The Politics Behind Federal Rules of Evidence 413, 414, and 415

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THE POLITICS BEHIND FEDERAL RULES OF EVIDENCE 413, 414, AND 415

I. INTRODUCTION

Our judiciary recognizes that a person's character, when used as propensity evidence, can be overwhelmingly prejudicial. Such evidence can blind jury members, preventing them from reaching a conclusion based on the merits of the case before them. The exclusion of character evidence, based on its potential to prejudice the person about whom it is being admitted, conflicts with the general doctrine that a jury should reach an independent judgment based on the merits of the case presented to it. Therefore, character evidence is generally excluded when offered to show an individual acted in conformity with a certain trait. This exclusion has developed through the common law and has been codified in the Federal Rules of Evidence.

However, on July 9, 1995, three new amendments to the Federal Rules of Evidence became effective that changed this well-established rule of exclusion. The purpose of these amendments, Federal Rules of Evidence 413-415, is to allow instances of prior sexual misconduct to be admissible against a defendant in a sexual assault case. Specifically, the rules allow a prosecutor, or a plaintiff in a civil matter, to present evidence of a defendant's prior sexually assaultive behavior in order to establish an inference that the defendant has a propensity to commit such acts. Such evidence leads to the inference that the defendant acted in conformity with that trait in the case at bar.

Since their proposal before Congress, these new amend-

2. Id.
3. Id.
4. Id.
5. Id.
6. See infra note 41 and accompanying text.
7. FED. R. EVID. 413-415 judicial app.
8. See FED. R. EVID. 413-415.
9. FED. R. EVID. 413-415 judicial app.
10. Id.
ments have been the subject of constant debate.12 The proponents of the new rules state that they are helpful tools in the prosecution of a very serious criminal problem.13 The opponents, on the other hand, state that the rules recklessly disregard the strong policy behind the exclusion of such evidence and that they infringe on the defendant's right to a fair trial.14 The effects of these new rules are just beginning to be seen as they are analyzed in published judicial opinions.15

This comment addresses the weaknesses behind Rules 413, 414, and 415, both politically16 and substantively.17 It emphasizes the inappropriate means through which the rules were enacted, the poor manner in which they were drafted, and the weak substantive foundation on which they are based.18 By illustrating the legal quagmires that the new amendments inevitably will cause, this comment ultimately proposes that the rules either be significantly amended or repealed.19

The following section, Part II, discusses the background of the federal law regarding the admissibility of character evidence prior to the enactment of the new rules.20 This section also explains the scope and policies behind Rules 413, 414, and 415.21 Part III identifies the main problem of the rules22 and Part IV addresses the political23 and substantive24 weaknesses of the new rules, respectively.

II. BACKGROUND

This background is divided into two main sections. The first section discusses the scope and common law history of

13. Id.
14. Id.
16. See discussion infra Part IV.A.
17. See discussion infra Part IV.B.
18. See discussion infra Part IV.A-B.
19. See discussion infra Part V.
20. See discussion infra Part II.
21. See discussion infra Part II.
22. See discussion infra Part III.
23. See discussion infra Part IV.A.
24. See discussion infra Part IV.B.
Federal Rules of Evidence 403, 404, and 405. These are the three main rules generally excluding character evidence in trials. The second section discusses the scope and legislative history of the newly enacted Federal Rules of Evidence 413, 414, and 415, the three new rules permitting certain character evidence to be admissible in sexual assault cases.

A. Federal Rules of Evidence 403, 404, and 405

1. The Scope of Rules 403, 404, and 405

In 1975, Congress enacted the Federal Rules of Evidence. This enactment codified the federal common law which had developed from several centuries of both American and English jurisprudence. The rules provide the federal court system with uniformity in deciding the admissibility of evidence and act as a model code system on which the majority of the states have designed their individual laws of evidence. The three federal rules which are the most applicable when considering the admissibility of character evidence are Rules 403, 404, and 405.

a. Federal Rule of Evidence 403

Rule 403 is a general rule applicable to all forms of evidence. It gives a judge discretion in determining what evidence is admissible based on the evidence’s probative and prejudicial values. The rule requires the judge to weigh the probative value of evidence against such factors as: (1) the danger of the evidence causing undue prejudice to the party seeking its exclusion; (2) the danger of the evidence confus-
ing the jury as to the issues of the case;\(^{35}\) (3) the danger of the evidence generally misleading the jury;\(^{36}\) or (4) the danger of the presentation of the evidence causing an undue delay or waste of time.\(^{37}\) If the judge finds the probative value of the offered evidence to be substantially outweighed by any of the above-listed dangers, he or she may exclude that evidence.\(^{38}\) This rule is fundamental in the laws of evidence and is strongly supported by case law.\(^{39}\) Its purpose is to prevent a jury from making inaccurate judgments based on emotion and to ensure an orderly, efficient, and fair process of trial.\(^{40}\)

b. **Federal Rule of Evidence 404**

Federal Rule of Evidence 404 addresses the admissibility of character evidence.\(^{41}\) The rule is divided into two parts.\(^{42}\) The first part establishes a general rule stating that character evidence is not admissible as propensity evidence, with three exceptions: (1) evidence of the character of the accused or the victim may be admitted by the accused; (2) evidence of

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35. See supra note 32 and accompanying text.
36. See supra note 32 and accompanying text.
37. See supra note 32 and accompanying text.
38. See supra note 32 and accompanying text.
40. FED. R. EVID. 403 advisory committee's note.
41. FED. R. EVID. 404. Rule 404 states:
   (a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
      (1) **Character of Accused.** Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;
      (2) **Character of Victim.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
      (3) **Character of Witness.** Evidence of the character of a witness, as provided in rules 607, 608, and 609.
   (b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Id.
42. Id.
the character of the accused may be admitted by the prosecution as rebuttal evidence; and (3) character evidence may be admitted to discredit a witness.\footnote{Id.}

In court, issues regarding a person's character can arise in one of two ways. The character evidence is either direct, where the person's character is a main issue, or circumstantial, where the evidence is suggestive of a particular inference.\footnote{Id.} For example, a plaintiff's truthful character is a direct issue when a defendant is attempting to defend a claim of defamation. Yet, a defendant's violent character is circumstantial when offered to show that the defendant is the initial aggressor in a battery.\footnote{Id.} Rule 404, generally excluding character evidence, is only applicable to instances where the evidence is circumstantial.\footnote{Id.}

