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Court Refuses 100 Limit on Protesters

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Daily Death Toll antiwar demonstrators lay down on the sidewalk in front of the White House yesterday. Several hours later, the U.S. Court of Appeals here refused to limit the number of demonstrators to 100.

About 175 members of the Fellowship of Reconciliation and Clergy and Laymen Concerned from Philadelphia began their demonstration at 1 p.m. with a march from the Capitol to the White House. By the time the Court of Appeals had ruled at 4 p.m., they were disbanding for the day.

The ruling yesterday means that the Daily Death Toll, which every day until Nov. 24 will feature demonstrators from a different city, can proceed without being limited to 100 on the White House sidewalk.

The 100 limitation, in conjunction with a limit of 500 demonstrators in nearby Lafayette Park, was incorporated in Department of Interior regulations at the behest of the U.S. Secret Service, which

fears that larger numbers could pose a threat to the life of the President.

"We are delighted with the decision," said attorney Philip Hirschkop, who argued the case for the continued suspension of the 100-500 rule before a three-judge panel of the appellate court at 9 a.m. yesterday.

The Court of Appeals originally suspended the 100-500 rule pending the outcome of a suit brought by the American Civil Liberties Union to do away with the rule entirely on the ground that it is unnecessary and is a violation of First Amendment rights of freedom of speech.

Yesterday's decision was a blow to the government, which had asked the appellate court to specially enjoin the Daily Death Toll because some persons connected with the demonstration advocated civil disobedience.

Yesterday's decision—written jointly by Judges Harold Leventhal, George M. MacKinnon and Carl McGowan—carried a stern warning to the demonstrators not to engage

in civil disobedience lest the demonstrations be enjoined entirely.

The panel wrote that any violations of law would give the court "a basis, if it deems such action appropriate, to suspend or vacate the pending injunction upon application by the government . . ."

This would mean that U.S. District Judge George L. Hart Jr., the trial judge in the case who last week refused to enjoin the demonstration only because he said he was in yesterday's appellate court, could still enjoin some activities of the demonstrations.

In the complex legal history of the ongoing lawsuit, Hart repeatedly has ruled in favor of the government and been overruled by the appellate court. At one point, the latter wrote that Secret Service officials might be excessively preoccupied with security "at the unnecessary expense of First Amendment freedoms."

But in yesterday's early morning argument, both Leventhal and MacKinnon ap-

peared shocked at the idea that the groups would engage in civil disobedience. Their afternoon printed opinion was careful to "reiterate that our orders do not provide any protection to any person or persons attempting either an unconsented entry onto White House grounds or any act of civil disobedience there . . ."

The judges quoted a flyer of the Daily Death Toll—a name memorializing the war dead in southeast Asia—distributed at American University and saying, "We hope that people will be able to enter the White House grounds and engage in civil disobedience there."

Groups conducting demonstrations in excess of the 100-500 rule, the judges wrote, "have a deep obligation to instill in participants an attitude of compliance with the law and to take steps to prevent the outbreak or spread of any violence . . ."

Yesterday's group was not arrested, although they lay on the sidewalk from 2 p.m. to 4 p.m. They did not block entrances to the White House.