can be no valid claim if there is no criminal prosecution [198] The Court in recent years has also applied the privilege to situations, such as police interrogation of suspects, in which there is no *legal* compulsion to speak.[199]

What the privilege protects against is compulsion of "testimonial" disclosures. Thus, the clause is not offended by such nontestimonial compulsions as requiring a person in custody to stand or walk in a police lineup, to speak prescribed words, to model particular clothing, or to give samples of handwriting, fingerprints, or blood.[200] A person may be compelled to produce specific documents even though they contain incriminating information.[201] If, however, the existence of specific documents is not known to the government, and the act of production informs the government about the

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[198] Chavez v. Martinez, 538 U.S. 760 (2003) (rejecting damages claim brought by suspect interrogated in hospital but not prosecuted).

[199] Miranda v. Arizona, 384 U.S. 436 (1966).

[200] Schmerber v. California, 384 U.S. 757, 764 (1966); United States v. Wade, 388 U.S. 218, 221–23 (1967); Holt v. United States, 218 U.S. 245, 252 (1910). In California v. Byers, 402 U.S. 424 (1971), four Justices believed that requiring any person involved in a traffic accident to stop and give his name and address did not involve testimonial compulsion and therefore the privilege was inapplicable, id. at 431–34 (Chief Justice Burger and Justices Stewart, White, and Blackmun), but Justice Harlan, id. at 434 (concurring), and Justices Black, Douglas, Brennan, and Marshall, id. at 459, 464 (dissenting), disagreed. In South Dakota v. Neville, 459 U.S. 553 (1983), the Court indicated as well that a state may compel a motorist suspected of drunk driving to submit to a blood alcohol test, and may also give the suspect a choice about whether to submit, but use his refusal to submit to the test as evidence against him. The Court rested its evidentiary ruling on the absence of coercion, preferring not to apply the sometimes difficult distinction between testimonial and physical evidence. In another case, involving roadside videotaping of a drunk driving suspect, the Court found that the slurred nature of the suspect's speech, as well as his answers to routine booking questions as to name, address, weight, height, eye color, date of birth, and current age, were not testimonial in nature. Pennsylvania v. Muniz, 496 U.S. 582 (1990). On the other hand, the suspect's answer to a request to identify the date of his sixth birthday was considered testimonial. Id. Two Justices challenged the interpretation limiting application to "testimonial" disclosures, claiming that the original understanding of the word "witness" was not limited to someone who gives testimony, but included someone who gives any kind of evidence. United States v. Hubbell, 530 U.S. 27, 49 (2000) (Justice Thomas, joined by Justice Scalia, concurring).

[201] Fisher v. United States, 425 U.S. 391 (1976). Compelling a taxpayer by subpoena to produce documents produced by his accountants from his own papers does not involve testimonial self-incrimination and is not barred by the privilege. "[T]he Fifth Amendment does not independently proscribe the compelled production of every sort of incriminating evidence but applies only when the accused is compelled to make a *testimonial* communication that is incriminating." Id. at 408 (emphasis by Court). Even further removed from the protection of the privilege is seizure pursuant to a search warrant of business records in the handwriting of the defendant. Andresen v. Maryland, 427 U.S. 463 (1976). A court order compelling a target of a grand jury investigation to sign a consent directive authorizing foreign banks to disclose records of any and all accounts over which he had a right of withdrawal is not testimonial in nature, since the factual assertions are required of the banks and not of the target. Doe v. United States, 487 U.S. 201 (1988).