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The Supreme Court's Double Standards

By Jack C. Landau
Newhouse News Service

WASHINGTON - The Supreme Court approved this past week some new rules for the conduct of federal trials which permit:

- Police (but not news­men) to protect the identity of their confidential inform­ants.
- Attorneys (but not ac­countants) to protect confidential information obtained from their clients.
- Psychiatrists (but not psychologists or any other type of physician) to protect information they obtain from their patients.
- Clergymen (but not marriage counselors) to pro­tect information obtained from couples seeking their advice.

These new rules were approved by the Supreme Court under a power granted to the Court by Congress to set rules for the admis­sion of evidence in all federal civil and criminal cases.

Rules of Evidence

Although they are de­scribed as technical "rules of evidence," the new rules can just as effectively win or lose a trial for a particular defendant as a major Supreme Court decision.

If, for example, an ac­countant is required to in­criminate his client under an evidentiary rule, then for all practical purposes the Supreme Court has decided that accountants have no constitutional right to pro­tect their clients' confi­dences.

Although an advisory com­mittee of 15 lawyers and judges worked for more than seven years drafting the new rules, some of their inconsistencies are confus­ing.

Under the rules, husbands and wives may be forced to testify against each other in criminal trials. The legal theory has gen­erally been that forcing spouses to testify against each other destroys the bonds of marriage. But it is difficult to see how a mar­riage would be aided by pro­ceeding in a criminal case.

In giving the secrecy privi­lege to clergymen, the advisory committee notes that clergymen frequently con­duct marriage counseling sessions where confidences must be disclosed.

Clergymen (but not marriage counselors) have less protection for the confidences that they obtain.

Under the rules, husbands and wives may be forced to testify against each other in civil-type litigation, but not in criminal trials.

Destroys Bonds

Even though many legal experts believe that forcing spouses to testify against each other destroys the bonds of marriage, it is difficult to see how a marriage would be aided by proceeding in a civil case.

In giving the secrecy privi­lege to clergymen, the advisory committee notes that clergymen frequently conduct marriage counseling sessions where confidences must be disclosed.

But there is no discus­sion of why a non-religious marriage counselor should have less protection for the confidences that he receives.

The advisory committee notes that the courts should encourage drugs users to communicate confidentially with psychotherapists. And yet, the family general prac­titioner (who must tell all under the rules) is most commonly consulted initially about drug problems.

Search for Truth

Albert Jenner, a Chicago attorney who headed the ad­visory committee, said that the underlying "principle of the new rules is you search for truth best if all the rele­vant information is ob­tained."

If Congress makes no objec­tion, the new rules will go into effect next July. Only Justice William O. Douglas did not approve. He said the Supreme Court had not really researched or drafted the new rules but was merely acting as "con­duit" for the advisory com­mittee.

Eye Pole Ban

ANN ARBOR (Mich.) - The Ann Arbor City Council is consid­ering a sign ordinance ban on "visual pollution" to in­clude revolving barber poles.

Light Show

VANDENBERG AFB - The Air Force launched a Minuteman III intercontinental ballistic missile at 6 p.m. Friday, creating a light show in the evening sky.