

Looking at the Law: An Updated Look at the Privilege Against Self-Incrimination in Post-Conviction Supervision

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THE FIFTH AMENDMENT of the United States Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” In 1999, David N. Adair, Jr., then Assistant General Counsel of the Administrative Office of the United States Courts, wrote an article in *Federal Probation* describing the Fifth Amendment self-incrimination questions that arise in the context of offender supervision. (See David N. Adair, Jr., *The Privilege Against Self-Incrimination and Supervision*, 63 *Fed. Probation* 73 (June 1999). As Adair noted, offenders sometimes refuse to answer questions posed by officers or do not cooperate in treatment sessions, which leads to uncertainty about the best course of action in these situations. Because there was at that time virtually no federal circuit case law relating to the Fifth Amendment and offender supervision, Adair based his analysis and advice for officers on a variety of state court cases and the United States Supreme Court’s decision in *Minnesota v. Murphy*, 465 U.S. 420 (1984).

Over the past decade, there have been numerous federal circuit cases clarifying the Fifth Amendment privilege against self-incrimination in the context of post-conviction supervision. Although these cases involve challenges to conditions requiring polygraph examinations of sex offenders, their findings and reasoning apply to ordinary interviews by officers regardless of whether a polygraph condition is imposed. The cases demonstrate that, despite the offender’s obligation to answer truthfully all inquiries and follow the officer’s instructions, there may be some limits to what an officer can require of an offender if there is a possibility of self-incrimination. This article provides guidance for officers to consider to ensure that offenders’ Fifth Amendment rights are not violated and that any evidence obtained during interviews of offenders is not later excluded by the court. The first section summarizes the Supreme Court’s *Murphy* decision. The next section provides a circuit-by-circuit description of the relevant federal cases since Adair’s article in 1999. The final section offers specific guidance for officers to consider while conducting interviews in the post-conviction supervision setting.

Minnesota v. Murphy

The Supreme Court’s *Murphy* decision remains the starting point for any discussion of the Fifth Amendment privilege in the context of post-conviction supervision. In *Murphy*, the defendant was placed on probation for a sex-related crime and ordered to be truthful with his probation officer in all matters. As a result of admitting to the officer a past crime, *Murphy* was later

convicted of murder. He challenged his conviction on the grounds that his admission to the probation officer should not have been admitted into evidence because he was forced to make the admission in violation of his right against self-incrimination. The Supreme Court held that, while a probationer does not lose his Fifth Amendment privilege simply because he has been convicted of an offense, a state may require a probationer to appear and truthfully discuss matters that affect his or her probationary status. If a probationer has a valid privilege against self-incrimination, the probationer must assert the privilege, and the probation officer is not required to give *Miranda* warnings when asking the offender questions.

The Supreme Court noted, however, that there could be a Fifth Amendment violation in situations in which the probation officer threatens the imposition of a “substantial penalty” for refusal to answer an incriminating question. 465 U.S. at 435. This would violate the Fifth Amendment even if the probationer did not assert his Fifth Amendment privilege. As the Court explained, if a state “either expressly or by implication, asserts that invocation of the privilege would lead to revocation of probation, it would have created the classic penalty situation,”¹ with the result that the failure to assert the privilege would be excused and the probationer’s answers would be deemed inadmissible in a later criminal prosecution. *Id.* The Court continued:

[W]hether or not the answer to a question about [a condition of probation] is compelled by the threat of revocation, there can be no valid claim of the privilege on the ground that the information sought can be used in a revocation proceeding... [M]oreover,...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...

[N]othing in the Federal Constitution would prevent a State from revoking probation for a refusal to answer that violated an express condition or from using the probationer’s silence as one of a number of factors to be considered by a finder of fact in deciding whether other conditions of probation have been violated.

Murphy, 465 U.S. at 435-6 & n.7.

According to Adair’s 1999 analysis of Murphy, a federal offender on probation or supervised release may clearly be required to answer a question regarding compliance with a condition of supervision. If noncompliance might result in revocation but not in a criminal prosecution, the offender may not validly invoke his Fifth Amendment right.² However, an offender retains a right against self-incrimination with respect to information that might result in criminal prosecution. If the invocation of the privilege is legitimate, the state may not penalize the offender by revoking supervision for that exercise of his or her Fifth Amendment right.

