing in Black’s definition of a confession that requires such a limiting and exclusive use of the concept of admissions. Indeed, Black’s Law Dictionary defines an “admission” as “any statement or assertion made by a party to a case and offered against that party…” This is generally referred to as a “party admission”.

Given the above, a party admission may occur in either civil or criminal litigation while a confession would be appropriate only in criminal litigation. What is it about confessions that yield a restrictive use yet such a catholic employment of admissions? Is there a substantive difference between the two concepts or is the distinction merely ipse dixit?

Whatever the answer, the distinction can be found in case law, as illustrated through the majority position concerning the application of the Corpus Delicti Rule. According to said rule, no criminal prosecution may proceed against a criminal defendant solely upon the defendant’s out-of-court or extrajudicial confession. That is, without independent evidence that a crime has occurred, a criminal defendant’s extrajudicial confession cannot be used as evidence that a crime has been committed nor that the criminal defendant is responsible. There is an absence of unanimity among the state courts as to whether the rule which excludes a criminal defendant’s extrajudicial confession under
the appropriate circumstances also excludes party admissions. Few states subject both party admissions and confessions to the exclusionary rule; most states do not.¹ But if this is correct, then those courts that apply the rule to confessions but not to admissions must acknowledge a substantive difference between the two concepts as used in criminal litigation.

II

Several evidence scholars have endeavored to delineate the nature of and the boundary between the two concepts. It has been proffered that the contours of each concept are best seen as a relation between part and whole, class and subclass. As one might say that the defendant confesses to the crime, one would probably say that the defendant only admitted to an element or aspect of the crime. It is not that speaking of admitting to a crime or confessing to an element is an abuse of language but rather that it might be deemed more comfortable or more natural to speak in the former fashion rather than in the latter. Therefore, it is maintained, a confession entails the defendant’s acknowledgement of responsibility for the criminal act. A party admission is posited as merely a remark by the defendant or plaintiff that yields an inference that will go toward the establishment of an element of the criminal or civil complaint or defense. For example, Professor William Richardson notes that “The distinction between admissions in criminal cases and confessions by the accused is a distinction in effect between admission of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.”¹⁰

Likewise, Professor Faraday Strock notes that:¹¹

An admission might very well be called a confession’s little brother. A confession includes an acknowledgment of all of the essential elements in the crime charged and is generally defined as an acknowledgment of guilt. Admissions, however, are merely acknowledgments of one or more facts which fall short of supplying all of the essential elements necessary to constitute the offense charged. Accordingly, an admission, if it is to be distinguished from a confession, must be something short of an acknowledgment of guilt.

Professor John McKelvey proclaims that “a confession is an express admission of guilt made by a person charged with a crime...to prove the main facts in issue rather than to establish any single evidential fact or circumstance.” Admissions are “all declarations, statements or acts on the part of the accused person which may lead to an inference of guilt.”¹² Similar statements regarding admissions and confessions and the relationship thereto may be discovered being advocated by such evidence scholars as Professors Charles McCormick,¹³ Irving Klein,¹⁴ Christopher Mueller,¹⁵ Graham Lilly,¹⁶ and renowned American evidence teacher, Professor John Wigmore.¹⁷

These authors explain the nature of each type of statement so that one extrajudicial
statement is a subclass of the other. But there would appear a few difficulties with this analysis. First, as indicated by Black’s definition and by the above referenced authors, if confessions are only to be issued by defendants in criminal settings and admissions may be issued by defendants in either criminal or civil settings as well as plaintiffs in civil litigation and it is a part-whole, subclass-class relation that obtains between admissions and confessions, then admissions are a part of no whole, a subclass of no class in civil litigation. The statement “I wish I had not been texting while driving”, would constitute a party admission. The statement “I violated the statutory proscription against texting while operating a vehicle and thereby caused injury to the plaintiff and I am negligent as a matter of law” would not be a confession as there are no confessions in civil litigation. Moreover, the former would not amount to a part or subclass of any whole or class to which the latter statement, were it expressed in criminal litigation, would constitute a member.

Given Black’s definitions and the above referenced scholars’ positions, a party admission is appropriately used in both criminal and civil litigation, while a confession is at home in criminal litigation. If a confession is the whole of which party admission is a part, then in civil litigation where the whole is definitionally excluded, it would seem untoward to describe a party admission as a part or subclass of a definitionally impossible whole or class, respectively.

