Vanderbilt Law Review

Volume 5
Issue 3 *Issue 3 - April 1952*

Article 1

4-1952

# A Symposium on Evidence -- Foreward

Orie L. Phillips

VANDERBILT LAW REVIEW

VOLUME 5 APRIL, 1952 NUMBER 3

# A SYMPOSIUM ON EVIDENCE

## FOREWORD

ORIE L. PHILLIPS*

This is the fifth in a series of symposia published by the Vanderbilt Law Review on important legal subjects. This symposium covers a number of selected subjects in the field of Evidence. The privilege accorded me of writing this foreword affords me the opportunity to express my sincere appreciation of this excellent symposium and the confident hope that it will be most helpful to students, judges and practicing lawyers.

The term "Evidence" imports the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.[1] It embraces the rules of law governing the admissibility or rejection of proffered proof and the weight to be given to proof that is admitted. Practical and workable rules of Evidence have an important function in the due administration of justice, both by judicial and administrative tribunals.

The Review has accorded me the privilege in this foreword of discussing individual essays and presenting any personal ideas I desire to in the field of Evidence. I regard it as inappropriate for me to comment individually on these scholarly essays by distinguished writers, and I shall refrain from expressing any personal ideas, other than one concept, which is the outgrowth of my experience of 13 years at the bar and 29 years on the bench, and which, I think, may properly be emphasized. It is that, subject to the limitations imposed by well-settled basic rules of Evidence, a wide discretion should be accorded the trial judge in determining the admissibility of proffered proof. The first consideration ought to be whether the proffered proof, not clearly otherwise inadmissible, will aid the trier of the fact in arriving at the truth with respect to controverted issues of fact. This does not mean that every fact which has a bearing on the factual issues should be open to proof. Undue prolonging of the time of trial and obscuring of the real issues by collateral matters are practical considerations which must be kept in mind.

* Chief Judge, United States Court of Appeals, Tenth Circuit.

1. Bednarik v. Bednarik, 18 N.J. Misc. 633, 16 A.2d 80, 89 (Ch. 1940).

The late Mr. Wigmore, in his excellent treatise on Evidence, in the Preface to the First Edition, said:

> "The rules of Evidence, as recorded in our law, may be said to be essentially rational. . . .
>
> "If we are to save the law for a living future, if it is to remain manageable amidst the spawning mass of rulings and statutes which tend increasingly to clog its simplicity, we must rescue these reasonings from forgetfulness. A main attempt, therefore, in the following pages and in the preparation for them, has been to search out and to emphasize the accepted reasons for each rule. . . .
>
> " . . . Sir James Stephen once laid down this canon: 'A complete account of any branch of the law ought to consist of three parts, corresponding to its past, present, and future condition respectively; these parts are: Its history; A statement of it as an existing system; A critical discussion of its component parts, with a view to its improvement.' That our law of Evidence can be improved upon, no one doubts. That the improvement must be gradual, yet unremitting, is equally certain,—at least if we believe, with Carlyle, that 'all Law is but a tamed Furrow-field, slowly worked out and rendered arable from the waste Jungle.' "[2]

This symposium is a further work in a "Furrow-field" and in my opinion will constitute a worth-while contribution to that gradual improvement in the law of Evidence, and in turn to improvement in the administration of justice; which must be our never ending endeavor.

---

2. 1 WIGMORE, EVIDENCE xiv, xviii (3d ed. 1940).