

GOLDBERG SCORES CODE ON EVIDENCE

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Urges Congress to Rewrite
Plan Backed by Justices

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WASHINGTON, Feb. 8—Former Supreme Court Justice Arthur J. Goldberg urged Congress today to rewrite new Federal rules of evidence promulgated by the Court and to take away the Justices' power to make such changes.

Testifying before a House Judiciary subcommittee, Mr. Goldberg conceded that he voted 10 years ago, as a member of the Court for a new code of Federal court procedure. He said that he had regarded its provisions as "essentially housekeeping."

But the 40-page code on evidence that the Court ordered adopted last November, the former Justice said, was prepared without adequate consultation with the public, represented legislation by the judicial branch and threatened, unconstitutionally, to wipe out state laws of evidence.

If Congress permits the new code to take effect unchanged, Mr. Goldberg warned, newsmen's privilege laws in some 18 states will become ineffective in Federal cases tried in those states. These laws permit a reporter to keep his sources of information private under questioning in court.

The new code does not make any provision for such a newsmen's privilege, although it preserves the confidentiality of communications between lawyer and client and between clergyman and layman and creates a new privilege for communications between psychotherapist and patient.

In the past, there have been no uniform evidence standards for the Federal court system, and judges have often applied state rules. A landmark Supreme Court decision in 1938 held that the Federal courts must observe the laws of the state in which they are sitting.

The House subcommittee, headed by Representative William L. Hungate, Democrat of Missouri, showed increasing signs of support today for postponing the effective date of the Court's evidence rules until the end of the 1973 Congressional session, to allow more time for study and revision.

The Senate approved a bill providing for such a delay yesterday. If Congress does not

take some affirmative action, the new evidence rules will go into effect on July 1, as written by an advisory committee of the Judicial Conference and approved by the Supreme Court, 8 to 1.

During a day devoted to critics of the evidence code, the Hungate subcommittee heard representatives of the Association of the Bar of the City of New York conclude reluctantly that a code was less satisfactory than rules developed case by case by the Federal courts themselves.

Alvin K. Helerstein, chairman of the association's Committee on Federal Courts, said that an evidence code could not be drafted practically without involving the au-

thors in controversial areas, such as government secrecy and husband-wife relations, about which it is difficult to generalize in advance.

Representatives of the Washington Council of Lawyers attacked the evidence code from a variety of angles. They charged that the proposed rules invade the legislative responsibility of Congress, abrogate state law and are produced by "grossly inadequate" procedures that limit public participation.

Charles R. Halpern of the council listed nine significant provisions in the code ultimately promulgated by the Supreme Court that were not in the last proposed draft that was circulated to members of the bar for their comments.

The changes, he said, are the result of "unprecedented intervention" by the Department of Justice and Senator John L. McClellan, Democrat of Arkansas who is chairman of the Senate Judiciary Subcommittee on Criminal Justice.