

Jaffee v. Redmond (95-266), 518 U.S. I (1996)

Syllabus

NOTE:

This syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 3213 337.

SUPREME COURT OF THE UNITED STATES

JAFFEE, SPECIAL ADMINISTRATOR FOR ALLEN,
DECEASED v. REDMOND et al.

certiorari to the united states court of appeals for the seventh
circuit

No. 95-266. Argued February 26, 1996 -- Decided June 13, 1996

Petitioner, the administrator of decedent Allen's estate, filed this action alleging that Allen's constitutional rights were violated when he was killed by respondent Redmond, an on duty police officer employed by respondent village. The court ordered respondents to give petitioner notes made by Karen Beyer, a licensed clinical social worker, during counseling sessions with Redmond after the shooting, rejecting their argument that a psychotherapist patient privilege protected the contents of the conversations. Neither Beyer nor Redmond complied with the order. At trial, the jury awarded petitioner damages after being instructed that the refusal to turn over the notes was legally unjustified and the jury could presume that the notes would have been unfavorable to respondents. The Court of Appeals reversed and remanded, finding that "reason and experience," the touchstones for acceptance of a privilege under Federal Rule of Evidence 501, compelled recognition of a psychotherapist patient privilege. However, it found that the privilege would not apply if in the interests of justice, the evidentiary need for disclosure outweighed the patient's privacy interests. Balancing those

interests, the court concluded that Beyer's notes should have been protected.

Held: The conversations between Redmond and her therapist and the notes taken during their counseling sessions are protected from compelled disclosure under Rule 501. Pp. 5-17.

(a) Rule 501 authorizes federal courts to define new privileges by interpreting "the principles of the common law ... in the light of reason and experience." The Rule thus did not freeze the law governing privileges at a particular point in history, but rather directed courts to "continue the evolutionary development of testimonial privileges." *Trammel v. United States*, 445 U.S. 40, 47. An exception from the general rule disfavoring testimonial privileges is justified when the proposed privilege "promotes sufficiently important interests to outweigh the need for probative evidence" *Id.*, at 51. Pp. 5-7.

(b) Significant private interests support recognition of a psychotherapist privilege. Effective psychotherapy depends upon an atmosphere of confidence and trust, and therefore the mere possibility of disclosure of confidential communications may impede development of the relationship necessary for successful treatment. The privilege also serves the public interest, since the mental health of the Nation's citizenry, no less than its physical health, is a public good of transcendent importance. In contrast, the likely evidentiary benefit that would result from the denial of the privilege is modest. That it is appropriate for the federal courts to recognize a psychotherapist privilege is confirmed by the fact that all 50 States and the District of Columbia have enacted into law some form of the privilege, see *Trammel v. United States*, 445 U.S., at 48-50, and reinforced by the fact that the privilege was among the specific privileges recommended in the proposed privilege rules that were rejected in favor of the more open ended language of the present Rule 501. Pp. 7-13.

(c) The federal privilege, which clearly applies to psychiatrists and psychologists, also extends to confidential communications made to licensed social workers in the course of psychotherapy. The reasons for recognizing the privilege for treatment by psychiatrists

and psychologists apply with equal force to clinical social workers, and the vast majority of States explicitly extend a testimonial privilege to them. The balancing component implemented by the Court of Appeals and a few States is rejected, for it would eviscerate the effectiveness of the privilege by making it impossible for participants to predict whether their confidential conversations will be protected. Because this is the first case in which this Court has recognized a psychotherapist privilege, it is neither necessary nor feasible to delineate its full contours in a way that would govern all future questions. Pp. 13-16.

51 F. 3d 1346, affirmed.

Stevens, J., delivered the opinion of the Court, in which O'Connor, Kennedy, Souter, Thomas, Ginsburg, and Breyer, JJ., joined. Scalia, J., filed a dissenting opinion, in which Rehnquist, C. J., joined as to Part III.