

Court Rules Soldier Can't Choose His War

By William N. Curry
Washington Post Staff Writer

The U.S. Court of Military Appeals yesterday emphatically rejected the notion that servicemen can avoid duty in wars they find unjust.

"A selective conscience in the military creates enormous problems," the court said in denying the appeal of Air Force Capt. Dale E. Noyd.

A serviceman, the court held, cannot substitute "private judgment for the judgment of public officers carrying out the powers of the government."

Noyd contended the Air Force wrongfully denied him conscientious objector status because he opposes only those wars he considers unjust. He was court-martialed in 1968 for refusing an order to train pilots for combat duty in Vietnam.

In its 25-page opinion, the court also ventured into territory certain to spark controversy. Many civil libertarians presently contend that citizens should not lose any rights upon joining the military. The court, however, set down at least one situation in which citizens do lose a right.

"Because Congress has accorded civilians subject to the draft a right of exemption from induction on the grounds of conscience," the court said, "it has no constitutional duty to grant a serviceman the right to be separated from the service or to demand reassignment to (non-combat) duties

to satisfy his scruples of conscience.

"One who does not assert his right to exemption before he is inducted loses the right."

Therefore, the court held, the armed forces can grant or not grant CO status to servicemen as it sees fit. In the granting of such status, the court went on, "We are not dealing with a private right but with a government-conferred privilege."

Noyd's American Civil Liberties Union attorney, Marvin M. Karpatkin, said in a telephone interview that he would appeal the decision through the civilian courts.

This fall Noyd will become an assistant professor of psychology at Earlham College in Richmond, Ind. He is presently awaiting discharge at Cannon Air Force Base, N.M.

The court said it was not questioning the sincerity of Noyd's beliefs. But it cited the "Lebanon invitation," the U-2 affair, the Cuban missile crisis, the Dominican Republic invasion and said, "the accused's conscience responded to none of these . . ."

Noyd, 34, joined the Air Force after he was graduated from Washington State University in 1955. The Air Force sponsored his studies for a master's degree in psychology at the University of Michigan.

Sentenced to Year in Jail

While in the service, his beliefs changed, and a few years ago he became a selective conscientious objector. As

a result, he asked the Air Force for either a discharge or a transfer to noncombat-related duty. The Air Force said no.

In December, 1967, Noyd refused an order to train F-100 fighter pilots at Cannon, AFB. A court-martial convicted him and sentenced him to one year in jail, loss of pay, and dismissal from the service. A board of review affirmed the conviction and the sentence.

He became an instant hero in the anti-war movement, for his case raised a question dating back to the Nuremberg trials. When must a soldier say no to a commanding officer?

Noyd, reached by phone after the decision, said the ruling was "not unexpected" and commented with a quote from Clemenceau: "Military justice is to justice what military music is to music."