Secondly, the statement “I violated the statutory proscription against texting while operating a vehicle and thereby caused injury to the plaintiff and I am negligent as a matter of law” conforms to the stated definition of a confession were it made in a criminal context. In a case of a criminal act in violation of a criminal statute prohibiting texting while driving, the defendant’s statement above, would be a confession but in a suit for damages for negligence as a matter of law, that same statement would not constitute a confession. The statement would be a party admission, notwithstanding that it does not conform to the inferential element established in the definition of an admission.

III

If the above is not spurious, the delimiting analysis of the questioned concepts by the above noted scholars is either inaccurate or incomplete. Moreover, their proffered characterization of the relationship between confessions and party admissions is oddly not in harmony with the definitional requirements of the Federal Rules of Evidence (FRE). 18 A party admission, under rule §801d2, 19 is distinguished from other out-of-court remarks offered to prove the truth of the proposition expressed therein, i.e., hearsay. 20 Although like hearsay, a party admission is an out-of-court statement offered as substantive evidence of its truth. However, a party an admission is not hearsay. Party admissions do not fall within the classification of hearsay subject to an exception. Rather, party admissions fail to constitute hearsay at all. 21
An exception to hearsay with which a party admission is likely confused is a Declaration Against Interest (DAI) §804b3.\textsuperscript{22} Such a declaration is, as suggested by the exception’s title, against one’s interest when the out-of-court person made the declaration. Additionally, to qualify for the exception, the out-of-court person making the declaration (the declarant) must be unavailable for cross examination and not a party to the litigation. The out-of-court declaration may be offered for its truth by either party (plaintiff or defendant in a civil litigation or the government or defendant in a criminal action). Finally, because the declaration is against the declarant’s interest when made, the declaration is accorded a significant measure of trustworthiness.

Following Black's definition, the FRE notes that a party admission need not be against the interests of the party who issued the admission when the admission was made. Indeed, an admission is simply a prior statement or its functional equivalent made by a party and used in a criminal or civil action and offered as being inconsistent with what that same party presently claims at trial. Thus, a party admission, pursuant to FRE §801d2, is: 1. A statement or its functional equivalent, e.g., behavior intended or taken at common law as expressing a statement. 2. The statement must be made or accepted by a party, i.e., a plaintiff or defendant in a civil case or the defendant in a criminal case.\textsuperscript{3} 3. The statement must be made out-of-court. 4. The out-of-court statement or equivalent must be offered against the party who otherwise issued or accepted the statement or the equivalent. 5. The statement must be offered by the opponent of the party in the case. 6. Although the statement is made out of court and is offered as substantive evidence of its truth, it is not hearsay. Importantly, what constitutes an admission may well be nondiscernable prior to trial. This is chiefly due to the fact that admissions might actually be in a party’s interest when made. Whether or not a party’s statement will constitute a party admission is a function of the party’s present position at trial.

Hence, an out-of-court request that one admit that one defrauded an old man may be a request for an admission or a request for a confession. But the answer will not be a party admission covered by § 801d2 until and unless it is offered by the opponent against the litigating party who issued the answer. The litigating party’s response that he or she did not defraud the old gentleman because the party was attending church at the relevant time would appear to be a statement in the party’s interest and not a statement the opponent would use against that party. Therefore, the statement would not appear to count as a party admission in a case against the party for defrauding the elderly victim. However, the party’s remark might well constitute a party admission in a case where that same party is later charged with a theft of money from the germane church’s collection box. Whether or not a self-incriminating remark or a self-serving remark will constitute a party admission will ultimately depend upon or be a function of what the party issuing the remark maintains at trial and the opposing party’s adverse use thereof.
It would seem to follow that even if an extrajudicial confession tends to be about accepting criminal responsibility for a set circumstances, if the out-of-court confession were introduced into evidence by the party opponent in opposition to the issuing party’s interest at trial, then the confession would be an admission. That is, the above noted scholars contend that a confession amounts to a value laden conclusion with or without reference to the particular facts justifying the conclusion, e.g., “I defrauded the elderly man”. This out-of-court confession would nevertheless constitute a party admission, if offered by the opposing counsel against the party issuing the statement. The same would be correct about what the above noted scholars classify as an admission. The statement, “Gee, I suppose I should not have had that fifth beer before driving my motor car”, if contrary to what the party making the remark is maintaining at trial and offered by opposing counsel against that party, would satisfy the §801d2 requirements of a party admission. But if what the aforementioned scholars offered as two speech acts, one the part of the other in admissions and confession, respectively, then the included act (admission) may include or be identical to the including act (confession).

