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SENATE PUTS OFF EVIDENCE RULES

Congress Wants to Take a
Closer Look at New Code

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WASHINGTON, Feb. 7—Congress moved today to postpone the effective date of controversial new evidence rules for the Federal court system until the lawmakers can take a closer look at them.

The rules were drafted by a special committee of the Judicial Conference and officially promulgated by the Supreme Court, and they have touched off a developing power contest between the legislative and judicial branches.

The Senate approved by voice vote a bill that will delay application of the Court's rules until the end of the 1973 legislative session. Under a Court order of last November, they will otherwise go into effect automatically next July 1.

The measure now goes to the House, where some support for the idea of postponement was expressed today at a hearing of a special Judiciary subcommittee. The subcommittee has been assigned to study the code and whether the Supreme Court has the power to make such changes in the justice system without legislation.

Testifying before the House group were the three men chiefly responsible for drafting the new rules: Judge Albert B. Maris of the United States Court of Appeals in Philadelphia, chairman of the Judicial Conference's Standing Committee on Practice and Procedure; Albert B. Jenner Jr. of Chicago, chairman of the conference's Advisory Committee on Rules of Evidence, and Prof. Edward W. Cleary of the University of Arizona Law School, reporter for the advisory committee.

'Not a Product' of Court

The witnesses went to some length to emphasize that the Court, in approving their final draft, had not exceeded its authority to enact rules of procedure and was still free to invalidate any parts of the new code that might later come before it in litigation.

Mr. Jenner went so far as to contend that the evidence rules "are not and are not intended to be a product of the United States Supreme Court," which only examined them for thoroughness and received assurance of broad participation in their preparation.

The Judicial Conference is the administrative arm of the Federal court system. Under existing law, the Chief Justice can assign it the job of preparing new procedural rules, which go into effect without further action unless Congress moves to veto or delay them.

Critics have suggested that some of the new evidence rules are substantive rather than procedural. Among these they cite rules setting up a new secrecy classification system for Government documents and abolishing the traditional ban on husbands and wives testifying against each other in criminal cases.

1924 Case Recalled

Judge Maris recalled a 1924 case in which the Supreme Court invalidated a bankruptcy rule that it had earlier promulgated itself. No one believes, he said, that the Court would insist "that every procedural rule which it adopts is valid from every standpoint."

There was considerable discussion at the House hearings as to whether there had been a real opportunity for public participation in drafting the new evidence rules, comparable to what would have been required if they had been produced by Congress.

Representative Elizabeth Holzman, Democrat of Brooklyn, won an admission from Judge Maris that six or eight changes, some of them controversial, had been made in the code at the suggestion of the Justice Department and a Senate subcommittee after its last general public circulation.

Many attorneys did not learn of these changes, which included creation of the "state secrets" security classification, until the code was published after the Court approved it, a year and a half later.

The subcommittee chairman, Representative William L. Hungate, Democrat of Missouri, promised "responsible Congressional action" on the evidence code. He said the group would consider the delaying bill approved by the Senate today.