Fed. R. Evid. 804(b)(3)

The statement against interest exception.
The declarations against interest exception is sometimes confused with the exemption for “admissions.” (Note: Under the restyled rules, “admissions” are called “statements of a party opponent.”) Declarations against interest are different from “admissions” because, in the case of a declaration against interest--

1. The circumstances provide a guarantee of trustworthiness.
2. There is no requirement that the statement be offered against a party opponent.
3. The exception does not apply unless the declarant is unavailable.
4. All of the above.
State v. English, p. 355

Supreme Court of North Carolina, 1931
Would the Federal Rules of Evidence call for a different result than the one reached in the *State v. English*?

1. Yes
2. No
3. It depends

[Bar chart showing 68%, 10%, and 23% for Yes, No, and It depends respectively.]
Hypo: You represent a defendant who is accused of a single-handed bank robbery. Your client tells you that he has a buddy who will testify at trial. The buddy will testify that while he was in prison, he heard another man confess to the crime that defendant is charged with. Under the federal rules, the testimony about the confession will be --

1. Admissible
2. Inadmissible
3. It depends
Foundation required by Fed. R. Evid. 804(b)(3):

--Declarant is now unavailable
--Statement was sufficiently against legal interest
--Statement is corroborated, if against penal interest in criminal case
Hypo. Buzzy is chatting with Beany at Whole Foods. Suddenly, five pounds of salmon plop onto the floor. The manager accuses Buzzy of concealing the salmon in his trousers. The manager says she will not press charges if Buzzy will sign a confession, be photographed, and agree never to come back. Buzzy complies. Later Beany (not Buzzy) is prosecuted for the crime. The prosecution believes that Beany’s trousers were actually the source of the incriminating salmon. Beany offers Buzzy’s confession in evidence. The confession is --

1. Admissible
2. Inadmissible
3. It depends
Why were the confessions admissible?

Pretend you are planning for trial for the party opposing the evidence. Can you imagine any possible argument in favor of excluding the confessions?
Tilley said, “Bucky wasn’t involved. It was Buzzy.” The statement is offered by Bucky.

1. What is the argument against receiving the evidence?
2. What is the argument in favor of receiving the evidence?
In explaining why the Buzzy-Bucky statement was against interest, the *Barrett* court said:

“First, the Buzzy-Bucky statement . . . is itself arguably disservices to Tilley, since it strengthened the impression that he had an insider’s knowledge of the crimes. And second, the case law, while far from settled, has tended to grant ‘[a] certain latitude as to contextual statements, neutral as to interest, giving meaning to the declaration against interest.’” (pp. 282-83)
Harris told police that he was transporting cocaine to Atlanta for Williamson.

What is the argument *in favor* of admitting the evidence?

What is the argument *against* admitting the evidence?
In *Williamson*, the majority held that --

1. Even if a narrative is generally against declarant’s interest, statements within it that are neutral as to his interest do not fit the exception.

2. Because Harris’s confession was against his interest, it was admissible against Williamson.

3. Statements inculpating a third person cannot be against the declarant’s interest.
Quote from Williamson at p. 365:

“In our view, the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory.”
Hypo. In casual chit-chat, Buzzy tells a friend that on May 16 he met with X at X’s house. X is widely reputed to be a terrorist. Buzzy and X are later charged with conspiracy to commit terrorism. Buzzy dies before trial. In the prosecution of X, Buzzy’s statement is –

1. Admissible as a declaration against interest
2. Admissible as the statement of a coconspirator
3. Both of the above
4. Inadmissible.
Another quote from Williamson at p. 285:

“[W]hether a statement is self-inculpatory or not can only be determined by viewing it in context. . . ‘Sam and I went to Joe’s house’ might be against the declarant’s interest if a reasonable person in the declarant’s shoes would realize that being linked to Joe and Sam would implicate the declarant in Joe and Sam’s conspiracy.”
Question 1, p. 367. Were Harris’s statements incriminating Williamson testimonial within the meaning of *Crawford*?

1. Yes
2. No
If a statement that incriminates an accomplice of the declarant is against the penal interest of the declarant, will it be admissible against the accomplice over a Confrontation Clause objection? (Q-1, second half)

1. Yes
2. No
3. It depends

8% Yes
32% No
60% It depends
Q-3, p. 367. Declarant confided in a fellow prisoner, saying that the defendant helped him commit the crime. The other prisoner secretly recorded the conversation. The recorded statement is –

1. Testimonial
2. Not testimonial
United States v. Dale
614 F.3d 942 (8th Cir. 2010)

A co-defendant made a statement to a fellow prisoner implicating himself and the defendant in a murder. The prisoner secretly recorded it. The court held that the statement was not testimonial. Accord, United States v. Pelletier, 666 F.3d 1 (1st Cir. 2011).
Would the *Barrett* case be decided the same way after *Williamson*?

( pp. 282-83 )

1. Yes
2. No
Hypo: A White House intern tells her mother, “I had sex with the President.” Unforeseeably, the intern and the President are later prosecuted for perjury on grounds that during a deposition, they lied under oath about having sex together. On that foundation alone, the intern’s statement to her mother is --

1. Admissible against the intern.
2. Admissible against the President.
3. Both
4. Neither
Suppose that the intern is unavailable at the time of the trial of the President. Offered against the president, the intern’s statement to her mother would be --

1. Admissible as a declaration against interest
2. Admissible as the statement of a coconspirator
3. Both
4. Neither
Suppose that the intern is unavailable at the time of the trial of the President. Offered against the President, under California law (CEC sec. 1230) the intern’s statement to her mother would be --

1. Admissible as a declaration against interest
2. Not admissible as a declaration against interest
3. It depends.
Federal-California comparison:

Fed. R. Evid. 804(b)(3) [If declarant is not available, the hearsay rule does not exclude a statement that:]
(A) a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and
(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

CEC § 1230. Declarations against interest
“Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true.
Hypo. Police found heroin in a raincoat in Becky’s car and charged her with possession of a controlled substance. She offers a witness who heard Buzzy say, before the heroin was found, “I left my raincoat in Becky’s car.” Buzzy is unavailable. On that foundation, Buzzy’s statement would be --

1. Admissible as a declaration against interest
2. Not admissible as a declaration against interest
The end

(An optional hypo follows)
Buzzy says, “I owe Beanny $5000 for the car he sold me.” Buzzy dies. Beanny sues his estate for $15,000 allegedly due in payment for the car. The estate offers Buzzy’s statement as evidence that the amount was only $5000.

1. Admissible as a declaration against interest.
2. Not admissible as a declaration against interest.