Adair further noted that if the offender does not attempt to invoke his or her right against self-incrimination and instead provides incriminating answers, such answers may be used against the offender in a criminal proceeding. In other words, the probation officer may *ask* an incriminating question and any answer may be used in a subsequent prosecution, but the officer may not require an offender to answer the question (by threatening revocation). Moreover, Murphy clearly indicates that, in the context of an ordinary interview with a probation officer (not in police custody), the officer is not required to give *Miranda* warnings to the offender.

Adair concluded that there is little the probation officer can do to force an offender to answer questions if the offender asserts a Fifth Amendment privilege. If the questions involve the offense of conviction, any other offense of which the offender has been convicted and sentenced, or violations of the conditions of supervision that do not constitute new criminal offenses, the officer may consider reporting the apparent violation to the court. If the question for which the offender asserts a Fifth Amendment privilege might elicit information about new offenses, the assertion of the right is very possibly legitimate. The officer might still refer the matter to the court for resolution, particularly if there is any doubt about whether the question calls for incriminating information, but it is more likely that, in this case, the court will uphold the assertion of the right.

Federal Case Law on Self-Incrimination and Offender Supervision

While Murphy clarified that officers are not required to give *Miranda* warnings to offenders in the context of post-conviction supervision (assuming they are not in some type of police custody), it left a number of issues unresolved. Over the past decade, federal case law has developed on self-incrimination and post-conviction supervision in the context of sex offender polygraph testing, which may shed light on some of these issues. Each circuit that has considered the issue has upheld the constitutionality of polygraph testing as a special condition of supervision for sex offenders. As discussed below, the courts have found that an offender interview with a polygraph does not differ in any constitutionally important way from an ordinary interview without a polygraph. Therefore, the findings and analyses in the cases below apply to all interviews by officers in the post-conviction setting.

In *United States v. York*, 357 F.3d 14 (1st Cir. 2004), the First Circuit held that the order requiring the defendant to submit to periodic polygraph testing did not violate his right against self-incrimination. The special condition at issue in *York* stated:

The defendant is to participate in a sex offender specific treatment program at the direction of the Probation Office. The defendant shall be required to submit to periodic polygraph testing as a means to insure that he is in compliance with the requirements of his therapeutic program. No violation proceedings will arise based solely on a defendant's failure to "pass" the polygraph. Such an event could, however, generate a separate investigation. When submitting to a polygraph exam, the defendant does not give up his Fifth Amendment rights.

York, 357 F.3d at 18.

York argued that the mandatory polygraph testing condition was invalid because it would compel him to incriminate himself in violation of the Fifth Amendment. He contended that in the course of his treatment program he would inevitably be asked incriminating questions and that he would be compelled to answer due to the severe consequences of revocation. Relying on *Minnesota v. Murphy*, 465 U.S. 429 (1984), the court noted that nothing in the Fifth Amendment mitigates the general obligation on probationers to appear and answer questions truthfully, and probation officers may demand honest answers to their questions. *Id.* at 24. Furthermore, because revocation proceedings are not criminal proceedings, *York* would not be entitled to refuse to answer questions solely on the ground that his replies might lead to revocation of his supervised release. *Id.* While he would have a valid Fifth Amendment claim if his probation officers asked, and compelled him to answer over his assertion of privilege, a particular question implicating him in a crime other than that for which he had been convicted, *York* could not mount a generalized Fifth Amendment attack on the conditions of his supervised release on the ground that he would be required to answer the probation officer's questions truthfully. *Id.*

Noting that the caveat included in the special condition of supervised release that "the defendant does not give up his Fifth Amendment rights" was ambiguous, the court concluded that the most sensible interpretation of it was that *York*'s supervised release would not be revoked based on his refusal to answer polygraph questions on valid Fifth Amendment grounds.³ Under *Murphy*, if *York* could assert his Fifth Amendment privilege without risking revocation, he would not face a "classic penalty situation," 465 U.S. at 435 & n. 7, and his answers would not be considered "compelled" within the meaning of the Fifth Amendment unless he were forced to answer over his valid assertion of privilege. *Id.* at 25. This interpretation of the order would also guarantee that if *York* and his probation officers disputed whether he refused to answer a question on valid Fifth Amendment grounds, *York* would be entitled to a hearing before a court before any penalty could be imposed. *Id.* Therefore, construing the order to provide that *York*'s supervised release would not be revoked based on his valid assertion of Fifth Amendment privilege during a polygraph examination, the First Circuit upheld the constitutionality of the polygraph condition. *Id.* See also *United States v. Roy*, 438 F.3d 140 (1st Cir. 2006) (upholding special condition of supervised release requiring offender to submit to polygraph examination to answer specific questions regarding his contact with girlfriend's children because there was no argument that truthful answers would implicate offender in any new and separate crime).

