

2 California Evidence (5th), Witnesses

I. ATTENDANCE AND COMPENSATION

A. [§1] Who May Compel Attendance.

B. When Witnesses Must Attend.

1. Civil Cases.

- (a) [§2] Witness Residing in County.
- (b) [§3] Witness Residing Outside County.
- (c) [§4] Law Enforcement Officers.
- (d) [§5] Other State Employees and Trial Court Employees.

2. Criminal Cases.

- (a) [§6] Defendant's Constitutional Right.
- (b) [§7] Territorial Limitations on Compulsory Attendance.
- (c) [§8] Undertaking To Appear.
- (d) Out-of-State Witnesses: Uniform Act.
 - (1) [§9] Nature of Act.
 - (2) [§10] Certificate as Prima Facie Evidence.
 - (3) [§11] Limitation of Cumulative Evidence.
 - (4) [§12] No Attorneys' Fees for Successful Resistance.

3. [§13] Prisoners.

C. [§14] Protection Against Reprisal.

D. Compensation of Ordinary Witnesses.

- 1. [§15] In General.
- 2. [§16] Fees and Mileage in Civil Cases.
- 3. [§17] Fees and Mileage in Criminal Cases.
- 4. [§18] Grand Jury, Coroner's Jury, and Juvenile Court.
- 5. [§19] Payment of Extra Compensation.

E. [§20] Compensation of In-Custody Informants.

F. Attendance and Compensation of Experts.

- 1. Right to Reasonable and Customary Compensation.
 - (a) [§21] Former Rule Denying Extra Compensation.
 - (b) [§22] Abrogation of Rule.
- 2. [§23] Right to Agreed Compensation.

G. Procedure.

1. Subpena.

- (a) [§24] Nature and Form.
- (b) [§25] Issuance.
- (c) Service.
 - (1) [§26] In General.
 - (2) [§27] Special Rules.
- (d) Contempt for Failure To Obey.
 - (1) [§28] In General.
 - (2) [§29] Refusal To Answer Proper Questions.
 - (3) [§30] Case No Longer Pending.
- (e) Other Penalties for Failure To Obey.
 - (1) [§31] Arrest.

- (2) [§32] Statutory Penalty and Damages.
- (f) [§33] Special Agreement To Appear.
- (g) [§34] Quashing Subpena.
- 2. [§35] Compelled Testimony Without Subpena.
- 3. [§36] Notice to Attorney for Party Witness.

II. COMPETENCY OF WITNESSES

A. Abolished Grounds of Disqualification.

- 1. Common Law Grounds.
 - (a) [§37] General Rule.
 - (b) [§38] Exceptions and Distinctions.
- 2. Dead Man Statute.
 - (a) [§39] Nature of Former Rule.
 - (b) [§40] Repeal of Statute.

B. Remaining Grounds of Disqualification.

- 1. Capacity To Understand and Express.
 - (a) [§41] In General.
 - (b) Children.
 - (1) [§42] Former Law: Age 10 Distinction.
 - (2) [§43] Abrogation of Age Distinction.
 - (3) [§44] Medical Records of Child Witness.
 - (c) [§45] Insane Persons.
- 2. Personal Knowledge.
 - (a) [§46] In General.
 - (b) [§47] Hearsay Rule Distinguished.
- 3. [§48] Examination, Determination, and Review.

C. Presiding Judge.

- 1. Disqualification by Objection.
 - (a) [§49] Nature of Problem.
 - (b) [§50] Uniform Rule and Evidence Code.
 - (c) [§51] Testimony in Subsequent Proceeding.
- 2. [§52] Procedure Where No Objection.

D. [§53] Juror.

E. Attorney.

- 1. Civil Cases.
 - (a) [§54] Attorney as Witness for Client.
 - (b) [§55] Opposing Attorney Called as Witness.
- 2. Criminal Cases.
 - (a) [§56] Prosecutor as Witness.
 - (b) [§57] Defense Counsel as Witness for Defendant.
 - (c) [§58] Defense Counsel Called by Prosecution.

III. PRIVILEGE: IN GENERAL

A. [§59] Nature of Rules of Privilege.

B. Privileges Are Statutory.

- 1. [§60] General Rule.
- 2. Illustrations.
 - (a) [§61] General Duty To Testify.

