SUPREME COURT OF THE UNITED STATES

No. 95-266

CARRIE JAFFEE, SPECIAL ADMINISTRATOR FOR RICKY ALLEN, SR., DECEASED, PETITIONER v. MARY LU REDMOND ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June 13, 1996]

JUSTICE STEVENS delivered the opinion of the Court. After a traumatic incident in which she shot and killed a man, a police officer received extensive counseling from a licensed clinical social worker. The question we address is whether statements the officer made to her therapist during the counseling sessions are protected from compelled disclosure in a federal civil action brought by the family of the deceased. Stated otherwise, the question is whether it is appropriate for federal courts to recognize a "psychotherapist privilege" under Rule 501 of the Federal Rules of Evidence.

I

Petitioner is the administrator of the estate of Ricky Allen. Respondents are Mary Lu Redmond, a former police officer, and the Village of Hoffman Estates, Illinois, her employer during the time that she served on the police force.[1] Petitioner commenced this action against respondents after Redmond shot and killed Allen while on patrol duty.

On June 27, 1991, Redmond was the first officer to respond to a "fight in progress" call at an apartment complex. As she arrived at the scene, two of Allen's sisters ran toward her squad car, waving their arms and shouting that there had been a stabbing in one of the apartments. Redmond testified at trial

that she relayed this information to her dispatcher and requested an ambulance. She then exited her car and walked toward the apartment building. Before Redmond reached the building, several men ran out, one waving a pipe. When the men ignored her order to get on the ground, Redmond drew her service revolver. Two other men then burst out of the building, one, Ricky Allen, chasing the other. According to Redmond, Allen was brandishing a butcher knife and disregarded her repeated commands to drop the weapon. Redmond shot Allen when she believed he was about to stab the man he was chasing. Allen died at the scene. Redmond testified that before other officers arrived to provide support, "people came pouring out of the buildings," App. 134, and a threatening confrontation between her and the crowd ensued.

Petitioner filed suit in Federal District Court alleging that Redmond had violated Allen's constitutional rights by using excessive force during the encounter at the apartment complex. The complaint sought damages under Rev. Stat. §1979, 42 U. S. C. §1983 and the Illinois wrongful death statute, Ill. Comp. Stat., ch. 740, §180/1 et seq. (1994). At trial, petitioner presented testimony from members of Allen's family that conflicted with Redmond's version of the incident in several important respects. They testified, for example, that Redmond drew her gun before exiting her squad car and that Allen was unarmed when he emerged from the apartment building.

During pretrial discovery petitioner learned that after the shooting Redmond had participated in about 50 counseling sessions with Karen Beyer, a clinical social worker licensed by the State of Illinois and employed at that time by the Village of Hoffman Estates. Petitioner sought access to Beyer's notes concerning the sessions for use in cross-examining Redmond. Respondents vigorously resisted the discovery. They asserted that the contents of the conversations between Beyer and Redmond were protected against involuntary disclosure by a psychotherapist-patient privilege. The district judge rejected this argument. Neither Beyer nor Redmond, however, complied with his order to disclose the

contents of Beyer's notes. At depositions and on the witness stand both either refused to answer certain questions or professed an inability to recall details of their conversations.

In his instructions at the end of the trial, the judge advised the jury that the refusal to turn over Beyer's notes had no "legal justification" and that the jury could therefore presume that the contents of the notes would have been unfavorable to respondents.[2] The jury awarded petitioner $45,000 on the federal claim and $500,000 on her state-law claim.

The Court of Appeals for the Seventh Circuit reversed and remanded for a new trial. Addressing the issue for the first time, the court concluded that "reason and experience," the touchstones for acceptance of a privilege under Rule 501 of the Federal Rules of Evidence, compelled recognition of a psychotherapist-patient privilege.[3] 51 F. 3d 1346, 1355 (1995). "Reason tells us that psychotherapists and patients share a unique relationship, in which the ability to communicate freely without the fear of public disclosure is the key to successful treatment." Id., at 1355—1356. As to experience, the court observed that all 50 States have adopted some form of the psychotherapist-patient privilege. Id., at 1356. The court attached particular significance to the fact that Illinois law expressly extends such a privilege to social workers like Karen Beyer.[4] Id., at 1357. The court also noted that, with one exception, the federal decisions rejecting the privilege were more than five years old and that the "need and demand for counseling services has skyrocketed during the past several years." Id., at 1355—1356.