Therefore, according to Rule 404, evidence of a person's character is admissible only if: (1) the issue of that person's character is direct or; (2) it falls within the rule's enumerated exceptions.\footnote{Id.} However, once it has been determined that character evidence may be admissible, there are also limits as to what type of evidence is available to establish the proposition.\footnote{See infra note 50 and accompanying text.} Rule 405 addresses what types of character evidence can be admitted under such circumstances.\footnote{Id.}

c. Federal Rule of Evidence 405

Rule 405 recognizes the three evidentiary ways in which one can show character—by reputation, opinion, or specific instances of prior conduct.\footnote{FED. R. EVID. 405.} Character evidence provided

\footnotesize{43. Id. 
44. FED. R. EVID. 404 advisory committee's note. 
45. Id. 
46. Id. 
47. Id. 
48. See infra note 50 and accompanying text. 
49. FED. R. EVID. 405. 
50. Id. Rule 405 states: 
(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. 
(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct. 
Id.
through opinion or reputation is always acceptable, assuming Rule 404 has been satisfied. However, evidence of one's prior conduct to establish character is only admissible when the character issue is direct. Thus, according to Rules 404 and 405, the only occasion when specific instances of conduct may be admitted as character evidence is where character is a central issue to the case. If one's character is not a central issue to the case, but character evidence is admissible due to another enumerated exception, the type of evidence admissible is limited to evidence of reputation or opinion. Prior conduct is not admissible.

2. The Policies Supporting Rules 403, 404, and 405

While Rules 403, 404, and 405 have only existed since 1975, their substantive bases have long been established within the common law. The Supreme Court has specifically stated that character evidence can persuade a jury to infer a defendant acted in conformity with his character on the particular occasion when there would be little or no corroborating evidence.

If there is an exceptional situation where character evidence is admissible, there are established policies against the admission of specific instances of prior conduct as a means of establishing the character in question. Specific instances of conduct are not inadmissible because they lack probative value. Rather, in establishing character, such evidence is extremely relevant and far more informative than evidence of one's reputation or opinion. However, evidence of prior conduct is considered extremely prejudicial and may tend to mislead the jury in considering the factual issues before it. According to the advisory committee's notes on Rule 405, "[o]f the three methods of proving character provided by the rule, evidence of specific instances of conduct is the most convinc-

51. Id.
52. Id.
53. See supra notes 41, 50 and accompanying text.
54. See supra notes 41, 50 and accompanying text.
55. FED. R. EVID. judicial app.
56. See Michelson v. United States, 335 U.S. 469 (1948).
57. FED. R. EVID. 404 advisory committee's note.
58. See supra note 41 and accompanying text.
59. FED. R. EVID. 405 advisory committee's note.
60. Id.
61. Id.
ing. At the same time it possesses the greatest capacity to arouse prejudice, to confuse, to surprise, and to consume time.\textsuperscript{62}

3. \textit{Distinguishing Between Character Evidence and Prior Acts}

As discussed above, evidence of specific instances of prior conduct to establish character can be both probative and prejudicial.\textsuperscript{63} As a result, such evidence is generally excluded based upon a Rule 403 balancing test.\textsuperscript{64} However, there is another available method which may be used to admit prior instances of conduct.\textsuperscript{65}

The available method derives from Federal Rule of Evidence 404(b).\textsuperscript{66} This rule begins by recognizing that prior crimes, wrongs, or acts cannot be admitted as character evidence.\textsuperscript{67} Yet, once this is established, the rule goes on to explain that prior instances of conduct, such as crimes or wrongs, may be admissible for other purposes, such as proof of motive, knowledge, preparation, and intent.\textsuperscript{68}

Under this exception, evidence of prior acts is admissible because it is distinguishable from character evidence.\textsuperscript{69} While the prior acts are admissible as circumstantial evidence, the inferences that a jury is expected to draw differ significantly from those a jury is normally expected to draw with circumstantial evidence.\textsuperscript{70} Evidence to be taken purely as character evidence is to be considered by the jury as a means to determine the character of a person and whether the actions in question are consistent with that character.\textsuperscript{71} The jury must ask: What kind of person is the accused?\textsuperscript{72} However, when the evidence is admitted through the Rule 404(b) exception, the jury is no longer forced to consider the character of the

\textsuperscript{62} Id.
\textsuperscript{63} See discussion supra Part II.A.2.
\textsuperscript{64} FED. R. EVID. 405 advisory committee's note.
\textsuperscript{65} See discussion infra Part II.A.3.a-b.
\textsuperscript{66} See supra note 41.
\textsuperscript{67} See supra note 41.
\textsuperscript{68} See supra note 41.
\textsuperscript{70} Id.
\textsuperscript{71} Id. at 1137.
\textsuperscript{72} Id.
accused. Instead, the inferences involve the objective consideration of how past actions reflect upon the mens rea (or guilty mind) of the accused.

B. Federal Rules of Evidence 413, 414, and 415

1. The Scope of Rules 413, 414, and 415

The three new amendments to the Federal Rules of Evidence are included in Section XXXII of the Violent Crime Control and Law Enforcement Act of 1994. This act was signed into law by President William J. Clinton on September 13, 1994 and became effective on July 9, 1995. The enactment of these rules has caused a great deal of controversy among the judiciary because of the radical changes imposed on the established laws of evidence in regards to character evidence, such as Rules 403, 404, and 405.

Rules 413, 414, and 415 allow specific instances of prior conduct to be admissible as character evidence against the accused in sexual assault cases. Rules 413 and 414 are specific to criminal cases of sexual assault and child molestation,

73. Id.
74. FED. R. EVID. 413-415 judicial apps.
75. Id.
76. See id.
77. FED. R. EVID. 413-415. Rules 413, 414, and 415 read in pertinent part:
   Rule 413. Evidence of Similar Crimes in Sexual Assault Cases.
   (a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

   FED. R. EVID. 413.
   (a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

   FED. R. EVID. 414.
   Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation.
   (a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.