- (b) [§62] Nonstatutory Privileges Rejected.
 - (c) [§63] Distinction: Consular Privilege Under Treaty.
- 3. [§64] Nonstatutory Exceptions to Privilege Rejected.
- C. [§65] Scope and Construction of Division 8.**
- D. [§66] Eavesdroppers and Other Interceptors.**
- E. Waiver by Disclosure or Consent.**
 - 1. [§67] In General.
 - 2. Advance Waiver by Contract.
 - (a) [§68] Insurance Contracts.
 - (b) [§69] Other Contracts.
 - 3. Failure To Claim Privilege.
 - (a) [§70] What Constitutes Waiver.
 - (b) Conduct Not Amounting to Waiver.
 - (1) [§71] Nonparty Client's Failure To Appear.
 - (2) [§72] Disclosure of Subject Matter.
 - (3) [§73] Designation of Party as Expert Witness.
 - (4) [§74] Issuance of Subpena.
 - 4. [§75] Presence of Third Parties.
 - 5. Voluntary Disclosure to Third Person.
 - (a) [§76] In General.
 - (b) [§77] Distinctions.
 - 6. [§78] Refreshing Recollection With Communication.
 - 7. [§79] Attorney's Knowledge of Facts.
 - 8. [§80] Attorney's Investigation Used as Defense in Discrimination Case.
 - 9. [§81] Other Illustrations.
 - 10. Exceptions to Waiver Rule.
 - (a) [§82] Where Privilege Is Joint.
 - (b) [§83] Where Disclosure Itself Is Privileged.
 - (c) Necessary Confidential Disclosure.
 - (1) [§84] Nature of Exception.
 - (2) [§85] Clarifications and Distinctions.
 - (d) [§86] Disclosure in Course of Federal Investigation.
- F. Claim and Determination of Privilege.**
 - 1. Presumption of Confidentiality.
 - (a) [§87] In General.
 - (b) [§88] Necessity of Preliminary Proof That Privilege Exists.
 - 2. Disclosure to Court.
 - (a) [§89] General Rule: No Compelled Disclosure.
 - (b) Exceptions: Required Disclosure to Judge.
 - (1) [§90] Statutory Basis.
 - (2) [§91] Constitutional Basis.
 - (3) [§92] Basis in Federal Common Law.
 - (c) [§93] Judge's Discretion To Deny In Camera Hearing.
 - 3. [§94] Exclusion by Presiding Officer.
 - 4. Effect of Overruling Claim.
 - (a) [§95] Claim Overruled in Present Proceeding.

(b) [§96] Claim Overruled in Prior Proceeding.

G. No Comment or Inference.

1. [§97] Former Law.
2. [§98] Evidence Code.
3. [§99] Illustrations.

IV. LAWYER-CLIENT PRIVILEGE

A. General Principles.

1. [§100] Nature of Privilege.
2. [§101] Liberal or Strict Construction.
3. [§102] Communications by Prisoners.

B. Lawyer Licensed or Believed Licensed.

1. [§103] General Requirement.
2. [§104] Exception: Client's Reasonable Belief.
3. [§105] Exception: Representative in AFDC Hearing.

C. Holder of the Privilege.

1. Client.
 - (a) [§106] Privilege Belongs to Client.
 - (b) [§107] Who Is Client in General.
 - (c) [§108] Corporation as Client.
2. [§109] Representative.
3. [§110] Successor.

D. Communication.

1. [§111] Information or Advice.
2. [§112] Information Acquired Through Communication.
3. Distinction: Knowledge Without Communication.
 - (a) [§113] In General.
 - (b) [§114] Identity of Client.
 - (c) [§115] Knowledge of Client's Agent.

E. In Course of Relationship.

1. Professional Consultation.
 - (a) [§116] In General.
 - (b) [§117] Statement of Indigency to Public Defender.
 - (c) [§118] Termination or Continuation of Relationship.
2. Nonprofessional Employment or Consultation.
 - (a) [§119] In General.
 - (b) [§120] Client's Denial of Consultation.
 - (c) [§121] Attorney's Refusal To Represent Client.

F. Confidential Disclosure.

1. [§122] General Requirement.
2. [§123] Requirement Excused.
3. [§124] Presence of Third Persons.
4. Communication to Lawyer's Agent.
 - (a) [§125] In General.
 - (b) [§126] Guardian Ad Litem as Agent.
5. Communication by Client's Agent.
 - (a) [§127] Agent of Natural Person.

