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# Judge Refuses to Enjoin Viet Death Toll Protest

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A federal judge yesterday refused to enjoin a series of Daily Death Toll antiwar demonstrations scheduled between Nov. 8 and 24 in front of the White House.

In a hearing yesterday, Thomas J. Kelley, assistant director of the U.S. Secret Service, testified that the daily demonstration planned by 300 members of two groups, the Fellowship of Reconciliation and Clergy and Laymen Concerned, would pose a serious threat to the life of President Nixon.

U.S. District Judge George L. Hart Jr., indicated that while he preferred to enjoin the demonstration, he felt he

couldn't because of U.S. Appeals Court decisions.

"The Court of Appeals has said the Secret Service is not going to be the arbiter of how you protect the President of the U.S.," said Hart. "It doesn't appear to me that anyone who goes to the White House with anything less than heavy arms is to be banned."

An Oct. 2 Court of Appeals ruling had ordered Hart to hold yesterday's hearing, saying that he was to decide "whether the officials involved have transformed this concern (for the safety of the President) into an excessive preoccupation with security that is achieved at the unnecessary



GEORGE L. HART  
... "reversed" too often.

expense of First Amendment freedoms."

Yesterday's ruling was the latest development in a court battle initiated in early 1969 by the American Civil Liber-

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ties Union seeking to strike down Department of Interior regulations that limit demonstrations to 500 persons in Lafayette Park and to 100 on the sidewalk in front of the White House.

The 100-500 rule has been temporarily suspended by the appellate court, but since potential demonstrators must file notice 15 days in advance, the government several times has been able to obtain lower court waivers of the injunction.

The ACLU has contended that 6,000 can demonstrate on the sidewalk and 50,000 in the park without posing a danger to the President.

Judge Hart, who said yesterday he thinks the Secret Service should decide what is needed for presidential safety, has granted several waiver requests in the last year (...) and has thus limited the size of demonstrations.

But he has been reversed three times by the Court of Appeals in his attempts to uphold the 100-500 rule.

Yesterday he said, "I have been reversed time after time." He added that he would not grant the waiver this time "unless somebody is trying to wheel 16-inch guns up there (to the White House)... unless it is so patently dangerous that even the most extreme liberal thinks something should be done."

The Daily Death Toll, according to spokesmen for the two groups, will involve 300 different people from different cities for about four hours each afternoon. The groups' members plan to pray and lie down on the sidewalk in front of the White House. They have turned down a government request to move their demonstration across the street to the park where their action would stay within the limits of the 100-500 rule.

Kelley testified yesterday that the Secret Service did not consider the leaders of the two groups a threat to the President, but said the leaders could not be expected to fully control the number and type of demonstrators.

He said that the demonstrations could be "infiltrated" by persons prone to violence, and that it is difficult for security personnel to maintain control in large demonstrations.

Kelley was asked by attorney Philip J. Hirschkop for the two groups, "Do you really believe they (police) would have trouble controlling 300 mostly religious people praying in front of the White House?"

"Yes," said Kelley, "they could be joined by others."

The judge broke in at one point to ask the Secret Service official, "Is there any concern that the more bodies you put in front of the White House, the more cover it could furnish for an Oswald or a group of Oswalds?" The reference was to the man accused of slaying President Kennedy.

Kelley said the Secret Service had considered the possibility.