Appendix B

Sec. 8-8. Impeaching and Supporting Credibility of Declarant

When hearsay has been admitted in evidence, the credibility of the declarant may be impeached, and if impeached may be supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement of the declarant made at any time, inconsistent with the declarant's hearsay statement, need not be shown to or the contents of the statement disclosed to the declarant.

COMMENTARY

The weight a fact finder gives a witness' in-court testimony often depends on the witness' credibility. So too can a declarant's credibility affect the weight accorded that declarant's hearsay statement admitted at trial. Consequently, Section 8-8 permits the credibility of a declarant, whose hearsay statement has been admitted in evidence, to be attacked or supported as if the declarant had taken the stand and testified. **[**No Connecticut case law directly supports this rule.**]** See *State* v. *Calabrese*, 279 Conn. 393, 409–10, 902 A.2d 1044 (2006) (evidence tending to show bias, prejudice or interest); *State* v. *Mills*, 80 Conn. App. 662, 667–68, 837 A.2d 808 (2003) (evidence of prior criminal convictions), cert. denied, 268 Conn. 914, 847 A.2d 311 (2004); **[**But see**]** cf. *State* v. *Torres*, 210 Conn. 631, 640, 556 A.2d 1013 (1989) **[**(impeachment of hearsay declarant's probable cause hearing testimony, which was admitted at trial, achieved through introduction of declarant's inconsistent statements)*;*cf.**]**;*State* v. *Onofrio*, 179 Conn. 23, 35, 425 A.2d 560 (1979); *State* v. *Segar*, 96 Conn. 428, 440–43, 114 A. 389 (1921). **[**Nevertheless, given the breadth of hearsay exceptions available to litigants; see Sections 8-3 through 8-6; and the corresponding amount of hearsay evidence ultimately admitted at trial, Section 8-8 is seen as a logical and fair extension of the evidentiary rules governing the impeachment and rehabilitation of in-court witnesses.**]**

Treating the hearsay declarant the same as an in-court witness would seem to pose a problem when impeachment by inconsistent statements is employed. Section 6-10 (b) provides that when examining a witness about a prior inconsistent statement, "the statement should be shown . . . or [its] contents . . . disclosed to the witness at that

time.” [The hearsay declarant often will not be a witness, or at least, on the stand when the hearsay statement is offered and thus s]Showing or disclosing the contents of the inconsistent statement to the declarant will usually be [infeasible, if not] impossible or impracticable because the declarant may not be a witness at trial (or may not be on the witness stand at the time the hearsay statement is offered). [Thus, t]The second sentence in Section 8-8 relieves the examiner from complying with [the common-law rule; see] Section 6-10 (b).[; that gives the court discretion to exclude the inconsistent statement when the examiner fails to lay a foundation by failing to first show the statement or disclose its contents to the witness. E.g., *State* v. *Butler*, 207 Conn. 619, 626, 543 A.2d 270 (1988). The effect is to remove that discretion in the Section 8-8 context.]

By using the terminology “[e]vidence of a statement . . . *made at any time*”; (emphasis added); Section 8-8 recognizes the possibility that impeachment of a hearsay declarant may involve the use of a subsequent inconsistent statement[s—when the] (i.e., an inconsistent statement [is] made after the hearsay declaration statement to be impeached)[—rather than the more common use of prior inconsistent statements]. See generally *State* v. *Torres*, supra, 210 Conn. 635–40 (statements made subsequent to and inconsistent with probable cause hearing testimony, which was admitted at trial, were used to impeach hearsay declarant).