- (b) Employee of Corporation or Public Entity.
 - (1) [§128] In General.
 - (2) [§129] Control Group Test Repudiated.
 - (3) [§130] Communications Not Involving Attorneys.
- (c) [§131] Agent Who Is Also Party.
- 6. Writings Transmitted to Attorney.
 - (a) [§132] Existing Papers Are Not Privileged.
 - (b) Reports Prepared for Litigation.
 - (1) [§133] Nature of Problem.
 - (2) [§134] Governing Law: Dominant Purpose Test.
 - (3) [§135] Report Must Emanate From Client.
 - (4) Where Corporation or Similar Entity Is Client.
 - (aa) [§136] Chadbourne Criteria.
 - (bb) [§137] Illustrations: Report Privileged.
 - (cc) [§138] Illustrations: Report Not Privileged.
 - (c) [§139] Distinction: Photograph or Film.
 - (d) [§140] Distinction: Expert Opinion.
- 7. Attorney's Work Product.
 - (a) Federal Hickman Rule.
 - (1) [§141] Statement of Rule.
 - (2) [§142] Scope of Rule.
 - (b) [§143] California Cases Before 1963 Statute.
 - (c) [§144] Statutory Work Product Rule.
 - (d) Scope and Application of Rule.
 - (1) [§145] In General.
 - (2) [§146] Attorney Is Holder of Privilege.
 - (3) [§147] Crime-Fraud Exception Inapplicable.
 - (4) [§148] Work Product After Delivery to Client.
 - (5) [§149] Opinion of Expert Consultant.
 - (6) Identity of Lay Witnesses.
 - (aa) [§150] Conditional Protection.
 - (bb) [§151] Distinction: Disclosure of Witness Lists at Pretrial Conference.
 - (7) [§152] Writings of Lawyer-Negotiator.
 - (8) [§152A] (New) Witness Statements Obtained by Attorney or Attorney's Agent.
 - (e) [§153] Inapplicability of Rule.
 - (f) [§154] Waiver of Work Product Privilege.
- 8. Waiver of Attorney-Client Privilege.
 - (a) [§155] Implied and Express Waiver.
 - (b) [§156] Information and Advice From Attorney.

G. Exceptions to the Privilege.

- 1. Contemplated Crime or Fraud.
 - (a) Scope of Exception.
 - (1) [§157] Nature of Exception.
 - (2) [§158] Evidence Code.

- (3) [§159] Physical Evidence of Completed Crime.
- (4) [§160] Fraud in Defending Insurance Bad Faith Action.
- (b) Procedure.
 - (1) [§161] Foundation.
 - (2) [§162] Where Evidence Is Seized Pursuant to Warrant.
 - (3) [§163] Federal Common Law.
- 2. [§164] Parties Claiming Through Deceased Client.
- 3. Breach of Duty.
 - (a) [§165] In General.
 - (b) [§166] Challenge of Competency of Counsel.
- 4. [§167] Lawyer as Attesting Witness.
- 5. [§168] Deceased Client's Dispositive Instrument.
- 6. Joint Clients.
 - (a) [§169] General Rule for Civil Proceeding.
 - (b) Action by Insured Against Insurer.
 - (1) [§170] In General.
 - (2) [§171] Exception Not Applicable.
 - (c) [§172] Distinction: No Waiver in Criminal Case.

IV-A. (NEW) LAWYER REFERRAL SERVICE-CLIENT PRIVILEGE

A. [§172A] (New) Nature of Privilege.

B. [§172B] (New) Communications Not Privileged.

V. HUSBAND-WIFE PRIVILEGE

A. Privilege Not To Testify Against Spouse.

- 1. [§173] In General.
- 2. [§174] Federal Rule: Hawkins and Trammel.
- 3. Condition: Valid Marriage.
 - (a) [§175] General Rule on Void Marriage.
 - (b) [§176] Dissolution or Annulment.
 - (c) [§177] Nonmarital Relationship.
- 4. Scope.
 - (a) [§178] Witness Spouse Alone Is Privileged.
 - (b) [§179] Privilege Not To Be Called.
 - (c) [§180] Witness Must Testify for Spouse.
- 5. Exceptions to the Privilege.
 - (a) [§181] In General.
 - (b) Civil Proceedings.
 - (1) [§182] Proceeding Between Spouses.
 - (2) [§183] Commitment and Competency Proceedings.
 - (3) [§184] Proceedings by Former Spouse, Other Parent, or Guardian.
 - (c) Criminal Proceedings.
 - (1) [§185] In General.
 - (2) [§186] Crime Against Other Spouse, Child, Parent, Relative, or Cohabitant.
 - (3) [§187] Crime Incidentally Committed Against Third Person.
 - (d) [§188] Proceedings Arising From Premarital Criminal Acts.

6. Waiver by Testimony or Interest.
 - (a) [§189] Testimony by Spouse.
 - (b) Direct Interest in Proceeding.
 - (1) [§190] In General.
 - (2) [§191] "Immediate Benefit."

B. Privilege for Confidential Marital Communications.

1. [§192] Nature and Distinctions.
2. Scope.
 - (a) [§193] Both Spouses May Claim.
 - (b) [§194] During Marriage and Afterwards.
 - (c) [§195] Communication.
 - (d) Confidential Disclosure.
 - (1) [§196] Statutory Requirement.
 - (2) [§197] Loss of Confidentiality.
3. Exceptions to the Privilege.
 - (a) [§198] Civil Proceedings.
 - (b) [§199] Criminal Proceedings.
 - (c) [§200] Other Exceptions.

VI. PHYSICIAN-PATIENT PRIVILEGE

A. General Principles.

1. [§201] Nature of Privilege.
2. [§202] Strict or Liberal Construction.

