

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

# aclu NEWS

AMERICAN LIBERTIES  
CIVIL UNION OF  
NORTHERN CALIFORNIA

Volume XXXVIII

San Francisco, June 1973

No. 5

## Rep. Stark sues to end bombing in Cambodia

War in Indochina has been challenged repeatedly in the Courts by the ACLU and other groups, always with the same result. The Judiciary has dodged the core constitutional question of whether the executive branch may commit long-term military force without a declaration of war by the Congress each time.

In the past, the courts interpreted certain congressional actions to imply consent of the continued war in Indochina. The Gulf of Tonkin Resolution, renewal of the Selective Service Act and passage of defense appropriations bills have all been considered as justification for the war.

ACLU-NC filed a suit last month on behalf of Representative Fortney H. (Pete) Stark (D-Oakland) against the Secretaries of Defense, the Air Force and the Navy, which charges that there is now no implied Congressional support for the bombing in Cambodia, but that the reverse is true.

### CONGRESS OPPOSES BOMBING

In his brief, Legal Director Charles Marson asks the Court to declare the bombing of Cambodia unconstitutional on the grounds that it directly contradicts law that has been passed by the Congress and signed by the President. He points out that the Gulf of Tonkin Resolution has been repealed and that Congress has explicitly

prohibited the President from engaging in combat operations in Cambodia.

Not only has Congress failed to authorize combat operations in Cambodia, but it has stipulated that no military activity should continue in Indochina once all ground troops and POW's have returned home. The Mansfield Amendment, which was passed in 1970, says just that.

### 'INHERENT' AUTHORITY

In addition, every military appropriations bill since the Cambodian incursion of 1970 has contained a paragraph known as the Fullbright Proviso which states that "... nothing herein shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the governments of Cambodia or Laos."

Finally, when Congress approved foreign aid to Cambodia, it included a specific limitation in the law which said "... it shall not be construed as a commitment by the United States to Cambodia for its defense."

Already the Administration has recognized that it can no longer justify the bombing of Cambodia on Congressional actions and has developed an alternative



Attorney Peter Donnici, Executive Director Jay Miller and Legal Director Charles Marson announce suit to halt bombing at press conference.

theory. Last month, when Secretary of Defense Elliot Richardson was testifying before the Senate Foreign Relations Committee, he introduced the novel thought that the President has "inherent" authority to conduct the bombing which derives from his power to seek a negotiated settlement. In other words, the Administration is saying that Congress is powerless to stop military operations ordered by the President because the military might of this country is only a foreign policy tool for his use. Richardson did not say where the Constitution explained this.

### 'COURT MUST DECIDE'

Marson charged that this "represents a severe threat to our Constitutional system of checks and balances and it is the judicial

branch of the government which must resolve the conflict between Congress and the Executive. Thus, it is incumbent on the courts to declare continuation of the bombing unconstitutional."

Congressman Stark stated that he was bringing the suit "because I think it is imperative that we do everything legally and humanly possible to stop the killing in Indochina. Through this action, we are trying to stop people from being killed, wounded and captured in an unconstitutional war."

A companion case was filed on behalf of Congressman Ronald V. Dellums (D-Alameda) by USF Law Professor Peter Donnici. Both cases will be combined for argument before U.S. District Court Judge Alfonso Zirpoli in the near future.