

#63

7/11/68

Memorandum 68-70

Subject: Study 63 - Evidence Code (Evidence Code Section 1235)

Attached is a copy of People v. Johnson, 68 A.C. 674 (May 1968).

One of the statutory duties of the Commission is to report to the Legislature on statutes held unconstitutional by the California Supreme Court. We suggest that the following statement concerning the Johnson case be included in the next annual report:

In People v. Johnson,<sup>1</sup> the Supreme Court of California held Evidence Code Section 1235, which provides a hearsay exception for prior inconsistent statements of a witness, violates the Sixth Amendment's guarantee of the right of confrontation when the prior inconsistent statement is sought to be used as substantive evidence against the defendant in a criminal prosecution. Since Evidence Code Section 1204<sup>2</sup> specifically recognizes that the hearsay exceptions provided in the code are subject to any restrictions on the admission of evidence imposed by the state and federal constitutions, the Commission has concluded that no revision is needed in the Evidence Code to reflect the decision in the Johnson case.

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1. 68 A.C. 674 (1968).

2. Section 1204 provided:

A statement that is otherwise admissible as hearsay evidence is inadmissible against the defendant in a criminal action if the statement was made, either by the defendant or by another, under such circumstances that it is inadmissible against the defendant under the Constitution of the United States or the State of California.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary