



## The Florida Bar News

# Letters

### The Fifth Amendment

As I write this letter, tomorrow is November 2, election day. I don't know who the winner in the governor's race will be, so this is not "sour grapes" from me.

I can no longer stand by silently while the U.S. Constitution, particularly the Fifth Amendment, is vilified.

As a lawyer, I took an oath to support the Constitution. I cannot support the Constitution without defending it.

During her campaign for governor, Alex Sink ran television ads featuring prosecutors and law enforcement officers who criticized Rick Scott for invoking his constitutional rights as guaranteed to him by the Fifth Amendment. Ms. Sink's television ads implied that Mr. Scott was guilty of a crime because he invoked the Fifth Amendment. While Mr. Scott, his company, or both of them may have resolved the charges against them with an agreement to pay large fines, and they may have some culpability or even be guilty of the crimes for which they are accused, it is unfair, misleading, and unjust to infer guilt to Mr. Scott, or anyone one else, for invoking their constitutional rights under the Fifth Amendment.

When our forefathers wrote the Bill of Rights, they did not include the Fifth Amendment as a sanctuary for the guilty. This precious right, purchased with the blood of our ancestors, was put into the Bill of Rights as a shield for citizens against the tremendous power of government. Our forefathers realized that when a citizen is accused of a crime that power is focused upon one individual who stands to lose his liberty, his property, and, in some circumstances, even his life. This power is awesome and frightening. Nothing is a match for it, not even great wealth.

Our courts have long recognized the legitimacy of the Fifth Amendment. The Supreme Court stated it clearly in the case of *Ullman v. United States*: "Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege. Such a view does scant honor to the patriots who sponsored the Bill of Rights as a condition to acceptance of the Constitution by the ratifying states. The founders of the nation were not naive or disregarding of the interests of justice."

Our forefathers did not exclude anyone, whether rich or poor, from the protections of the Fifth Amendment.

Our forefathers also knew that governments were run by human beings. As such, the power of government was susceptible to misuse by those whose self-interest or personal agendas would motivate them to do so. We need look no further back in history than the McCarthy era to remind us of this danger.

There is no substitute for liberty. Our constitutional rights are the fortress of our liberty. If we stand by silently while they are assaulted, that fortress may fall. I, for one, cannot be silent.

**Carlton 'Duke' Fagan**  
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