

Cambodia and the Law

From the Supreme Court of the United States has come an early warning signal that President Nixon's pretensions to unchecked executive power may be in for trouble at the bench.

A legal maneuver to end the bombing of Cambodia forthwith was blocked yesterday by Justice Marshall, but he did it in terms which argued that the case against the Administration had merits deserving consideration by the full Supreme Court. Though Justice Marshall refused on his own authority to end a Court of Appeals stay that has the effect of letting the bombing continue, he took twelve pages to stress that neither he nor the Court of Appeals had yet confronted the essence of the case.

The war in Cambodia, said Justice Marshall, "may ultimately be adjudged to have not only been unwise but unlawful. . . . I might well conclude on the merits that continued American military operations in Cambodia are unconstitutional." While hardly Supreme Court dictum, this could be a disturbing portent for the White House. Justice Marshall is not one of the three Supreme Court justices who have previously taken positions indicating reservations about some legal aspects of the Indochina war. For that matter, Federal District Judge Orrin G. Judd, who started the present process by declaring the Cambodian bombings "unauthorized and unlawful," had himself given opinions favorable to the Vietnam war effort before the Paris agreements on cease-fire and withdrawal of United States troops.

It is doubtful that the present case will reach final decision before the Aug. 15 cut-off date designated by Congress for ending all military operations in Southeast Asia. But even if the courts cannot move fast enough to halt the bombing raids earlier, it will be useful for the nation to have a firm statement of the constitutionality of President Nixon's war policy. This is doubly true now that the retired chairman of the Joint Chiefs of Staff, Gen. Earle G. Wheeler, has confirmed that it was the President personally who ordered that the thousands of B-52 raids over Cambodia in 1969 and 1970 be kept totally secret—a cover-up that applied not solely to Congress and the public but even to responsible Pentagon officials given falsified military reports.

No claims of national security can justify contempt for the constitutional rights and responsibilities of Congress in blatant disregard of legal process. There are signs now that the nation's court system is ready to apply that test of law.