

# U.S. Grand Jury Focuses on Troops In Shootings of Kent State Students

By AGIS SALPUKAS

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CLEVELAND, Feb. 24—Shots from an M1 rifle reverberated at Kent State University near the pagoda on top of the knoll from which National Guardsmen fired on May 4, 1970, killing four students and wounding nine.

This time, the shots were fired last week by a Justice Department lawyer in an effort to reconstruct the sound of the rifle fire for a Federal grand jury that, for the last six weeks, has been attempting to find out what happened that day in 1970.

It was the second time that the lawyer, Paul Lawrence, was on the campus. He had tried to reconstruct the sound of the shots last Jan. 24 by pricking toy balloons.

The experiment is an example of the systematic way that the grand jury, which was called into session by the Justice Department last December, has been trying to reconstruct the events of the day when National Guard troops and students confronted each other on the Kent State campus.

## Focus on National Guard

The witnesses called and comments from those who have appeared so far indicate that the grand jury is focusing on the National Guard's role in the confrontation.

Despite several investigations and a report by the Federal Bureau of Investigation that Guardsmen may have manufactured a story after the shooting that they felt their lives were endangered, the actions of the National Guardsmen had not been fully investigated.

A state grand jury that issued its findings in October, 1970, called only a few Guardsmen to testify and concluded that the troops "fired in the honest and sincere belief that they would suffer bodily injury had they not done so."

The state grand jury indicted 25 persons, mostly students, and, in an 18-page report, criticized the university community for permissiveness.

That grand jury did not have access to the F.B.I. report. A summary of the report, which has become available to some newsmen, concludes that "we have reason to believe that the claim by the National Guard that their lives were in danger was manufactured subsequent to the event."

## 50 Guardsmen Called

The current grand jury has made extensive use of the 8,000-page F.B.I. report, which is still secret. It has also called about 50 National Guardsmen to testify. At least seven have refused to answer questions, invoking their Fifth Amendment right against self-incrimination.

The seven Guardsmen and possibly others have also been informed of their rights by Justice Department attorneys. A defense attorney for some of the Guardsmen has said this procedure indicates that they could be indicted.

The Guardsmen who have invoked the Fifth Amendment have asked for full immunity before answering questions.

It is unknown whether the grand jury will continue to investigate the actions of the Guardsmen who fired at students when it reconvenes tomorrow, or the grand jury will begin to examine the decisions of such officials as former Gov. James A. Rhodes, who ordered the campus to be kept open.

It is also unknown whether the grand jury will seek indictments or issue a report of its findings.

## Grand Jury Praised

But, unlike the previous state grand jury, which left many people outraged, the present Federal grand jury has sometimes been praised by students, National Guardsmen and other witnesses.

Robert H. Canterbury, retired Assistant Adjutant General of Ohio, who commanded

the National Guard troops on the campus, told reporters after testifying for four hours, "I find nothing up there in today's proceedings that the National Guard or individual Guardsmen should complain about."

But one defense attorney, C. D. Lambros, who represents six Guardsmen, has criticized the grand jury system in general.

"It is a well-refined system of the rack," he said, referring to an instrument of torture used in medieval Europe.

Witnesses are not allowed to have counsel, he said, and are at the mercy of the prosecutor, who has considerable leeway to influence the grand jury.

## Appeal Planned

Mr. Lambros has filed several motions asking for the dismissal of the grand jury. They have been denied by Judge Frank J. Battisti of United States District Court, who impounded a grand jury. Mr. Lambros plans to appeal.

If Guardsmen are indicted, Mr. Lambros said in an interview, he will challenge the indictments on the ground that they Guardsmen have been denied their right to a speedy trial.

"Their identity and locations have been known for four years," he said. "There has been confusion on the part of three Attorneys General on what to do. These factors are not the burden of the accused."

It took more than three years and extensive efforts by students, parents of the dead and wounded students, church groups, legislators and behind-the-scene efforts by some Justice Department officials to reopen the case.

## Mitchell's Decision

In August, 1971, then Attorney General John N. Mitchell decided not to call a grand jury. In his statement, he said there "was no credible evidence of a conspiracy between National Guardsmen to shoot students on the campus and there was no likelihood for successful prosecution of individual Guardsmen."

During the next two years, there were appeals and petitions from students to the Justice Department and the Nixon Administration, but each was turned down for reasons similar to those given by Mr. Mitchell.

However, last Aug. 3, then Attorney General Elliot L.

Richardson ordered a new investigation.

About four months after Mr. Richardson's decision to order a new investigation, J. Stanley Pettinger, Assistant Attorney General for civil rights, announced that he thought it necessary to call witnesses before a grand jury but that this did not mean the Justice Department would seek indictments.

The main questions before the grand jury are: Why did the Guardsmen fire? Was it the result of a conspiracy or was it out of fear? To what extent were leaders responsible for what happened?

The grand jury has spent much time and effort to determine whether the Guardsmen fired because of a prearranged signal.

On several tape recordings of the incident, a single shot can be heard before the volley of the Guardsmen.

The jury spent a week trying to determine whether the shot could have come from a .38-caliber revolver that Terrence B. Norman, then a student and free-lance photographer, turned over to the authorities shortly after the shooting.

#### **Says Gun Wasn't Loaded**

Mr. Norman, who is now a policeman in Washington, has denied firing the gun.

The grand jury has also been studying allegations made in a book by Peter Davies, a New York insurance man. In the book, called "The Truth About Kent State," Mr. Davies alleges that the first shot may have come from the .45-caliber pistol of Sgt. Myron G. Pryor of the Ohio National Guard.

Sergeant Pryor was photographed pointing a .45-caliber pistol at a crowd of demonstrators, but he has said that he could not have fired because the gun was not loaded.

The grand jury may also seek to clear up the role of former Governor Rhodes, who ordered the troops on the campus.

Michael Delaney, a former Guardsman, has said he told a grand jury that Mr. Rhodes had ordered the Guard commanders "to take any steps necessary to keep the campus open even if they had to put an armed guard in each classroom."

Mr. Rhodes is now seeking the Republican nomination for United States Senator from Ohio. An investigation into his role could affect his political prospects.