

Jaffee v. Redmond (95-266), 518 U.S. 1 (1996)
The Abstract From Justice Stevens' Opinion

Justice John Paul Stevens wrote the opinion for the majority in the Supreme Court's decision in the case of *Jaffee v. Redmond*. The case was first heard in Illinois, where clinical social worker Karen Beyer's session notes were subpoenaed as evidence in a federal district court action. When she refused to produce the notes or answer questions about the therapeutic communications, the judge ruled that clinical social workers could not claim such a privilege, and informed the jury that the clinician's refusal could be interpreted to mean that damaging statements had been made in therapy by the clinician's client.

The following is taken directly and consecutively from the Supreme Court majority opinion, section IV (the ABE et al friend-of-the-court brief is cited in the decision as "Brief for National Association of Social Workers et al as Amici Curiae"):

"All agree that a psychotherapist privilege covers confidential communications made to licensed psychiatrists and psychologists. We have no hesitation in concluding in this case that the federal privilege should also extend to confidential communications made to licensed social workers in the course of psychotherapy. The reason for recognizing a privilege for treatment by psychiatrists and psychologists apply with equal force to treatment by a clinical social worker such as Karen Beyer. Today, social workers provide a significant amount of mental health treatment. See, e.g., U.S. Dept. of Health & Human Services, Center for Mental Health Services, *Mental Health, United States, 1994*, pp. 85, 87, 107-114; Brief for National Association of Social Workers et al as Amici Curiae 5-7 (citing authorities). Their clients often include the poor and those of modest means who could not afford the assistance of a psychiatrist or psychologist, *id.*, at 6-7 (citing authorities), but whose counseling sessions serve the same public goals. Perhaps in recognition of these circumstances, the vast majority of States explicitly extend a testimonial privilege to licensed social workers. We therefore agree with the Court of Appeals that drawing a distinction between the counseling provided by costly psychotherapists and the counseling provided by more readily

accessible social workers serves no discernible public purpose.

"We part company with the Court of Appeals on a separate point. We reject the balancing component of the privilege implemented by that court and a small number of States. Making the promise of confidentiality contingent upon a trial judge's later evaluation of the relative importance of patients' interest in privacy and the evidentiary need for disclosure would eviscerate the effectiveness of the privilege. As we explained in *Upjohn*, if the purpose of the privilege is to be served, the participants in the confidential conversation 'must be able to predict with some degree of certainty whether particular discussions will be protected. An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all."