Evidence - Hearsay Statement in the Nature of a Declaration Against a Penal Interest Admissible in Evidence Even Though the Unavailability of the Dedarant Is Not Established. People v. Spriggs (Cal. 1964)

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Spriggs and a companion, Mrs. Roland, were arrested for posses-sion of narcotics. Mrs. Roland made a statement to the arresting officer that the narcotics belonged to her. Spriggs alone was tried. During cross-examination by defense counsel, the arresting officer was asked to relate the substance of his conversation with Mrs. Roland at the time of the arrest. The prosecutor's objection to this question was sustained on grounds of hearsay and immateriality. Spriggs' subsequent conviction was reversed on appeal. The Su-preme Court of California held that the testimony should have been admitted as a declaration against penal interest and that the failure to show the unavailability of the declarant was not a bar to admission. People v. Spriggs, 60 Cal. 2d 868, 389 P.2d 377, 36 Cal. Rptr. 841 (1964).

Declarations against the proprietary and pecuniary interests of the declarant are well established exceptions to the rule prohibiting the admission of hearsay evidence,¹ and are recognized by statute in California.² However, declarations against penal interest have not enjoyed the same degree of acceptance.³ The usual reason advanced for barring the admission of declarations against penal interest is that the introduction of such statement into evidence would create a possibility of the inclusion of fabricated testimony.⁴ Numerous arguments have been offered in various dissenting opinions which favor the admission of this class of declaration as an exception to the hearsay rule. Justice Holmes, dissenting in Donnelly v. United States,⁵ said, "[N]o other statement is so much against interest as a confession of murder; it is far more calculated to convince than dying declarations, which would be let in to hang a man . . . ."⁶

Spriggs specifically overruled previous California decisions⁷ which had excluded hearsay declarations against penal interests. In justify-

1 Bowen v. Chase, 98 U.S. 254 (1879); Wallace v. Oswald, 57 Cal. App. 333, 207 Pac. 51 (1922); see generally, 5 WIGMORE, EVIDENCE §§ 1455-77 (3d ed. 1940).
2 CAL. CODE CIV. PROC. §§ 1853, 1870, 1946.
3 Donnelly v. United States, 228 U.S. 243 (1913); People v. Hall, 94 Cal. 595, 30 Pac. 7 (1892); Sussex Peerage Case, 11 Clark & F. 85, 8 Eng. Rep. 1034 (H.L. 1844).
4 E.g., Lyon v. State, 22 Ga. 399, 401 (1857). For Wigmore's comment on this case see 5 WIGMORE, op. cit. supra, note 1, § 1447 n.2.
5 228 U.S. at 277.
7 E.g., People v. Hall, 94 Cal. 595, 30 Pac. 7 (1892).
ing the court's action in creating new exceptions in an area of the law seemingly pre-empted by statute, Justice (now Chief Justice) Traynor said that admissible hearsay is not limited to the types enumerated by the statutes. Justice Traynor was of the opinion that the courts consider the statutory provisions as foundations upon which to build the law of evidence, and, therefore, they may expand those statutory rules. Since declarations against penal interest are not expressly excluded by statute, the Spriggs decision does not contravene the statutes, but, rather, represents an addition to a long list of court-made rules of evidence.

The Spriggs court stated that declarations against penal interest are no less trustworthy than those against proprietary or pecuniary interests. As early as 1955 there were indications that this viewpoint would eventually be enshrined as law in California. In People v. One 1948 Chevrolet the court said that an individual's interest in avoiding criminal liability gives reasonable assurance of the veracity of statements made contrary to that interest.

Traditionally courts and writers have stated that four facts must be established as a prerequisite to the admission of a declaration against interest: (1) the unavailability of the declarant; (2) that the declaration, when made, was contrary to the declarant's apparent pecuniary or proprietary interest; (3) that the declarant had knowledge of the facts with which the declaration is concerned; (4) the improbability of a motive to falsify. It is obvious that factors (2), (3) and (4) deal with circumstances prevailing at the time when the declaration was uttered, and permit its admission, if under those circumstances the declaration is shown to be trustworthy. Theoretically, the most trustworthy testimony is that which has survived the fiery crucibles of cross-examination and the observation of the witness' demeanor in court. The objection to the admission of hearsay is based upon the fact that such statements are not subject

8 60 Cal. 2d at 873, 389 P.2d at 380, 36 Cal. Rptr. at 844. 60 Cal. 2d at 873, 389 P.2d at 380, 36 Cal. Rptr. at 844. It should be noted that Professor Wigmore would do away with all codification of evidentiary rules as being, "... obstructive or confusing rather than helpful; for they ... merely restate, in a form too concise to be useful, the established common-law rule ... ."

