

# Clinical Social Work Wins Big in Supreme Court Decision

## Broad Confidentiality Privilege Becomes National Standard

The Supreme Court of the United States has ruled that there is a **broad federal privilege** protecting the confidentiality of communication between psychotherapists and their clients, and that this privilege **unequivocally applies to clinical social workers' therapeutic communications**. In its majority decision in Jaffee v. Redmond, the Supreme Court repeatedly cited the "friend of the court" (amicus curiae) brief submitted by the American Board of Examiners in Clinical Social Work in partnership with the NASW and the National Federation of Societies for Clinical Social Work. From these references, it is apparent that the ABE *et al* brief was helpful in leading the Court to conclude that clinical social work was deserving of an absolute privilege.

The Court's decision, released on June 13, was written by Justice John Paul Stevens and reflects the 7-2 majority, from which only Justices Scalia and Rehnquist dissented. In the opinion, Stevens writes that "the mental health of our citizenry, no less than its physical health, is a public good of transcendent importance."

In a national news release, ABE president Richard Reif hailed the opinion as "an unqualified endorsement of clinical social work as a psychotherapy discipline. Millions of people benefit from this decision. Its effect is to assure the public that when they go to a clinical social worker for mental-emotional healthcare, their remarks will remain confidential, and that protection of their privacy is guaranteed at the highest judiciary level in the United States."

As a result of the decision, clinical social work, psychology, and psychiatry are the only mental health disciplines which have been recognized by

Supreme Court as being within the scope of the privilege. In the past, this privilege was not uniformly recognized throughout the federal circuit courts, and some federal judges made rulings in which their assessment of the importance of confidentiality was balanced against their perception of the probable value of therapist-client communication as evidence in the case. Rejecting this "balance testing" was a major part of the Court's decision, and was advocated specifically in the ABE *et al* brief and by the Justice Department attorney in oral argument before the Court.

The Supreme Court opinion was covered as important national news, including front-page treatment from the *New York Times* on June 14. In her closing paragraph, reporter Linda Greenhouse notes that clinical social work was recognized alongside psychology and psychiatry "because the reasons for having the privilege apply with equal force' to all the professions." She quotes Justice Stevens as writing that clinical social workers' clients often "include the poor and those of modest means."

"The stakes in this case were very high," noted ABE's Richard Reif. "Had the decision gone against psychotherapists--and clinical social workers in particular--it could have set back our profession by many years. I think all BCDs can take pride in the Supreme Court's recognition of our having become the leading provider of mental-emotional healthcare services in America, and of ABE's role in having promoted and protected the gains we have made."

--Robert Booth, 6/24/96

(See other side for 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. (Note: the friend of the court brief, submitted by the American Board of Examiners in Clinical Social Work and partners NASW and the National Federation of Societies for Clinical Social Work, 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 'dewing 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.'"