If any extrajudicial statement may constitute a party admission simply by satisfying the formal criteria of FRE §801(d)(2), then the aforementioned endeavors of legal scholars to delineate the difference between admissions and confessions in terms of confession’s completeness of the party’s self-incrimination as opposed to the admission’s partial and inferential self-incrimination, is logically misplaced. Any confession noted by the above referenced scholars may be a party admission in the proper hands and for the proper purpose.

IV

If the above is not entirely suspect, then pursuant to §801d2, a party admission is a concept born of procedure and the adversarial system. Any statement may be an admission attributed to a party so long as it is offered by the party opponent and is contrary to that which the party issuing the statement or its equivalent now advocates at trial. If what counts as a party admission is not solely determined by the content of the statement but rather upon who offers the statement and what relation the statement has to the party’s present position at trial, then arguably, the concept of a party admission does not function as a rigid, exhaustive designator but rather like “checkmate” or “trump”. The argued mistake made by the referenced, evidence scholars is in treating “admission” as if it functioned otherwise.

Might the same be said of confessions? After all, as noted above, the two concepts are often used as synonyms. Whatever the relation between the two concepts, it is curious that the FRE references admissions rather extensively while virtually omitting reference to confessions; and then only to note the protection necessary when determining the admissibility of a confession.

Perhaps the FRE’s failure to detail the admissibility of confessions is due to the likely
treatment of confessions through admissions. That is, if at trial one is endeavoring to defend oneself against the charged commission of a crime, then an out-of-court confession to that crime would likely be a great find for the opponent and a clear anathema to the confessing party. In such a case, the confession would be employed by the opponent as an admission.

Of course, a confession might function before trial in the capacity of a guilty plea. Such a plea usually precludes a trial on the merits but has the same effect as a verdict of guilty. Yet another way a confession might function, but at trial, is hinted at in the United States Constitution, Article III §3(1). Treason against the United States may be established in two ways, one of which involves a “confession in open court”. Such a confession would have, as it were, the internal indicia of truthfulness because it is against the confessor’s self-interest when said. Moreover, such a confession would likely be under oath. Of course, not only might a party make a confession in open court but so might a non-party witness. In order to treat any open court confession as an admission, it would have to be offered in a subsequent legal action against the confessing party by the opponent.

Were the proponent to use the confessing party’s confession in a subsequent legal action, the confession would not be used as a party admission. First, the confession would not be introduced by the opponent against the confessing party but by the proponent in advance of the confessing party’s case. While the use of a confession as an admission makes perfect sense, it is not altogether intelligible why one would wish to introduce one’s own confession in a subsequent case or how such an act could advance the proponent’s case. It would, however, make sense if the confession referenced the commission of a different and lesser crime committed at the same time that precluded the commission of the more serious crime for which the defendant is being tried. If, for example, the defendant on trial for murder in Albuquerque, New Mexico, presented an alibi defense that he or she had confessed to a breaking and entering in Tucson, Arizona and the two crimes occurred at approximately the same time and on the same day of the year.

As specified by the terms of rule §801d2, an admission could not be based upon a statement issued for the first time in the trial in which it was offered as an admission. The admission of a party’s in-court, judicial confession may but need not be predicated upon an out-of-this-court remark. A party admission on the other hand, must be derived from a statement made out of the court in which it is offered as such. The defendant’s confession to a particular act of breaking and entering in a trial for that breaking and entering is quite different from the defendant’s on-the-stand confession to the breaking and entering in a trial for homicide. The latter confession, were it introduced in a subsequent trial by the opponent against the confessing party’s interest at trial, would be admissible as a party admission. Were that same confession introduced by the proponent, the confession would fail to be an admission and unlike
the party admission, would encounter an obstacle to admission.

