unwarranted governmental intrusion.[183] To protect these interests and to preserve these values, the privilege "is not to be interpreted literally." Rather, the "sole concern [of the privilege] is, as its name indicates, with the danger to a witness forced to give testimony leading to the infliction of penalties affixed to the criminal acts."[184] Furthermore, "[t]he privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute . . . ."[185]

The privilege against self incrimination parries the general obligation to provide testimony under oath when called upon, but it also applies in police interrogations. In all cases, the privilege must be supported by a reasonable fear that a response will be incriminatory. The issue is a matter of law for a court to determine,[186] and therefore, with limited exception, one must claim the privilege to benefit from it.[187] Otherwise, silence in the face of questioning may be insufficient because it may not afford an adequate opportunity either to test whether information withheld falls within the privilege or to cure a violation through a grant of immunity.[188] A witness who fails to explicitly claim the privilege when an affirmative

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[183] "[T]he basic purposes that lie behind the privilege against self-incrimination do not relate to protecting the innocent from conviction, but rather to preserving the integrity of a judicial system in which even the guilty are not to be convicted unless the prosecution 'shoulder the entire load.' . . . "

"The basic purpose of a trial is the determination of truth, and it is self-evident that to deny a lawyer's help through the technical intricacies of a criminal trial or to deny a full opportunity to appeal a conviction because the accused is poor is to impede that purpose and to infect a criminal proceeding with the clear danger of convicting the innocent. . . . By contrast, the Fifth Amendment's privilege against self-incrimination is not an adjunct to the ascertainment of truth. That privilege, like the guarantees of the Fourth Amendment, stands as a protection of quite different constitutional values—values reflecting the concern of our society for the right of each individual to be let alone." Tehan v. United States ex rel. Shott, 382 U.S. 406, 415, 416 (1966). See also Miranda v. Arizona, 384 U.S. 436, 460 (1966); Schmerber v. California, 384 U.S. 757, 760–765 (1966); California v. Byers, 402 U.S. 424, 448–58 (1971) (Justice Harlan concurring). For a critical view of the privilege, *see* Friendly, *The Fifth Amendment Tomorrow: The Case for Constitutional Change*, 37 U. CIN. L. REV. 671 (1968).

[184] Ullmann v. United States, 350 U.S. 422, 438–39 (1956).

[185] Hoffman v. United States, 341 U.S. 479, 486 (1951). *See also* Emspak v. United States, 349 U.S. 190 (1955); Blau v. United States, 340 U.S. 159 (1950); Blau v. United States, 340 U.S. 332 (1951).

[186] *E.g.*, Mason v. United States, 244 U.S. 362 (1917).

[187] The primary exceptions are for a criminal defendant not taking the stand and a suspect in inherently coercive circumstances (*e.g.*, custodial interrogation). *See* Salinas v. Texas, 570 U.S. ___, No. 12–246, slip op. at 4–6 (2013).

[188] 570 U.S. ___, No. 12–246, slip op. (2013). During noncustodial questioning about a double murder, Salinas freely answered all questions other than one about whether his shotgun would match shells recovered at the murder scene. He fell silent on this inquiry, but did not assert the privilege against self-incrimination. At closing argument at Salinas's murder trial, the prosecutor argued that this silence