The Court of Appeals qualified its recognition of the privilege by stating that it would not apply if "in the interests of justice, the evidentiary need for the disclosure of the contents of a patient's counseling sessions outweighs that patient's privacy interests." Id., at 1357. Balancing those conflicting interests, the court observed, on the one hand, that the evidentiary need for the contents of the confidential conversations was diminished in this case because there were

numerous eyewitnesses to the shooting, and, on the other hand, that Officer Redmond's privacy interests were substantial.[5] Id., at 1358. Based on this assessment, the court concluded that the trial court had erred by refusing to afford protection to the confidential communications between Redmond and Beyer.

The United States courts of appeals do not uniformly agree that the federal courts should recognize a psychotherapist privilege under Rule 501. Compare In re Doe, 964 F. 2d 1325 (CA2 1992) (recognizing privilege); In re Zuniga, 714 F. 2d 632 (CA6), cert. denied, 464 U. S. 983 (1983) (same), with United States v. Burtrum, 17 F. 3d 1299 (CA10), cert. denied, 513 U. S. ___ (1994) (declining to recognize privilege); In re Grand Jury Proceedings, 867 F. 2d 562 (CA9), cert. denied sub nom. Doe v. United States, 493 U. S. 906 (1989) (same); United States v. Corona, 849 F. 2d 562 (CA11 1988), cert. denied, 489 U. S. 1084 (1989) (same); United States v. Meagher, 531 F. 2d 752 (CA5), cert. denied, 429 U. S. 853 (1976) (same). Because of the conflict among the courts of appeals and the importance of the question, we granted certiorari. 516 U. S. ___ (1995). We affirm..

II

Rule 501 of the Federal Rules of Evidence authorizes federal courts to define new privileges by interpreting "common law principles . . . in the light of reason and experience." The authors of the Rule borrowed this phrase from our opinion in Wolfle v. United States, 291 U. S. 7, 12 (1934),[6] which in turn referred to the oft-repeated observation that "the common law is not immutable but flexible, and by its own principles adapts itself to varying conditions." Funk v. United States, 290 U. S. 371, 383 (1933). See also Hawkins v. United States, 358 U. S. 74, 79 (1958) (changes in privileges may be "dictated by `reason and experience'"). The Senate Report accompanying the 1975 adoption of the Rules indicates that Rule

501 "should be understood as reflecting the view that the recognition of a privilege based on a confidential relationship . . . should be determined on a case-by-case basis." S. Rep. No. 93— 1277, p. 13 (1974).[7] The Rule thus did not freeze the law governing the privileges of witnesses in federal trials at a particular point in our history, but rather directed federal courts to "continue the evolutionary development of testimonial privileges." Trammel v. United States, 445 U. S. 40, 47 (1980); see also University of Pennsylvania v. EEOC, 493 U. S. 182, 189 (1990).

The common-law principles underlying the recognition of testimonial privileges can be stated simply. "`For more than three centuries it has now been recognized as a fundamental maxim that the public . . . has a right to every man's evidence. When we come to examine the various claims of exemption, we start with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are distinctly exceptional, being so many derogations from a positive general rule.'" United States v. Bryan, 339 U. S. 323, 331 (1950) (quoting 8 J. Wigmore, Evidence §2192, p. 64 (3d ed. 1940)).[8] See also United States v. Nixon, 418 U. S. 683, 709 (1974). Exceptions from the general rule disfavoring testimonial privileges may be justified, however, by a "`public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.'" Trammel, 445 U. S., at 50, quoting Elkins v. United States, 364 U. S. 206, 234 (1960) (Frankfurter, J., dissenting).

