The Feres Doctrine

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Order of March

- Federal Liability in the Old World (pre-1946)
- The Doctrine Arrives - 1949
- Expansion
- Harm
- Reform Efforts

Sovereign Immunity

A LEGAL RELIC FROM ANCIENT ENGLAND
THE PAST IS PRESENT MORE THAN YOU THINK
The Original Position

- The Federal Government, e.g., the King, Cannot Be Sued
- [Without Its Consent]

Frustration with Imperial Governance...

- ...Reaches a Breaking Point in 1945

Congress Finally Acts

- Federal Torts Claims Act
- 1946
- Broad Waiver of Sovereign Immunity

10/1/2019
Servicemembers Are Covered by the FTCA...

...Until The Supreme Court Says They Aren’t  
Statutory language applies to SM’s  
Judicial legislation


Consolidation of three cases
- Feres - Barracks Fire
- Jefferson - Towel marked “Property of U.S. Government” left in stomach
- Griggs - Medical malpractice leads to death of SM

Modification and Expansion

All original justifications have been abandoned

Supreme Court replaced them with one overarching principle: Preservation of Military Discipline
Expansion of the Doctrine, 1


Judges won’t second guess the thought process of military officials

Expansion of the Doctrine, 2


Predominance of Military Discipline Argument

Expansion of the Doctrine, 3


The Status of the Tortfeasor Doesn’t Matter
Harm Caused by Feres Doctrine

Justice Scalia’s Take-down in Johnson Dissent

Prison inmates have more access to civil justice than service members.

Harm, Part 2

Gross injustice to servicemembers

Courthouse door often completely closed, even for attendant state claims against tortfeasor personally

Lack of accountability emboldens military managers inclined to abuse their power

Reform Effort – SFC Richard Stayskal Bill

Sponsored by Congresswoman Jackie Speier

Would allow servicemembers injured by routine medical malpractice file FTCA claims

Strong support in House, prospects cloudy in Senate
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• Center for Law and Military Policy
• Doctoral dissertation and Congressional testimony in resource section