

Justice Marshall Won't Halt Raids

Washington

Supreme Court Justice Thurgood Marshall, pleading he lacks legal authority, refused yesterday to order an immediate bombing halt in Cambodia sought by a freshman congresswoman and four Air Force officers.

The American Civil Liberties Union promptly took the case to vacationing Justice William O. Douglas in the hope of getting a favorable ruling. Meanwhile the ACLU succeeded in advancing an appeals court hearing on the case by five days — to August 8.

U.S. bombing in Cambodia is to end anyway on August 15 under a deadline imposed by Congress and accepted by President Nixon in late June.

DECISION

Representative Elizabeth Holtzman (Dem-N.Y.) and the Air Force officers won a decision by U.S. District Judge Orrin G. Judd in Brooklyn last week that the bombing is unconstitutional.

Judd's order that the bombing be halted last Friday afternoon was stayed at the government's request pending an appeals court hearing scheduled for August 13 — two days before the congressional deadline for a bombing halt.

Stymied by this delay, the ACLU took the case to Marshall, who administers the U.S. Court of Appeals for the second circuit here. After two days of deliberations, Marshall handed down a 12-page opinion saying he

would "exceed my legal authority were I, acting alone, to grant this application.

JUSTICE

With the Supreme Court in recess, a motion denied by one justice can be taken to another. It was not known how long it would take the ACLU to reach Douglas at his isolated vacation retreat at Goose Prairie, Wash.

At the same time, the ACLU asked the appeals court to hold its hearing on the government's appeal Friday. The appeals court agreed instead to advance the hearing to August 8, a week before the bombing halt deadline.

Marshall said that if the decision were his alone, he might well agree with the lower court that continued U.S. military operations in Cambodia were unconstitutional.

But he said he feels obliged to consult the entire court, which has never considered the legality of the war in Southeast Asia.

RECESS

With the court recessed until October 1, any full review of the controversy is unlikely before the August 15 deadline for a bombing halt.

Under the circumstances, Marshall said "this highly controversial constitutional questioning involving the other two branches of the government" should be handled through the appeals court on its accelerated schedule.

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