

Confidentiality, Privileged Communication, Rules of Evidence, and Social Work
Jaffee vs. Redmond et al – US Supreme Court – October 1995
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On 6-27-91 Mary Lu Redmond, an on duty police officer, responded to a call of a “fight in progress” in an apartment complex in the city of Village of Hoffman Estates, Illinois. As she arrived on the scene two women ran to her police car shouting someone had been stabbed. She notified the dispatcher and called for an ambulance, left her vehicle, and observed several men running from the building, one carrying a piece of pipe. The men ignored her commands to stop and lay on the ground whereupon she drew her service revolver. Two other men then ran from the building, one chasing the other with a butcher knife. The man with the knife, Ricky Allen, also ignored her commands to drop the knife and continued to pursue the other man. Officer Redmond then shot and killed Ricky Allen.

After the incident Officer Redmond attended counseling sessions with Karen Beyer, an Illinois licensed clinical social worker. Ms. Beyer was employed by the city, Village of Hoffman Estates.

Jaffee, the administrator of Rickey Allen’s estate, filed a lawsuit against the Officer Redmond and the city Village of Hoffman Estates in Federal District Court alleging that Mr. Allen’s civil rights had been violated due to his being shot and killed by Officer Redmond. As part of the court proceedings Jaffee’s attorneys requested psychotherapy records and notes from Karen Beyer, Officer Redmond’s therapist, claiming they would be pertinent to the case. Ms. Beyer and Officer Redmond both refused, citing psychotherapist confidentiality and privileged communication under Federal Rules of Evidence 501. The judge disagreed, and although neither Beyer or Redmond were cited for contempt of court the judge did instruct the jury that their refusal to submit the therapy records probably indicated they would not be favorable to the defendant, Officer Redmond. The jury could consider that in their deliberations. The jury awarded damages to Jaffee for the violation of Ricky Allen’s civil rights.

On appeal the Federal Appeals Court reversed the decision and remanded the matter back to the Federal District Court. Without repeating pages of detail, process, and legal jargon, I will summarize the issues in this case as follows:

1. Although all 50 states recognized privileged communication between clients and social workers, and specified as such in licensing and other laws, no federal case had established precedent for this issue.
2. The Federal Rules of Evidence 501 was the focal point of this case as it had already been used to establish privileged communication for psychiatrists, psychologists, etc.
3. Although the Federal Appeals Court rejected the lower court’s initial ruling it left the door open for additional interpretations when it remanded the case back to the District Court. The District Court’s subsequent interpretations led to another appeal, which eventually reached the US Supreme Court
4. Federal Courts, District and Appeals, had rendered contradictory and inconsistent decisions regarding the issue of privileged communications for social workers. There had also been some confusion about what defined a clinical social worker and what skills and abilities they used in their professional practice.
5. Since it became clear that a uniform and universal policy was needed on this issue the case was accepted by the US Supreme Court.
6. Many organizations filed “amicus curiae” (friend of the court) briefs in behalf of this case. The briefs supported the position that client communication with clinical social workers is privileged communication and cannot be retrieved by a court, subpoenaed, or used in discovery. The briefs were from a wide range of organizations. Of course NASW and ASWB filed, but so did labor unions, mental health associations, both APAs, police officer

associations, police chiefs' organizations, ACLU, the Menninger Foundation, in short, an amazing and diverse collection of supports.

The Supreme Court majority cited common law, as defined by the states laws which had already determined that communication with social workers was privileged, as a primary deciding factor, citing the states "reason and experience" with the issue. The court attached particular significance to the fact that Illinois law expressly extended privileged communication to social workers. They also took note that all 50 states had similar laws and concluded the state laws would not have much legitimacy if they could be ignored by federal courts.

The US Supreme Court majority ruled that communication between clients and clinical social workers is privileged communication. They extended the Federal Rules of Evidence 501 to apply equally to social workers as it did to other mental health professionals. Justice Stevens delivered the opinion of the Court joined by O'Connor, Kennedy, Souter, Thomas, Ginsburg, and Breyer. Justice Scalia dissented, joined by Justice Rehnquist. This decision, rendered in October 1995 and written in 1996, set the rules of evidence regarding privileged communication between client and clinical social worker for all federal courts, and consequently state courts as well, although that was of minimal impact as all 50 states had already addressed the issue with their own laws and policies.

Justice Scalia wrote the dissent, a document which is almost as long as the majority decision written by Justice Stevens. He was not sure social workers had the same status of mental health providers as psychiatrists and psychologists. On the other hand, he seemed to object to psychiatrists and psychologists having privileged communication as well, saying that the practices of psychiatry and psychology were flourishing long before any federal court decided their communications were privileged. He was also concerned about where privileged communication would end. Would other counselors want it. How about ministers? Are they also protected? Who decides that, the churches, the legislatures, or the courts? Scalia and Rehnquist argued the Supreme Court should not be deciding this issue and that privileged communication issues and the rules of evidence governing them should be decided by legislatures and not the courts.

Conclusion:

- 1 The US Supreme Court recognized clinical social workers as mental health professionals
- 2 Clinical social workers conversations with clients are considered confidential and privileged as defined by the Federal Rules of Evidence 501.
- 3 Before the Supreme Court decision all 50 states had already passed legislation extending privileged communication to licensed clinical social workers.
- 4 There was a groundswell of support from multiple sources, from some surprising sources, arguing in favor of the Supreme Court finding that the rules of evidence regarding privileged communication should include clinical social workers.