   FED. R. EVID. 415.
respectively. Rule 415 applies to civil cases. For example, if a defendant was charged with rape, evidence of a prior conviction, charge, or accusation of rape may be admissible to establish an inference that the defendant is a rapist.

2. The Legislative History of Rules 413, 414, and 415

The purposes of these rules are best understood by noting their legislative history. The amendments to the Federal Rules of Evidence were initially proposed to Congress in the Women's Equal Opportunity Act bill in February of 1991. The two main supporters of the amendments were Representative Susan Molinari and Senator Robert Dole. The amendments were rejected, but later reintroduced in the Sexual Assault Prevention Act bills of the 102d and 103d Congresses. The amendments gained more support through the 102d Congress and were added to a violent crime bill supported by President George Bush. Finally, "the Senate passed the proposed rules on November 5, 1993 by a vote of 75 to 19 in a crime bill amendment offered by Senator Dole."

According to the Rules Enabling Act, originally enacted in 1934, a Judicial Reviewing Conference may have the opportunity to review legislation proposed by Congress. Such a review is intended to provide Congress with feedback from the judicial branch as to the anticipated results of the proposed legislation's enactment. Furthermore, the Rules Enabling Act is also intended to provide the judiciary with an opportunity to have a unique perspective on proposed federal legislation.

78. FED. R. EVID. 413-14.
79. FED. R. EVID. 415.
80. See id.
81. 139 CONG. REC. H8991-92 (1994) (statement of Rep. Molinari (R-N.Y.)). "Senator Dole and I initially proposed this reform in February of 1991 in the Women's Equal Opportunity Act bill, and we later re-introduced it in the Sexual Assault Prevention Act bills of the 102d and 103d Congresses... and was included in President Bush's violent crime bill of that Congress, D. 635."
82. See id.
83. Id.
84. Id.
85. Id.
86. Id.
87. Id., judicial app.
opportunity to assist in the drafting of laws that it will later be applying. Ultimately, the goal of the Rules Enabling Act is to encourage the cooperation of two branches of the federal government when performing closely related duties. While this rule does not adjust the enumerated powers of the individual branches, the intent is clear—both branches could be more effective if there were less conflicts between them.

Federal Rules of Evidence 413, 414, and 415 did not go through this procedure. Congress bypassed the normal enabling rules and directly enacted the amendments through the crime bill. According to Congressman Hughes:

[The] existing rule-making process involves a minimum of six levels of scrutiny or stages of formal review. This has gone through none. This is an amendment offered on the floor of the Senate after about twenty minutes' debate, without very much thought, and it is procedurally and substantively flawed.

Specifically, in section 329035 of the crime bill, Congress provided that “[t]he Rules Enabling Act shall not apply to the recommendations made by the Judicial Conference pursuant to this section.”

As a compromise, Congress announced it would reconsider the legislation if the Judicial Reviewing Conference made a timely objection. Congress requested that the Judicial Conference submit a report reviewing the new rules within 150 days after the bill's enactment on September 13, 1994. Congress then stated that once it received the report, it would review the recommendations. If the recommendations were in favor of the legislation, the rules would become effective thirty days after the report was received. If the

88. Id.
89. Id.
93. 140 CONG. REC. H8968, H8990 (daily ed. Aug. 21, 1994) (statement by Congressman Hughes (D-N.J.)).
94. Id.
96. Id.
97. Id.
98. Id.
recommendations were against the legislation, the rules would become effective 150 days after the report was received.\footnote{99} The purpose of this delay was to provide Congress an additional period of time to review the legislation.

On February 9, 1995, pursuant to the legislation, the Judicial Conference Committee sent a report to Congress regarding the proposed amendments to the Federal Rules of Evidence.\footnote{100} The Committee's report was clear: Congress should reconsider the substantive bases of Rules 413, 414, and 415.\footnote{101} In comprising its report, the Judicial Conference Committee created several groups which reviewed how the legislation would effect specific areas of the law, such as criminal law and the laws of evidence.\footnote{102} Further, the Committee solicited comments from hundreds of members of the legal community.\footnote{103} The results of these smaller committees all supported the ultimate conclusion of the report delivered to Congress.\footnote{104}

For example, the Advisory Committee on Evidence Rules reported an unanimous decision, but for one dissenting vote by the representative of the Department of Justice.\footnote{105} The report stated:

The advisory committee believed that the concerns expressed by Congress and embodied in new Evidence Rules 413, 414, and 415 are already adequately addressed in the existing Federal Rules of Evidence. In particular, Evidence Rule 404(b) now allows the admission of evidence against a criminal defendant of the commission of prior crimes, wrongs, or acts for specified purposes, including to show intent, plan, motive, preparation, identity, knowledge, or absence of mistake or accident.\footnote{106}

The report went on to recognize the unusual unanimity of the members, composed of over forty judges, practicing lawyers,

\footnotesize
\begin{itemize}
\item \footnote{99} Id.
\item \footnote{100} Fed. R. Evid. 413 congressional committee action note.
\item \footnote{102} Id.
\item \footnote{103} Id.
\item \footnote{104} Id.
\item \footnote{105} Id.
\item \footnote{106} Id.
\end{itemize}
and academians, in viewing the new rules as undesirable.107

In regards to the comments received from the legal community, the report stated: "The overwhelming majority of judges, lawyers, law professors, and legal organizations who responded opposed new Evidence Rules 413, 414, and 415. The principle objections expressed were that the rules would permit the admission of unfairly prejudicial evidence and contained numerous drafting problems not intended by their authors."108

In its report, the Judicial Review Committee seemed to note the unusual fervor in which Congress was attempting to pass its legislation.109 While Congress had stated that it would review the recommendations of the Committee, it seemed clear that it did not intend to repeal the rules.110 Thus, in hopes of having some affect, the Judicial Committee also contained a compromise in their report.111 This section recommended that if Congress refused to repeal the new rules, then Rules 413, 414, and 415 should be incorporated into Federal Rule of Evidence 404.112

Because the report was not in favor of the amendments, the enactment of the rules was postponed 150 days.113 Theoretically, this provided time for Congress to review the report and reconsider the opinions of the judiciary.114 Yet, the 150 days passed and Rules 413, 414, and 415 became effective as originally drafted.115

III. PROBLEM IDENTIFIED

Federal Rules of Evidence 413, 414, and 415 clearly conflict with established evidentiary rules as to character evidence and specific instances of prior conduct.116 Since their enactment, the rules have been the subject of constant debate due to the confusion they cause;117 Rules 403-405 generally

107. JUDICIAL CONFERENCE REPORT, supra note 101, § III.
108. Id.
109. Id.
110. Id.
111. Id. § IV.
112. Id.
113. McLaughlin, supra note 91, at 11-12.
114. Id.
115. Id.
116. See discussion supra Part II.A.
117. FED. R. EVID. 413-415 judicial app.
forbid character evidence while Rules 413-415 permit it. Thus, two pertinent questions arise: (1) do the Federal Rules of Evidence, taken as a whole, allow prior instances of specific conduct to be admitted as character evidence in sexual assault cases?; and (2) what were the motivating factors behind Congress' enactment of these rules?

