dant's self-incrimination privilege to create a presumption upon the establishment of certain basic facts from which the jury may infer the defendant's guilt unless he rebuts the presumption.[225]

The obligation to testify is not relieved by this clause, if, regardless of whether incriminating answers are given, a prosecution is precluded,[226] or if the result of the answers is not incrimination, but rather harm to reputation or exposure to infamy or disgrace.[227] The clause does not prevent a public employer from discharging an employee who, in an investigation specifically and narrowly directed at the performance of the employee's official duties, refuses to cooperate and to provide the employer with the desired information on grounds of self-incrimination.[228] But it is unclear under what other circumstances a public employer may discharge an employee who has claimed his privilege before another investigating agency.[229]

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which a defense investigator's notes of interviews with prosecution witnesses were ordered disclosed to the prosecutor for use in cross-examination of the investigator. The Court discerned no compulsion upon defendant to incriminate himself.

[225] "The same situation might present itself if there were no statutory presumption and a *prima facie* case of concealment with knowledge of unlawful importation were made by the evidence. The necessity of an explanation by the accused would be quite as compelling in that case as in this; but the constraint upon him to give testimony would arise there, as it arises here, simply from the force of circumstances and not from any form of compulsion forbidden by the Constitution." Yee Hem v. United States, 268 U.S. 178, 185 (1925), quoted with approval in Turner v. United States, 396 U.S. 398, 418 n.35 (1970). Justices Black and Douglas dissented on self-incrimination grounds. Id. at 425. *See also* United States v. Gainey, 380 U.S. 63, 71, 74 (1965) (dissenting opinions). For due process limitations on such presumptions, *see* discussion under the Fourteenth Amendment, "Proof, Burden of Proof, and Presumptions," *infra*.

[226] Prosecution may be precluded by tender of immunity (see next topic for discussion of immunity), or by pardon, Brown v. Walker, 161 U.S. 591, 598–99 (1896). The effect of a mere tender of pardon by the President remains uncertain. *Cf.* Burdick v. United States, 236 U.S. 79 (1915) (acceptance necessary, and self-incrimination is possible in absence of acceptance); Biddle v. Perovich, 274 U.S. 480 (1927) (acceptance not necessary to validate commutation of death sentence to life imprisonment).

[227] Brown v. Walker, 161 U.S. 591, 605–06 (1896); Ullmann v. United States, 350 U.S. 422, 430–31 (1956). Minorities in both cases had contended for a broader rule. *Walker*, 161 U.S. at 631 (Justice Field dissenting); *Ullmann*, 350 U.S. at 454 (Justice Douglas dissenting).

[228] Gardner v. Broderick, 392 U.S. 273, 278 (1968). Testimony compelled under such circumstances is, even in the absence of statutory immunity, barred from use in a subsequent criminal trial by force of the Fifth Amendment itself. Garrity v. New Jersey, 385 U.S. 493 (1967). However, unlike public employees, persons subject to professional licensing by government appear to be able to assert their privilege and retain their licenses. *Cf.* Spevack v. Klein, 385 U.S. 511 (1967) (lawyer may not be disbarred solely because he refused on self-incrimination grounds to testify at a disciplinary proceeding), *approved in* Gardner v. Broderick, 392 U.S. at 277–78. Justices Harlan, Clark, Stewart, and White dissented generally. 385 U.S. 500, 520, 530.

[229] *See* Slochower v. Board of Higher Education, 350 U.S. 551 (1956), *limited by* Lerner v. Casey, 357 U.S. 468 (1958), and Nelson v. County of Los Angeles, 362 U.S. 1 (1960), which were in turn apparently limited by *Garrity* and *Gardner*.