In *United States v. Johnson*, 446 F.3d 272 (2d Cir. 2006), the Second Circuit upheld a supervised release condition requiring sex offender treatment using polygraph testing. The special condition of supervised release limited the scope of polygraph examinations to “information necessary for supervision, case monitoring, and treatment,” and made clear that (though Johnson would be compelled to answer) “if a truthful answer would expose him to a prosecution for a crime different from the one on which he was already convicted,” he would preserve his “right to challenge in a court of law the use of such statements as violations of his Fifth Amendment rights” or, “[i]n other words, [Johnson] must answer the questions posed to him, but, by answering, he will not be waiving his Fifth Amendment rights with respect to any criminal prosecution unrelated to the conviction for which he is now on supervised release.” *Johnson*, 446 F.3d at 275.

The Second Circuit based its holding in *Johnson* on precedent allowing the revocation of supervised release of an offender who fails to answer questions even if they are self-incriminating. In *Asherman v. Meachum*, 957 F.2d 978 (2d Cir. 1992) (*en banc*), supervised release was revoked when the offender refused to answer questions about a crime for which the court assumed he might have been prosecuted. *Id.* at 980-81. The court rejected Asherman’s Fifth Amendment challenge, reasoning that revocation is an administrative decision that may be made based on a refusal to answer relevant questions, so long as the administrator does nothing to impair the later invocation of the privilege. *Id.* at 982-83. The court explained that the probation administrator stayed well within his authority by conducting a relevant inquiry and then taking appropriate adverse action, not for the offender’s invocation of his constitutional rights but for his failure to answer a relevant inquiry. *Id.* at 983.⁴ The *Johnson Court* concluded that, because the only distinction between *Asherman* and *Johnson* was the polygraph, which had “no impact on Fifth Amendment considerations,” *Asherman* applied, and the polygraph condition at issue conformed to *Asherman* by preserving Johnson’s “right to challenge in a court of law the use of [incriminating] statements as violations of his Fifth Amendment rights.” *Johnson*, 446 F.3d at 280.

In *United States v. Lee*, 315 F.3d 206 (3d Cir. 2003), the Third Circuit held that a condition of supervised release requiring the defendant to submit to random polygraph examinations did not violate his Fifth Amendment privilege against self-incrimination. The court rejected Lee’s argument that his situation was distinguished from the facts in *Murphy* due to the added element of the polygraph condition, which increases the coercive nature of the probation interview by physically restraining him. The coercive element of the polygraph, Lee argued, would require him to choose between making incriminating statements and jeopardizing his liberty by refusing to answer the questions. *Lee*, 315 F.3d at 212. The court did not find this factor to bring Lee’s sentence to the level where it is likely to compel him to be a witness against himself. *Id.* It reasoned that Lee can choose to terminate the interview and exit the room while being questioned by having the machine detached from him. The court was not persuaded that Lee’s feeling of an obligation to stay through the end of the interview differs in any significant way from an ordinary probation interview without a polygraph.

The court also found that the polygraph condition did not violate Lee’s Fifth Amendment right because it did not require him to answer incriminating questions. The government in *Lee* indicated that the types of conduct that could result in revocation and a return to prison were failure to comply with the conditions of release or failure to submit to a polygraph test or to answer questions (other than those within the scope of the privilege against self-incrimination) truthfully. Thus, the court concluded, if Lee were asked a question during the polygraph examination that called for an answer that would incriminate him in a future criminal proceeding, he would retain the right to invoke his Fifth Amendment privilege and remain silent. *Id.* See also *United States v. Kosteniuk*, 251 Fed. Appx. 7 (3d Cir. 2007) (unpublished) (condition requiring defendant to submit to polygraph testing was warranted).

