

The Secret Service argues that release of these names would contravene the holding and principles articulated by the Supreme Court in Jaffe v. Redmond, 518 U.S. 1 (1996). In Jaffee, the Court held that communications occurring between a clinical social worker and patient are protected from compelled disclosure by virtue of a newly created psychotherapist-patient privilege under the Federal Rules of Evidence. *Id.* The Jaffee decision is inapplicable to the facts of this appeal. The Review Board is not seeking to compel disclosure of any doctor-patient privileged communications. To the extent any of the information contained in the Dinneen summaries was derived from a doctor-patient consultation, any claim of privilege has long since been waived. Further, the Secret Service has not produced any evidence of a confidentiality agreement involving any of the subjects listed in the disputed materials.

IV. The Service has failed to demonstrate how release of this information compromises an Understanding of Confidentiality.

The Service argues that disclosure of these names would contradict the holding and principles articulated in Jaffee v. Redmond, 518 U.S. 1 (1996). The Jaffee decision is inapposite to the facts in this case for several reasons. First, Jaffee held that a trial court could not compel disclosure of communications made by a patient to a clinical social worker, thus creating a psychotherapist privilege under the Federal Rules of Evidence. The Jaffee court held that “confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment” are protected under the Federal Rules of Evidence. Jaffee at 15. In the instant case, no one is compelling disclosure of confidential communications made between any of the targeted individuals and any doctors. This information was provided voluntarily to the Secret Service in the 1960's. The Service has been unable to produce any confidentiality agreements that pertain to any of the threat sheet subjects at issue. Further, there is no evidence that the summary sheets contain “confidential communications between a licensed psychotherapist and her patients in the course of diagnosis and treatment.”

While the Court in Jaffee created a psychotherapist-patient privilege under the Federal Rules of Evidence, the Court also recognized that “[E]xceptions 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 truth. Jaffee v. Redmond, 518 U.S. 1 (1996) 9 citing Trammel v. United States, 445 U.S. 40, 50, quoting Elkins v. United States, 364 U.S. 206, 234 (1960) (Frankfurter, J., dissenting). This does not in any way detract from a Tarasoff-like duty to protect potential victims of their patients violent acts by warning the intended target of the patient's threat.

This is significant for two reasons: Doctors were complying with this in the 1960's. And, doctors will comply with this today.

The Jaffee case involved the creation of a new, psychotherapist-patient privilege under the Federal Rules of Evidence, with respect to compelled testimony of a therapist. It should be noted that, although given the opportunity, the Secret Service did not produce evidence of the existence of any confidentiality agreements, with any of the individuals contained in the threat sheets, or between any doctors, and individuals contained in the threat sheets. Further, the Court pointed out that “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. Jaffee at Note 19.

The Whalen case, which involved a constitutional challenge to a New York statute requiring that

patient identifying information be filed with the State Health Department for prescriptions involving dangerous drugs, and is therefore, inapposite to the facts or issues in this case.