

# How Bombing Ban Was Upset

Examiner News Services

WASHINGTON — Supreme Court Justice Thurgood Marshall yesterday overturned a ban on U.S. bombing in Cambodia issued only hours earlier, by fellow Justice

William O. Douglas.

The Nixon administration had ignored Douglas' order, and Marshall made it clear that Douglas was a minority of one.

Marshall said he had con-

sulted with and won the agreement of seven other Supreme Court members for his action.

Throughout the intense legal activity the bombing continued uninterrupted. The Nixon administration issued a statement through the Pentagon that appeared to challenge directly the authority of Douglas' order.

#### Notes Mandate

The Pentagon declared simply that "pending appropriate legal action on this matter, we will abide by the congressional mandate to end the bombing on August 15."

The date was selected by Congress for cutting off funds to finance the air war over Cambodia. President Nixon has agreed to honor the deadline but has warned that it presents "dangerous potential consequences."

Military sources reported that bombing missions were flown after Douglas' order.

Marshall's action was the second in two weeks on the issue of the Cambodia bombing and presidential war-making power.

#### Halt Ordered

U.S. District Court Judge Orrin G. Judd of New York last month declared U.S. participation in the Cambodia war unconstitutional and ordered a halt to the bombing.

The U.S. circuit court in New York stayed Judd's order pending the outcome of a hearing on an appeal by the government.

Last Wednesday, Marshall refused to tamper with that stay. But the issue was presented to Douglas who reached the opposite conclusion.

Yesterday, the government quickly filed a motion to nullify Douglas' order and

— Turn to Page 20, Col. 1

# Marshall Reverses Douglas

—From Page 1

it went to Marshall, who issued his own stay to block the effect of Judd's bombing decision.

In his second decision on the complex issue, Marshall noted that the court of appeals had issued its stay in order to preserve things as they are while the case was argued on its merits. Yesterday he did the same thing as the appeals court.

He concluded his order by noting that he had been in communication with Chief Justice Warren E. Burger, and Justices William J. Brennan Jr., Potter Stewart, Byron R. White, Harry Blackmun, Lewis F. Powell Jr. and William H. Rehnquist. They all agreed with the action, Marshall said.

Marshall said the July 27 bombing halt was "stayed pending further order by this court." This seemed to indicate the justices fully expected to receive an appeal from the 2nd U.S. Circuit Court of Appeals in New York, which now has the case, no matter which way that court decides.

The appeals court has scheduled a hearing on the bombing challenge for Aug. 8 — one week before all U.S. combat activity is scheduled to end in Cambodia under orders from Congress.

Marshall cancelled out Douglas' order just as Rep Elizabeth Holtzman (D-N.Y.), who took the bombing challenge to court in the first place, issued a short-lived statement rejoicing over Douglas' decision.

"For the first time in 10 years, this country will not be at war," she said. "No more desperately needed tax dollars will go any more to fuel this unconstitutional war."

In comments that accompanied his order, Douglas said he was not ruling on the



**NEW YORK CONGRESSWOMAN E. HOLTZMAN**  
Filed lawsuit that brought bomb ruling

constitutionality of U.S. involvement in Cambodia.

The justice said however that the basic questions of the case was whether or not Congress had declared war on Cambodia. Douglas thought not.

"It has become popular to think the President has that power to declare war. But there is not a word in the Constitution that grants that power to him. It runs only to Congress," Douglas wrote.

As far as his specific action was concerned, Douglas compared it to the decision that faces a judge when asked to stay the execution of a man convicted in a capital case.

"The upshot is that we

know someone is about to die," said Douglas. He concluded his written comments by saying:

"The merits of the present controversy are . . . to say the least, substantial, since denial of the application before me would catapult our airmen as well as Cambodian peasants into the death zone. I do what I think any judge would do in a capital case — vacate the stay entered by the Court of Appeals."

Senate Democratic Leader Mike Mansfield and House Speaker Carl Albert declined to comment on Douglas' order. Mansfield said: "I assume it is a matter for the full court to take up."