

## ***Confidentiality in Counseling: What Police Officers Need To Know***

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Police work is highly stressful and is one of the few jobs where one continually faces the effects of murders, violence, accidents and serious personal injury. A police officer's twenty-plus years of "peacetime combat" wreaks a heavy toll personally and professionally. No human being, no matter how healthy, well trained, or well adjusted, is immune to the long-term effects of cumulative stress or sudden critical incidents. In the words of one police veteran with 17 years on the department, "Policing is a combination of mind-numbing boredom and mind-blowing terror."

Because the nature of policing has changed so drastically in the past decade, many departments have begun to provide psychological services for officers and their families either as an in-house unit or as a contractual arrangement with a private therapist who is not an employee of the department.

One barrier that prevents officers from seeking counseling is the perception that the information they share is not confidential. These concerns are valid because in some cases, the information is not confidential. The following information is essential for all officers to protect their rights should they seek the services of a therapist on their own or be ordered by their department.

### **Important Definitions: *Confidentiality and Privilege***

**Confidentiality** refers to information that is shared with the implicit or explicit promise and expectation that it will not be disclosed to others.

**Privilege** is a legal protection against forced disclosure in legal proceedings that would violate the promise of confidentiality. "*Privilege*" allows the professional to refuse to answer questions in court and/or to refuse to produce records without fear of a "contempt of court" citation or an adverse instruction to the jury. Professionals who can decline to disclose information provided by their "clients" or "penitents" are priests, lawyers, physicians, and therapists in many states. However, a recent Supreme court decision (June 13, 1996 *Jaffee v. Redmond*) is particularly important to police officers because it upheld the right of psychotherapists to maintain the confidences of their clients. Moreover, this case involved a police officer in Illinois.

## **JAFFEE v. REDMOND**

Marylu Redmond, a police officer, shot and killed Ricky Allen, Sr. when she responded to a report of a stabbing at an apartment complex. According to Officer Redmond's testimony, Allen was pursuing another man with a knife.

Following the shooting, Officer Redmond participated in counseling sessions with her organization's employee assistance program. Her therapist, Karen Beyer, was a licensed social worker. Carrie Jaffee, attorney for the deceased Allen's estate, sued Redmond and the city in the District Court for the Northern District of Illinois.

Officer Redmond refused to answer questions about her counseling sessions with Beyer claiming "privilege."

Similarly, Beyer refused to turn over her notes and testified only about the timing, duration, and number of sessions with Officer Redmond. The court refused to grant privilege to Beyer, holding that privilege applied to psychiatrists and clinical psychologists only - not to licensed clinical social workers. The judge instructed the jury that in the absence of the therapist's notes, the jury could assume that the notes contained information damaging to Officer Redmond.

The court's ruling contradicted an Illinois statute, like statutes in nearly all states, that provide privilege for therapists licensed by the state whether they are psychiatrists, psychologists, counselors, or clinical social workers.

The U.S. Court of Appeals for the Seventh Circuit reversed the lower court ruling, citing that the lower court judge's instructions to the jury were incorrect. Jaffee then appealed the decision to the United States. THE SUPREME COURT ruled in favor of Officer Redmond and expanded the psychotherapist privilege granted in 1974 in the Federal Rule of Evidence 501 that instructed the courts that claims of privilege by a witness included a psychotherapist-patient privilege for psychiatrists and clinical psychologists which were the only professions licensed to provide psychotherapy at that time.

However, the ruling upheld the necessity of breaking confidentiality in certain prescribed situations such as child abuse or clear danger to self or others. The oral arguments before the Supreme Court were based primarily on common law, the Constitution, and on Wigmore's classic rationale for granting privilege:

1. The communication originated in confidence.
2. Confidence is necessary for the relationship.
3. The relationship is one that society wants to foster.
4. The injury that would be caused by forcing disclosure must be greater than the benefit gained for the correct ruling on the matter at hand.

The Supreme Court ruling that Officer Redmond's therapist could not be forced to reveal the contents of their sessions is important to all licensed therapists providing services to law enforcement officers. However, the Supreme Court ruling in favor of privilege for Officer

Redmond does not provide “carte blanche” protection for all police officers in all situations or settings.

