

New Court Rules Hit Resistance

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A Supreme Court proposal to make sweeping changes in the law of evidence for federal courts met with stiff resistance yesterday in both houses of Congress.

The Senate passed unanimously and sent to the House a bill to give Congress until the end of this session, rather than until July 1, to decide whether to reject the far-reaching new code of evidence or permit it to become law.

Meanwhile, the House opened hearings on the code amid complaints by members that Congress, already embroiled in a power battle with the White House, lacks time and resources to cope with this extra challenge.

The court-inspired code calls for new rules to govern federal judges in deciding on the admissibility of evidence in civil and criminal trials.

Its provisions for maintaining secrecy of government information and the anonymity of Justice Department informants are satisfactory to the executive branch, but not to several groups of private attorneys.

Chairman William L. Hungate (D-Mo.) and other members of a special House judiciary subcommittee said the proposed rules, which among other things would eliminate a husband's privilege against testimony by his wife in civil cases, could have profound effects on human relationships.

Saying that he had an open mind on the novel question, Hungate said he wondered whether Congress had ever intended to delegate as much law-making power as the Supreme Court asserted in transmitting the new code to Congress on Monday.

The high court voted 8 to 1 last November to approve the code and invoke a seldom-used law by which the code becomes law unless Congress passes contrary legislation.

Justice William O. Douglas dissented, saying that the new code was beyond the scope of

the "procedural" rulemaking that courts can perform without affirmative action by Congress.

Defending the code yesterday were U.S. Judge Albert B. Maris, chairman of the rules committee of the U.S. Judicial Conference; Albert E. Jenner Jr., a Chicago attorney who headed a rules drafting committee, and Edward W. Cleary, a law professor at Arizona State University and a principal draftsman of the rules.

Jenner, an appointee of both Chief Justices Earl Warren and Warren E. Burger to the rules project, said it would give lawyers and judges, for the first time in history, a body of evidence law complete in one paperback volume.

Maris, a member of the federal judiciary since 1938, admitted that some sections of the 40-page code were controversial, but he said Congress was free to change them, either before or after they take effect.

Cleary said the Supreme Court's power to promulgate evidence rules had gone virtually unchallenged during the 10 years the question had been discussed in legal circles.

Hungate said lawyers may have agreed among themselves, but Congress now must face the issue in the light of wider public awareness and concern.

Rep. Elizabeth Holtzman (D-N.Y.) said she doubted that the rules had been adequately discussed by a broad cross-section of lawyers. She charged that at one point the draftsmen gave in to Justice Department demands for secrecy of "official information" without publicizing this major change.

Rep. David W. Dennis (R-Ind.) said he thought the draftsmen had gone beyond relatively technical matters of procedure and deeply into the substantive rights of individuals, where state law has long set the policy to be applied even in the federal courts.

Rep. Lawrence J. Hogan (R-Md.) commended the draftsmen for their scholarship. But in light of the "constitutional crisis" confronting Congress, "we need to assert our prerogatives," Hogan said, taking more time with the rules "or perhaps starting from scratch."

The hearings are to resume today, with adverse testimony expected from former Supreme Court Justice Arthur J. Goldberg, the Washington Council of Lawyers and a committee of 30 Wall Street lawyers.