

NEW YORK POST, TUESDAY, OCTOBER 7, 1975



## James A. Wechsler

### JUSTICE OBSTRUCTED?

How long will justice be obstructed and denied in the tragic chronicle of the Kent State shootings?

The question emerges again in the light of new information indicating that prejudicial rulings by Federal Judge Don Young may have shaped the outcome of the civil suit against state officials and others recently lost by parents of the victims.

It is a long time since that blood-drenched confrontation of May 4, 1970, and many Americans may prefer not to be reminded of that terrible day. But far more is at stake than the families' quest for some vindication and retribution. In a very real sense the case has become a test of our judicial system.

What has now been revealed by the Cleveland Plain Dealer, with sadly little national notice, confirms defense charges that the jury in the civil proceedings was barred from access to vital evidence. It also bluntly projects the issue of whether Ohio's Governor James Rhodes violated federal or state perjury laws in his testimony at the trial.

\* \* \*

The Plain Dealer's disclosures are based on the records of the federal grand jury proceedings conducted last year. Shortly after conclusion of the recent trial, the newspaper obtained transcripts of those sessions.

They clearly show that Sylvester T. Del Corso, adjutant general of the National Guard at the time of the shootings, told the grand jury that the actions of the Guardsmen were "unjustified." In fact he said so sixteen times during his secret appearance.

But when attorneys for the plaintiffs sought to question him along those lines, Judge Young repeatedly ruled that they could not pursue that area of interrogation. He held that Del Corso, as a defendant in the suit, could not be obliged to testify as an "expert."

At the time of the ruling, Joseph Kelner, chief counsel for the plaintiffs, called the Judge's exclusionary pronouncement "devastating" and said, "I don't know how to overcome it."

With the publication of Del Corso's grand jury recital, the shattering impact of Young's stand becomes apparent. In wholly unequivocal language, Del Corso had told the grand jury:

"I can't for the life of me find any real justification for the shooting there . . . Their [the Guardsmen's] lives were not in danger . . . We could substantiate no sniper fire . . . There wasn't any."

But none of these words were ever heard by the jurors in the civil suit. Young's ruling had muted any reference to the prior, secret record.

\* \* \*

A partially suppressed bombshell concerned the clear clash between Gov. Rhodes' testimony at the civil trial and Del Corso's grand jury recital.

Rhodes denied under oath that he had telephoned then Vice President Agnew on the day of the shootings.

But Del Corso had told the grand jury that he went to Rhodes' office immediately after learning of the event, stayed with him most of the day and was present when the Rhodes-Agnew conversation occurred. In fact, he swore, Rhodes invited him to speak directly to Agnew, and he did.

While Del Corso was allowed to discuss his account of the Rhodes-Agnew dialogue at the civil trial, the convincing details and elaboration were contained in the grand jury minutes.

When the Plain Dealer subsequently confronted Rhodes with the discrepancies between his own public and private testimony, the Governor offered varying versions of his story. At one point he contradicted his statements to the grand jury, at another he said he could not remember the details.

At the civil trial he had testified flatly: "I did not call Vice President Agnew."

Asked whether he had spoken to him on the deadly day, (regardless of who initiated the call), he had replied:

"No sir, not to my knowledge . . . I don't think I spoke to Vice President Agnew."

Could he really have forgotten?

\* \* \*

The process of appeal is now being initiated by the plaintiffs' attorneys, and Young's conduct on the trial on many levels will obviously loom large in that effort. At the same time Arthur Krause, whose daughter Allison was one of those slain by the Guardsmen's fire, has asked the Justice Dept. to investigate Rhodes' alleged perjury as a basis for federal prosecution.

Nearly five-and-a-half years have elapsed since the shootings, and the machinery of appeal means another long, costly interval of waiting and preparation. Yet for those who have followed the case from the earliest days of attempted cover-up through the frustrations of the recent trial, the notion of "closing the book" remains intolerable.

The grand jury records now unveiled cast a new shadow over the judicial structure. The role of Gov. Rhodes cries out for review by Attorney General Levi. To say it is too late in the day to care about justice is an affront to the dead and the crippled.