

Five years ago, when the buses first rolled here, there were threats of white

GI Drug Search Is Upheld

By Timothy S. Robinson

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The Army can search soldiers and their belongings without warrants to attempt to control drug abuse, the U.S. Court of Appeals ruled here yesterday.

The decision reverses an earlier ruling by a federal judge that had found such searches during a drug control program in Europe unconstitutional because they did not meet the Fourth Amendment's requirements of a search warrant.

The European program, which began two years ago, was allowed to continue despite that ruling, but evidence taken in such searches could not be used in any punitive action against the soldiers involved.

However, yesterday's unanimous ruling by a three-judge federal appellate panel said the searches are constitutional in the military context because of the "vital interest of the nation in maintaining the readiness and fitness of its armed forces." Evidence taken in such searches is legally seized, and may be used against soldiers in later proceedings, the court added.

"The soldier cannot reasonably expect the Army barracks to be a sanctuary like his civilian home," wrote U.S. District Court Senior Judge William Jameson of Montana, sitting as an appeals judge here in this case.

Voting with Jameson were U.S. Circuit Judges George MacKinnon and Malcolm R. Wilkey.

Attorney David Addlestone, who brought the class action suit for the American Civil Liberties Union and the Lawyers' Military Defense Committee on behalf of 145,000 soldiers stationed in Europe, said the ruling was a setback for groups that have been attempting to gain increased rights for servicemen.

"If the armed forces persist in using such crude methods [as warrantless searches], all they will do is drive young recruits away," Addlestone said. "There is in effect no review in the federal courts when 'military necessity' is invoked as a defense by the government," he added.

The ruling by the appellate

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judges yesterday listed five main reasons why the warrantless searches are legal in the military, but said none of them alone would justify the searches being ruled constitutional.

The five factors cited by the judges:

- The increased incidence of drug abuse in the armed forces, which the judges said "poses a substantial threat to the readiness and efficiency of our military forces."

- The difference in the lifestyles between the military and civilian personnel and the lower "expectation of privacy" available to a member of the armed forces.

- The primary purpose of such searches is to "ferret out

illegal drugs as a means of protecting the health of the unit and assuring its fitness to accomplish its mission," and not as a punitive measure.

- The drug inspections appear to be the "most effective means" of identifying drug users.

- The Army has attempted to "guard the dignity and privacy of the soldier insofar as practical" in its regulations concerning the searches.

"With the advent of the all-volunteer Army in recent years, the armed forces have improved conditions of military life by providing greater benefits and a broader scope of individual freedom to the enlisted man," the judges said.

"Nevertheless, the fact remains that discipline and fitness are prerequisites of an ef-

fective military force," they added in ruling the searches legal.

The Army began its drug search program in Europe after Congress had ordered treatment of armed forces personnel who were drug addicts or alcoholics. GI rights groups opposed various parts of a treatment program that followed, and filed suit in federal court here in April, 1973.

U. S. District Court Judge Gerhard A. Gesell ruled in January, 1974, that the warrantless searches were not justified by military necessity and therefore unconstitutional. The appeal followed.

Attorneys familiar with the case said yesterday that an appeal of yesterday's ruling was unlikely.