

1/22/64

## First Supplement to Memorandum 64-3

Subject: Study No. 34(L) - Uniform Rules of Evidence (Article I. General Provisions)

In Memorandum 64-3 we stated that we were sending you a tentative recommendation on Article I (General Provisions), but that we had not then made a careful check of the use of the defined terms (Rule 1) in the various URE Rules. We wanted to send you the tentative recommendation well in advance of the meeting so that you would have an opportunity to study it prior to the meeting. We have now made a check of the use of the defined terms in the various Revised URE rules. As a result of this check, we make the following suggestions.

- (1) The introductory clause of Rule 1 should be revised to read:

As used in these rules, unless the context otherwise requires:

We suggest that the phrase "unless the context otherwise requires" be added to the introductory clause because, in some cases, the context of a particular rule makes it clear that the meaning of a word or phrase used in a particular rule is different than its definition in Rule 1. For example, "conduct" is used in Revised Rule 62(1) ("non-verbal conduct") in a more restrictive sense than in Rule 1; "writing" is used in Revised Rule 63(29) to refer to a written document (as distinguished from a tape recording). Other examples could be given.

We see no need to revise rules where the context makes the meaning clear. But, at the same time, we believe that the phrase suggested above is desirable to make clear that in some cases the context requires another meaning to be given to a defined word or phrase.

The addition we suggest is consistent with the standard format for a definition provision that is found in other modern codes. For example, Section 100 of the Vehicle Code (a 1959 statute) provides:

100. Unless the provision or context otherwise requires, these definitions shall govern the construction of this code.

We anticipate that our comprehensive evidence statute would have a section similar to Section 100 of the Vehicle Code. Accordingly, we suggest that Rule 1 be revised to so indicate.

(2) We find that the phrase "relevant evidence" is used only in Rule 7(f). But we also find that the phrase perhaps should be used in other rules. For example, the following is an extract from the Research Study relating to Rule 63(6):

The provisions of Rule 63(6) are applicable to any previous statement by the accused "relative to the offense charged" and offered against him. The expression "relative to the offense charged" is probably intended to have the same meaning as "relevant evidence of the offense charged." "Relevant evidence" is defined in Rule 1(2) as "evidence having any tendency in reason to prove any material fact." The coverage of Rule 63(6) is thus quite broad. All previous statements by the accused are included so long as such statements are relevant evidence (whether strong or weak or comprehensive or fragmentary) and are offered against him. If these conditions are met, neither admissibility nor the procedure for determining admissibility depends on the content of defendant's statement.

Without regard to whether our consultant is correct in his analysis of Rule 63(6), it should be apparent that the definition of "relevant evidence" will provide a helpful definition to use when we review the various revised URE rules and the existing code sections which use or should use the term. After we have examined these provisions in their final form, we can then delete the definition if it is not needed. For the time being, since the definition states existing law, we urge that it be retained.

(3) The substance of the existing California statute defining "proof" should be substituted for URE Rule 1(3). We suggest that proof be defined as follows:

(3) "Proof" is the effect of evidence, that is the establishment of the existence or non-existence of a fact by evidence.

Compare this definition to that found in Code of Civil Procedure Section 1824, which provides:

Proof is the effect of evidence, the establishment of a fact by evidence.

We have examined the various rules where the word "proof" appears: Revised Rules 1(1), 1(8) and 5(1), URE Rule 16, and Revised Rule 63(9)(a)(ii) and 63(9)(b)(ii). We would substitute the word "evidence" for "proof" in Revised Rule 1(8); we believe that "proof" is used in the Section 1824 sense in the other rules listed above. Moreover, retaining the existing statutory definition of proof would be helpful when we add existing statute sections to our comprehensive evidence statute, for we will then be retaining the existing definition that applies to such sections.

Accordingly, the staff suggests that "proof" be defined as set out above.

Respectfully submitted,

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