

U.S. Expected to Ask Grand Jury Action In Kent State Deaths

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The Civil Rights Division of the Justice Department is expected to decide next month to present evidence to a federal grand jury in Cleveland on the fatal shooting of four Kent State University students in 1970.

Such a decision, which a source close to the investigation said will "probably" be made, would be a dramatic turnabout for the administration.

Although the FBI established probable cause for the filing of criminal charges against the Ohio National Guardsmen who fired their weapons during a student demonstration, former Attorney General John N. Mitchell decided in 1971 against launching a federal grand jury probe.

Assistant Attorney General J. Stanley Pottinger, who heads the Civil Rights Division, would not publicly confirm yesterday that a decision to proceed is expected.

But he said that a grand jury, if called, will be used, at least initially, as a fact-finding body. A grand jury has a "unique capability," he said, because it can command witnesses to testify under oath and subject them to perjury charges if they lie.

Asked if he expected trouble getting certain witnesses to testify without a grand jury subpoena, Pottinger said, "We anticipate that we might."

Pottinger's division has been re-examining the case since last August. The renewed investigation itself was a reversal of past administration policy, since as late as last May 25 White House Counsel Leonard Garment wrote student leaders at Kent State that "the answer on convening a federal grand jury is negative."

At the time of Mitchell's negative decision, there were repeated suggestions that it was motivated in part by the

administration's partisan political concerns about the 1972 election: Ohio was a key state to carry.

A state grand jury, convened by Ohio's Republican governor, James A. Rhodes, exonerated the Guardsmen but indicted 25 persons, mostly Kent State students and faculty, for demonstrating against the entry of American troops into Cambodia in May, 1970. Nearly all charges were dropped.

Pottinger said that if a federal grand jury is called, a new one would not be empaneled but the one already sitting in Cleveland would be used.

An important power of a grand jury, he noted, is that of granting immunity in exchange for information. "We are most interested in finding out the truth about what happened," he said.

We aren't trying to get some 22-year-old frightened kid to go to jail. We want to know what happened — if there was a conspiracy or not, if it was just a wild hare. The important thing is that the [state] grand jury was never used to find the truth."

Pottinger said that his investigators have not yet received secret testimony that was given to the state grand jury because the judge of the Portage County Court of Common Pleas, which has jurisdiction over the evidence, "doesn't yet believe he has authority to turn it over."

But the civil rights chief said his investigators can subpoena the material if necessary. It is said to include testimony of at least 20 Ohio National Guardsmen, including five of six the FBI said might be responsible for the shootings. It is also said to include testimony of Kent State faculty and other witnesses that the state grand jury ignored in writing its re-

port.

Pottinger was asked about a comment by Sen. William B. Saxbe (R-Ohio), the Attorney General-designate and a former member of the Ohio National Guard, that he might halt the Kent State investigation but that if it has hit "pay dirt," he might let it proceed.

The assistant attorney general said he had not discussed the case with the senator but had sent him a transcript of the Aug. 3 press conference he held announcing the reopening of the case.

He said that any decision on presenting grand jury evidence would go to Acting Attorney General Robert H. Bork if a new Attorney General is not confirmed by the time it is made.