Court Says Ohio Can Be Sued in Kent State Deaths

By Abe Zaidan 1971/71

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CLEVELAND, Sept. 30—The Eighth District Court of Ap today struck down this state's today struck downthis state's claim to immunity from civil suits arising from misdeeds by the state.

The ruling, which described the concept of sovereign immunity as unjust and discriminatory, came on an appeal from a lower court involving the slaying of four Kent State University students by Ohio National guardsmen during the May 4, 1970 disorders on that campus.

A spokesman for the Ohio attorney general's office in Columbus said the appellate court's decision "will certainly be appealed" to the Ohio Supreme Court.

The aide said that if today's decision were to go unchallenged, it would "open the door to millions of dollars of suits against the state."

The District Court acted on an appeal by Arthur Krause of Pittsburgh, father of Allison Krause, one of the four slain students. Krause claimed $2 million damages from the state for the "wrongful death" of his daughter.

Earlier, a common pleas court had dismissed the suit on grounds that the state enjoyed sovereign immunity from such litigation. In their majority opinion, presiding Appellate Judge Jack G. Day and Judge Alvin I. Krenzler declared the lower court was in error and sent the case back for trial.

The judges wrote, "The state of Ohio is responsible . . . for the tortuous acts of its authorized agents," adding:

"Moreover, a special shield for the state against responsibility for its tortuous acts is unjust, arbitrary and unreasonable and results in discrimination prohibited by the equal protection and due process clauses in the 14th Amendment to the United States Constitution."

According to the majority opinion, the sovereign immunity doctrine was derived from "judicial interpretation" and as such it could there fore be removed by the judiciary.

In his dissent, Judge John Manos observed that if sovereign immunity is no longer relevant, the change should come not through the courts but rather through "legislative action or with a new constitutional convention."

Earlier, a federal court here had dismissed $11 million in wrongful death claims arising from the Kent State tragedy on grounds of sovereign immunity. The suits were filed by Krause and other parents of the slain students. The cases are being appealed to a U.S. Appellate Court.

National Guardsman Wins CO Discharge

CLEVELAND, Sept. 30 (AP) —A federal judge has ordered the discharge of an Ohio National Guardsman who declared himself a conscientious objector after the fatal shootings of four students at Kent State University in 1970.

U.S. District Judge William K. Thomas reversed the decision Wednesday of an Army review board which had refused to grant Pvt. Raymond D. Silvey, 24, the discharge in July.

Silvey, an Akron computer analyst, was a member of the Akron-based 1st Battalion, 145th Infantry, which was among guard units sent to Kent State University in May, 1970.