9 Id. at 873, 389 P.2d at 380, 36 Cal. Rptr. at 844. 60 Cal. 2d at 874, 389 P.2d at 381, 36 Cal. Rptr. at 845.

10 45 Cal. 2d 613, 290 P.2d 538 (1955).

11 Id. at 622, 290 P.2d at 544. At least one court seems to have intimated that declarations against social interest are admissible. State v. Alcorn, 7 Idaho 559, 64 Pac. 1014 (1904); see also, Modern Code of Evidence rule 509 (1942); Uniform Rules of Evidence 63 (10) (1953).


to these traditional tests. For the courts to accept an extra-judicial and hence a theoretically less trustworthy statement, some necessity should exist. A majority of the cases have held that the unavailability of the declarant (regardless of the cause) creates that necessity. It would seem, however, that the true criterion for admissibility should be trustworthiness; not an artificial technicality dependent upon conditions existing at the time of trial.

The requirement that the declarant be dead originated in England. Many writers have denounced the strict requirement of death and assert that 'unavailability' should include other situations. Judicial liberalizations of the doctrine have encompassed declarants who are absent for the jurisdiction, insane, or who refuse to testify on grounds of self-incrimination.

It is recognized that some hearsay statements should be admitted into evidence since the benefit of various classes of otherwise credible testimony would be lost entirely unless they are accepted untested by cross-examination. That credible evidence may be lost should be sufficient necessity for admission into evidence if, indeed, necessity must be shown. The requirement of unavailability, to which a majority of the courts stringently adhere, serves no purpose in many instances other than to preclude the introduction of otherwise trustworthy evidence. There seems to be no logical justification for continuing to automatically impose it. It is submitted that the sole criterion for the admission of hearsay declarations should be the trustworthiness of the statement at the time it is uttered. If such were the universal rule, declarations against interest would be admissible regardless of the availability of the witness, as well they should, since such declarations are normally trustworthy because very few individuals will concede the existence of facts which will cause them substantial personal harm.

The Spriggs court eliminated the unavailability of the declarant as a condition precedent to the admission of declarations against

17 5 Wigmore, op. cit. supra, note 1, § 1456; Morgan, Declarations Against Interest, in SELECTED WRITINGS ON THE LAW OF EVIDENCE AND TRIAL 820 (Fryer ed. 1958).
20 Sutter v. Easterly, 354 Mo. 282, 189 S.W.2d (1945).
21 5 Wigmore, op. cit. supra, note 1, §§ 1420, 1421.
23 Morgan, supra note 17, at 820.
penal interest. In *Spriggs* the actual unavailability of the witness need not have been proven in order to admit Mrs. Roland's statement into evidence. This issue could have been disposed of within the framework of the contemporary law. As the court itself pointed out, if called as a witness Mrs. Roland could have refused to testify as to her ownership of the narcotics by invoking the privilege against self-incrimination. Since for that reason it might very well have been futile to call her as a witness, the court could have found that she was effectively unavailable. But the court chose not to follow that course, and by stating that Mrs. Roland's availability could not be a bar to the admission of the statement, the court has deleted the requirement of unavailability as a prerequisite to the admission into evidence of declarations against penal interests.

The question remains, however, whether the requirement of unavailability is now abrogated as to other declarations against interest; *i.e.*, those against propriety and pecuniary interests. The court's language seems to be equally applicable to any statement against the interest of the declarant:

> If she was available, however, the credibility of her extrajudicial statements would not be lessened by that fact. . . . Thus, in the event of a retrial, defense counsel should be allowed to ask . . . the question objected to, whether or not the unavailability of Mrs. Roland is established.

It should be kept in mind, however, that a declaration against a penal interest involves elements of self-incrimination and the privilege of the witness to refuse to testify. Constructive unavailability will normally be present in situations involving a penal declaration and therefore *Spriggs* logically breaks with the past. It is submitted that the court, when the opportunity presents itself, should clarify the requirements of unavailability in all situations involving declarations against interest. Such a clarification in the *Spriggs* case would have been dictum, but dictum is often the basis of enforceable, recognizable rules of law. Although *Spriggs* has failed to clarify this area of the evidentiary rules, the decision represents a logical progression in the law of evidence.

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24 60 Cal. 2d at 876, 398 P.2d at 382, 36 Cal. Rptr. at 846.
25 Sutter v. Easterly, 354 Mo. 282, 189 S.W.2d 284 (1945).
26 60 Cal. 2d at 875, n.3, 398 P.2d at 381, n.3, 36 Cal. Rptr. at 845, n.3.
27 Id. at 875, 398 P.2d at 381, 36 Cal. Rptr. at 845.