

Marshall Asked To Reconsider

Washington

Lawyers seeking a court order to make the U.S. immediately stop its bombing of Cambodia asked Supreme Court Justice Thurgood Marshall yesterday to reconsider his decision to let it continue.

A petition filed on behalf of Representative Elizabeth Holtzman (Dem-N.Y.) contended that the high court's own procedural rules had been contravened Saturday by a rapid reversal of orders which left the U.S. still legally free to proceed with the air attacks.

The Brooklyn representative's suit briefly appeared to have succeeded Saturday when Justice William O. Douglas ordered bombing halted.

But the legal victory was short-lived, for the government quickly won from Justice Marshall a new stay of a lower court injunction against the bombing.

Marshall acted after conducting an unusual poll of the other justices. Seven agreed with his overruling Douglas, and Douglas was the only one who voted not to support Marshall's decision.

In ordering a halt to the air war, Douglas compared the case to one involving the death sentence — in which situation the court normally stays execution pending a review of the merits because human life is at stake.

That argument was grimly dramatized by Defense Department confirmation yesterday that an American B-52 had accidentally bombed a Cambodian town, Neak Luong, killing as many as 100 civilians and injuring many more during the weekend.

STATEMENT

Representative Holtzman said in a statement that the innocent lives would not have been lost if Douglas' order had remained in effect.

"It is tragic that these lives have been lost in an illegal and unconstitutional war," she said. "It is doubly so because Saturday's in-

junction would have saved these lives."

Unless the Supreme Court acts today, the legal challenge to the Cambodian bombing will shift the next day to New York's U.S. Court of Appeals, where a three-judge panel will review a lower court ruling that the air raids must cease immediately.

The bombing will stop anyway on August 15, as a result of congressional action which President Nixon says he will heed reluctantly.

The three judges reviewing the case in New York, William H. Mulligan, William H. Timbers and James L. Loakes, are the junior members of the circuit court and all were appointed by President Nixon.

CLAIM

The Holtzman suit maintains that the bombing is unauthorized by Congress, and illegal.

Her effort before the Supreme Court yesterday, however, rested mainly on complicated technicalities. She appealed to Justice Marshall either to reverse himself or to summon the whole court into session.

In essence, her suit contended that Marshall had violated Supreme Court rules in overruling Justice Douglas. In the interpretation of her lawyers, these rules do not permit a single justice to overrule the granting of a petition by another justice.

Government lawyers, however, apparently foresaw this argument Saturday. They sought not to overturn Douglas' order but to obtain a completely new stay of the stop-the-bombing order issued by the lower court in New York on July 25.

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