

# Burger Delays Evidence Code

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11/7/73

Chief Justice Warren E. Burger has delayed, at least temporarily, transmitting to Congress a far-reaching new code of evidence for the federal courts.

No specific reason was given, but the delay appeared designed to give Congress more time to study the code, which is supposed to become law 90 days after Congress receives it.

The code contains important and potentially controversial provisions concerning the use of hearsay evidence and the confidentiality of official secrets and communications between doctor and patient and husband and wife.

Possibly even more controversial is the question of whether major changes in federal law can be accomplished under existing rule-making legislation, which permits courts to write the rules subject to veto by act of Congress.

Both the code itself and its implications for the law-making process have aroused the concern of Sen. Sam J. Ervin Jr. (D-N.C.) and others in Congress.

Their immediate concern is the shortage of time available to Congress to pass judgment on sweeping law changes that were seven years in the drafting.

The Supreme Court, over the lone dissent of Justice William O. Douglas, authorized Burger had done so, adding the 40-page code to Congress as soon as it convened. If

Burger had done so, additional time to cope with the code would have been lost while the Senate and House judiciary committees organize themselves.

Asked to explain the delay, a court spokesman would say only that the law gave Burger four months in which to act and that Congress was not yet completely organized.

Douglas has consistently opposed the court's role in rule-making even when the rules were in the area of civil and criminal procedure. Procedural rules, though important, deal mostly with technical matters such as where and how to file suits and serve court papers.

But Douglas noted that evidence went beyond mere practice and procedure. Some experts contend that Douglas was correct and that the rule-making power is aimed only at letting the courts keep the procedural rules up to date without bothering Congress over details.

If Douglas is correct, the evidence rules would be vulnerable to legal challenge in court but there might be considerable confusion before lawyers and citizens had permanent ground rules for federal civil and criminal trials.

Supporters of the new code contend that uniform evidence rules are long overdue in the nation's 94 federal district courts and that the rules governing state secrets do not change existing law as laid down by the courts.