Guided by these principles, the question we address today is whether a privilege protecting confidential communications between a psychotherapist and her patient "promotes sufficiently important interests to outweigh the need for probative evidence . . . ." 445 U. S., at 51. Both "reason and experience" persuade us that it does. .

III

Like the spousal and attorney-client privileges, the psychotherapist-patient privilege is "rooted in the imperative need for confidence and trust." Trammel, 445 U. S., at 51. Treatment by a physician for physical ailments can often proceed successfully on the basis of a physical examination, objective information supplied by the patient, and the results of diagnostic tests. Effective psychotherapy, by contrast, depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears. Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.[9] As the Judicial Conference Advisory Committee observed in 1972 when it recommended that Congress recognize a psychotherapist privilege as part of the Proposed Federal Rules of Evidence, a psychiatrist's ability to help her patients

> "is completely dependent upon [the patients'] willingness and ability to talk freely. This makes it difficult if not impossible for [a psychiatrist] to function without being able to assure . . . patients of confidentiality and, indeed, privileged communication. Where there may be exceptions to this general rule . . . , there is wide agreement that confidentiality is a sine qua non for successful psychiatric treatment." Advisory Committee's Notes to Proposed Rules, 56 F. R. D. 183, 242 (1972) (quoting Group for Advancement of Psychiatry, Report No. 45, Confidentiality and Privileged Communication in the Practice of Psychiatry 92 (June 1960)).

By protecting confidential communications between a psychotherapist and her patient from involuntary disclosure, the proposed privilege thus serves important private interests.

Our cases make clear that an asserted privilege must also "serv[e] public ends." Upjohn Co. v. United States, 449 U. S. 383, 389 (1981). Thus, the purpose of the attorney-client privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." Ibid. And the spousal privilege, as modified in Trammel, is justified because it "furthers the important public interest in marital harmony," 445 U. S., at 53. See also United States v. Nixon, 418 U. S., at 705; Wolfle v. United States, 291 U. S., at 14. The psychotherapist privilege serves the public interest by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.[10]

In contrast to the significant public and private interests supporting recognition of the privilege, the likely evidentiary benefit that would result from the denial of the privilege is modest. If the privilege were rejected, confidential conversations between psychotherapists and their patients would surely be chilled, particularly when it is obvious that the circumstances that give rise to the need for treatment will probably result in litigation. Without a privilege, much of the desirable evidence to which litigants such as petitioner seek access - for example, admissions against interest by a party - is unlikely to come into being. This unspoken "evidence" will therefore serve no greater truth-seeking function than if it had been spoken and privileged.

That it is appropriate for the federal courts to recognize a psychotherapist privilege under Rule 501 is confirmed by the fact that all 50 States and the District of Columbia have enacted into law some form of psychotherapist privilege.[11] We have previously observed that the policy decisions of the States bear on the question whether federal courts should recognize a new privilege or amend the coverage of an existing one. See Trammel, 445 U. S., at 48—50; United States v. Gillock, 445 U. S. 360, 368, n. 8 (1980). Because state

legislatures are fully aware of the need to protect the integrity of the factfinding functions of their courts, the existence of a consensus among the States indicates that "reason and experience" support recognition of the privilege. In addition, given the importance of the patient's understanding that her communications with her therapist will not be publicly disclosed, any State's promise of confidentiality would have little value if the patient were aware that the privilege would not be honored in a federal court.[12] Denial of the federal privilege therefore would frustrate the purposes of the state legislation that was enacted to foster these confidential communications.

