

FIFTH EDITION

**COURTROOM
CRIMINAL
EVIDENCE**

VOLUME 1

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Courtroom Criminal Evidence

Fifth Edition

VOLUME 1

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2011



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Library of Congress Card Number: 98-88607

ISBN:978-1-4224-9849-1

Cite this publication as: [Vol. no.] Giannelli, Gilligan, Imwinkelried, Lederer, Courtroom Criminal Evidence § [sec. no.] (Matthew Bender, Rev. Ed.)

Example: 1 Giannelli, Gilligan, Imwinkelried, Lederer, Courtroom Criminal Evidence § 1.01 (Matthew Bender, Rev. Ed.)

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1987

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MATTHEW  BENDER

DEDICATIONS

Professor Imwinkelried dedicates his work on this project to Cindy, Molly, and Kenny; his parents, Enes and the late John Imwinkelried; and his in-laws, the late Mary Jane Clark and Lyman (Brownie) Clark.

Professor Giannelli dedicates his work on this project to Sue.

Mr. Gilligan dedicates his work on this project to Barbara.

Professor Lederer dedicates his work on this project to Blossom Lederer Cass in deep appreciation and with the greatest admiration, love, and friendship.

ACKNOWLEDGMENTS

Professor Imwinkelried acknowledges the efforts of his research assistants, Ms. Jody Willson, Mr. Lorenzo Formoso, and Ms. Melinda Yaki, and of Ms. Glenda McGlashan, Ms. Lisa Chance, and Ms. Ann Graham of the staff of the University of California, at Davis Law School.

Professor Giannelli acknowledges the efforts of Ms. Eleanore Ettinger of the Case Western Reserve University Law School.

Professor Lederer acknowledges with gratitude the support of the Marshall-Wythe School of Law Annual Fund, which helped make this book possible.

PREFACE: HOW TO USE THIS BOOK

We are writing this preface to define and delimit the purposes of this book. This book is not intended as an exhaustive treatise on evidence law. This is not the text that an attorney should use in drafting a formal memorandum of law for the trial court or a brief for the appellate court. If the issue is a question of common law evidence, we recommend that the research attorney consult J. Wigmore, *Evidence in Trials at Common Law* (11 vols.). When the issue is the interpretation of a Federal Rule of Evidence, we have three recommendations. Weinstein's *Federal Evidence* (2d ed. 1997) (6 vols.) and Mueller & Kirkpatrick, *Federal Evidence* (2d ed. 1994) (5 vols.) contain the best collection of cases construing the Federal Rules. However, 21-31 C. Wright, *Federal Practice and Procedure: Evidence* presents the most perceptive analysis of the issues of statutory construction. If the issue is a question of constitutional evidence, that is, the fourth, fifth and sixth amendment exclusionary rules, we suggest W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (2d ed. 1987) (4 vols.), W. LaFave & J. Israel, *Criminal Procedure* (3 vols.), and C. Whitebread & C. Slobogin, *Criminal Procedure* (3d ed. 1993).

In contrast to those scholarly texts, this book is frankly intended for courtroom use by trial attorneys. In general, this text has two purposes. One is to help the proponent of evidence make arguments and offers of proof precise enough to preserve for appeal any erroneous exclusion of evidence. The second is to aid the opposing attorney in making arguments, objections, and motions to strike specific enough to preserve for appeal any erroneous admission of evidence.

Given the intended use of this text, we have attempted to make this book as compact as possible. We have reduced the number of citations to the bare minimum. Moreover, we have added indices to enable a trial attorney to quickly find the relevant passages in the book. Before attempting to use this book in the courtroom, the reader should browse through the entire text cover to cover. The attorney should carefully read the Introduction which explains the organization of the text. We suggest that the attorney read § 3 of the Introduction twice. Having done so, the attorney should have a good sense of the structure of the text. That sense should permit the attorney to use the indices much more effectively and find the relevant law more readily even under the pressure of the courtroom environment. We have placed a skeleton table of contents on the inside cover of each volume of our book. The attorney should open the book to the inside cover and place the open book on the counsel table.

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