B. [§203] Physician Licensed or Believed Licensed.

C. Holder of the Privilege.

1. [§204] Patient, Representative, or Successor.
2. [§205] Third-Party Recipient of Communication.

D. Confidential Communication.

1. [§206] In Course of Relationship.
2. Confidential Information.
 - (a) [§207] Information Transmitted or Obtained.
 - (b) [§208] Confidential Disclosure.

E. Exceptions to the Privilege.

1. Patient-Litigant.
 - (a) [§209] Issue Tendered by Patient.
 - (b) [§210] Issue Tendered by Others.
2. [§211] Criminal, Disciplinary, and Competency Proceedings.
3. [§212] Contemplated or Committed Crime or Tort.
4. Damage Action: Good Cause for Disclosure.
 - (a) [§213] In General.
 - (b) [§214] Illustrations.
5. [§215] Other Exceptions.

VII. PSYCHOTHERAPIST-PATIENT PRIVILEGE

A. Nature of Privilege.

1. [§216] Former Law and Criticism.
2. Evidence Code Restatement.
 - (a) [§217] In General.

(b) [§218] Criminal Proceedings.

(c) [§219] No Exception for Lanterman-Petris-Short Act Records.

B. [§220] Definition of Psychotherapist.

C. [§221] Definition of Patient.

D. [§222] Holder.

E. Confidential Communication.

1. [§223] In General.

2. [§224] Communication by Parent of Patient.

3. Identity of Patient Privileged.

(a) [§225] In General.

(b) [§226] Distinction: Where Need for Disclosure Is Great.

F. Exceptions to the Privilege.

1. [§227] Those Similar to Physician-Patient Exceptions.

2. Partial Waiver Through Litigation.

(a) [§228] In General.

(b) [§229] Distinction: Disclosures in Prior Unrelated Proceeding.

3. [§230] Insanity Defense in Criminal Action.

4. Dangerous Patient.

(a) [§231] Nature of Exception.

(b) [§232] Balancing Test: Tarasoff Case.

(c) [§233] Other Illustrations.

(d) [§234] In Camera Inspection.

(e) [§235] Statutory Authority and Duty.

5. Psychotherapist Appointed by Court or Prison Board.

(a) [§236] Scope of Exception.

(b) [§237] Where Criminal Defendant Requests Appointment.

(c) [§238] Where Prosecution Requests Appointment.

6. [§239] Report of Child Abuse or Neglect.

7. [§240] Criminal Defendant's Confrontation Rights.

8. [§241] Coroner's Inquiry Into Decedent's Death.

G. [§242] Overlapping of Privileges.

VIII. CLERGY-PENITENT PRIVILEGE

A. [§243] Nature of Privilege.

B. [§244] Privileges of Penitent and Clergy Member.

C. [§245] Communications Not Privileged.

IX. SEXUAL ASSAULT VICTIM-COUNSELOR PRIVILEGE

A. [§246] Nature of Privilege.

B. [§247] Procedure for Disclosure.

X. DOMESTIC VIOLENCE VICTIM-COUNSELOR PRIVILEGE

A. [§248] Nature of Privilege.

B. [§249] Procedure for Disclosure.

XI. HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE

A. [§250] Nature of Privilege.

B. [§251] Procedure for Disclosure.

XII. OFFICIAL INFORMATION PRIVILEGE: IN GENERAL

A. Nature and Purpose of Privilege.

1. [§252] State Secrets.
2. [§253] Official Information.
3. [§254] Absolute and Conditional Privilege.

B. [§255] Claim and Waiver.

C. Determination and Sanction.

1. Civil Case: Disclosure to Judge.
 - (a) [§256] General Rule: Showing of Necessity Is Required.
 - (b) [§257] Procedure.
 - (c) [§258] No Dismissal of Action.
2. Criminal Case: Dismissal or Adverse Finding.
 - (a) [§259] General Rule.
 - (b) [§260] Illustrations.
 - (c) [§261] Balancing Process.

D. Privilege for Taxpayer's Statements and Returns.

1. Privileged Matters.
 - (a) [§262] Original Statements and Returns.
 - (b) [§263] Copies of Tax Returns.
 - (c) [§264] Information From Tax Consultants.
2. Exceptions.
 - (a) [§265] In General.
 - (b) [§266] Family Law Proceedings.
 - (c) [§267] IRS Examination of Accountant's Audit.
 - (d) [§268] Punitive Damages Claim.
3. [§269] Waiver.

E. Privilege for Confidential Business Information.

1. [§270] In General.
2. [§271] Waiver by Reporting Party.

F. Privilege for Criminal History Records and Related Matters.

1. [§272] In General.
2. [§273] Statements in Connection With Deferred Entry of Judgment or Pretrial Diversion.
3. [§274] Minor's Criminal or Juvenile Court Records.
4. [§275] Statements to Police About Alleged Rape.
5. [§276] Surveillance Location Privilege.