It is of no consequence that recognition of the privilege in the vast majority of States is the product of legislative action rather than judicial decision. Although common-law rulings may once have been the primary source of new developments in federal privilege law, that is no longer the case. In Funk v. United States, 290 U. S. 371 (1933), we recognized that it is appropriate to treat a consistent body of policy determinations by state legislatures as reflecting both "reason" and "experience." Id., at 376—381. That rule is properly respectful of the States and at the same time reflects the fact that once a state legislature has enacted a privilege there is no longer an opportunity for common-law creation of the protection. The history of the psychotherapist privilege illustrates the latter point. In 1972 the members of the Judicial Conference Advisory Committee noted that the common law "had indicated a disposition to recognize a psychotherapist-patient privilege when legislatures began moving into the field." Proposed Rules, 56 F. R. D., at 242 (citation omitted). The present unanimous acceptance of the privilege shows that the state lawmakers moved quickly. That the privilege may have developed faster legislatively than it would have in the courts demonstrates only that the States rapidly recognized the wisdom of the rule as the field of psychotherapy developed.[13]

The uniform judgment of the States is reinforced by the fact that a psychotherapist privilege was among the nine specific privileges recommended

by the Advisory Committee in its proposed privilege rules. In United States v. Gillock, 445 U. S. 360, 367—368 (1980), our holding that Rule 501 did not include a state legislative privilege relied, in part, on the fact that no such privilege was included in the Advisory Committee's draft. The reasoning in Gillock thus supports the opposite conclusion in this case. In rejecting the proposed draft that had specifically identified each privilege rule and substituting the present more open-ended Rule 501, the Senate Judiciary Committee explicitly stated that its action "should not be understood as disapproving any recognition of a psychiatrist-patient . . . privileg[e] contained in the [proposed] rules." S. Rep. No. 93—1277, at 13.

Because we agree with the judgment of the state legislatures and the Advisory Committee that a psychotherapist-patient privilege will serve a "public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth," Trammel, 445 U. S., at 50, we hold that confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence.[14].

IV

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 reasons 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.[15] Today, social workers provide a significant amount of mental health treatment. See, e.g., U. S. Dept. of Health and 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.[16] Perhaps in recognition of these circumstances, the vast majority of States explicitly extend a testimonial privilege to licensed social workers.[17] We therefore agree with the Court of Appeals that "[d]rawing a distinction between the counseling provided by costly psychotherapists and the counseling provided by more readily accessible social workers serves no discernible public purpose." 51 F. 3d, at 1358, n. 19.

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.[18] Making the promise of confidentiality contingent upon a trial judge's later evaluation of the relative importance of the patient's 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." 449 U. S., at 393.

These considerations are all that is necessary for decision of this case. A rule that authorizes the recognition of new privileges on a case-by-case basis makes it appropriate to define the details of new privileges in a like manner. Because this is the first case in which we have recognized a psychotherapist privilege, it is neither necessary nor feasible to delineate its full contours in a way that would "govern all conceivable future questions in this area." Id., at 386. [*See* Footnote 19]

V

The conversations between Officer Redmond and Karen Beyer and the notes taken during their counseling sessions are protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence. The judgment of the Court of Appeals is affirmed.

It is so ordered.

FOOTNOTES:

1.
Redmond left the police department after the events at issue in this lawsuit.

2.
App. to Pet. for Cert. 67.

3.
Rule 501 provides as follows: "Except as otherwise required by the Constitution of the United States or provided by Act of Congress, or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State or political subdivision thereof shall be determined in accordance with State law."

4.
See Illinois Mental Health and Developmental Disabilities Confidentiality Act, Ill. Comp. Stat., ch. 740, §§110/1—110/17 (1994).

5.
"Her ability, through counseling, to work out the pain and anguish undoubtedly caused by Allen's death in all probability depended to a great deal upon her trust and confidence in her counselor Karen Beyer. Officer Redmond, and all those placed in her most unfortunate circumstances, are

entitled to be protected in their desire to seek counseling after mortally wounding anotherhuman being in the line of duty. An individual who is troubled as the result of her participation in a violent and tragic event, such as this, displays a most commendable respect for human life and is a person well-suited `to protect and to serve.'" 51 F. 3d, at 1358.

