

# Top Judge Hits Rules Of Evidence

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The Supreme Court's proposed new federal code of evidence was sharply criticized at a congressional hearing yesterday by a ranking federal judge and defended by the Department of Justice.

Henry J. Friendly, chief judge of the Second U.S. Circuit Court of Appeals, said the entire idea of a set of evidence rules was "ill-conceived" and, if allowed to go into effect, would produce "injustice" to persons involved in lawsuits.

Associate Deputy Attorney General Donald E. Santarelli defended the code and recent controversial changes made by the drafters in the realm of government secrecy.

Judge Friendly, widely regarded as perhaps the most impressive scholar on the federal bench, and Santarelli, whose office handled the Justice Department's participation in the rule-making process, appeared before a House Judiciary subcommittee headed by Rep. William L. Hungate (D-Mo.).

The subcommittee is ex-

pected to approve soon a stop-gap measure, already passed by the Senate, to prevent the rules from taking effect on July 1 as scheduled and give Congress until the end of the session to review them.

Judge Friendly disclosed that he was the only member of the 25-judge U.S. Judicial Conference who objected last October when the conference, an administrative arm of the federal judiciary under the chairmanship of the Chief Justice, recommended that the Supreme Court issue the new code.

The judge said it was unjust and possibly unconstitutional for federal courts to apply their own rules governing such matters as privileged communications with physicians in the face of policies set in the states where the federal judges sit.

He said there was no need for the rules, some of which showed the draftsmen's "inability to resist making changes where none are needed." New rules would breed litigation rather than reduce it, he said.

Santarelli said the rules were not perfect from the Justice Department's viewpoint but should be speedily approved subject to later amendment by Congress.