G. [§277] Confidential Records of Licensing Board.

H. [§278] Confidential Records of State Bar.

I. Confidential Records of Social Service and General Assistance Programs.

1. [§279] Privileged Matters.
2. [§280] Clarifications and Distinctions.

J. Confidentiality of Compulsory Vehicle Accident Reports.

1. [§281] Confidential Matters.
2. [§282] Exceptions and Distinctions.
3. [§283] Reports and Data Generated.
4. [§284] Discovery by Criminal Defendant.

K. [§285] Confidentiality of Administrative Proceeding Against Driver's License.

L. Disclosure of Records of Auxiliary Organizations and Campus Foundations of State Community Colleges and Universities.

1. [§286] Nature and Purpose of Act.
2. [§287] Right To Inspect and Copy.
3. [§288] Proceedings To Enforce Rights.
4. [§289] Exemptions.

M. [§290] Federal Freedom of Information Act.

XIII. OFFICIAL INFORMATION PRIVILEGE: CALIFORNIA PUBLIC RECORDS ACT

A. [§291] Nature and Purpose of Act.

B. [§292] Scope: Agencies and Officials Covered.

C. Scope: Records Covered.

1. [§293] In General.
2. [§294] Court Clerk's Rough Minutes.
3. [§295] Records of State Board of Equalization.
4. [§296] Miscellaneous Records.
5. [§296A] (New) Common Law Right of Access to State Bar Admissions Database.

D. Right To Inspect and Copy.

1. [§297] In General.
2. [§298] Inspection by Specific Persons or Entities.
3. [§299] Inspection of Hazardous Waste Records.

E. Proceedings To Enforce Rights.

1. [§300] Nature of Proceedings.
2. [§301] Costs, Attorneys' Fees, and Appeal.
3. [§302] Distinction: No Action by Governmental Entity.
4. [§302A] (New) Reverse-CPRA Action.

F. Exemptions.

1. [§303] In General.
2. [§304] Records Pertaining to Pending Litigation.
3. [§305] Personnel and Medical Records.
4. Records of Intelligence Information.
 - (a) [§306] General Rule of Nondisclosure.
 - (b) [§307] Clarifications and Distinctions.
 - (c) Exceptions.
 - (1) [§308] Specific Information to Specified Persons.
 - (2) [§309] Specific Information to All Persons.
 - (3) [§310] Specific Information for Specified Purposes.
5. [§311] Records Exempted by Federal or State Law.
6. Public Interest Exemption.
 - (a) [§312] In General.
 - (b) [§313] Exemption Not Applicable.
 - (c) [§314] Executive or Deliberative Process Privilege.
7. [§315] Miscellaneous Exemptions.
8. [§316] Records Not Covered by Exemptions.

G. [§317] In Camera Examination.

H. [§318] Agency's Voluntary Disclosure.

I. [§319] Waiver of Exemptions.

XIV. PRIVILEGE FOR ELECTED OFFICIALS AND THEIR AIDES

A. [§320] President of United States.

B. [§321] Members of Congress and Aides.

C. [§322] State and Local Officials.

XV. PRIVILEGE FOR IDENTITY OF INFORMER

A. [§323] Nature of Privilege.

B. Scope and Conditions.

1. [§324] In General.

2. [§325] Official Information Privilege Distinguished.

C. [§326] Weighing Public Interest Against Necessity for Disclosure.

D. Exceptions Necessary for Fair Trial.

1. [§327] Nature of Exceptions.

2. [§328] Participating Informer.

3. Nonparticipating Material Witness.

(a) Who Is Material Witness.

(1) [§329] In General.

(2) [§330] Illustrations.

(b) [§331] Disclosure at Trial.

(c) [§332] Disclosure at Preliminary Hearing.

(d) [§333] Disclosure in Probation Revocation Hearing.

4. [§334] Informer Relied on for Arrest.

5. Procedure in Raising and Determining Issue.

(a) [§335] Defendant's Request and Prosecution's Response.

(b) Hearing To Determine Issue.

(1) [§336] Outside Jury's Presence.

(2) [§337] In Camera Hearing.

(3) [§338] Test for Judge's Determination.

(c) [§339] Duty of Judge To Hold Hearing.

(d) [§340] Change of Circumstances After Denial.

E. Where Disclosure Is Not Required.

1. Search Under Search Warrant.

(a) [§341] Judicial Rule of Nondisclosure.

(b) [§342] Codification of Rule.

2. [§343] Reasonable Cause To Arrest.

3. [§344] Reasonable Cause Shown Without Informer.

F. [§345] Disclosure Withheld Until Informer Is Unavailable.

G. Duty To Locate Informer.

1. [§346] Eleazer Rule of Good Faith.