IV. ANALYSIS

An understanding of the above material makes the following arguments against Rules 413, 414, and 415 much more clear. The arguments are divided into two main parts. Part A addresses the political motivations behind the new rules as well as the poor drafting methods used by Congress in creating them. Part B addresses the substantive problems with the rules. The arguments will show that Rules 413-415 were not only enacted carelessly and improperly, but also demonstrate that their substantive basis is both confusing and conflicting with centuries of developed jurisprudence.

A. The Politics of Rules 413, 414, and 415

Congress appeared to take several steps to ensure Rules 413, 414, and 415 were enacted: (1) Congress made sure the Rules Enabling Act specifically did not apply to the legislation; (2) Congress requested a reviewing report from the Judicial Conference, but evidently paid it no attention throughout the 150 day review period; and (3) Congress not only ignored the clear recommendations from the Judicial Conference, but also from the responding members of the general legal community. The natural question that follows is: Why would Congress do this?

The new rules are a reflection of political trends. In

118. See discussion supra Part II.A.
119. See discussion infra Part IV.A-B.
120. See discussion infra Part IV.A.
121. See discussion infra Part IV.B.
122. See discussion infra Parts IV-V.
123. See supra notes 91-94 and accompanying text.
124. See supra notes 91-94 and accompanying text.
125. See supra notes 91-94 and accompanying text.
126. See McLaughlin, supra note 91, at 11-12; Sara Sun Beale, Prior Similar Acts in Prosecutions for Rape and Child Sex Abuse, 4 CRIM. L.F., 307 (1993); Imwinkelried, supra note 69, at 1129.
enacting Rules 413-415, Congress appears to be more interested in demonstrating to the country that legislation which addresses current political issues can be enacted, rather than provide the judiciary with effective laws.\(^{127}\)

During the early 1990s, two highly publicized cases focused public attention on the prosecution of sexual assaults, and their outcomes called for political action.\(^{128}\) Additionally, women’s political influence was growing stronger.\(^{129}\) Debates over a woman’s involvement in the military and in the working world had reached an all-time high, and the nation was learning the power of the term “sexual harassment.”\(^{130}\) There were also public outcries at dramatically increasing rape statistics.\(^{131}\)

This was also the time when celebrities such as William Kennedy Smith and boxer Mike Tyson were prosecuted for rape.\(^{132}\) In the end, Kennedy was acquitted and Tyson was convicted. These disparate outcomes were a result of at least one major evidentiary distinction between the two cases.\(^{133}\) While in both cases the prosecution offered evidence of prior sexual misconduct against the defendants,\(^{134}\) in Kennedy’s case, the judge excluded the prior misconduct as prejudicial character evidence while in Tyson’s case, the judge admitted it.\(^{135}\) These two otherwise unrelated rulings demonstrated to the public the power of character evidence in sexual assault cases.\(^{136}\)

These political and legal events combined to influence Congress to produce legislation which would focus on the politically charged concerns of sexual assault.\(^{137}\) The result was Federal Rules of Evidence 413-415: a set of rules that Congress could present to the public as its attempt to get tough

\(^{127}\) Beale, supra note 126, at 307-08.

\(^{128}\) Id.

\(^{129}\) Id. at 309.

\(^{130}\) Id. at 311.

\(^{131}\) McLaughlin, supra note 91, at 11-12. While statistics demonstrated an increase in the number of rapes, the results implied an increase in the number of reported rapes rather than an actual increase in the number of assaults. Id.

\(^{132}\) Imwinkelried, supra note 69, at 1126-27.

\(^{133}\) Id. at 1127.

\(^{134}\) Id.

\(^{135}\) Id.

\(^{136}\) Id. at 1128.

\(^{137}\) Beale, supra note 126, at 307-08.
Unfortunately, it seems apparent that by enacting Rules 413-415, Congress was more interested in appeasing the political cries of the public, rather than providing reasonable legislation. According to statements made by Representative Molinari, the principal House sponsor of the amendments, Congress intended to implement the legislation, regardless of the Judicial Conference report:

[C]ongress has agreed to a temporary deferral of the effective date of the new rules, pending a report by the Judicial Conference, in order to accommodate procedural objections raised by opponents of the reform. However, regardless of what the Judicial Conference may recommend, the new rules will take effect within at most 300 days of the enactment of this legislation.

Additionally, the Violent Crime Control and Law Enforcement Act of 1994 included a legislative surge of striking attacks against defendants accused of sexual assaults. For example, an amendment to Federal Rule of Evidence 412 (the Rape Shield Law) was also included with Rules 413, 414, and 415. While Rules 413-415 focus on the admissibility of a defendant's prior acts, Rule 412 focuses on the inadmissibility of the victim's prior acts. The defense most often used by defendants charged with rape is consent by the victim. This defense is substantiated by introducing evidence of the sexual history of the victim to establish his or her propensity towards promiscuity. Therefore, with the

139. See id. at 15.
140. See FED. R. EVID. 413-415 congressional discussion notes.
141. 139 CONG. REC. H8991-92 (1994).
142. FED. R. EVID. 412. Rule 412 reads in pertinent part:
   Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition.
   (a) Evidence Generally Inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):
   (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.
   (2) Evidence offered to prove any alleged victim's sexual predisposition.

