existence, custody, or authenticity of the documents, then the privilege is implicated.[202] Application of these principles resulted in a holding that the Independent Counsel could not base a prosecution on incriminating evidence identified and produced as the result of compliance with a broad subpoena for all information relating to the individual's income, employment, and professional relationships.[203]

The protection is against "compulsory" incrimination, and traditionally the Court has treated within the clause only those compulsions which arise from legally enforceable obligations, culminating in imprisonment for refusal to testify or to produce documents.[204] The compulsion need not be imprisonment, but can also be termination of public employment[205] or disbarment of a lawyer[206] as a legal consequence of a refusal to make incriminating admissions. The degree of coercion may also prove decisive, the Court having ruled that moving a prisoner from a medium security unit to a maximum security unit was insufficient to compel him to incriminate himself in spite of the attendant loss of privileges and the harsher living conditions.[207] However, al-

---

[202] In United States v. Doe, 465 U.S. 605 (1984), the Court distinguished *Fisher*, upholding lower courts' findings that the act of producing tax records implicates the privilege because it would compel admission that the records exist, that they were in the taxpayer's possession, and that they are authentic. Similarly, a juvenile court's order to produce a child implicates the privilege, because the act of compliance "would amount to testimony regarding [the subject's] control over and possession of [the child]." Baltimore Dep't of Social Services v. Bouknight, 493 U.S. 549, 555 (1990).

[203] United States v. Hubbell, 530 U.S. 27 (2000).

[204] *E.g.*, Marchetti v. United States, 390 U.S. 39 (1968) (criminal penalties attached to failure to register and make incriminating admissions); Malloy v. Hogan, 378 U.S. 1 (1964) (contempt citation on refusal to testify). *See also* South Dakota v. Neville, 459 U.S. 553 (1983) (no compulsion in introducing evidence of suspect's refusal to submit to blood alcohol test, since state could have forced suspect to take test and need not have offered him a choice); Selective Service System v. Minnesota PIRG, 468 U.S. 841 (1984) (no coercion in requirement that applicants for federal financial assistance for higher education reveal whether they have registered for draft).

[205] Garrity v. New Jersey, 385 U.S. 493 (1967); Gardner v. Broderick, 392 U.S. 273 (1968); Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation, 392 U.S. 280 (1968). *See also* Lefkowitz v. Turley, 414 U.S. 70 (1973), holding unconstitutional state statutes requiring the disqualification for five years of contractors doing business with the state if at any time they refused to waive immunity and answer questions respecting their transactions with the state. The state may require employees or contractors to respond to inquiries, but only if it offers them immunity sufficient to supplant the privilege against self-incrimination. *See also* Lefkowitz v. Cunningham, 431 U.S. 801 (1977).

[206] Spevack v. Klein, 385 U.S. 511 (1967).

[207] McKune v. Lile, 536 U.S. 24 (2002). The transfer was mandated for refusal to participate in a sexual abuse treatment program that required revelation of sexual history and admission of responsibility. The plurality declared that rehabilitation programs are permissible if the adverse consequences for non-participation are "related to the program objectives and do not constitute atypical and significant hard-