2. [§347] Effect of Reversal of Conviction.

3. [§348] Distinction: Anonymous Informant.

XVI. NEWSPERSON'S SHIELD LAW

A. [§349] Origin of Immunity.

B. Nature and Scope of Immunity.

1. [§350] Persons Protected.

2. Matter Procured for Publication.
 - (a) [§351] Statutory Provisions.
 - (b) [§352] Undisseminated Source Materials.
 - (c) [§353] Nonconfidential Information.
3. Immunity.
 - (a) [§354] Protection From Contempt.
 - (b) [§355] No Writ Review Before Contempt Judgment.
 - (c) [§356] Sanctions Other Than Contempt.

C. Limitations on Immunity.

1. [§357] In General.
2. [§358] Refusal To Testify.
3. Judicial Control of Court Proceedings.
 - (a) [§359] Rule Prior to Constitutional Immunity Provision.
 - (b) [§360] Effect of Constitutional Immunity Provision.

D. Constitutional Qualified Privilege.

1. [§361] First Amendment Basis.
2. [§362] Balancing Test for Civil Cases.
3. Balancing Test for Criminal Cases.
 - (a) [§363] Disclosure Demanded by Defendant.
 - (b) [§364] Disclosure Demanded by Prosecution.

E. [§365] In Camera Review.

XVII. [§366] VOTER'S PRIVILEGE

XVIII. TRADE SECRET PRIVILEGE

A. [§367] Nature and Purpose.

B. Procedure.

1. [§368] In General.
2. [§369] Protective Order.
3. [§370] Exclusion of Public in Criminal Proceeding.
4. [§371] Request To Seal Articles.

XIX. PRIVILEGE AGAINST SELF-INCRIMINATION

A. General Principles.

1. Constitutional Basis.
 - (a) [§372] United States and California Constitutions.
 - (b) [§373] United States Constitution Applies to States.
 - (c) [§374] Evidence Code.
2. [§375] Policy of the Privileges.
3. [§376] Remedies for Denial.
4. Effects of Claim.
 - (a) [§377] In General.
 - (b) Claim by Public Officer or Employee.
 - (1) [§378] Federal Cases.
 - (2) [§379] California Cases.
 - (c) [§380] Claim by Attorney.
 - (d) [§381] Claim by Corporation Officer.

B. Privilege of Accused (Defendant in Criminal Case).

1. General Principles.

- (a) [§382] Nature of Privilege.
- (b) [§383] Improper Procedural Restrictions.
- 2. What Is Criminal Case Against Accused.
 - (a) [§384] Criminal and Quasi-Criminal Proceedings.
 - (b) Noncriminal Judicial Proceedings.
 - (1) [§385] In General.
 - (2) [§386] Juvenile Court Hearings.
 - (3) [§387] Fitness Hearings.
- 3. Nonjudicial Proceedings.
 - (a) [§388] Grand Jury or Legislative Investigations.
 - (b) [§389] Administrative Disciplinary Proceedings.
 - (c) Required Registration.
 - (1) [§390] Gambling Activity.
 - (2) [§391] Registration of Firearms.
 - (3) [§392] Registration of Membership in Subversive Organization.
 - (4) [§393] Regulated Occupations.
 - (5) [§394] Registration of Gang Membership.
 - (d) Required Disclosure of Identity.
 - (1) [§395] Driver's Identity and Involvement in Accident.
 - (2) [§396] Loiterer's Identity.
 - (e) [§397] False Statements in Required Reports.
 - (f) Probation Revocation Hearings.
 - (1) [§398] Limited Exclusionary Rule.
 - (2) [§399] Rule Survives Proposition 8.
 - (g) [§400] Psychiatric Examinations on Competency.
 - (h) [§401] Psychiatric Examination on Insanity.
- 4. [§402] Evidence Without Testimony or Compulsion.
- 5. Compulsion Without Testimony.
 - (a) [§403] General Rule: No Violation of Privilege.
 - (b) [§404] Compelled Production of Child.
 - (c) Handwriting Exemplars.
 - (1) [§405] Legally Procured Exemplar.
 - (2) [§406] Procurement After Illegal Arrest.
 - (d) Voice Identification.
 - (1) [§407] No Violation of Privilege.
 - (2) [§408] Warning and Precautions.
 - (e) [§409] Violation of Miranda Rule.
- 6. Lineup.
 - (a) Wade-Gilbert Rule: Counsel's Presence Is Required.
 - (1) [§410] Statement of Rule.
 - (2) [§411] Appointed Counsel Is Sufficient.
 - (3) [§412] When Counsel Should Be Present.
 - (4) [§413] Waiver of Lineup Right to Counsel.
 - (5) [§414] Procedure for Objection to Lineup.
 - (b) [§415] Preaccusatory Lineup.