Id.
143. See id.
144. Tedeschi, supra note 12, at 116.
145. Id. at 117.
combination of these four amendments to the Federal Rules of Evidence, a defendant accused of sexual assault receives two striking blows.\textsuperscript{146} First, the defendant's main defense focusing on the victim's promiscuity is practically eliminated; and, second, more potentially-damaging evidence is available to the prosecution.\textsuperscript{147}

Furthermore, since the prosecution of sexual assault crimes is extremely rare in federal courts,\textsuperscript{148} it is unclear what substantive purpose Congress would have for developing a double-edged attack against people accused of such crimes. This is yet another reason to presume the main purpose of the legislation was to relay a political message.

Finally, if Congress was motivated by something other than politics, such as the desire to draft clear and reliable laws, it would not have supported the enactment of such poorly drafted legislation\textsuperscript{149} As written, Rules 413, 414, and 415 directly contradict Rules 404 and 405.\textsuperscript{150} Assuming that each rule, as an independent Federal Rule of Evidence, is weighed equally, which set of rules apply?

One may assume that Congress intended the new rules to act as exceptions to Rules 404 and 405. However, if this is the case, why draft them as separate rules? The Judicial Conference Report noted this inconsistency and suggested that if Congress insisted upon passing this type of legislation, then it should do so by creating an amendment to Rule 404.\textsuperscript{151} The Conference report went so far as to include a suggestive draft of an amended Rule 404 that contained the same substantive law of the new rules.\textsuperscript{152} Unfortunately, Congress decided not to act on these recommendations.\textsuperscript{153}

Further, Rules 413, 414, and 415 are unclear as to whether they are mandatory rules, or if Rule 403 still applies.\textsuperscript{154} As drafted, the new rules state that character evidence “is admissible.”\textsuperscript{155} Congress chose to use this vague

\begin{itemize}
\item \textsuperscript{146} Id.
\item \textsuperscript{147} Tedeschi, supra note 12, at 118.
\item \textsuperscript{148} Beale, supra note 126, at 309.
\item \textsuperscript{149} JUDICIAL CONFERENCE REPORT, supra note 101, § III.
\item \textsuperscript{150} See supra notes 41, 50, 77 and accompanying text.
\item \textsuperscript{151} JUDICIAL CONFERENCE REPORT, supra note 101, § IV.
\item \textsuperscript{152} Id.
\item \textsuperscript{153} McLaughlin, supra note 91, at 15.
\item \textsuperscript{154} Tedeschi, supra note 12, at 115.
\item \textsuperscript{155} See JUDICIAL CONFERENCE REPORT, supra note 101, § III.
\end{itemize}
phrase as opposed to the common “may be admissible” (implying judicial discretion through Rule 403)\textsuperscript{156} or “shall be admissible” (implying mandatory admission of the evidence).\textsuperscript{157} Again, it is unclear which way the rules should be interpreted.\textsuperscript{158} While the floor statements of Representative Molinari imply that Rule 403 is still applicable to the new rules, the fact that the rules do not expressly state whether Rule 403 is applicable is yet another example of the poor manner in which the legislation was drafted.\textsuperscript{159}

It is important that Congress create legislation which reflects the needs of our country.\textsuperscript{160} As problems present themselves, Congress may decide to create new legislation as a solution. It is this flexibility that ensures the system’s strength.\textsuperscript{161} However, the judiciary must be able to apply this legislation for this system to be effective.\textsuperscript{162} Once Congress begins creating legislation that is unable to be applied or conflicts with other laws, its goals are unobtainable.\textsuperscript{163} If this legislation is in conflict with widely accepted, fundamental rules, it leads one to conclude that the intent behind the legislation was not to develop an innovative way to solve a problem. Instead, it appears that the intent of the legislation was to serve other purposes, such as providing a release for political pressure.\textsuperscript{164} Such legislation is void of substance and cannot effectively be used by the judiciary.\textsuperscript{165} This is the case with Federal Rules of Evidence 413, 414, and 415.

B. The Substantive Flaws of Rules 413, 414, and 415

There are several substantive flaws with the new rules and the policies which support them.\textsuperscript{166} This comment presents four main arguments against the substance of these rules.\textsuperscript{167} The first two arguments are founded in the laws of

\begin{itemize}
  \item \textsuperscript{156} \textit{Id.}
  \item \textsuperscript{157} \textit{Id.}
  \item \textsuperscript{158} \textit{Id.}
  \item \textsuperscript{159} \textit{Id.}
  \item \textsuperscript{160} \textit{Id.}
  \item \textsuperscript{161} \textit{See JUDICIAL CONFERENCE REPORT, supra note 101, § III.}
  \item \textsuperscript{162} \textit{Id.}
  \item \textsuperscript{163} \textit{Id.}
  \item \textsuperscript{164} \textit{See discussion supra Part IV.A.}
  \item \textsuperscript{165} \textit{See JUDICIAL CONFERENCE REPORT, supra note 101, § III.}
  \item \textsuperscript{166} \textit{See discussion infra Part IV.B.1-4.}
  \item \textsuperscript{167} \textit{See discussion infra Part IV.B.1-4.}
\end{itemize}
character evidence. The last two address Rules 413-415 and their specific focus on sexual assaults. Each argument is enough to question the validity of the rules. Therefore, taken as a whole, these four arguments show that Federal Rules 413-415 need to either be drastically amended or repealed.

1. Evidence of Specific Instances of Prior Conduct Offered to Establish the Character of a Defendant Is Too Prejudicial, and Therefore Should Not Be Admissible

The rule establishing character evidence as prejudicial existed in our system of jurisprudence as common law long before the creation of the Federal Rules of Evidence. The rule was established through years, even centuries, of judicial experience in both the United States and England. Over time, judges consistently found the probative value of such evidence to be substantially outweighed by its prejudicial effect. As long ago as 1865, Chief Justice Cockburn, while recognizing the relevance of prior acts on determining one's character, noted the existence of the common law's absolute rule of exclusion: "it is quite clear that an antecedent bad character would form quite as reasonable a ground for the presumption and probability of guilt as previous good character lays the foundation of innocence, yet you cannot on the part of the prosecution, go into evidence as to character."