Indeed if such a confession, wherever made, is to be introduced in a subsequent legal action, not as an admission but by the confessing party, the confession would be a prior, out-of- this-court statement, offered in the instant court as substantive evidence of its truth. Such a statement, unlike a party admission, would be hearsay. Also unlike a party admission, the out-of- court confession offered by the confessing party would require a hearsay exception in order to be admissible. Yet an appropriate hearsay exception for the so used confession will not be easy to find. For example, as the confessing party is endeavoring to offer the prior confession not in opposition to but rather in support of the confessing party’s present position, perhaps as an alibi, as suggested above. No hearsay exception that requires the unavailability of the out-of-cour
t declarant (the confessing party) will be effective in such a case. Thus, the two most likely hearsay exceptions, Former Testimony (§804b1) where the confession occurred in a prior court proceeding and the Declaration Against Interests (§804b3) will prove inefficacious.30

It is true that the vast majority of hearsay exceptions do not require that the out-of-court declarant be unavailable at the legal proceeding in which the declarant’s out-of-court statement is to be introduced. Thus, if the out-of-court confession were made under the stress of a startling event (§803(2)), as a relevant part of the description of the source of the declarant’s mental or physical condition relayed to a health care provider for purposes of medical diagnosis or treatment (§803(4)) or a self-recorded account (§803(5)), the confession might well be admitted into evidence on behalf of the confessing party.31

The point is not merely that confessions as admissions are always admissible and confessions not as admissions are excluded as hearsay unless covered by an exception, but also that there is the paradoxical oddity of a confessor endeavoring to introduce into evidence a prior, out-of-this-court confession not as an admission. After all, the persuasive power of a confession and the reason it is likely more probative than other reasonably produced evidence is that it is contrary to the confessor’s interest when made. The confession has the indicia of trustworthiness due to the voluntary infliction of self-incrimination. Yet, where the confessor wishes to introduce the confession in support of the confessing party’s position at trial, that evidence was against the confessor’s interest when made. That which supports the confessing party’s interest at trial is that which was against the party’s interest when made.

The introduction of the party’s confession by the opposing party as an admission poses none of these oddities. As an admission may be any party statement offered by the opponent against the party’s interest at trial, a statement that was not against the party’s interest when said may well constitute an admission at trial. This may appear to suffer the same sort of paradoxical oddity noted with confessions offered by the confessing
party. The similarity is only superficial. The admission is not admissible because it has indicia of reliability but rather because it may be used against the party. It is merely a tool of the adversarial process. The confession is offered for its truth and is deemed reliable because it was against the party’s interest when it was said. But because the out-of-this court confession is offered for its truth, it is hearsay. The oddity then is that the confessing party offers a statement, the truth of which is evidenced by it being against interest when said, in order to further the party’s interest at trial.

Of course, it might be thought that rather than confront the hearsay problem of introducing an out-of-court confession in favor of the confessing party’s position at trial, it would be a complete cure simply to have the party re-confess. This may not be satisfactory. In the alibi example, the reliability of the confession is the detriment to the confessing party’s interests when made out of court. In this case, the re-confession made in court, while no longer hearsay, also enjoys no additional indicia of reliability because it is said where it will benefit the confessing party. This, of course, would not be the case of an initial party confession, e.g., when the defendant confesses on the stand, to the crime for which he or she stands trial.

V

If what has been argued is at all reasonable, a party admission is a lineal descendant of the adversarial system and is to be understood in terms of that system. As “checkmate” and “trump” have meanings within their respective games, the use of which within the game is not independent of the rules of the game, a party admission is a concept the proper use of which is dictated by rules of evidence. Thus, a party admission may be any statement put to the proper use by the proper party as determined by the adversarial system of adjudication. This would include what otherwise might be a confession. Given the rules of evidence, a party admission is not a sub part of a confession, contrary to the belief of many scholars. The concept of a party admission does not function such that it refers to the same speech act irrespective of its definitionally prescribed use.

A confession, by contrast, is a statement that is essentially against the speaker’s legal interests when made. While against the confessing party’s interest when made, the confession need not be against the confessing party’s interest at trial and hence, why re-confessing may be quite inadequate without the out-of-court confession. An admission is always against the party’s interest at trial, but need not be against the party’s interest when made. If the out-of-this-court confession is to be used against the confessing party’s interest at trial, it would be offered by the opponent as an admission. If the same confession is to be used in the confessing party’s interest at trial, it would be introduced by the confessing party and would be hearsay in need of an exception. Moreover, a confession made in any venue other than the trial in which it is to be introduced is hearsay when not an admission; but as an admission, it is never hearsay. A confession might be admissible under a hearsay exception where the unavailability of
the declarant is immaterial. Such an excepted hearsay confession would support the testimony of the party at trial albeit against the interest of the party when made. Finally, a party confession may be a performatory, testimonial act used at the trial where the act occurred, a party admission cannot be.

