

1-1966

Issue Editor's Preface

James E. Allen Jr.

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

James E. Allen Jr., *Issue Editor's Preface*, 18 HASTINGS L.J. 1 (1966).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol18/iss1/1

This Comment is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

Issue Editor's Preface

The field of products liability has attracted much attention in recent years through its rapid development which has witnessed the complete overturn in established concepts. Professor William L. Prosser, who has done much to guide this field of law along its at times explosive path, opens this issue of the *Hastings Law Journal* with "Strict Liability to the Consumer in California." Professor Prosser discusses the California decisions, many of which are the leading cases in the field, and offers predictions as to how the courts will resolve some of the unanswered questions in this fast-moving area of law.

Subsequent articles and student work are devoted to the law of evidence. Professor Francis C. Sullivan traces the case-by-case development of the law of wiretapping and eavesdropping as it affects the investigative methods of law enforcement officers. He finds that the checkered pattern of present law not only produces distasteful results, in that a state court may authorize wiretapping and admit its contents into evidence even though disclosure violates federal law, but it is also inadequate to cope with modern, sophisticated devices for eavesdropping. As a remedy, Professor Sullivan suggests that Congress enact a comprehensive statute, embracing all forms of eavesdropping, which would permit law enforcement officers to undertake eavesdropping after a court order based on probable cause has been secured.

In this century much consideration has been directed toward revision of the law of evidence. The American Law Institute's *Model Code of Evidence* and the *Uniform Rules of Evidence*, promulgated by the National Conference of Commissioners on Uniform State Laws, are two prominent products of this movement for reform. But the new California Evidence Code, operative January 1, 1967, is the most ambitious effort so far. The new Code represents an attempt to establish a comprehensive statutory scheme of evidence—a unique venture in American law, but one which will likely be followed elsewhere.

The Evidence Code was primarily the product of the California Law Revision Commission. Professor John R. McDonough, Commission Chairman at the time the Code was submitted to the state legislature, opens the symposium on the new Code with a précis that those desiring an introductory acquaintance with the Code will find most valuable. Much of the Code, he assures the reader, is simply a restatement of California law as gathered from the various state

codes and case law. However, Professor McDonough does not neglect to describe the basic changes and innovations produced by the Code.

Revision of the California law of evidence has also clarified many areas of the law previously troubled by uncertainty and confusion. Judge Thomas Kongsgaard, in his article on "Judicial Notice and the California Evidence Code," observes that although the Code makes minor changes as to what may be judicially noticed, it clarifies prior law by setting forth a clear and concise procedure for taking judicial notice. Under the Code Judge Kongsgaard expects judges to make more liberal use of judicial notice, but he warns that the attendant advantages of saving time must be balanced against possible harm to the adversary process. Mr. Robert F. Carlson, Assistant Chief Counsel for the California Department of Public Works, provides a detailed analysis of the Evidence Code sections dealing with rules of evidence in eminent domain proceedings. Mr. Carlson finds the Code's treatment of the subject a convenient reference tool in a field that is of vast contemporary importance in California.

In the first student comment, Mr. Terry Ross examines the role of the expert witness in obscenity cases—a role that ought to be broadened, he argues, in order to shed some light into this cloudy field of law. Mr. Thomas Wood, in the second comment, advocates an expanded business records exception to the hearsay rule for accident reports prepared by federal agencies and public carriers. He resolves the apparent conflict with federal statutory provisions excluding these reports from use in civil litigation by recommending that these statutes be repealed.

Three student notes take up the thread of the new Evidence Code with an analysis of particular Code sections. Mr. Carl Leonard examines the apparent gloss of unconstitutionality that *Griffin v. United States* casts on section 413, which provides that the trier of fact may consider a defendant's failure to explain or deny the evidence against him by his testimony. Mr. Leonard offers several interpretations which may save this statute from complete invalidity in criminal cases. Mr. Gale Guthrie's note concerns section 770, which permits admission of extrinsic evidence of a witness' inconsistent statement although a foundation has not been laid. Miss Naomi Litvin offers a prediction on how the California courts will treat a spouse's extrajudicial statement in light of the marital testimonial privilege contained in section 970.

In the concluding note Mr. Peter Laird discusses a problem arising out of recent concern over abuse of the public assistance program. In

an analysis of the investigative procedure of conducting the mass welfare search, particularly the midnight raids of "Operation Weekend," he determines that the fourth amendment rights of welfare recipients are not respected by this means of investigation.

The book review section contains Mr. James B. Little's review of *The Courts, The Public, and The Law Explosion*, a collection of essays edited by Mr. Harry W. Jones, and Professor Don Berger's review of Peter Hay's *Federalism and Supranational Organizations*.

The *Journal* is grateful for the helpful advice of Professors Falknor, Madden, Moreau, Munster, Perkins, Prosser, and Steffen of our faculty, and Mr. John H. DeMouly and Mr. Joseph B. Harvey of the California Law Revision Commission. Certainly any of our mistakes, however, are entirely our own responsibility.

I am personally grateful for the special assistance of Mr. Jerry Duncan and Mr. Lee Mermelstein of the *Journal* Board and Miss Judith Mann, Mr. Gary Snyder, Mr. Allen Cox, and Mr. Kenneth Granberg, *Journal* associate editors.

JAMES E. ALLEN, JR.
Issue Editor

