

'Unconstitutional'

Judge Prohibits Cambodia Raids

Government Will Appeal Decision

New York

A federal judge ruled yesterday that the U.S. bombing of Cambodia is unconstitutional and he enjoined further U.S. military operations in that country without congressional approval.

"There is no existing congressional authority to order military forces into combat in Cambodia or to release bombs over Cambodia," declared U.S. District Judge Orrin G. Judd in Brooklyn.

He stayed the execution of the injunction until 1 p.m. PDT tomorrow to allow the government to appeal.

U.S. Attorney Robert Morse, after consulting with the Justice Department, filed a notice of appeal late in the day. He said papers for the appeal were being prepared and he would seek a stay of the order before it goes into effect tomorrow.

SUIT

The ruling came in a suit brought by freshman Representative Elizabeth Holtzman (Dem-N.Y.) and three Air Force flyers based in Guam. It sought to have the Cambodia operations declared unconstitutional on the ground that the President had usurped Congress' power to declare war.

The plaintiffs pressed the suit even after both houses of Congress voted to cut off funds for the bombing and, in a compromise, the Presi-

dent agreed to halt the air war by August 15.

In arguing the case on July 6, the government held that the Cambodia opera-

Back Page Col. 7

From Page 1

tions were "part and parcel of a war that has continued for many years. Now one phase of that war is continuing."

In his 36-page memorandum on the basis for the decision, Judge Judd took issue with that argument:

"The question here 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 . . .

"The congressional action before and after the beginning of hostilities in Cambodia does not include authorization to bomb Cambodia in order to achieve a Cambodian cease-fire or even to protect the Vietnam cease-fire as urged by defendants.

"The extent of the power granted by Congress depends on the language used by Congress, not on the President's statements to Congress. An emergency does not create power unless Congress has granted it."

REACTION

Ms. Holtzman, who prefers the feminist designation, said at her Washington office that she was "extraordinarily pleased" by the decision.

"It reasserts the constitutional requirement that no American lives can be sacrificed, that no American lives can be risked, and that no American taxpayer's dol-

lars can go to a military effort that has not been approved or authorized by Congress," she said.

Burt Neuborne, assistant legal director of the American Civil Liberties Union, which represented the plaintiffs, said he was "delighted" and that he thought it was a "significant opinion."

Neuborne also said that one effect of Judd's order would be that persons facing courts-martial for refusing to bomb Cambodia may have their cases dismissed. He cited the case of Air Force Captain Donald E. Dawson, who is under charges for refusing to fly bombing missions over Cambodia on June 19 and 20.

AUTHORITY

Judge Judd wrote, "What is involved in this case is not the training or tactics of American forces, but whether Congress has authorized the Cambodian bombing. That question is capable of



MS. HOLTZMAN 'Extraordinarily pleased'

judicial resolution . . . by applying traditional processes of statutory construction."

And he observed: "It cannot be the rule that the President needs a vote of only one-third plus one of either house in order to conduct a war, but this would be the

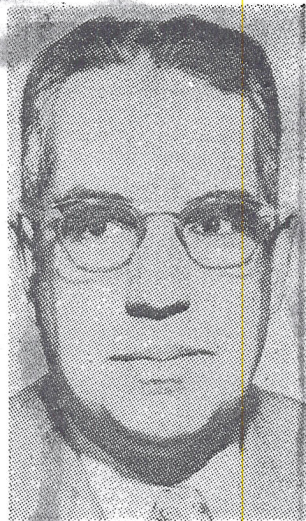
More Cambodia news on Page 12

consequence of holding that Congress must override a presidential veto in order to terminate hostilities which it has no tauthorized."

Judd, 66, was appointed to the federal bench by President Johnson in 1968. He was a summa cum laude graduate of Harvard Law School and after graduation was a law clerk to Circuit Judge Learned Hand.

The three officers in the suit are Captain James H. Strain, 34, of Chickasha, Okla.; Captain Michael E. Flugger, 29, of New York, and Lieutenant Arthur Watson, 25, of St. Paul Minn.

Associated Press



AP Wirephotos

JUDGE JUDD Historic ruling