## **THE LIMITS OF CONFIDENTIALITY**

Therapists are mandated legally and ethically to inform their prospective clients about any limits that exist regarding confidentiality before the session begins - preferably in writing.

Many officers report that they assumed that because they spoke with a “therapist,” who did not tell them otherwise, that the information was confidential. Indeed, it is unethical to proceed in a counseling session without clarifying this situation and informing everyone concerned in writing about the scope of confidentiality. The therapist, whether employed directly by the police department or contractually bound to it must, at the outset, make this clear.

## **DO’S & DON’TS**

1. Before participating in any in-house, department-ordered counseling for any reason, make sure that you clarify with the therapist the limits of confidentiality - in writing.

Without written clarification, you can assume that whatever you tell the therapist may become a part of your medical file which can be subpoenaed.

This safeguard applies to in-house as well as contracted counseling programs.

2. Fitness-For-Duty Evaluations are not protected by confidentiality or privilege since their specific purpose is to advise the Department about an officer’s ability to perform his/her job.

Nothing discussed in a “fitness-for-duty” evaluation is “off the record.” A report of the psychological findings will be made available to the Department and may become part of an officer’s permanent personnel file. Although the APA ethical guidelines state that only information pertinent to the evaluation should be included in written and oral reports, there is no guarantee of confidentiality when personal information is shared.

3. Officers should always make certain they understand what choices they have and the consequences of each option.
4. Police officers should not assume that speaking to a police peer counselor is privileged or confidential. Before instituting a police peer counseling program, the Department should set out clear and concise policies and procedures - especially in the case of “confidentiality.” Police Departments do not have the legal authority to extend “privilege” to peer counselors who can be called to testify as to any matters of which they have knowledge, including the identity of an officer that they referred to a licensed therapist.

**WHAT DO OFFICERS WANT FROM A COUNSELING PROGRAM?**

The seven most important characteristics of a police counseling program were rated in a 1998 survey of the Metropolitan Police Officers in Washington, D.C. The results are as follows:

(Listed in order with most important first.)

1. Licensed professional therapists who are completely independent from the department to ensure strict confidentiality.
2. Long term counseling for me and my family for as many times as we need.
3. Therapists who have many years of experience with the Metropolitan Police Department.
4. On-going stress training for officers and management.
5. Private, comfortable offices far removed from any police facility.
6. Free services
7. Debriefings and mandatory counseling after critical incidents, like shootings.

These results were similar to those reported by Marketa K. Ebert, Ph.D. in 1996. (Psychological Services for Law Enforcement, F.B.I., 1986. Issues in Proving Psychological Services to Law Enforcement Personnel, pp. 249-252). Dr. Ebert, an Employee Assistance Counselor for Ann Arundel County, administered a needs assessment survey to 74 Ann Arundel County police officers. Officers were asked to check all applicable factors, out of a list of 14, that would make it easier for them to seek help. They are listed below in order of importance.

Table 1. PREFERENCES OF POLICE OFFICER SAMPLE REGARDING PSYCHOLOGICAL HELP. N=74Factor

	<i>of points</i>
Strict confidentiality	117
Costs partially or fully covered by the department	87
Professional has no connection with the police department	65
Ready availability and flexible hours	55
Office located away from headquarters	50
Professional shows interest in police work	48
Program available for the entire family	36
Peers' positive attitude toward psychological help	26
Mandatory counseling following high stress situations	25
Supervisors' positive attitude toward psychological help	19
Personal acquaintance with professional	14
Services provided by a member of the clergy	13
Professional employed by the police department	11
Services provided by police officers trained as counselors	10

Not surprisingly, concerns related to privacy and confidentiality as well as therapist competence proved to be the most important factors for a majority of the officers.

### **UNDERSTANDING THE POLICE CULTURE**

Police officers are inherently distrustful of mental health services. Although job related stress increases in proportion to levels of violence and traumatic exposure, officers are still less likely to seek help than the average person. While many occupations give rise to a variety of stressors, most do not constitute the closed and guarded culture of law enforcement. No matter how “numbed out” police officers appear (and they are champions at the art of emotional cover-up), they suffer terribly from the psychological assaults of their work. Therapists cannot be of real help until they come to understand the danger and face the evil that accompany the police on every tour of duty.

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