6.
"[T]he rules governing the competence of witnesses in criminal trials in the federal courts are not necessarily restricted to those local rules in force at the time of the admission into the Union of the particular state where the trial takes place, but are governed by common law principles as interpreted and applied by the federalcourts in the light of reason and experience. Funk v. United States, 290 U. S. 371." Wolfle v. United States, 291 U. S., at 12—13.

7.
In 1972 the Chief Justice transmitted to Congress proposed Rules of Evidence for United States Courts and Magistrates. 56 F.R.D. 183 (hereinafter Proposed Rules). The rules had been formulated by the Judicial Conference Advisory Committee on Rules of Evidence and approved by the Judicial Conference of the United States and by this Court. Trammel v. United States, 445 U. S. 40, 47 (1980). The proposed rules defined nine specific testimonial privileges, including a psychotherapist-patient privilege, and indicated that these were to be the exclusive privileges absent constitutional mandate, Act of Congress, or revision of the Rules. Proposed Rules 501—513, 56 F. R. D., at 230—261. Congress rejected this recommendation in favor of Rule 501's general mandate. Trammel, 445 U. S., at 47.

8.
The familiar expression "every man's evidence" was a well-known phrase as early as the mid-18th century. Both the Duke of Argyll and Lord Chancellor Hardwicke invoked the maxim during the May 25, 1742, debate in the House of Lords concerning a bill to grant immunity to witnesses who would give evidence against Sir Robert Walpole, first Earl of Orford. 12 T. Hansard, Parliamentary History of England 643, 675, 693, 697 (1812). The bill was defeated soundly. Id., at 711.

9.
See studies and authorities cited in the Brief for American Psychiatric Association et al. as Amici Curiae 14—17, and the Brief for American Psychological Association as Amicus Curiae 12—17.

10.
This case amply demonstrates the importance of allowing individuals to receive confidential counseling. Police officers engaged in the dangerous and difficult tasks associated with protecting

the safety of our communities not only confront the risk of physical harm but also face stressful circumstances that may give rise to anxiety, depression, fear, or anger. The entire community may suffer if police officers are not able to receive effective counseling and treatment after traumatic incidents, either because trained officers leave the profession prematurely or because those in need of treatment remain on the job.

11.

Ala. Code §34—26—2 (1975); Alaska Rule Evid. 504; Ariz. Rev. Stat. §32—2085 (1992); Ark. Rule Evid. 503; Cal. Evid. Code Ann. §§1010, 1012, 1014 (1995); Colo. Rev. Stat. §13—90—107(g)(1) (1987); Conn. Gen. Stat. §52—146c (1995); Del. Uniform Rule Evid. 503; D. C. Code Ann. §14—307 (1995); Fla. Stat. §90.503 (Supp. 1992); Ga. Code Ann. §24—9—21 (1995); Haw. Rules Evid. 504, 504.1; Idaho Rule Evid. 503; Ill. Comp. Stat., ch. 225 §15/5 (1994); Ind. Code §25—33—1—17 (1993); Iowa Code §622.10 (1987); Kan. Stat. Ann. §74—5323 (1985); Ky. Rule Evid. 507; La. Code Evid. Ann., Art. 510 (West 1995); Me. Rule Evid. 503; Md. Cts. & Jud. Proc. §9—109 (1995); Mass. Gen. Laws §233:20B (1995); Mich. Comp. Laws Ann. §333.18237 (Supp. 1996); Minn. Stat. Ann. §595.02 (1988 and Supp. 1996); Miss. Rule Evid. 503; Mo. Rev. Stat. §491.060 (1994); Mont. Code Ann. §26—1—807 (1995); Neb. Rev. Stat. §27—504 (1995); Nev. Rev. Stat. Ann. §49.209 (Supp. 1995); N. H. Rule Evid. 503; N. J. Stat. Ann. §45:14B-28 (West 1995); N. M. Rule Evid. 11—504; N. Y. Civ. Prac. Law §4507 (McKinney 1992); N. C. Gen. Stat. §8—53.3 (Supp. 1995); N. D. Rule Evid. §503; Ohio Rev. Code Ann. §2317.02 (1995); Okla. Stat., Tit. 12 §2503 (1991); Ore. Rules Evid. 504, 504.1; 42 Pa. Cons. Stat. §5944 (1982); R. I. Gen. Laws §§5—37.3—3, 5—37.3—4 (1995); S. C. Code Ann. §19—11—95 (Supp. 1995); S. D. Codified Laws §§19—13—6 to 19—13—11 (1995); Tenn. Code Ann. §24—1—207 (1980); Tex. Rules Civ. Evid. 509, 510; Utah Rule Evid. 506; Vt. Rule Evid. 503; Va. Code Ann. §8.01—400.2 (1992); Wash. Rev. Code §18.83.110 (1994); W