The general policy underlying the exclusion of character evidence is the expectation that a defendant will be tried for what he did and not for who he is. When prior conduct character evidence is permitted at trial,

the jurors may be tempted to punish the accused for the other crimes. The temptation may be especially acute when . . . the accused has not as of yet been convicted of

| 168. See discussion infra Part IV.B.1-2. |
| 169. See discussion infra Part IV.B.3-4. |
| 170. See discussion infra Part V. |
| 171. Tedeschi, supra note 12, at 115. |
| 172. Id. |
| 174. Id. at 474 n.29. |
and punished for the uncharged crime. The uncharged misconduct evidence may create the impression that to date, the accused has unjustly escaped punishment for the uncharged misdeeds. The jurors may be tempted to rectify that injustice by punishing the accused now for the uncharged crimes—even though they have a reasonable doubt about the accused’s guilt of the charged offense.\footnote{176} Additionally, this type of evidence, tends to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.\footnote{177}

Yet, Congress quickly passed these three new rules, saying very little about how they contradicted with such an established rule of evidence as Rule 404.\footnote{178} Instead of addressing this controversial issue, proponents of the rules, such as Senator Dole, focused on policy issues by making statements as to their necessity in dealing with crime.\footnote{179} For example, during floor hearings Senator Dole stated:

[T]oo often, crucial evidentiary information is thrown out at trial because of technical evidentiary rulings. This amendment is designed to clarify the law and make clear what evidence is admissible, and what evidence is not admissible, in sex crime cases . . . . \[I\]f we are really going to get tough, and if we are really going to try to make certain that justice is provided for the victim . . . \[I\] think we ought to look seriously at [this amendment].\footnote{180}

Sexual assaults are serious crimes and it is necessary to establish deterrents in our legal system to try and prevent future assaults. Senator Dole’s statements regarding the need to “get tough on crime” are recognized as important. However, there are several other legal issues that are also important. For example, it is important that defendants accused of sexual assault receive a fair trial.\footnote{181} It is also important that rules of evidence, which are established to ensure

\footnotesize{\begin{itemize}
\item \footnote{176} Imwinkelried, \textit{supra} note 69, at 581.
\item \footnote{177} \textit{Fed. R. Evid.} 404 advisory committee’s note.
\item \footnote{178} McLaughlin, \textit{supra} note 91, at 11.
\item \footnote{179} 139 \textit{Cong. Rec.} S15072-3 (daily ed. Nov. 4, 1993).
\item \footnote{180} \textit{Id.}
\item \footnote{181} \textit{Fed. R. Evid.} 403 advisory committee’s note.
\end{itemize}}
that a trial is fair, are not ignored in order to “get tough on crime.”

The rules excluding specific instances of prior conduct when offered as character evidence are important in maintaining the fairness of trials. When Congress creates legislation ignoring these rules, it indirectly says it is more important to get tough on crime than to ensure a defendant receives a fair trial.

2. What About Sexual Assault Crimes Requires Such a Drastic Change in the Rules of Evidence?

As drafted, Rules 413, 414, and 415 clearly create inconsistencies in the admissibility of prior conduct character evidence when trying a defendant on a sexual assault charge as opposed to another serious crime. For example, consider a defendant being prosecuted for the rape and murder of an individual. The defendant has two prior bad acts, one of which is a rape, the other a murder. Under these new rules, the prior rape can be admitted even when offered as pure character evidence, while the prior murder could not be admitted without the prosecution showing that it has a non-propensity purpose.

Why did Congress single out sexual assaults from other serious crimes like murder, kidnapping, or narcotics distribution? As mentioned earlier, the motives seem to be political. However, the proponents of the rules had to provide substantive arguments in their support. Congress provided three main arguments to justify its actions. First, statistics showed that the number of sexual assaults in the country were rising, and, therefore, new laws were necessary to reduce the frequency of this crime. Second, sexual assaults generally take place in private, and, thus, there are few witnesses and little direct evidence available to be used at trials. Therefore, as much available evidence should be re-

182. See discussion infra Part III.B.2.
183. See supra notes 32, 41 and accompanying text.
184. Beale, supra note 126, at 315.
185. Imwinkelried, supra note 69, at 1140.
186. Id.
187. See discussion supra Part IV.A.
188. JUDICIAL CONFERENCE REPORT, supra note 101, § III.
189. Tedeschi, supra note 12, at 112.
190. Id.
viewed by the courts in reaching a verdict.\textsuperscript{191} Third, people who sexually assault others are often recidivists and are more likely to repeat their crimes.\textsuperscript{192} Their recidivist nature is probative, and, thus, procedural exceptions should be made in the prosecution to demonstrate their repetitive, criminal nature.\textsuperscript{193}

Congress' first argument, regarding the statistics of sexual assaults, is flawed due to an inaccurate interpretation of those statistics.\textsuperscript{194} First, criminal statistics on murder and drug trafficking appeared to be increasing at the same rate as sexual assaults.\textsuperscript{195} Thus, the fact that sexual assaults had apparently increased is not a sufficient reason for the creation of the new rules; by that rationale, character evidence exceptions should be made for murder and drug trafficking crimes as well as sexual assaults.\textsuperscript{196} Second, many statisticians believed that the apparent increase in sexual assaults was due to increased reporting rather than an actual increase in the number of crimes.\textsuperscript{197} If this was the case, there was not a sudden need for laws focusing on sexual assault as Congress had suggested.\textsuperscript{198}

The second argument provided by Congress is also weak. While it is true that sexual assaults often take place in private, this is also the case for the majority of other crimes.\textsuperscript{199} Murder, for example, usually occurs in a private area with few or no witnesses.\textsuperscript{200} Furthermore, given the inherent nature of murder, even less direct evidence is available because a main witness is also the victim.\textsuperscript{201} If this rationale was one of the motivating factors in the creation of Rules 413-415, then once again, this is not sufficient to pass legislation specializing in sexual assaults.

