

HELD: Yes--requiring him to do so was an attempt to elicit testimonial evidence.

REASONING:

1. The Fifth Amendment of the United States Constitution protects a person in a criminal case from being compelled by the government to be a witness against himself.

2. There is no question that requiring James to discuss the offense for which he had been convicted was an attempt to elicit testimonial evidence.

3. James had testified at his trial that he did not commit the offenses for which he was convicted. Any statement James made during therapy admitting to the offense could be used by the State to prosecute him for perjury.

4. Upholding James' exercise of his Fifth Amendment right might allow him to avoid sex-offender treatment, but that right must trump practical difficulties raised by the legitimate exercise of that right.

NOTES:

Compare this case with Minnesota v. Murphy, Legal Bulletin No. 80, where statement given to a probation officer regarding a prior homicide rape was ruled admissible.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers during Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 270 numerically under Section R of the manual.