SUPREME COURT OF THE UNITED STATES

THURSDAY, APRIL 28, 1983

ORDERED:

1. That the Federal Rules of Criminal Procedure for the United States District Courts be, and they hereby are, amended by including therein new Rules 11(h), 12(i) and 12.2(e), and amendments to Rules 6(e) and (g), 11(a), 12.2(b), (c) and (d), 16(a), 23(b), 32(a), (c) and (d), 35(b) and 55, as hereinafter set forth:

[See *infra*, pp. 1121–1127.]

2. That Rule 58 of the Federal Rules of Criminal Procedure and the Appendix of Forms are hereby abrogated.

3. That the foregoing additions and amendments to the Federal Rules of Criminal Procedure, together with the abrogation of Rule 58 and the Official Forms, shall take effect on August 1, 1983, and shall govern all criminal proceedings thereafter commenced and, insofar as just and practicable, in proceedings then pending.

4. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing additions to and changes in the Federal Rules of Criminal Procedure in accordance with the provisions of Sections 3771 and 3772 of Title 18, United States Code.

JUSTICE O'CONNOR filed a dissenting statement.

With one minor reservation, I join the Court in its adoption of the proposed amendments. They represent the product of considerable effort by the Advisory Committee, and they will institute desirable reforms. My sole disagreement with the Court's action today lies in its failure to recommend correction of an apparent error in the drafting of proposed Rule 12.2(e).

As proposed, Rule 12.2(e) reads:

> "Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not ad-

> missible in any civil or criminal proceeding against the person who gave notice of the intention."

Identical language formerly appeared in Federal Rule of Criminal Procedure 11(e)(6) and Federal Rule of Evidence 410, each of which stated that

> "[certain material] is not admissible in any civil or criminal proceeding against the [defendant]."

Those Rules were amended by this Court on April 30, 1979, 441 U. S. 987 and 1007, and approved by Congress on July 31, 1979, Pub. L. 96–42, 93 Stat. 326. After the amendments, the relevant language read:

> "[Certain material] is not, in any civil or criminal proceeding, admissible against the defendant."

As the Advisory Committee explained, this minor change was necessary to eliminate an ambiguity. Before the amendments, the word "against" could be read as referring either to the kind of proceeding in which the evidence was offered or to the purpose for which it was offered. Thus, for instance, if a person was a witness in a suit but not a party, it was unclear whether the evidence could be used to impeach him. In such a case, the *use* would be against the person, but the *proceeding* would not be against him. Similarly, if the person wished to introduce the evidence in a proceeding in which he was the defendant, the use, but not the proceeding, would be against him. To eliminate the ambiguity, the Advisory Committee proposed the amendment clarifying that the evidence was inadmissible against the person, regardless of whether the particular proceeding was against the person. See Advisory Committee's Notes to Fed. Rule Crim. Proc. 11(e)(6), 18 U. S. C. App., p. 1029 (1976 ed., Supp. V); Advisory Committee's Notes to Fed. Rule Evid. 410, 28 U. S. C. App., p. 160 (1976 ed., Supp. V).

The same ambiguity inheres in the proposed version of Rule 12.2(e). We should recommend that it be eliminated now. To that extent, I respectfully dissent.