

New Rules of Evidence: the Newhouse story you sent me makes more explicit than any other that their purpose is not facilitating the establishing of truth, regardless of what may have been in Jenner's mind, but furthering repression. They limit or eliminate ~~not~~ certain Constitutional rights, eliminate entirely the protections of basic laws and decisions, and will be ruled upon by the court that gave this approval or one farthure to the right, more dedicated to reaction than this one. You seek truth by making examination of a police fink impossible and persecuting reporters? By eliminating the protection of preventing a (perhaps vindictive) spouse from testifying against the mate? Now a criminal has to be a nut to seek a cure from a psychologist, for there is no privelege. Help society? Even the justifications are senseless, like encouraging drug users to consult therapists and taking the priveleged nature of that consultation away. H Lesar is supposed to be getting me the full text.

EXAM. 11/26/72

The Supreme Court's Double

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 admis-

sion 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 case for a particular defendant as a major Supreme Court decision on constitutional law.

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

Standards

testify against each other in negligence cases and other civil-type litigation, but not in criminal trials.

Destroys Bonds

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 making a distinction between criminal and civil trials.

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 couples he counsels.

The advisory committee notes that the courts should encourage drug 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.