Lastly, the third argument provided by Congress is flawed in a manner similar to the first. True, there are statistics which show that people who commit sexual assaults

\begin{thebibliography}{99}
\bibitem{191} Id.
\bibitem{192} Id.
\bibitem{193} Id.
\bibitem{194} Id. at 119.
\bibitem{195} Tedeschi, \textit{supra} note 12, at 119.
\bibitem{196} McLaughlin, \textit{supra} note 91, at 14.
\bibitem{197} Tedeschi, \textit{supra} note 12, at 119.
\bibitem{198} See McLaughlin, \textit{supra} note 91, at 14.
\bibitem{199} Tedeschi, \textit{supra} note 12, at 112.
\bibitem{200} Id.
\bibitem{201} Id. at 119-20.
\end{thebibliography}
are recidivists; however, there are other statistics which say that such people are no more likely to repeat their crimes than other people who commit serious crimes, such as murderers or drug distributors.\textsuperscript{202} Recidivism appears to be associated with the general criminal rather than the specific sexual assaulter.\textsuperscript{203}

Overall, the arguments that Congress presented do not support laws which create exceptions for cases involving sexual assaults. Each of the above arguments can be applied to other equally serious crimes. For example, if the admissibility of character evidence is justified in sexual assault cases, why should it not be admissible in murder cases?

3. \textit{Our Legal System Has Established Methods to Accomplish the Same Goal Behind the New Rules Without Allowing Prejudicial Evidence to Be Admitted}

Rule 404(b) permits evidence of "other crimes, wrongs, or acts" to be admitted when used for purposes other than propensity evidence, such as proving a defendant's motive, knowledge, or intent.\textsuperscript{204} However, the list of purposes contained within the rule is not exhaustive.\textsuperscript{205} The list is preceded by the phrase "such as," implying the list is merely an example of purposes for which such evidence may be admitted.\textsuperscript{206} Thus, evidence of prior acts can be admissible for numerous reasons, and a competent prosecutor can often find some purpose to make sure the proposed evidence is admitted.\textsuperscript{207}

As an example, consider the following hypothetical. A criminal defendant is charged with the illegal possession of cocaine. The defendant admits to possessing the contraband, but defends his possession by claiming he did not know that the powder substance was cocaine. However, the prosecution has evidence that six months earlier, the defendant was charged and convicted of possessing cocaine. This evidence of the defendant's prior conduct would not be admissible as

\begin{itemize}
\item \textsuperscript{202} Tedeschi, supra note 12, at 112.
\item \textsuperscript{203} See Beale, supra note 126, at 319.
\item \textsuperscript{204} See supra note 41 and accompanying text.
\item \textsuperscript{205} FED. R. EVID. 404 advisory committee's note.
\item \textsuperscript{206} Id.
\item \textsuperscript{207} Imwinkelried, supra note 69, at 1135.
\end{itemize}
character evidence; the prosecution could not offer the prior conviction to show the defendant has a propensity to possess cocaine. On the other hand, the evidence would be admissible to rebut the defendant's defense of lack of knowledge; the evidence shows the defendant probably did know that he was possessing cocaine because of the experience of his prior conviction. Therefore, the same evidence may be admissible for one purpose and not admissible for another.208

4. The New Rules May Force Judges to Hold Mini-Trials in Determining the Admissibility of Evidence

Considering the way Rules 413, 414, and 415 were drafted, it is unclear whether these new rules are discretionary or mandatory.209 Strong evidence suggests the rules are discretionary, and, therefore, Rule 403 still applies.210 However, the nature of these new rules goes against the original intention of Rule 403, and, thus, the problems of application arise.211

Originally, prior instances of specific conduct, when offered as character evidence, were subject to the Rule 403 balancing test, weighing the probative and prejudicial values.212 Such evidence was deemed to be substantially more prejudicial than probative, and, thus, the general rule of exclusion developed.213 However, Congress now asks judges to not only admit evidence which would have previously been considered prejudicial, but also to use Rule 403 to do so.214 This is very confusing, and yet Congress never provided an explanation as to how this should be done.215

The question then becomes: To what extent does Rule 403 apply to the new rules? It appears that Congress may be suggesting that character evidence is generally admissible unless it is prejudicial in some other manner suggested in Rule 403.216 Specifically, Rule 403 states that evidence may

208. Id. at 1133.
209. See id.
211. See supra notes 32, 77 and accompanying text.
212. See supra notes 32, 41, 50 and accompanying text; see also FED. R. EVID. 404-405 advisory committee's notes.
213. See FED. R. EVID. 404-405 advisory committee's notes.
215. JUDICIAL CONFERENCE REPORT, supra note 101, § III.
216. Id.
be excluded if its admissibility would confuse the jury as to the issue of the case, generally mislead the jury, or cause an undue delay in the trial.\textsuperscript{217}

A closer look at Rule 403 reveals that its applicable limits would still almost always exclude evidence the new rules are intended to admit.\textsuperscript{218} For example, the new rules allow evidence of prior sexual assaults by the accused, regardless of whether the evidence is in the form of a prior conviction, a criminal charge, or just another person claiming the defendant had previously sexually assaulted him or her.\textsuperscript{219} The judge is then required to perform a “new” Rule 403 balancing test, presuming the prior acts will be admissible, but still considering its other possible prejudicial effects.\textsuperscript{220}

According to Rule 403, the judge would begin by considering whether the evidence would have the potential to confuse or mislead the jury as to the issues it is to decide.\textsuperscript{221} By its nature, character evidence focuses the attention of the jurors away from the facts supporting the case before them.\textsuperscript{222} Instead, it directs their attention to events that occurred in a different time and situation.\textsuperscript{223} While such evidence is relevant in establishing the individual’s character, it is not relevant to the factual issues supporting the particular case before the jury.\textsuperscript{224} Therefore, admitting such evidence naturally either: (1) confuses the jury as to the acts for which the defendant is on trial;\textsuperscript{225} or (2) misleads the jury to consider certain factual circumstances that are unrelated to the charge when reaching a verdict.\textsuperscript{226} Unfortunately, due to the legislation’s vagueness, it is difficult to know if Rules 413, 414, and 415 were intended to excuse these types of evidentiary prejudices.\textsuperscript{227}

\begin{itemize}
\item \textsuperscript{217} See supra note 32 and accompanying text.
\item \textsuperscript{218} See supra note 32 and accompanying text; see also Fed. R. Evid. 403 advisory committee’s note.
\item \textsuperscript{219} See supra note 77 and accompanying text; see also Judicial Conference Report, supra note 101, § II.
\item \textsuperscript{220} Id.
\item \textsuperscript{221} Id.
\item \textsuperscript{222} See supra note 32 and accompanying text; see also Fed. R. Evid. 403 advisory committee’s note.
\item \textsuperscript{223} Id.
\item \textsuperscript{224} Id.
\item \textsuperscript{225} Id.
\item \textsuperscript{226} Id.
\item \textsuperscript{227} See Judicial Conference Report, supra note 101, § III.
\end{itemize}
Rule 403 also allows a judge to exclude evidence if its admittance would cause undue delay within trial. As designed, the new rules have the potential to cause great delays. Consider the following example. A male defendant is prosecuted for the rape of a woman. During his trial, the prosecution uses Rule 413 and offers evidence of a prior sexual assault by the defendant. The evidence is used to show the defendant has a propensity to rape. The evidence is in the form of a woman who is willing to testify that two years ago, the defendant raped her. This woman states that she had never reported her rape to anyone, and that this was the first time she was speaking publicly about the incident. As a result, there is no prior charge or conviction of rape against the defendant. The defendant objects, claiming that such an event never happened.

