

## Kent State Revisited

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Despite our own strong feelings about the fatal shooting of four young people at Kent State University a year ago, we suspect that Attorney General Mitchell was right when he decided not to send the matter before a federal grand jury. There can be little doubt from his announcement last Friday that Mr. Mitchell believes the fault in this incident lies with the Ohio National Guard. But the federal government is not the principal enforcer of criminal law in the country and there are situations—of which this appears to be one—in which it simply lacks the jurisdiction to do what ought to be done.

It seems clear, both from the work of the Scranton Commission and the investigation of the FBI, that four students died and nine others were wounded on that tragic day because of what Mr. Mitchell has called "unnecessary, unwarranted and inexcusable" acts by a group of National Guardsmen. These reports provide a substantial basis for belief that the claim by various members of the Guard that their lives were in danger when the shots were fired was not only untrue but was fabricated after the event in an effort to whitewash what had happened. Despite a massive investigation, the FBI could find no evidence that any shots had been fired at the Guard or that the Guardsmen involved were surrounded. Indeed, none of the four young people who died was within 250 feet of the point from which the shots were fired.

That record, standing alone, may well provide the evidence on which a criminal prosecution can be based but it does not provide a basis on which a federal case can proceed. The federal government lacks jurisdiction to try men for murder or manslaughter, except in particular situations such as when the crime occurs on federal property.

Generally speaking, it has power to intervene in cases of this type only under the civil rights laws where it must prove that those who are accused acted with the intent to deprive their victims of federally protected rights. It is on this requirement that Mr. Mitchell rested his decision to close the matter. He says the government cannot establish that the Guardsmen, either collectively or individually, intended to break that law. The federal government's inability to proceed in matters like this is one of the prices of a federal system.

It is true, no doubt, that Mr. Mitchell's action will be received in some quarters as further evidence of his insensitivity to the rights of students or protesters. But if our reading of the evidence is accurate, further action by the federal government would waste time and money with no result likely or perhaps even possible other than passing the responsibility for the decision from the Attorney General to a grand jury or a judge. In this sense, Mr. Mitchell demonstrated a bit of courage by taking the harder of the two roads open to him.

All this does not mean that the affair at Kent State should now be forgotten. The State of Ohio has a great debt to the parents of those who died and to those who were wounded unnecessarily and inexcusably. It could pay part of that debt by now doing what it ought to have done in the first place—placing the full record before a state grand jury, instead of the one-sided or patently false record it placed before a grand jury last year. A new grand jury might decide to bring criminal charges against some of the Guardsmen or it might decide charges should not be brought given the difficulty of determining which man actually did what on that day. But the state would then have at least tried to enforce the law, something it has failed to do so far in this affair.