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BOOKS RECEIVED

Effective Introduction of Evidence in California. Edited by Anne Harris. Berkeley, CA: California Continuing Education of the Bar. 1990. Pp. xx + 614. Hardcover. \$85.00.

Effective Introduction of Evidence in California is intended to provide a quick reference guide and a checklist of information for both civil and criminal litigators in proceedings governed by the California Evidence Code. The book is designed to answer unexpected evidentiary problems that may arise during adversarial proceedings and to assist attorneys preparing for direct examination of witnesses.

The author of the preface states that the book is designed to prepare attorneys for the unexpected and to assist them in their "relentless . . . pursuit of a way to admit evidence that is important to the case." The goal of the book is "to guide attorneys through [witness] preparation . . . so well that once in court they will be able to concentrate on what the witnesses are saying and how they are affecting the trier of fact."

Fifteen contributors have pooled their talent and litigation expertise to provide a concise, readily accessible guide for the attorney preparing a witness or facing a formidable adversary in the courtroom. Richard P. Caputo, past President of the Santa Clara County Trial Lawyers' Association, former member of the Board of Governors of the California Trial Lawyer's Association, and graduate of Santa Clara University School of Law is among the authors. Contributors include Donald D. Howard of McCutchen, Doyle, Brown & Enerson in San Jose, California; David Malnick, who practices in Cupertino, California and is a faculty member of the federal practice program, U.S. District Court, Northern District; and Robert Franklin, who practices with Murray and Murray in Palo Alto, California. Consultants who reviewed the material include two justices of Division Three of the First Appellate District Court of Appeal, four superior court judges, and one retired superior court judge.

The strength of this book lies in its concise format and its easily accessible checklist of requirements, possible objections, sample questions, practice tips, alternative methods of admissibility, and

relevant evidence code sections. The book is a veritable evidence “cookbook” for the litigator. The first seven chapters cover general information such as witness preparation, laying a foundation, and asking questions effectively.

Chapters Eight through Fifty-Three, the heart of the book, are organized alphabetically and clearly tabbed to assist the reader who must access a rule quickly. The book expertly navigates through the shoals of character evidence, hearsay exceptions, felony convictions used to impeach in civil trials, parol evidence, privileges, best evidence, and physical evidence.

The first section of each chapter, set off in a box, briefly summarizes the rule that is the focus of the chapter and cites the relevant section of the evidence code. Below each rule, the requirements are placed on the left side of the page and possible objections that may be made are placed opposite the requirements on the right side of the page.

The next section of each chapter, highlighted in grey, contains sample question segments for different hypothetical cases. Interspersed within the question segments are practice tips that give tactical advice, suggest objections that may be made to practical questions, and provide strategies for countering those objections. Margin notes explain why the questions are appropriate.

A “Comment” section follows the question segment and details procedures relevant to the evidence rule. A “Subpena Necessary Witnesses” section lists the type of witnesses or evidence it may be necessary to subpoena to meet foundational requirements. Each chapter also contains a “Consider Alternative Methods of Admissibility” section that provides a checklist of other avenues for successfully introducing evidence that does not meet the requirements of the evidence rule discussed in that chapter. The last section sets out relevant evidence code sections and provides a cross-reference to other books or treatises on the topic.

The book’s success is due, in large part, to its format. The chapters are short; they vary in length from about three pages to twelve pages. Each section within a chapter is concise. It is not necessary to wade through pages of explanation; the material is pared to the essentials. Bullets, tabs, bold type, and concise checklists make the material easy to access quickly. Sample questions on direct and cross-examination are highlighted. The format is invaluable to the litigator who must quickly reference evidence code sections and rules to support or object to the introduction of evidence. The chapters provide useful checklists of material to elicit from a witness.

The questions offer helpful models of ways to phrase questions and of the order in which to ask them.

The book is not a substitute for a substantive evidence text or a detailed treatise. It is, however, an effective courtroom tool for the litigator.

Prison Population and Criminal Justice Policy in California. By Franklin E. Zimring and Gordon Hawkins. Berkeley, CA: Institute of Governmental Studies Press, 1992. Pp. x + 72. Paperback. \$7.95.

This book is a new study by two University of California, Berkeley law professors who challenge California prison population projections and the need for a multibillion dollar prison-building program. At a time when California is struggling to trim \$10.7 billion from a budget of more than \$50 billion, this book is a timely examination of projected expenditures on prisons. According to the California State Department of Finance, more money is allocated to prison building in California than to education or natural resources and environmental quality. Zimring and Hawkins propose a fundamental restructuring of the prison system; they challenge the assumptions of those whose view is that the way to win the "war on drugs" and achieve law and order is to build more prisons. The book contains a careful balancing of policy considerations and a detailed analytical study of the projections and strategies of the Department of Corrections and of state lawmakers.