12.

At the outset of their relationship, the ethical therapist must disclose to the patient "the relevant limits on confidentiality." See American Psychological Association, Ethical Principles of Psychologists and Code of Conduct, Standard 5.01 (Dec. 1992). See also National Federation of Societies for Clinical Social Work, Code of Ethics V(a) (May 1988); American Counseling Association, Code of Ethics and Standards of Practice A.3.a (effective July 1995).

13.

Petitioner acknowledges that all 50 state legislatures favor a psychotherapist privilege. She nevertheless discounts the relevance of the state privilege statutes by pointing to divergence among the States concerning the types of therapy relationships protected and the exceptions

recognized. A small number of state statutes, for example, grant the privilege only to psychiatrists and psychologists, while most apply the protection more broadly. Compare Haw. Rules Evid. 504, 504.1 and N. D. Rule Evid. 503 (privilege extends to physicians and psychotherapists), with Ariz. Rev. Stat. Ann. §32—3283 (1992) (privilege covers "behavioral health professional[s]"); Tex. Rule Civ. Evid. 510(a)(1) (privilege extends to persons "licensed or certified by the State of Texas in the diagnosis, evaluation or treatment of any mental or emotional disorder" or "involved in the treatment or examination of drug abusers"); Utah Rule Evid. 506 (privilege protects confidential communications made to marriage and family therapists, professional counselors, and psychiatric mental health nurse specialists). The range of exceptions recognized by the States is similarly varied. Compare Ark. Code Ann. §17—46—107 (1987) (narrow exceptions); Haw. Rules Evid. 504, 504.1 (same), with Cal. Evid. Code Ann. §§1016—1027 (West 1995) (broad exceptions); R. I. Gen. Laws §5—37.3—4 (1956) (same). These variations in the scope of the protection are too limited to undermine the force of the States' unanimous judgment that some form of psychotherapist privilege is appropriate.

4.
Like other testimonial privileges, the patient may of course waive the protection.

5.
If petitioner had filed her complaint in an Illinois state court, respondents' claim of privilege would surely have been upheld, at least with respect to the state wrongful death action. An Illinois statute provides that conversations between a therapist and her patients are privileged from compelled disclosure in any civil or criminal proceeding. Ill. Comp. Stat., ch. 740, §110/10 (1994). The term "therapist" is broadly defined to encompass a number of licensed professionals including social workers. Ch. 740, §110/2. Karen Beyer, having satisfied the strict standards for licensure, qualifies as a clinical social worker in Illinois. 51 F. 3d 1346, 1358, n. 19 (CA7 1995). Indeed, if only a state-law claim had been asserted in federal court, the second sentence in Rule 501 would have extended the privilege to that proceeding. We note that there is disagreement concerning the proper rule in cases such as this in which both federal and state claims are asserted in federal court and relevant evidence would be privileged under state law but not under federal law. See C. Wright & K. Graham, 23 Federal Practice and Procedure §5434 (1980). Because the parties do not raise this question and our resolution of the case does not depend on it, we express no opinion on the matter.