According to Rule 403, the judge now must make a ruling as to the admissibility of this evidence. Before the judge can decide to admit the evidence, he must conclude that there is sufficient evidence for a reasonable jury to find that the rape actually occurred. In order for him to reach such a conclusion, the judge must consider additional evidence; the prosecution offering the prior rape will need to provide sufficient evidence to overcome the defendant’s defense, and in turn, the defendant will likely raise new defenses to this claim. The judge will also be expected to consider whether the circumstances surrounding the two alleged rapes are similar enough to establish a probative relationship. If the witness was going to testify that she was a friend of the defendant when he raped her, and the defendant was charged with raping a stranger, are these two situations similar enough to allow in the evidence? Further, would it make a difference if the defendant had previously been charged and tried for the rape, but was found to be not guilty? What if the witness claims the defendant had raped her, but it occurred twenty years ago?

228. See supra note 32 and accompanying text; see also FED. R. EVID. 403 advisory committee’s note.
229. JUDICIAL CONFERENCE REPORT, supra note 101, § III.
230. See supra note 32 and accompanying text.
231. See FED. R. EVID. 104.
232. See JUDICIAL CONFERENCE REPORT, supra note 101, § III.
233. See FED. R. EVID. 104; See United States v. Roberts, 88 F.3d 872 (10th Cir. 1996).
In order for this new evidence of a prior rape to be admitted, the judge would, in essence, need to conduct a mini-trial to determine its reliability. This would be an extremely time consuming process. A judge could find that admission of this evidence would cause an undue delay in the trial and, therefore, exclude the evidence under Rule 403. However, it is difficult for judges to know what factors they should consider when making these admissibility decisions under the new rules. For example, should the proximity in time of alleged sexual assaults be considered in determining the admissibility of evidence?

Apparently, the proponents of the rule cannot reach an answer to this question. In 1991, Senator Dole stated: "[A] lapse of time from the uncharged offense may properly be considered by the jury for any bearing it may have on the evidence's probative value, but . . . there is no justification for categorically excluding offenses that occurred before some arbitrary specified temporal limit." The statement seems to imply that a judge should not consider proximity in time when determining if a prior sexual assault should be admitted. However, another statement by Senator Dole, two years later, seems to contradict this. In explaining how Rule 403 may still apply to the new rules, Senator Dole stated: "I think if somebody is a repeat offender, if you brought in eight or nine women, for example . . . and he had one offense after another, it would be probative. If it had not happened for ten years, it would probably not have any value." It is the duty of judges to exclude evidence that does not have any value, and, therefore, this statement seems to imply that a judge may consider proximity in time when making admissibility decisions.

234. See Judicial Conference Report, supra note 101, § III.
235. Id.
236. See supra note 32 and accompanying text.
237. See United States v. Roberts, 88 F.3d 872 (10th Cir. 1996).
243. Id.
244. See Fed. R. Evid. 104; see also supra note 32 and accompanying text.
In the end, it becomes clear that Rules 413, 414, and 415 are fundamentally inconsistent with Rule 403. While Congress claims that Rule 403 is still applicable, neither Congress nor the judiciary seem to understand how. Congress, as the creators of the new rules, failed to provide the judiciary with an explanation as to how they intended Rule 403 to apply. This may be because Congress itself is unsure. The result is that the judiciary is expected to apply contrasting rules, and one can reasonably expect that, in doing so, the results would be inconsistent.

V. PROPOSAL

Federal Rules of Evidence 413, 414, and 415 should be drastically amended or repealed. Doing so would rid the federal legal system of three confusing and inconsistent rules. While the political policies motivating the enactment of these rules may have been positive, the manner in which they were enacted and drafted made the attainment of such goals impossible.

The judiciary strongly disapproves of the amendments because of their effect on the established rules of evidence, as well as a defendant’s right to receive a fair trial. As of yet, the judiciary has had very little opportunity to interpret these rules. Currently, Senator Joseph Biden has introduced a bill into Congress which would repeal Rules 413-415 and replace them with an amendment to Rule 404, as suggested by the Judicial Conference. The outcome is yet to be determined.

245. See supra notes 32, 77 and accompanying text.
247. See JUDICIAL CONFERENCE REPORT, supra note 101, § III.
248. See supra note 246.
249. As an example of such an amendment, see JUDICIAL CONFERENCE REPORT, supra note 101, § IV.
250. See discussion supra Part II.A-B.
251. See discussion supra Part IV.A.
252. See discussion supra Part IV.B.
253. McLaughlin, supra note 91, at 11-12.
VI. CONCLUSION

Federal Rules of Evidence 413, 414, and 415 demonstrate the negative implications of Congress creating legislation for political purposes. Such legislation tends to have little substantive foundation, and, in this case, the new rules clearly create more problems than they solve.

With these rules, Congress can now show the public that it has taken steps to get tough on crime. Unfortunately, the public only sees the face of this legislation rather than its impact. With this politically-appealing legislation, Congress has attempted to throw out hundreds of years of common law and replace it with rules that are directly contrary to judicial standards. Thus, the end result is that the judiciary is left to work with two sets of rules that, as drafted, cannot coexist.

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254. See discussion supra Part IV.A.
255. See discussion supra Part IV.A-B.
256. See discussion supra Part IV.A-B.
257. See discussion supra Part IV.B.
258. See discussion supra Part IV.A.