In *United States v. Dotson*, 324 F.3d 256 (4th Cir. 2003), the Fourth Circuit upheld a condition of supervised release requiring the offender’s participation in a sex offender treatment program, “at the discretion of the probation officer,” that “may include physiological testing such

as the polygraph,” the results of which “shall not be made public.” *Dotson*, 324 F.3d at 258. The court noted that the use of the polygraph was “not aimed at gathering evidence to inculcate or exculpate” the offender but was “contemplated as a potential treatment tool upon Dotson’s release from prison as witnessed by the district court’s direction that the results of any polygraph testing not be made public.” *Id.* at 259. In *United States v. Locke*, 482 F.3d 764 (5th Cir. 2007), the Fifth Circuit held that a probation condition requiring mandatory participation in polygraph testing did not violate the defendant’s Fifth Amendment rights. Though Locke did not invoke the Fifth Amendment privilege, he argued that the mandatory polygraph testing condition created the “classic penalty situation” envisioned by *Minnesota v. Murphy*, 465 U.S. at 435-36, because he had no choice but to submit to the polygraph test and provide answers that incriminated him. Locke focused on questions during the polygraph test that attempted to ascertain whether he had viewed pornography. The court determined that the Fifth Amendment was not infringed upon because the questions attempted to ascertain whether Locke had violated conditions of probation, and his answers could not serve as a basis for a future criminal prosecution. *Locke*, 482 F.3d at 767. The court also noted that “[t]he fact that the questions were asked to Locke in the context of a polygraph test does not convert the question-and-answer session into a Fifth Amendment Violation.” *Id.*

In *United States v. Zinn*, 321 F.3d 1084 (7th Cir. 2003), the Seventh Circuit upheld the constitutionality of a special condition of supervised release that required the offender to participate in a treatment program, including polygraph testing, but stipulated that “[t]he results of the polygraph examination may not be used as evidence in court to prove that a violation of community supervision has occurred, but may be considered in a hearing to modify release conditions.” *Zinn*, 321 F.3d at 1085. In *United States v. Stoterau*, 524 F.3d 988 (9th Cir. 2008), the Ninth Circuit upheld a condition of supervised release that required the defendant to participate in a sex offender treatment program as directed by the probation officer and to abide by all requirements of the program, including polygraph testing. *Stoterau*, 524 F.3d at 1003. The court held that the condition did not infringe on Stoterau’s Fifth Amendment rights, because he retained the right to refuse to answer incriminating questions during the polygraph exams. *Id.* at 1004. The court also rejected Stoterau’s argument that the polygraph condition is akin to custodial interrogation requiring *Miranda* warnings before the exam.

In *United States v. Antelope*, 395 F.3d 1128 (9th Cir. 2005), the Ninth Circuit held that a provision of supervised release requiring the offender to successfully complete a sexual abuse treatment program that used random polygraph examinations and required full disclosure of past crimes violated his right against self-incrimination. This case involved a unique set of facts, because the offender’s supervision (probation and supervised release) was repeatedly revoked and incarceration was imposed for a valid invocation of his Fifth Amendment rights. The treatment program at issue required that Antelope complete a sexual history autobiography assignment and “full disclosure polygraph” verifying his “full sexual history.” The treatment counselor testified in the district court that he explained to Antelope that any past criminal offenses he revealed in the course of the program could be released to the authorities and that he was under a legal obligation to turn over information regarding offenses involving victims under eighteen years old to the authorities. When Antelope repeatedly refused to cooperate with the autobiography and full disclosure polygraph without immunity from future prosecution, his supervision was revoked and he was incarcerated on several occasions. *United States v. Antelope*, 395 F.3d at 1131.

The court concluded that the first prong of the Fifth Amendment analysis--that the information sought carried the risk of incrimination--was satisfied. As the court explained:

The...program required Antelope to reveal his full sexual history, including all past sexual criminal offenses. Any attempt to withhold information about past offenses would be stymied by the required complete autobiography and “full disclosure” polygraph examination. Based on the nature of this requirement and Antelope’s steadfast refusal to comply, it seems only fair to infer that his sexual autobiography would, in fact, reveal past sex crimes. Such an inference would be consistent with the belief of [the] counselor, who suspects Antelope of having committed prior sex offenses. The treatment condition placed Antelope at a crossroads--comply and incriminate himself or invoke his right against

self-incrimination and be sent to prison. We therefore conclude that Antelope's successful participation in [the program] triggered a real danger of self-incrimination, not simply a remote or speculative threat... We have no doubt that any admissions of past crimes would likely make their way into the hands of prosecutors. [The counselor] made clear that he would turn over evidence of past sex crimes to the authorities. The... release form, which Antelope signed, specifically authorizes [the counselor] to make such reports. And, were Antelope to reveal any crimes involving minors, Montana law would *require* [the counselor] to report to law enforcement... In sum, the evidence shows that, setting the privilege aside, Antelope would have to reveal past sex crimes to the... counselor; the counselor would likely report the incidents to the authorities, who could then use Antelope's admissions to prosecute and convict him of the additional crimes. Viewed in this light, very little stands between Antelope's participation in [the program] and future prosecution. (emphasis in original).

Id. at 1139.

The Ninth Circuit found that the second component of the self-incrimination inquiry – that the penalty suffered amounted to compulsion – was satisfied as well. When probation and supervised release terms are at issue, a court must determine whether the alleged Fifth Amendment problem truly implicates conditional liberty and is more than hypothetical. To illustrate, the Ninth Circuit discussed *United States v. Lee*, 315 F.3d 206, 212 (3d Cir. 2003), where the Third Circuit rejected a challenge to a supervised release condition because the offender offered “no evidence that [his] ability to remain on probation is conditional on his waiving the Fifth Amendment privilege with respect to future criminal prosecution.” In *Lee*, the prosecutor had stipulated that Lee's failure to pass a polygraph examination, in and of itself, likely would not result in a finding of a supervised release violation. Without the real risk of revocation, the polygraph's effect on Lee could not amount to compulsion. In *Antelope*, however, because the offender “has already suffered repeated revocation of his conditional liberty as a result of invoking his Fifth Amendment right,” the court had no doubt that Antelope's loss of liberty was a substantial penalty. *Id.* Ultimately, the district court revoked Antelope's supervised release as a result of his refusal to disclose his sexual history without receiving immunity from prosecution. Because the government and district court consistently refused to recognize that the required answers could not be used in a criminal proceeding against Antelope, the court held that the revocation of his probation and supervised release violated his Fifth Amendment right against self-incrimination. *Id.* at 1139.

In *United States v. Taylor*, 338 F.3d 1280 (11th Cir. 2003), the Eleventh Circuit upheld a special condition of supervised release ordering the offender to participate in a mental health program specializing in sexual offender treatment approved by the probation officer and to abide by the requirements of the program, “including submitting to polygraph testing to aid in the treatment and supervision process.” *Taylor*, 338 F.3d at 1284. While the offender argued that the polygraph testing would violate his Fifth Amendment privilege against self-incrimination, the court held that his injury is “entirely speculative because no incriminating questions have been asked,” and thus, it could only address the constitutionality of polygraph testing generally. *Id.*

Specific Guidance for Federal Probation Officers

As discussed above, each circuit that has considered the issue has upheld the constitutionality of polygraph testing as a special condition of supervision for sex offenders, because offenders retain their Fifth Amendment right against self-incrimination during polygraph examinations. Indeed, three circuits specifically recognized that the polygraph test itself has “no impact on Fifth Amendment consideration,” *Johnson*, 446 F.3d at 280; does not differ “in any significant way from an ordinary probation interview without a polygraph,” *Lee*, 315 F.3d at 212; and “does not convert the question-and-answer session into a Fifth Amendment violation,” *Locke*, 482 F.3d at 767. Therefore, the guidance provided in the cases above should assist probation officers when conducting ordinary interviews of offenders, regardless of whether a polygraph condition is imposed.

Officers in search of specific guidance about what they may or may not require of offenders may also wish to consider the guidelines in a sex offender management procedures manual that has been newly endorsed by the Criminal Law Committee of the Judicial Conference

of the United States. The manual was developed by a working group of federal probation officers and staff from the Administrative Office of the United States Courts to assist officers in implementing a new sex offender management policy. Based in large part on the case law discussed above, the procedures manual includes safeguards to ensure that officers do not violate the Fifth Amendment rights of offenders on post-conviction supervision. While each district court may of course establish its own procedures, the guidelines from the procedures manual are listed below to assist officers when conducting interviews of all types of offenders in the post-conviction supervision context:

