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May 29, 2019

Daniel Durst, Counsel
Committee on the Rules of Evidence
Supreme Court of Pennsylvania
P.O. Box 62635
Harrisburg, PA 17106-2635

Re: Proposed Pennsylvania Rule of Evidence 401 Comment

Dear Mr. Durst:

The Pennsylvania Association of Criminal Defense Lawyers (PACDL) is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As such, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions, and work to achieve justice and dignity for defendants. PACDL's membership includes more than 900 private criminal defense practitioners, court appointed counsel and public defenders throughout the Commonwealth. PACDL submits the following comments on the proposed amendment to the Comment to Pennsylvania Rule of Evidence 401.

As a general matter, we applaud the additional language which makes clear that as a general rule, a person's "class" is irrelevant and can only result in injecting prejudice into trial assessment of what was or could be proved. This is critical for persons accused of crimes -- whether it be immigration status, impoverishment, or association with a minority or disfavored religion or group, that "class" characteristic proves nothing and only serves to inflame.

However, the new language fails to recognize that in many instances such proof may be relevant and indeed may be part of the Constitutional rights to confront adverse witnesses and/or to present a defense. For example, immigration status of a government cooperating witness is often relevant to establish a motive to blame others [the accused]. The Constitutional grounding for such proof is found in cases such as *Davis v. Alaska*. Additionally, evidence of a person's "class" may be pertinent in other contexts, as when a "good character" witness testifies to where he/she knows the accused from and where the witness has heard of the accused's reputation.

Accordingly, we urge that language be added stating that "Nothing in these comments shall be interpreted as restricting a criminal defendant's constitutional right to present a defense and/or to confront adverse witnesses." Additionally, we urge that the revised comment note that a preferred approach is to litigate these matters pre-trial. Thank you for your consideration.

Sincerely,

Bradley Winnick
President