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McCormick: Handbook of the Law of Evidence

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RECENT BOOKS

HANDBOOK OF THE LAW OF EVIDENCE. By *Charles T. McCormick.* St. Paul, Minnesota: West Publishing Company. 1954. Pp. 774. $10.

There has been a real need for an up to date handbook on the law of evidence, and the new publication by Professor Charles T. McCormick as a part of the Hornbook Series of West Publishing Company fills this need exceptionally well. So much has been written in recent years in the merged areas of evidence, trial tactics and the new look in modern trials that it is refreshing to have this book which deals with the basic problems in the law of evidence showing the current movement along with a thorough consideration of existing law. The book is practical, with much of the "know how" embodied in the discussion of evidence problems. It is directed, however, to basic evidence issues with a careful discussion of cases and the development of significant points of the law. It exemplifies the highest qualities of thorough scholarship.

Because of its arrangement the book has the desirable attribute of being easy to use. The text is organized under nine main titles which are in turn subdivided into thirty-seven chapters. The chapters themselves are broken down into sections, there being three hundred and thirty-one in all. This large number of sections aids in the use of the book when the lawyer or student wishes to locate a particular problem. The first of the nine titles, designated as Introduction, treats the problems of preparing and presenting evidence. The remaining titles are: Examination of Witnesses; Admission and Exclusion; Competency; Privilege; Relevancy and Its Counterweights, Time, Prejudice, Confusion and Surprise; Demonstrative Evidence; Writings; and The Hearsay Rule and Its Exceptions. Under these nine titles the whole subject of Evidence is considered including both the common law and statutory developments under the Anglo-American system of law.

In spite of the recent trend toward "How To Do It" books, some containing but little else, it is my belief that the law of evidence requires careful consideration of the history, theory, and principles in order to obtain the knowledge and comprehensive understanding necessary to utilize the law of evidence effectively in the trial of a case. Without an understanding of the history, the principles, and the objectives, the law of evidence is but a hodge-podge of minute rules difficult to apply even though they might be memorized to perfection. There is perhaps no subject in which complete understanding as distinguished from mere learning is more necessary. The comprehension must be so thorough that a spontaneous reaction occurs as the many and changing issues unfold in the course of a trial.

There are few subjects which are richer than the law of evidence in historical background, some of which is favorable toward sustaining and preserving the rules, some of which shows certain rules to be fallacious

and mere creatures of historical accident. The reverential attitude of the profession toward the rules of evidence makes thorough understanding of the development of each of the rules all the more important. Evidence rules have been pretty much deified by the profession. In the over-all praise of the rules of evidence as the guardian of justice and the enemy of caprice, it is quite easy for the bad to be swept up with the good and, even though wrong, they may be regarded as untouchable.

In the formalistic era of the early nineteenth century the rules of evidence developed primarily out of a seventeenth and eighteenth century background and received largely the blessing of perfection. They were more accepted than criticized, and rather than reject a bad rule tremendous efforts seem to have been made to find some good reason to sustain it. With the coming of the twentieth century, however, a more introspective attitude was taken and slowly the light of logic and reason began penetrating the clouds of mistaken concepts. Science is being recognized as an aid to the discovery of truth, and the emphasis upon simplicity in the procedure is beginning to catch on in the area of evidence. The inroad of the administrative process which disregarded many evidential limitations has been an influential factor in a change of attitude about the rules of evidence. It has been a combination of these forces which is producing the forward looking approach to the law of evidence today. Professor McCormick's book is a sound contribution to this approach because of his introspective treatment of the basic rules showing those which are good and why they should be preserved while at the same time showing which rules are fallacious and why they should be changed.

One of the most interesting parts of Professor McCormick's book is chapter 12, dealing with confessions. Much has happened in this area of the law in recent years and many questions have arisen. Are confessions trustworthy? Are the existing safeguards sound? Should there be something more than the common law restrictions on their use? Should a second confession following one induced by illegal methods be admissible? Are confessions obtained prior to arraignment necessarily bad? Should the states follow the federal rule and discipline the enforcement personnel by refusing to admit the confession simply because there was a delay in arraignment? Are confessions to federal officers admissible if made prior to arraignment when arraignment is timely? To what extent under the due process clause will the federal courts disapprove of practices by state courts and hold their admission of confessions to be unconstitutional? Professor McCormick discusses all these problems with a careful analysis of the *McNabb* case and its successors which have created so much confusion in this area of the law. The problem of the balance of interests between, on the one side, the protection of society by the admission of confessions of those who acknowledge their guilt and, on the other side, the protection of the individual against abuse by law enforce-

ment officers and long delays before arraignment is one involving many delicate considerations.

Professor McCormick's careful treatment of this entire matter including the consideration of the effect of the work of the Wickersham Commission in 1931, the different approach to the subject in England and Scotland and the future of confessions as they relate to enforcement personnel is a real contribution to the thinking on this subject and like the rest of the book is presented with a clear-cut analysis of the real problems.

The subjects of presumptions, judicial notice, burden of proof, opinion rule, the hearsay rule with its multifold exceptions, the parol evidence rule and its intricate refinements are all treated with the comprehension and understanding which arises out of a lifetime study of this subject which Professor McCormick has given. Furthermore on almost every area covered in the book he has written one or more articles that have appeared in the various law reviews throughout the country and, while all of the book is new, it does reflect his thinking over many years.

My conclusions in respect to the book are that it is one of the best treatments of the subject in concise form that has been written. It will be valuable to the law student, but would be even more valuable to the practicing lawyer, and ought to be in every law office. It will keep the reader from having the forest obscured because of seeing the trees and at the same time it will show him the trees in spite of a tendency to see only the forest. So often a lawyer may become so tied up with a minute rule that he fails to observe the over-all problem of admissibility. On the other hand, the rules of evidence may not be considered as a generality but ultimately involve a precise and accurate application to a specific problem.

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