- A probation officer is permitted to ask an incriminating question of an offender on post-conviction supervision. A question is “incriminating” if a truthful answer poses a realistic threat of incrimination (new criminal prosecution for newly discovered offense conduct in a separate criminal proceeding).
- Probation officers are not required to warn offenders that they have the right to remain silent and not answer a question. In other words, they are not required to read offenders their “*Miranda* rights.” (If the offender is in some type of police custody, *Miranda* rights are required.)
- While a probation officer is permitted to ask an incriminating question, the officer may not compel an offender to incriminate himself.
 - An offender is “compelled” to incriminate himself if he is forced to choose between answering an incriminating question and having his supervision revoked for failing to answer the incriminating question.
 - A question is “incriminating” if a truthful answer poses a realistic threat of incrimination (new criminal prosecution for newly discovered offense conduct in a separate criminal proceeding).
- A probation officer may not:
 - Compel (by threatening to revoke supervision) an offender to answer a question that poses a realistic threat of incrimination in a separate criminal proceeding; or
 - Initiate the revocation of supervision for a refusal to answer a question that poses a realistic threat of incrimination in a separate criminal proceeding.
- An offender may be required to truthfully answer non-incriminating questions, such as those relevant to his supervision status or treatment or those that relate to a crime for which he has already been convicted. Revocation proceedings can be initiated for failure to answer non-incriminating questions.
 - For example, an offender may be prohibited from using pornography. His use of pornography might result in revocation, but would not result in a new criminal prosecution. He could therefore be required to truthfully answer a question regarding his use of pornography or have his supervision revoked.
- There is little the probation officer can do to force an offender to answer questions.
 - If the questions involve the offense of conviction, any other offense of which the offender has been convicted and sentenced, or violations of the conditions of supervision that do not constitute new criminal offenses, the officer may consider reporting the apparent violation to the court.
 - If the refusals are questions that might elicit information about new offenses, the assertion of the right is very possibly legitimate. The officer might still refer the matter to the court for resolution, particularly if there is any doubt about the assertion that the question calls for incriminating information.
- Guidelines Relating to Use of a Polygraph
 - A deceptive polygraph result can be used to:
 - Increase supervision;
 - Modify treatment plans;
 - Generate a separate investigation.
 - Modification of Conditions of Supervision Based on a Polygraph Result
 - Without a Hearing: If the offender waives his right to a hearing under Federal Rule of Criminal Procedure 32.1(c)(2)(A), a deceptive polygraph result may be used as the sole basis to modify conditions of supervision.

- With a Hearing: A deceptive polygraph result may not be used as the sole basis to modify conditions of supervision.
- Revocation of Supervision Based on a Polygraph Result
 - A deceptive polygraph result may not be used as the sole basis to revoke supervision.

¹The term "penalty situation" stems from a set of "so-called 'penalty' cases [before the Supreme Court where] the state not only compelled an individual to appear and testify, but also sought to induce him to forgo the Fifth Amendment privilege by threatening to impose economic or other sanction 'capable of forcing the self-incrimination which the Amendment forbids.'" 465 U.S. at 434 (citing *Lefkowitz v. Cunningham*, 431 U.S. 801, 806). These cases hold that a state may not impose substantial penalties because a witness elects to exercise Fifth Amendment rights. These cases recognize that the misconduct that the Fifth Amendment is designed to prevent may be accomplished as easily by imposing a penalty upon the exercise of the privilege against self-incrimination as by directly forcing the person to testify against himself.

²For example, a supervised releasee may be prohibited from using pornography. His use of pornography might result in revocation, but would not result in a new criminal prosecution. He could, therefore, be required to truthfully answer a question regarding his use of pornography on pain of revocation.

³The court noted that the caveat that "the defendant does not give up his Fifth Amendment rights" could have three meanings: (1) that York's supervised release will not be revoked based on his refusal to answer polygraph questions on valid Fifth Amendment grounds; (2) that York must answer every question during his polygraph exams on pain of revocation, but that his answers will not be used against him in any future prosecution; or simply (3) that York will be entitled, in any future prosecution, to seek exclusion of his answers on the grounds that the polygraph procedure forced him to incriminate himself. *York*, 357 F.3d at 25.

⁴The *Asherman* case relied on the assertion in *Murphy* 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." 465 U.S. at 435 n.7.

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