ration. Thus, a corporation cannot object on self-incrimination grounds to a subpoena of its records and books or to the compelled testimony of those corporate agents who have been given personal immunity from criminal prosecution.[193] Nor may a corporate official with custody of corporate documents that incriminate him personally resist their compelled production on the assertion of his personal privilege.[194]

A witness has traditionally been able to claim the privilege in any proceeding whatsoever in which testimony is legally required when his answer might be used against him in that proceeding or in a future criminal proceeding or when it might be exploited to uncover other evidence against him.[195] Incrimination is not complete once guilt has been adjudicated, and hence the privilege may be asserted during the sentencing phase of trial.[196] Conversely, there is no valid claim on the ground that the information sought can be used in proceedings which are not criminal in nature,[197] and there

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[193] United States v. White, 322 U.S. 694, 701 (1944); Baltimore & Ohio R.R. v. ICC, 221 U.S. 612 (1911); Hale v. Henkel, 201 U.S. 43, 69–70, 74–75 (1906).

[194] United States v. White, 322 U.S. 694, 699–700 (1944); Wilson v. United States, 221 U.S. 361, 384–385 (1911). But the government may make no evidentiary use of the act of production in proceeding individually against the corporate custodian. Braswell v. United States, 487 U.S. 99 (1988). *Cf.* George Campbell Painting Corp. v. Reid, 392 U.S. 286 (1968); United States v. Rylander, 460 U.S. 752 (1983) (witness who had failed to appeal production order and thus had burden in contempt proceeding to show inability to then produce records could not rely on privilege to shift this evidentiary burden).

[195] Thus, not only may a defendant or a witness in a criminal trial, including a juvenile proceeding, *In re* Gault, 387 U.S. 1, 42–57 (1967), claim the privilege but so may a party or a witness in a civil court proceeding, McCarthy v. Arndstein, 266 U.S. 34 (1924), a potential defendant or any other witness before a grand jury, Reina v. United States, 364 U.S. 507 (1960); Counselman v. Hitchcock, 142 U.S. 547, 563 (1892), or a witness before a legislative inquiry, Watkins v. United States, 354 U.S. 178, 195–96 (1957); Quinn v. United States, 349 U.S. 155 (1955); Emspak v. United States, 349 U.S. 190 (1955), or before an administrative body. *In re* Groban, 352 U.S. 330, 333, 336–37, 345–46 (1957); ICC v. Brimson, 154 U.S. 447, 478–80 (1894).

[196] Estelle v. Smith, 451 U.S. 454, 462–63 (1981) ("We can discern no basis to distinguish between the guilt and penalty phases of respondent's capital murder trial so far as the protection of the Fifth Amendment privilege is concerned"); Mitchell v. United States, 526 U.S. 314 (1999) (non-capital sentencing).

[197] Allen v. Illinois, 478 U.S. 364 (1986) (declaration that person is "sexually dangerous" under Illinois law is not a criminal proceeding); Minnesota v. Murphy, 465 U.S. 420, 435 n.7 (1984) (revocation of probation is not a criminal proceeding, hence "there can be no valid claim of the privilege on the ground that the information sought can be used in revocation proceedings"). In *Murphy*, the Court went on to explain that "a State may validly insist on answers to even incriminating questions and hence sensibly administer its probation system, as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination. Under such circumstances, a probationer's 'right to immunity as a result of his compelled testimony would not be at stake,' and nothing in the Federal Constitution would prevent a State from revoking probation for a refusal to answer . . . ." Id. (citations omitted).