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Jaffee v. Redmond

**A Psychotherapist-Patient Privilege
Exists Under Federal
Rule Of Evidence 501**

By Kathleen M. Maynard

In an opinion that gave an extensive review of the evolutionary development of federal privilege law, the United States Supreme Court resolved a conflict among the circuits by recognizing an absolute psychotherapist-patient privilege. In *Jaffee v. Redmond*, 116 S. Ct. 1923 (1996), the Court held that Federal Rule of Evidence 501 authorizes federal courts to extend a privilege to confidential communications between licensed psychotherapists and their patients made during the course of diagnosis or treatment. In so holding, the Court left open to case-by-case interpretation the delineation of the privilege's scope.

On June 17, 1991, respondent Mary Lu Redmond, ("Redmond"), a police officer for the Village of Hoffman Estates, Illinois, responded to a "fight in progress" call at an apartment complex. Redmond was the first officer to arrive at the scene, where onlookers informed her that a stabbing had occurred. While awaiting the arrival of an ambulance and support officers, Redmond observed Ricky Allen, Jr. emerging from the apartment complex chasing another man. Believing that Allen was about to stab the man, Redmond ordered Allen to drop the weapon. When he continued to ignore her, Redmond fired her service revolver, fatally wounding Allen, who died at the scene.

Carrie Jaffee ("Jaffee"), the administrator of Allen's estate,

filed suit against both Redmond and the Village of Hoffman Estates in U.S. District Court. She sought damages for the death of her son under federal and state statutes, claiming that Redmond had violated Allen's constitutional rights by use of excessive force. Upon learning that Redmond had received therapy after the shooting, Jaffee attempted to discover records of conversations between Redmond and clinical social worker Karen Beyer. Despite Redmond's assertion that a psychotherapist-patient privilege protected the communications, the district court judge ordered disclosure of the records. When both Redmond and Beyer refused to comply with the order, the trial judge instructed the jury that they could presume Redmond's failure to submit the documents was based on her desire to keep out injurious information. As a result, the jury awarded Jaffee damages under both the federal and state law claims.

The United States Court of Appeals for the Seventh Circuit reversed the district court, holding that recognition of a qualified psychotherapist-patient privilege

was required under Federal Rule of Evidence 501. Declaring that the privilege would apply only if a patient's privacy interest outweighed the court's need for evidence, the court applied the balancing test to the case at bar, and found that Redmond's interest in protecting the confidential records outweighed the evidentiary need. The United States Supreme Court granted certiorari, and affirmed the court of appeals' recognition of the privilege. The Court, however, rejected the lower court's case-by-case balancing approach to its application.

In an opinion by Justice Stevens, the Court began by acknowledging that Congress, in enacting Federal Rule of Evidence 501, intended for federal courts to delineate new privileges according to the principles established by the common law, and "in the light of reason and experience." *Jaffee*, 116 S. Ct. at 1927 (quoting *Wolfe v. United States*, 291 U.S. 7, 12 (1934)). At common law, testimonial privileges were disfavored because of the principle that "the public has a right to every man's evidence." *Id.* at 1928 (quoting *United States v. Bryan*, 339 U.S. 323, 331 (1950) (quoting 8 J. Wigmore, Evidence § 2192, p. 64 (3d ed. 1940))). This rule would allow no exceptions unless warranted by a transcendent public good. *Id.* (citing *Trammel v. United States*, 445 U.S. 40, 50 (1980) (quoting *Elkins v. United*

States, 364 U.S. 206, 234 (1960))). Emphasizing that reason and experience necessitated recognition of the privilege, the Court reasoned that the shielding of confidential psychotherapist-patient communications from discovery furthered interests important enough to outweigh a court's need for probative evidence. *Id.* (citing *Trammel*, 445 U.S. at 51 (1980)).

The Court analogized the psychotherapist-patient relationship to that of attorney and client and that of spouses, stating that an atmosphere of trust that fosters complete disclosure is essential to all of these relationships. *Id.* at 1928. Thus, the Court reasoned, the privilege furthers the important private interest of encouraging frank communications between psychotherapist and patient. *Id.* at 1929.

Furthermore, because the common law makes clear that a privilege must also serve a public good, the Court examined the societal benefit promoted by the psychotherapist-patient privilege. *Id.* (citing *Upjohn v. United States*, 449 U.S. 383 (1981)). Determining that a public good is promoted when citizens are encouraged to seek treatment for mental or emotional problems, the Court concluded that the privilege complies with the common-law mandate. *Id.* at 1929.

The Court next reasoned that it is appropriate for federal courts to recognize a psychotherapist-patient privilege because some form of the privilege has been enacted into law in all fifty states.

Id. The Court noted that the States' protection against compelled disclosure would be meaningless if not credited by federal courts. *Id.* at 1930. Rejecting Jaffee's argument that the Court should disregard States' adoption of the privilege because legislatively promulgated, and therefore politically influenced, the Court acknowledged that such policy determinations by state legislatures reflect both reason and experience. *Id.* (citing *Funk v. United States*, 190 U.S. 371, 376-81 (1933)).

To further bulwark the Court's recognition of the privilege, Justice Stevens referred to the Advisory Committee's inclusion of a psychotherapist-patient privilege in its original draft of Rule 501. The proposed rule included nine express privileges, but was rejected in favor of the more flexible rule that Congress eventually adopted. *Id.* at 1930.

Noting the significant amount of mental health treatment provided by licensed social workers, the Court made clear that the privilege extends not only to psychiatrists and psychologists, but equally to confidential communications made between licensed social workers and their patients in the course of diagnosis or treatment. *Id.* at 1931.

Significantly, the Court refused to condition the privilege upon a balancing of the court's evidentiary need and the patient's privacy need, explaining that this would result in uncertainty of application, thus destroying the privilege's

benefit. *Id.* at 1932 (citing *Upjohn*, 449 U.S. at 393).

In a vigorous dissent, Justice Scalia declared the scope of the new privilege to be ill-defined. He criticized the majority's premise that the private and public interests served by the privilege are important enough to override the court's need for evidence and questioned the majority's conclusion that recognition of the privilege will result in more open communications. *Id.* at 1934. Justice Scalia protested the Court's reliance upon state privilege law, contending that legislatively enacted testimonial exceptions should not provide guidance for judicial interpretation of the common law. *Id.* at 1935-36. Finally, Justice Scalia asserted that the inclusion of licensed social workers within the definition of "psychotherapist" is a matter best left to Congress, not to the Court. *Id.* at 1940.

In *Jaffee v. Redmond*, the United States Supreme Court acknowledged the existence of a psychotherapist-patient privilege for the first time. Although Maryland's General Assembly had already provided for a psychotherapist-patient privilege in the Courts and Judicial Proceedings Article section 9-109 of the Annotated Code of Maryland, the decision affords patients who seek counseling in Maryland the additional certainty that the privilege will be honored in federal courts.