Arguably then, a confession functions much less like a conditionally determined concept than does a party admission until or unless the confession is treated as a party admission. Thus, it cannot be the case that a confession constitutes a claim of which an admission is a member. To identify a confession as an admission is to appeal to the rules of evidence because an admission cannot be identified any other way. To identify a confession as an admission is to refer to the use of the statement in the judicial system pursuant to the rules. A confession, not used as an admission, undergoes no like transformation under the rules.

Notes

4. Black’s Law Dictionary, 9th edition, (2009) at 338. It might be noted that the definition does not make essential to the meaning of a confession the exposition of the details of the crime confessed to.
5. Although not the most natural reading, it is logically possible that Black’s definition is posed not as a limitation but rather as an illustration. It might be argued that Black’s definition was not to exclude confession from the area of civil litigation but only to give an example of its use in criminal litigation. If merely illustrative, then a civil litigant might also confess to the breach of a contract or to the substandard performance of a duty. Although this reading is possible, it is a somewhat strained reading and not generally accepted as the most intuitive reading of Black’s definition. In any event, this essay will follow the accepted reading and limit the discussion of confessions to the criminal arena.
9. See, for example, State v. Romo, 185 P.2d 757 (AZ. 1974).


17. According to Professor Wigmore, “A confession is an acknowledgment in express words by the accused in a criminal case, of the truth of the main fact or of some essential part of it”. Thus, according to Professor Wigmore, like the noted authors, confessions are at home only in criminal litigation. John H. Wigmore, Evidence in Trials at Common Law, Vol. 3. §821 (1970).

18. The FRE are those evidentiary rules employed in all federal courts in the United States and are mirrored, more or less, in all state courts. The FRE are integral to any practical or academic discussion of admissions. Moreover, most law school evidence courses include reference to, if not concentrate exclusively upon, the FRE.

19. Rule 801(d)(2). Admission by Party-opponent. Such a statement is not hearsay if: “The statement is offered against a party and is (A) the party’s own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy...”.

Admissions may be, therefore, express or implied, direct or vicarious.

20. §801c “Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.” §802 “Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.” Moreover, a party admission is distinguished from other out-of-court remarks offered as substantive evidence of their truth yet not considered hearsay, namely, prior inconsistent remarks (§801d1a) prior consistent statements (§801d1b) and prior identifications (§801d1c). In the former two instances certain pre-conditions must be satisfied in order for the statement to be considered for its truth. A prior identification, is deemed non-hearsay simply upon the report.

21. Although the FRE treat admissions as non-hearsay, some states regard admissions as yet another exception to hearsay. See, for example, the Alabama Rules of Evidence, §803(8).

22. FRE Rule 804(b)(3). A Declaration Against Interest, also called a Statement Against Interest, is a statement offered for its truth (hearsay) but is not excluded by the hearsay rule if the declarant is unavailable as a witness and the “statement is... contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true.”

23. Given that most states subject confession to the Corpus Delicti Rule but do not subject
admissions (see note #9, Supra) the argued mistake made by the referenced scholars appears duplicated by the vast majority of the states.

24. The relevant portion of FRE §104c simply notes that the “Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury.”


26. III §3(1) notes that “Treason against the United States shall constitute only in levying war against them, or, in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court”.

27. Famed but fictional attorney Perry Mason routinely generated confessions of this sort through the cross-examination of a non-party witness.

28. According to Black’s Law Dictionary, 9th Edition (2009) at 84, an alibi is “a defense based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time.” See also the Federal Rules of Criminal Procedure, 12.1.

29. Oddly enough, United States Supreme Court Justice White seems to make just this mistake in conflating a confession in open court with a party admission. See Brady v. United States, 397 U.S. 742 (1970).

30. Prior statements by a witness, excluded as non hearsay, will also be unavailable to the confessing party. The defendant is not endeavoring to demonstrate inconsistency (§801d1a) nor a prior identification (§801d1c). The exclusion of a prior consistent statement (§801d1b) is only available to rebut a charge of recent fabrication, improper influence or motive; none of which are material to the party simply wishing to introduce his or her prior, open court confession which in the instant court is an extrajudicial remark.

31. A confession offered on behalf of the confessing party might also be admitted under the Residual exception, §807. This would require that the prior out-of-court statement be material and more probative than other reasonably produced evidence.

32. If treason were to be established in a subsequent trial through a judicial admission of a former judicial confession, then the methods of establishing treason prescribed in III §3(1) are individually sufficient but not necessary.