

Judge Here Rules Raids On Cambodia Are Illegal

**But He Stays Injunction
Pending U.S. Appeal,
Which Is Initiated**

By MORRIS KAPLAN

A Federal District Court Judge in Brooklyn ruled yesterday that the Government must halt the American bombing of Cambodia on the ground that it is "unauthorized and unlawful."

Judge Orrin G. Judd issued a permanent injunction barring the Defense Department and the Air Force from supporting military activities in Cambodia. But he stayed its execution until 4 P.M. tomorrow to allow the Government to file an appeal.

Robert A. Morse, United States Attorney for the Eastern District, said that he had filed a notice of appeal on behalf of the Justice Department. He said that the case—the first judicial decision challenging the President's power to commit troops to combat without clear authorization by Congress—would be carried to the Supreme Court if necessary.

The White House had no comment on the decision except to state through a spokesman that the Government's position would continue to be that the

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bombing in Cambodia would go on until the cutoff date of Aug. 15 invoked by Congress.

In his order, the Judge declared: "There is no existing Congressional authority to order military forces into combat in Cambodia or to release bombs over Cambodia and military activities in Cambodia by American armed forces are unauthorized and unlawful."

Judge Judd, a 66-year-old Republican named to the Federal bench in 1968, found that there was "no Congressional authorization to fight in Cambodia after the withdrawal of American troops and the release of American prisoners of war."

The suit was brought last April 13 by Representative Elizabeth Holtzman, Democrat of Brooklyn, and four Air Force officers. They sought an injunction to stop the bombing



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Judge Orrin G. Judd in his chambers yesterday.

on the ground that it lacked Congressional approval.

The suit was handled by Burt Neuborne, assistant legal director of the American Civil Liberties Union, and Leon Friedman, a staff counsel. An assistant United States Attorney, James Porter, chief of the civil division of the Brooklyn office, argued for dismissal. He contended that Congress, in effect, knew about the bombing all along.

'Momentous Decision'

Miss Holtzman, expressing pleasure at the "momentous decision," declared that it reconfirmed the constitutional principle that "no American lives can be sacrificed and no American lives can be risked and no taxpayers' money can be spent on a military effort that is not approved by Congress."

Mr. Neuborne said he hoped the decision would set a precedent that would prevent a President from "rashly committing American forces to combat."

Pointing out that from now to Aug. 15 was short, the court declared, nevertheless, that it could not say that the Cambodian and American lives that might be lost in the next three weeks "are so unimportant that it should defer action in this case still further."

Earlier Suits Rejected

The decision culminated an earlier series of rulings in which Judge Judd rejected suits by servicemen to declare military operations in Vietnam unlawful. He had upheld the Government's contention that Congress, in appropriation bills from 1965 through 1969, had shown "its continued support of

the Vietnam action."

The rulings, affirmed by the Court of Appeals, supported military actions challenged by Malcolm Berk, an enlisted man from Queens, and Ernest Dacosta, also of Queens, who had sought to have declared unauthorized and illegal the mining of Haiphong Harbor.

The Air Force officers who joined Miss Holtzman as plaintiffs are three captains, Michael Flugger of New York, James H. Strain of Chickasha, Okla., Donald E. Dawson of Danbury, Conn., all co-pilots of B-52 Bombers and First Lieut. Arthur Watson of Rome, N.Y., an electronic-warfare specialist.

Captain Dawson faces court-marital at Clark Air Force Base, the Philippines, for allegedly refusing to fly a B-52 on June 20.

In his ruling, Judge Judd wrote that there was evidence that air operations over Cambodia had escalated sharply since last Jan. 27. He cited a Defense Department summary showing that between then and April 30 a total of 12,136 sorties were flown.

The last American combat troops were withdrawn from South Vietnam on March 28, he noted, and the last known American prisoners of war were released on April 1. With Congressional opposition to continuance of the Cambodian operations increasing, the court added, the President "set upon vetoing any bill containing riders cutting off funds" for those operations.

"The question here," Judge Judd went on, "is not the one posed by the Government, whether aerial action in Cambodia is the termination of a continuing war or the initiation of a new and distinct war, but whether Congress has authorized bombing in Cambodia after the withdrawal of American troops from Vietnam and the release of prisoners of war."