

Preface

The genesis of this book was the recognition that the practicing lawyer's library lacked a comprehensive guide to the application of the Fifth Amendment privilege against self-incrimination. This work is designed to fill that void and to become a basic research tool to aid lawyers in thinking about and applying the Fifth Amendment privilege in various contexts and proceedings.

This third edition not only updates the second edition with more recent court decisions but also expands the prior discussion on certain topics in order to elucidate, or in some instances question, a trend or a decision. These topics include the continuing effects of *Chavez v. Martinez* regarding the meaning of the Self-Incrimination Clause, the application of the privilege to the compelled access to encrypted communications, and the continued erosion of the "privilege of silence" that forms the title to this book. Additionally, this third edition highlights decisions by state courts, particularly where they differ from federal court rulings, in order to help readers understand the ambiguity or uncertainty in the law. It also expands the brief history of the Fifth Amendment privilege against compelled self-incrimination and the discussion of its future, especially with regard to brain imaging and other technologies that may extract incriminating information without compelling human expression.

Paul Hynes, who was my co-author for the second edition, was unable to assist with the third edition, but will hopefully return for the fourth. I received significant research help and diligent cite checking from our firm's paralegal and legal research analyst Melissa Lovell and careful editing from our firm's staff attorney Nina Falvello. As in previous writings, I received significant general aid from my assistant Melissa Smith, who often worked on the book after business hours, on her otherwise

free time. My law firm deserves acknowledgment for allowing these otherwise busy professionals to help me. My partner David Reiser gave me helpful comments and constructive criticism, as did my friend Andy Good. I have corrected mistakes made in prior editions and tried to improve the presentation. As was the case with the prior editions, errors either in the legal analysis or the editing remain mine, and mine alone, and I encourage readers to bring them to my attention.