

*CRIMINAL EVIDENCE: ADMISSION BY SILENCE  
WHILE UNDER ARREST.*

The Courts have gone far, perhaps too far, in protecting the defendant against being compelled to disclose his guilt out of Court. A confession is often excluded on technical grounds having little bearing on the probable truth of the confession. On the other hand, in the actual administration of the law, third-degree methods are pursued daily in violation of law and nothing is done about it. The decision in *People v. Graney* will tend in California to make a grilling examination by the police a preliminary of every trial. It is a well-established rule of evidence that anything a party says may be used against him, and an equally well-established extension that the silence of a party under circumstances where it would be natural for him to speak may also be used against him. Is it natural for a person under arrest to speak? The danger of such an inference is apparent, and accordingly many Courts have excluded the evidence entirely.

The California Courts have adopted no rigid exclusionary rule, but have taken into consideration the peculiar circumstances of each case to determine whether silence was evidence of guilt. The decisions shew careful discrimination. In the principal case, however, the defendants were brought together in the office of the sheriff after their arrest. One of them, Curry, confessed, incriminating himself and the others. The defendant interposed on a question addressed to Curry and said: "Our counsel gave us orders not to talk about the case until we were taken into Court." The defendant was later asked if there was anything in Curry's statement which he wanted to correct or add to and he replied, "No." The Court admitted the entire proceedings. It would certainly seem from these facts that whether or not the defendant was telling the truth about having received legal advice he was at least aware of his privilege of remaining silent and intended to exercise it. Under such circumstances no inference should be drawn against him.

As a result of this decision, a full and complete recital of the evidence from the point of view of the prosecution will be made to the defendant in every case. The advantage to the prose-