

# 63

5/29/67

First Supplement to Memorandum 67-29

Subject: Study 63 - Evidence Code

Attached as Exhibit I are two recent California Supreme Court decisions: People v. Ing, 65 Adv. Cal. 650 (January 1967), and People v. Perez, 65 Adv. Cal. 662 (January 1967).

These two cases indicate that under some circumstances the defendant in a criminal case can waive his privilege against self-incrimination by taking the stand and making a denial of the offense actually charged, without referring to other offenses evidence of which was offered to show a general scheme or plan or without referring to other offenses charged. An instruction or comment permitting the jury to draw an inference unfavorable to the defendant from his failure to deny or explain any matters (i.e., the offenses showing general scheme or plan or the other offenses charged) within his knowledge did not violate his federal or state constitutional privilege against self-incrimination under the circumstances of the two cases.

These cases indicate that it would be undesirable to attempt to codify the developing law in this area by revising Evidence Code Sections 412 and 413.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary