

10/27/64

Memorandum 64-91

Subject: Study No. 34(L) - Uniform Rules of Evidence (Preprint Senate Bill No. 1 - Division 11. Writings)

We have received no comments on the writings division. A few matters require some attention, however:

§§ 1415-1418. As contained in the Code of Civil Procedure, the existing counterparts of these sections all deal with handwriting. As recodified in the Evidence Code, Sections 1417 and 1418 have been broadened to deal with any writing. From a grammatical standpoint, the word "a" should probably be added before "writing" on lines 45 and 47 of page 67 and on line 1 of page 68. But, if the grammatical change is made, does the section reflect the Commission's intent? The section originally dealt with tangible writings that a trier of fact could readily compare. As revised, the section deals with moving pictures, sound recordings, and any other form of writing described in Section 250. As originally drafted, the section clearly dealt with comparing the physical characteristics of a questioned writing with the physical characteristics of a genuine writing. As revised, it may permit comparisons of rhetoric, punctuation, grammar, style, etc. Should the trier of fact be permitted to make such comparisons?

The Commission may avoid the problems raised in the foregoing paragraph by restoring the word "handwriting" where "writing" now appears on lines 45 and 47 of page 67 and line 1 of page 68. Another way of meeting the problems would be to limit Section 1417 to a comparison of the physical characteristics of the writings or to limit Section 1417 to tangible writings.

The Commission may wish to keep the sections in their broad form in recognition that recent discoveries indicate that authenticity or lack of authenticity can be shown by the frequency of the use of certain articles, by sound frequencies produced by particular voices, etc. We raise the problem, however, to be sure that you are fully aware that Section 1417 permits the trier of fact to make such comparisons without the aid of an expert.

§ 1418. We suggest the addition of "in evidence" following "introduced" in line 51.

§ 1419. We suggest the substitution of "if" for "when" in line 10.

Respectfully submitted,

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