

Prosecution of Guard In Kent Deaths Hinted

By Ken W. Clawson
Washington Post Staff Writer

7-24-70

The shooting deaths of four Kent State University students by Ohio National Guardsmen were termed "not necessary and not in order" in a Justice Department memorandum prepared for use in a possible state prosecution.

Signed by Jerris Leonard, Justice's civil rights chief, the memo also listed the names,

ranks and addresses of six National Guardsmen involved in the May 4 campus shooting and suggested they could be criminally charged under Ohio law.

The 10-page summary to Portage County Prosecutor Ronald Kane was based on evidence obtained by more than 100 FBI agents during a prolonged investigation of the shootings.

These other points were made:

- Guardsmen were not surrounded by demonstrators, and could have controlled the situation without shooting had they made arrests and used tear gas, which they still had despite using part of their gas supply earlier.

- No Guardsman was injured by flying rocks or projectiles and none was in danger of his life at the time of the shooting.

See KENT, A4, Col. 7

KENT, From A1

There was no hail of rocks from the 200 demonstrators before the shooting.

The conclusions contradict National Guard contentions, which have varied since May 4 from claims that the soldiers were under sniper fire to claims they fired following a barrage of rocks. The Guardsmen also have contended they had exhausted their tear gas supply.

Published in Ohio

Details of the Justice memo were published by the Akron Beacon Journal yesterday. The Justice Department acknowledged that it had prepared, at Kane's request, options for prosecution he might exercise under state law.

"If Mr. Kane chooses to release such information, he must bear responsibility for it," said a Justice Department statement.

Department sources raised the question whether the Ohio prosecutor may have sabotaged his own case by releasing the memo. "The pre-trial publicity caused by making this memo public, in my judgment, has foreclosed the possibility of prosecution under Ohio law," one source said.

Kane, who could not be reached for comment, has told state officials he would call a grand jury investigation if he could get \$100,000 from the state to underwrite the probe. The request is under consideration in Columbus.

The Justice Department meanwhile, is still gathering evidence for possible presentation to a federal grand jury in Cleveland.

'Identity Problems'

Yesterday, Justice sources said "loose ends" are still preventing the federal case from being completed. One source added, "We're still having identity problems," presumably referring to witnesses.

The memo, listing the names of six Guardsmen, apparently pinpoints those whose bullets struck the four victims and wounded nine others. Those wounded in the 11-second fusillade were struck in the side and back, the memo said.

Sources said the names of the Guardsmen were obtained by FBI agents based on interviews with them and witnesses as well as ballistics tests of the spent bullets found after the shootings.

The memo raises the ques-

tion of whether the confrontation could be classed as a riot, and its findings suggest there was no immediate threat to life or property.

"Raising the question of whether or not there were riot conditions takes on considerable significance," the memo said. "Under law, if it is determined there was a riot, then no Guardsman could be prosecuted for his actions.

Possibility of Congress

"In the absence of riot conditions, it could be that criminal charges could be filed."

One Guardsman reportedly told the FBI he saw a "three-inch log" flying toward him before the shooting. Another said he fired a clip of ammunition but declared, "I didn't see any people falling . . . I didn't think I was hitting anyone."

Two other Guardsmen told agents they fired into the air, while another was said to have shouted hysterically, "I shot two teen-agers . . . I shot two teen-agers."

The Guardsmen, mostly residents of the region in which the 20,000-student state university is located, moved onto the campus after a weekend of student disorders that were climaxed by the burning of the campus ROTC building. The Guardsmen were under orders of Gov. James Rhodes to break up all student assemblies, peaceful or not.

Letter to Parents

Kent State President Robert T. White closed the campus after the shootings until June 22. Yesterday, White said in a letter to parents of returning students that any disruptive activity this fall will lead to "swift and decisive disciplinary action."

He added that new identification cards would be required of Kent students and staff members and that visitors would be required to carry passes on the campus.

"The campus is no longer open to any and call who wish to use it . . ." White said.