

New federal evidence rules: Your neighbor can tell on you

WASHINGTON — The scales of justice will tip slightly for the prosecution in federal courts starting Tuesday.

That's when federal rules of evidence become mandatory. The change probably won't be noticeable to the average person. But for anyone charged with a federal crime, it could mean the difference between jail and freedom.

Paul Rothstein, a Georgetown University law professor who has written a handbook on the new rules, says they will help the prosecution.

"Their aim is to increase admissibility of evidence," he said, "and in a criminal case the defendant normally is the one who wants to limit the evidence."

Until they are tested in the appeals courts, the rules could allow a neighbor to give his personal opinion about a defendant, force a doctor to testify about conversations with his patients and permit a polygraph expert to say whether a defendant is lying.

Most states strictly limit the admissibility of such testimony. Until the new rules were proposed, federal courts followed state laws in deciding what testimony and evidence could be introduced.

Backers hope the new rules will bring uniformity and simplicity to the federal court system. They also see them as a means for reaching the truth.

The preface to the 24 pages of rules says they are designed "to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."

One of the most hotly contested provisions replaces state privilege laws in criminal trials with federal common law, which is to be interpreted "in the light of reason and experience."

If that sounds vague, it was not by accident. When the Supreme Court submitted the rules for congressional approval, it eliminated any privileges not specifically approved by federal law.

This raised an uproar from newsmen, doctors, ministers and other groups which have traditionally been accorded at least a limited right not to testify. Congress tried to appease them by leaving the privilege status unclear.

Under the new rule, a trial judge will have great discretion in deciding what privileges to allow. Without new federal laws, such as a newsmen's privilege bill now under consideration, privileges are likely to develop on a case-by-case basis, and probably will be more limited than under state laws.

This could mean a doctor might be forced to testify about conversations with a patient, a priest about statements heard in confession and a newsman about his sources.

If you are planning to commit a federal crime, you had better cultivate the good will of your neighbors. The new rules are more permissive in letting friends and acquaintances tell a jury what they think about you.

Most states limit such testimony to general statements about a defendant's reputation in the community. The new rules permit personal opinions in some circumstances, and these could be highly prejudicial unless carefully controlled by the judge.

One of the most striking changes allows an expert witness to voice his conclusions from the witness stand.

Rothstein says this could permit a lie-detector expert to testify whether a defendant told the truth. A psychiatrist

could tell the jury whether he thinks a defendant is insane. Such conclusions usually have been left to the jury.

There are safeguards for the defendant, too. Judges, for example, are given broad powers to limit potentially inflammatory evidence. The prosecution also will have less opportunity to introduce past convictions to impeach a witness or a defendant.

Cross examination will be limited to issues raised on direct testimony unless the trial judge grants an exception.

The full impact of the new rules will not be known for several years as various provisions are challenged in appellate courts. Much will depend on how broadly judges apply the rules.