

Claim of Illegality

Douglas Protests Bombing Reversal

Washington

Supreme Court Justice William O. Douglas said yesterday that his eight colleagues acted beyond the law and the custom of the high court to overturn him on U.S. bombing of Cambodia.

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No Court Session on Bombing

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Chief Justice Warren Burger yesterday denied a motion by representative Elizabeth Holtzman (Dem.-N.Y.) for an extraordinary session of the Supreme Court to determine if American bombing of Cambodia is constitutional.

The chief justice acted only a few hours after representative Holtzman made her latest bid to have the bombing halted immediately.

She said Wednesday's quick ruling by a U.S. Court of Appeals in New York permitting the bombing until August 15 a cut off date imposed by Congress — was prompted by a desire to allow the Supreme Court to resolve the matter as quickly as possible.

Reuters

Douglas' dissent attacks the legality of the decision to allow continued bombing that was reached by Justice Thurgood Marshall, with the endorsement of the seven other justices.

"The court has unquestioned power to reverse me: and although I disagree with the court's action on the merits, that is not the point of this dissent," Douglas wrote in a dissent dated Aug. 4.

ACCUSATION

He accused the other members of the court of resorting to "a Gallup Poll" type of inquiry to overrule him illegally.

The legal tangle began with a suit filed by Representative Elizabeth Holtzman, (Dem.-N.Y.) and three Air Force officers who sought to stop the bombing.

Last month a U.S. district judge in New York ruled the Cambodia bombing unconstitutional and ordered it halted. The U.S. Court of Appeals in New York blocked the effect of that decision until it could hear a government appeal.

Opponents of the bombing then went to Marshall asking him to reinstate the district court order. Marshall refused. They then moved on to Douglas who was vacationing at his Goose Prairie, Wash., retreat.

Last Saturday morning, Douglas reinstated the district court order, in effect ordering a halt to the bombing.

REVERSAL

That order stood for less than seven hours. The government hastily fashioned a countermotion and on Saturday afternoon Marshall blocked the effect of the district court order. While Marshall acted alone, he noted that all the other justices, save Douglas, agreed with him.

The central question turned on just what Douglas did Saturday morning.

For one thing, he removed the stay which the Court of Appeals had placed on the lower court order. But more importantly, in his eyes, he had also issued an order specifically reinstating the judgment of the district court.

Thus, Douglas maintained, the court took an illegal shortcut to overrule him.

Douglas, who has been on the court longer than any other justice, said only the full court, presumably in a special term, had the authority to block his order.

Associated Press