- (c) Due Process in Lineup.
 - (1) [§416] Unfair Lineup.
 - (2) Properly Conducted Lineup.
 - (aa) [§417] In General.
 - (bb) [§418] Defendant's Suggestive Conduct.
- (d) Defendant's Right to Lineup.
 - (1) [§419] In General.
 - (2) [§420] Right to Restricted Lineup.
 - (3) [§421] Sanctions for Witness's Failure To Attend Lineup.
- 7. Other Identification Methods.
 - (a) [§422] In-the-Field Identification.
 - (b) In-Custody Identification.
 - (1) [§423] Proper Method.
 - (2) [§424] Improper Where No Compelling Reason.
 - (c) [§425] Independent Origin of In-Court Identification.
 - (d) Pretrial Photographic Identification.
 - (1) [§426] General Rule: Substantial Likelihood of Misidentification.
 - (2) [§427] Illustrations.
 - (3) [§428] Simulated Lineup.
 - (4) Individual Photographs.
 - (aa) [§429] In General.
 - (bb) [§430] Clarifications and Distinctions.
- 8. Evidence Obtained by Brutality.
 - (a) [§431] Rochin Rule: Violation of Due Process.
 - (b) [§432] Brutal Body Examination.
 - (c) [§433] Other Evidence Brutally Obtained.
 - (d) Proper Procedures.
 - (1) [§434] General Rule: Reasonable Body Examination.
 - (2) [§435] Preventing Defendant From Swallowing Evidence.
 - (3) [§436] Procedure Used To Safeguard Defendant's Health.
 - (4) [§437] Search of Prison Inmate.
 - (e) Distinction: Surgery To Remove Physical Evidence.
 - (1) [§438] Operation Performed on Victim.
 - (2) [§439] Operation Performed on Accused.
- 9. Tests for Intoxication.
 - (a) Blood Test.
 - (1) [§440] Early Decisions.
 - (2) [§441] Schmerber Test: Medical Procedure Reasonably Performed.
 - (3) [§442] Former Requirement of Lawful Arrest.
 - (4) [§443] Abrogation of Lawful Arrest Requirement.
 - (b) [§444] Other Tests.
- 10. [§445] Compulsory Driver's Test (Implied Consent Law).
- 11. Waiver of Privilege by Testifying.
 - (a) [§446] In General.

- (b) [§447] Self-Represented Defendant.
- (c) Exceptions.
 - (1) [§448] Testimony in Prior Proceeding.
 - (2) [§449] Testimony on Motion To Suppress.
 - (3) [§450] Psychiatric Testimony on Competence.

12. No Comment or Inference.

- (a) [§451] Former Law Permitting Comment.
- (b) [§452] Griffin Rule: Comment Prohibited.
- (c) Application of Griffin Rule.
 - (1) [§453] Prosecutor's Comments.
 - (2) [§454] Jury Instructions.
 - (3) [§455] Violation Following Defendant's Limited Testimony.
 - (4) [§456] Comment by Codefendant's Counsel.
 - (5) [§457] Where Privilege Is Waived.
- (d) Instructions on Griffin Rule.
 - (1) [§458] Defendant Not Testifying.
 - (2) [§459] Defendant Testifying.
- (e) [§460] Comments Not Violative of Rule.
- (f) Effect of Griffin Error.
 - (1) [§461] Harmless and Reversible Error.
 - (2) [§462] Invited Error.

13. [§463] No Proof of Prior Claim.

14. [§464] Grant of Use Immunity Constitutionally Compelled.

C. Privilege of Witness in Any Proceeding.

1. General Principles.

- (a) Proceeding and Witness.
 - (1) [§465] Any Proceeding.
 - (2) [§466] Witness Alone Is Privileged.
 - (3) When Privilege Should Be Claimed.
 - (aa) [§467] Early Rule: In Jury's Presence.
 - (bb) [§468] Current Rule: Before Witness Takes Stand.
 - (4) [§469] Claim by Civil Defendant.
- (b) Business Records of Corporation or Association.
 - (1) [§470] Corporation.
 - (2) [§471] Association or Partnership.
- (c) Officer of Corporation or Association.
 - (1) Officer in Representative Capacity.
 - (aa) [§472] General Rule: No Privilege.
 - (bb) [§473] Illustrations.
 - (2) [§474] Distinction: Officer's Personal Privilege.
- (d) Required Records and Reports.
 - (1) [§475] General Rule: No Privilege.
 - (2) [§476] Distinction: Gambling Registration.
- (e) Personal Records.
 - (1) [§477] Tax Records.
 - (2) [§478] Other Records Disclosing Criminal Acts.

