though it appears that prisoners[208] and probationers[209] have less protection than others do, the Court has not developed a clear doctrinal explanation to identify the differences between permissible and impermissible coercion.[210]

It has long been the rule that a defendant who takes the stand on his own behalf does so voluntarily, and cannot then claim the privilege to defeat cross-examination on matters reasonably related to the subject matter of his direct examination,[211] and that such a defendant may be impeached by proof of prior convictions.[212] Similarly, when a defense expert testifies to a defendant's diminished mental capacity at the time of a ccrime, the prosecution may present psychiatric evidence in rebuttal based on the defendant's statements in its separate examination, even if the defendant did not consent to it.[213] But, in *Griffin v. California*,[214] the Court refused to permit prosecutorial or judicial comment to the jury upon a defendant's refusal to take the stand on his own behalf, because such comment was a "penalty imposed by courts for exercising a constitutional privilege" and "[i]t cuts down on the privilege by making

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ships in relation to the ordinary incidents of prison life." 536 U.S. at 38 (opinion of Justice Kennedy). Concurring Justice O'Connor stated her belief that the "minor" change in living conditions seemed "very unlikely to actually compel [the prisoner] to [participate]." Id. at 51.

[208] *See*, in addition to McKune v. Lile, Baxter v. Palmigiano, 425 U.S. 308 (1976) (adverse inference from inmate's silence at prison disciplinary hearing); and Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272, 286 (1998) (adverse inference from inmate's silence at clemency hearing).

[209] Minnesota v. Murphy, 465 U.S. 420 (1984) (the possibility of revocation of probation was not so coercive as to compel a probationer to provide incriminating answers to probation officer's questions).

[210] The Court in McKune v. Lile split 5-to-4, with no opinion of the Court.

[211] Brown v. Walker, 161 U.S. 591, 597–98 (1896); Fitzpatrick v. United States, 178 U.S. 304, 314–16 (1900); Brown v. United States, 356 U.S. 148 (1958). See also Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272, 286 (1998) (testimony at a clemency interview is voluntary, and cannot be compelled).

[212] Spencer v. Texas, 385 U.S. 554, 561 (1967); *cf.* Michelson v. United States, 335 U.S. 469 (1948).

[213] Kansas v. Cheever, 571 U.S. ___, No.12–609, slip op. (2013); Buchanan v. Kentucky, 483 U.S. 402 (1987). *Compare* Estelle v. Smith, 451 U.S. 454 (1981) (defendant's statements during court-ordered examination on his competency to stand trial inadmissable when offerred by prosecution in seeking capital punishment during penalty phase).

[214] 380 U.S. 609, 614 (1965). The result had been achieved in federal court through statutory enactment. 18 U.S.C. § 3481. *See* Wilson v. United States, 149 U.S. 60 (1893). In Carter v. Kentucky, 450 U.S. 288 (1981), the Court held that the Self-Incrimination Clause required a state, upon defendant's request, to give a cautionary instruction to the jurors that they must disregard defendant's failure to testify and not draw any adverse inferences from it. This result, too, had been accomplished in the federal courts through statutory construction. Bruno v. United States, 308 U.S. 287 (1939). In Lakeside v. Oregon, 435 U.S. 333 (1978), the Court held that a court may give such an instruction, even over defendant's objection. Carter v. Kentucky was applied in James v. Kentucky, 466 U.S. 341 (1983) (request for jury "admonition" sufficient to invoke right to "instruction").