16.
The Judicial Conference Advisory Committee's proposed psychotherapist privilege defined psychotherapists as psychologists and medical doctors who provide mental health services.

Proposed Rules, 56 F.R.D., at 240. This limitation in the 1972 recommendation does not counsel against recognition of a privilege for social workers practicing psychotherapy. In the quarter-century since the Committee adopted its recommendations, much has changed in the domains of social work and psychotherapy. See generally Brief for National Association of Social Workers et al. as Amici Curiae 5—13 (and authorities cited). While only 12 States regulated social workers in 1972, all 50 do today. See American Association of State Social Work Boards, Social Work Laws and Board Regulations: A State Comparison Study 29, 31 (1996). Over the same period, the relative portion of therapeutic services provided by social workers has increased substantially. See U. S. Dept. of Health and Human Services, Center for Mental Health Services, Mental Health, United States, 1994, pp. 85—87, 107—114.

17.

See Ariz. Rev. Stat. Ann. §32—3283 (1992); Ark. Code Ann. §17—46—107 (1995); Cal. Evid. Code §§1010, 1012, 1014 (West 1995); Colo. Rev. Stat. §13—90—107 (1987); Conn. Gen. Stat. §52—146q (1991); Del. Code Ann., Tit. 24 §3913 (1987); D. C. Code §14—307 (1995); Fla. Stat. §90.503 (1991); Ga. Code Ann. §24—9—21 (1995); Idaho Code §54—3213 (1994); Ill. Comp. Stat., ch. 225, §20/16 (1994); Ind. Code §25—23.6—6—1 (1993); Iowa Code §622.10 (1987); Kan. Stat. Ann. §65—6315 (Supp. 1990); Ky. Rule Evid. 507; La. Code Evid. Ann., Art. 510 (West 1995); Me. Rev. Stat. Ann., Tit. 32, §7005 (1988); Md. Cts. & Jud. Proc. Code Ann. §9—121 (1995); Mass. Gen. Laws §112:135A (1994); Mich. Comp. Stat. Ann. 339.1610 (1992); Minn. Stat. §595.02(g) (1994); Miss. Code Ann. §73—53—29 (1972); Mo. Ann. Stat. §337.636 (Supp. 1996); Mont. Code Ann. §37—22—401 (1995); Neb. Rev. Stat. Ann. §71—1,335 (1995); Nev. Rev. Stat. Ann. §§49.215, 49.225, 49.235 (Supp. 1995); N. H. Rev. Stat. Ann. §330—A:19 (1995); N. J. Stat. Ann. §45:15BB—13 (1995); N. M. Stat. Ann. §61—31—24 (Supp. 1995); N. Y. Civ. Prac. Law §4508 (1992); N. C. Gen. Stat. §8—53.7 (1986); Ohio Rev. Code Ann. §2317.02 (1995); Okla. Stat., Tit. 59, §1261.6 (1991); Ore. Rev. Stat. §40.250 (1991); R. I. Gen. Laws §§5—37.3—3, 5—37.3—4 (1995); S. C. Code Ann. §19—11—95 (Supp. 1995); S. D. Codified Laws §36—26—30 (1994); Tenn. Code Ann. §63—23—107 (1990); Tex. Rule Civ. Evid. 510; Utah Rule Evid. 506; Vt. Rule Evid. 503; Va. Code Ann. §8.01—400.2 (1992); Wash. Rev. Code §18.19.180 (1994); W. Va. Code §30—30—12 (1993); Wis. Stat. §905.04

18.

See, e.g., Me. Rev. Stat. Ann., Tit. 32, §7005 (1964); N.H. Rev. Stat. Ann. §330-A:19 (1995); N.C. Gen. Stat. §8—53.7 (1986); Va. Code Ann. §8.01—400.2 (1992).

19.

Although it would be premature to speculate about most future developments in the federal

psychotherapist privilege, we do not doubt that there are situations in which the privilege must give way, for example, if a serious threat of harm to the patient or to others can be averted only by means of a disclosure by the therapist.