

Searching GIs in Drug Drive Ruled Illegal

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An Army program being used to check 146,000 European-based GIs to see whether they use drugs was ruled unconstitutional yesterday by U.S. District Court Judge Gerhard A. Gesell.

Under the plan, which the judge ordered canceled, the soldiers could be subjected to mass strip searches and their private property could be examined by Army inspectors.

The government had argued that the rules were based on "military necessity" because of a serious drug problem among soldiers based in Europe.

"The doctrine of military necessity does not embrace everything the military may con-

sider desirable," Judge Gesell said. "One does not automatically forfeit the protections of the Constitution when he enters military service."

In addition, Judge Gesell said the Army's claim of "increasing drug use (in Europe) is subject to serious question.

"It is certainly clear that drug use in the command has not reached anything comparable to the epidemic proportions detected in Vietnam and is not particularly different from drug use encountered among civilians in major United States cities," he added.

Therefore, he said, the problem "does not reflect the type of urgent and generalized

threat to military morale or discipline which would warrant ignoring constitutional safeguards as to everyone in this large command."

The suit was filed last April by the Military Rights Project of the American Civil Liberties Union on behalf of the Committee for GI Rights and 17 GIs on duty in Europe.

The Army said its plan was designed to identify drug pushers and users, to provide users with medical assistance and other aid toward rehabilitation, and where rehabilitation failed, to eliminate drug users from the service.

The program included spot inspections of the entire exterior skin area of soldiers for drugs or indications of drug

use, and use of drug-detector dogs to inspect a soldier's property.

A "confirmed drug abuser" could be forced to enter a 60-day rehabilitation program. If his commander decided that a soldier did not complete that program with success, he could be discharged or court-martialed.

"Thus, the program combines rehabilitation with the prospect of strict disciplinary action when deemed appropriate by the Army," Judge Gesell said.

"The... searches involved would be illegal in a civilian context if conducted in the absence of particularized probable cause," Gesell said.

If the program were limited to rehabilitation, he said, such searches might be allowed. However, he added: "In the absence of a showing of military necessity, illegal searches and the imposition of penalties and other discipline without fair hearing cannot be permitted."

Gesell also specifically ruled unconstitutional a vague portion of the plan that authorized commanders to prohibit the display on barracks walls of posters and other items, which in their estimation, constituted "a clear danger to military loyalty, discipline or morale."

Government attorneys had made no decisions concerning a possible appeal.