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Foreword

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SPECIAL TOPICS IN THE LAW OF EVIDENCE

Foreword

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Congress enacted the Federal Rules of Evidence in 1975. Since then, thirty-one states have enacted their own codes of evidence substantially based on the federal Rules. The Federal Rules of Evidence are thus clearly the most significant single source of evidence law in the United States. Nonetheless, as with any other comprehensive code, there inevitably are gaps, uncertainties, and equivocal provisions in the structure of the Rules over which litigators argue, judges rule, and about which scholars delight in writing. This collection of Comments on Special Topics in the Law of Evidence explores some of these gaps, uncertainties, and equivocal provisions as they have come to be manifested by the experience of the past thirteen years. This collection has resulted, however, from an unusual process. Rather than give the usual synopsis of the contents of the individual Comments in this Foreword—a task, in any case, adequately fulfilled by the tables of contents that accompany each of the Comments—it appears to me to be more profitable to describe the process and its successes in the hope of encouraging others to pursue similar ventures.

During several years of teaching, lecturing, and writing on the subject of Evidence, I had compiled a list of issues that were of particular interest to me. Each of these issues arose frequently in litigation. They had, nonetheless, either been neglected by the leading treatises in the field, or more commonly, had been given only cursory treatment. The topics spanned the gamuts of complexity, difficulty,

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and size. I had also accumulated some preliminary research on several of the topics. Although I was very interested in each of the topics, there was little chance that my schedule would permit me to pursue this interest to the point of publication in the near future.

Early in 1987, therefore, I approached the *Review* with the following idea: I would guide a select group of the *Review*'s members with research and writing on the Evidence topics that I had gathered, if the *Review* would publish the student Comments as a collection. In addition, I would give the students the preliminary research that I had collected on the topics. I believed that the advantages of such a process for the *Review* and its members were significant. There was, at the outset, a considerable assurance of the utility of the topics, because this factor was the basis of their selection. In addition, the students would eliminate the time usually spent in developing an adequate research topic; they would be able to work closely with a professor for an entire academic year; they would get up to speed much faster than if they were to be proceeding on their own; and they would be assured of continued guidance throughout their research and writing of the Comments. It was hoped that these special factors would also enhance the quality of the Comments.

The *Review* accepted my offer, and the end product—the Comments in this collection—amply justifies the faith that we placed in each other. The process worked very smoothly. The *Review* invited some of its members to write on the Evidence topics in fulfillment of its membership writing requirement, instead of writing casenotes, as is common. Nine student writers chose eight topics, two working together on one of the topics. I supervised the writers on a weekly basis through their research and writing. The student authors and I focused upon the substantive content of the Comments, and the *Review* undertook responsibility for language, style, and technical editing.

Collectively, we hope that this process has produced a work that the reader will appreciate. We also hope that others will consider adopting this process.