

# New federal 3/15/73 court evidence code stymied

From Our Washington Bureau

WASHINGTON — The House has dealt a setback to Nixon administration efforts to speed adoption of a controversial new code of evidence for federal courts.

The code would virtually abolish the doctor-patient privilege and curtail the husband-wife privilege.

The House voted 388 to 1 to stop the code from taking effect July 1, as now scheduled, and prevent its adoption unless Congress gives its specific approval to the new rules.

Sponsors of the House bill said the Senate is expected to pass the same legislation soon. The Senate previously had acted to delay the effective date of the federal code only until the end of the session.

**CRITICS** of the proposed code, promulgated by the Supreme Court last November, contend it would expand government secrecy, unfairly benefit prosecutors and sharply alter existing rules on privileged testimony.

Under the proposed code, for example, only a psychotherapist would be able to invoke a doctor's privilege to refrain from testimony about a patient's statements.

A husband or a wife would be compelled to testify on statements made by his or her spouse in a civil case, and the historic privilege to remain silent would be curtailed in criminal cases.

Rep. Elizabeth Holtzman (D-N.Y.), sponsor of the House

bill, said nearly every member of Congress thought the proposed rules should not be adopted without approval by the House and Senate. Under existing law, the code automatically would go into effect July 1 once it was transmitted to Congress by the Supreme Court.

A **BLUE-RIBBON** body of lawyers and judges developed the new rules of evidence over an eight-year period, working through a judicial conference committee chaired by Albert E. Jenner, a Chicago lawyer.

Ms. Holtzman complained that the proposed rules were secretly altered to please the Justice Department and Sen. John L. McClellan (D-Ark.) after the deadline for comment by bar groups had passed.

This revision "backfired," Ms. Holtzman said, adding to the belief that Congress should conduct public hearings on the code and review it before it takes effect.

The American Bar Assn. said the latest version of the code was never submitted to any ABA group and contains "new matters" that were not included in an earlier draft reviewed by the ABA.

FOI/Jenner/ Rules Evidence HW 11/29/72

Thanks for the "ulle story from the Times service 11/24/72. The FOI part did not appear in the Post and I credit it. The whole concept of a "secret of state", which for some reason the Post found not worthy of mention or editorial comment, is anti-American and un-Konstotutional and, without Congressional enactment, of dubious legality, but who has the power to question it? With a NixonBurger (coined phrase) court? (Donald made it.)

<sup>id'ing</sup> The ban on hearsay bodes ill for any accused.  
That "area of specialized knowledge" jazz is another remnant of WC procedures, the wrong expert seeming to testify when he didn't.

There is nothing in this not entirely consistent with Jenner on the WC or with the bar's generally repressive postures of the past and present. They've disbarred many whose sole crime was defending the unpopular.

This is, in fact, consistent with the only real consequence of the WR.