- (3) Bank Records.
 - (aa) [§479] Federal Bank Secrecy Act.
 - (bb) [§480] California Right to Financial Privacy Act.
- 2. What Constitutes Incriminating Evidence.
 - (a) [§481] Federal Standards Control.
 - (b) [§482] Threat of Criminal or Quasi-Criminal Penalty.
 - (c) [§483] Direct and Indirect Incrimination.
 - (d) Reasonable Danger of Incrimination.
 - (1) [§484] Former Conservative Rule.
 - (2) [§485] Modern View: Federal Cases.
 - (3) [§486] Modern View: California Cases.
- 3. Determination of Incriminating Character.
 - (a) [§487] Burden of Proof.
 - (b) [§488] Test.
- 4. Possibility of Prosecution.
 - (a) [§489] Prosecution Barred.
 - (b) [§490] Liability to Prosecution in Other Jurisdiction.
- 5. Immunity of Witness.
 - (a) [§491] Nature of Immunity Statutes.
 - (b) Statutory Authority.
 - (1) [§492] In General.
 - (2) [§493] Judicial Use Immunity.
 - (c) [§494] Standing To Challenge Grant of Immunity.
 - (d) Immunity in Civil Actions.
 - (1) [§495] In General: Proceeding by People.
 - (2) [§496] Action by Private Litigant.
 - (3) [§497] Improper Grant to Some Defendants.
 - (e) Immunity Coextensive With Privilege.
 - (1) [§498] In General: Counselman Rule.
 - (2) [§499] Use Immunity Sufficient.
 - (3) [§500] Transactional Immunity.
 - (4) [§501] Immunity Following Guilty Plea.
 - (5) [§502] Immunity Following Trial on Merits.
 - (f) Federal Statutes.
 - (1) [§503] Former Statutes.
 - (2) [§504] Immunity of Witnesses Act.
 - (g) [§505] Specific California Statutes.
 - (h) General California Statute.
 - (1) [§506] Nature and Scope.
 - (2) [§507] Claim of Privilege.
 - (3) Procedure To Compel Testimony.
 - (aa) [§508] Statutory Authority.
 - (bb) [§509] Effect of Noncompliance.
 - (4) [§510] Transactional or Use Immunity.
 - (5) [§511] No Immunity From Perjury or Contempt.
 - (6) [§512] Limited Grant of Immunity.

- (7) [§513] Conditional Immunity to Accomplish.
- (i) Agreement for Immunity.
 - (1) [§514] In General.
 - (2) [§515] Misdemeanor Proceeding.
- 6. Waiver of Privilege.
 - (a) [§516] Waiver Before Trial.
 - (b) Waiver at Trial or Hearing.
 - (1) [§517] Testifying Without Objection.
 - (2) [§518] Partial Disclosure.
 - (3) [§519] Privilege in Later Proceeding.
 - (c) [§520] Failure To Object to Interrogatories.
 - (d) [§521] Claim and Waiver at Legislative Investigation.

XX. SPECIAL PRIVACY STATUTES

A. Records of Medical Committees.

- 1. [§522] Medical or Medical-Dental Staff Committee.
- 2. [§523] Medical or Psychiatric Quality Assurance Committee.
- 3. Medical Evaluation or Review Committee.
 - (a) Nature and Scope of Protection.
 - (1) [§524] In General.
 - (2) [§525] Hospital Staff Privileges.
 - (3) [§526] Multidisciplinary Infection Control Committee.
 - (4) [§527] Hospital Employee's Action for Damages.
 - (b) Exceptions.
 - (1) [§528] Statutory List.
 - (2) [§529] No Effect on Immunity From Disclosure in Malpractice Cases.
 - (3) [§530] Applicability to Criminal Proceedings.
 - (c) Distinctions.
 - (1) [§531] Hospital Administration Files.
 - (2) [§532] Voluntary Testimony.
 - (3) [§533] Administrative Subpena.
- 4. [§534] Nonprofit Medical Care Foundation.
- 5. [§535] Mental Health Quality Assurance Committee.
- 6. [§536] Committee Reviewing Specialty Health Services.

B. Confidentiality of Medical Information Act.

- 1. [§537] Confidentiality Requirements.
- 2. [§538] Authorization To Use or Disclose Information.
- 3. Illustrations.
 - (a) [§539] Authorization for Disclosure Required.
 - (b) [§540] Authorization for Disclosure Not Required.

C. [§541] Insurance Information and Privacy Protection Act.

D. Tests and Research on AIDS.

- 1. [§542] Confidentiality Requirements.
- 2. Exceptions.
 - (a) [§543] Reporting Requirements.
 - (b) [§544] Disclosure to Correctional Facility Personnel.

(c) [§545] Disclosure of Research Records.

(d) [§546] Disclosure of Public Health Records.

(e) [§547] Other Exceptions.

E. [§548] Identity, Address, and Phone Number.

F. [§549] Miscellaneous Statutes.