In Chapter One, Zimring and Hawkins examine the statistical data on prison growth from the 1950's through the 1990's and compare growth rates to trends in crime and changes in sentencing. They find that it was not until 1981 that jail and prison populations began to increase dramatically. The number of person incarcerated in California grew by 114,000 over the decade of the 1980's and the population in confinement at the end of the decade was about three-and-a-half times as large as the jail and prison total at the beginning of the decade. The authors conclude that "the major explanation of the prison population expansion of the 1980's is a change in [sentencing] policy rather than a change in California's population or in the character of its crime." They also emphasize that the trend towards tougher sentencing policy was not uniformly spread across California counties. During the 1980's, the proportion of convictions leading to prison doubled outside of Los Angeles but more than tripled in Los Angeles.

Zimring and Hawkins claim that parole failures, drug offenders, and nonpersistent property felons have contributed

disproportionately to prison population growth. They suggest methods that might be used to reduce the commitment rate of these three groups without structural change in the criminal justice system. They also outline some changes in the structure of sentencing, release determination, and correctional funding that would further reduce prison population.

In Chapter Two, the authors critique the 1990 report of the Blue Ribbon Commission, an advisory body created by statute in 1987. The aim of the Commission was to determine strategies for dealing with prison overcrowding without reducing public safety. The authors conclude that the report fails to provide any prison population impact estimates for its recommendations and to set any targets or goals. Zimring and Hawkins argue that an acceptable analysis of policy designed to reduce prison crowding should:

1. Focus on those offenses and offenders that have disproportionately contributed to the prison population explosion of the 1980's and early 1990's.
2. Consider a variety of different approaches as alternatives or supplements to be addressed to these targeted offender groups.
3. Speak frankly about the related issues of prison population projections and prison policy.
4. Address rather than avoid the financial and security costs of shifting particular target groups from prison to nonprison environments.

Chapter Three discusses alternative methods for reducing the extent of imprisonment for parole violators, drug offenses, and nonviolent property felons without requiring structural changes in the criminal justice system. The authors suggest three alternatives to prison commitment for drug offenders: "Boot Camps," special facilities for drug treatment in community settings, and imprisonment only for the most serious drug offenses.

The "Boot Camp" is a program, started in 1983 in Oklahoma and Georgia, that is modeled on the military style "boot camp." The correctional boot camp idea is to take young offenders, particularly drug offenders who are not yet either dependent on drugs or confirmed recidivists, and to provide them with a positive character-building experience. The authors admit, however, that programs designed to reduce the number of drug offenders in the prison population are likely to be politically unpalatable. They suggest diversion to community-based treatment programs as an alternative to prison commitment for nonviolent drug dependent property felons.

The authors also propose three alternatives for parole violators:

community-based custodial facilities where parole failures can serve terms; the creation and more extensive use of nonincarcerative parole violation sanctions; and the raising of the recommitment threshold for selected groups of parolees. Given the high rate of drug test failure in the parole population, they argue that community-based drug treatment programs would be one significant alternative to custodial recommitment for tens of thousands of parole violators.

Chapter Four deals with a series of strategies that would require substantial changes in the legal framework of criminal sentencing in California. The authors feel that three of the four mechanisms—sentencing commission, early release, parole release system—would involve the creation of some administrative or executive branch agency of state government with power to set or to modify prison terms. They argue that the fourth mechanism—extension of probation subsidy programs—would produce substantial changes in the role of state government in financing local criminal justice.

Chapter Five deals in detail with forecasts of prison populations in future years. The Blue Ribbon Committee had projected a prison population of 136,000 by 1994 and recommended an immediate 3.5 billion dollar prison-building program. The Department of Corrections in its Fall 1990 *Population Projections 1990 - 1996* predicted that prison population will reach 173,181 by June 30, 1997. A 1991 Department of Finance report suggested a prison population of 224,641 by the year 2000 and urged a prison-building program of \$10.2 billion. According to Zimring and Hawkins, it will take a near-record level of prison admissions throughout the decade to produce a prison population of 100,000. They argue that “any 10-year prison population projection that predicts a level above 120,000 must be based either on assumptions of increasingly strict sentencing practices or on statistically unjustified predictions about changes in crime patterns.”

Zimring and Hawkins have written an important book. This book is primarily aimed at legislators who address prison policy considerations that confront California. However, the book is also of interest to criminal attorneys and academics who wish to see structural changes in the criminal justice system. The authors have demonstrated the fallacy underlying the prison population projections for the 1990's and argue that with rational sentencing practices, California's prison population could even be reduced.

If Zimring and Hawkins are heeded, they could forestall a

wasteful program of prison construction at a time when California struggles with a crippling deficit.