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High Court Allows Kent State Suits

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The Supreme Court ruled yesterday that the families of students killed at Kent State University in 1970 can sue Ohio officials and National Guardsmen.

Without deciding whether the families can recover damages for the deaths of the students killed by National Guardsmen on the Kent State campus, the unanimous court ruled that lower courts were wrong in dismissing the lawsuits brought by the families of three of the students.

The suits were brought under the Civil Rights Act of 1871, which allows recovery for wrongful acts perpetrated "under color of state law."

The U.S. District Court in Cleveland and the Sixth U.S. Circuit Court of Appeals dismissed the lawsuits, ruling that although the suit was on its face brought against Ohio Gov. James Rhodes, the university president and the adjutant general of the Ohio National Guard and various individual guardsmen, in reality the suit was against the state of Ohio and therefore barred by the 11th Amendment. The 11th Amendment prohibits lawsuits against a state by citizens of another state.

The Supreme Court ruled that the District Court had acted too hastily in dismissing the lawsuit, and not giving the students' families an opportunity to prove whether they were entitled to recover against the National Guardsmen and officials.

Chief Justice Warren E. Burger, who wrote the opinion, said that the 11th Amendment "provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law."

The 8-to-0 decision did not decide the case, but merely reinstated the lawsuits in the District Court in Cleveland.

Justice Douglas did not take part in the decision of the case.

The cases involved yesterday

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day were brought by the families of slain students Sandra Scheuer, Allison Krause and Jeffrey Glen Miller, three of the four students killed at Kent State on May 4, 1970, during a protest against the U.S. decision to send troops into Cambodia.

Governor Rhodes had ordered the National Guard onto the campus after days of anti-war protests. The students were killed in a barrage of fire from a group of guardsmen; nine others were wounded in the incident.

A federal grand jury in Cleveland March 29 indicted eight former National Guardsmen on charges of violating the civil rights of those killed or wounded.

The guardsmen, all enlisted men, were charged with "willfully assaulting and intimidating demonstrators . . . by firing in their direction and violating the constitutional rights not to be deprived of liberty without due process of law."

The families of the three dead students who filed the two lawsuits told the court that a ruling against them in the highest court in the land would remove their last opportunity for redress.

In Boardman, Ohio, Mrs. Martin Scheuer, Sandra's mother, said she was "very pleased that we're finally getting something done. I just want to know why my daughter was killed."

Sylvester del Corso, state commander of the National Guard at the time of the killings, said: "I'm not worried, but I'm not elated. We were all agents of the state of Ohio. We did not act as individuals."

Ohio Gov. John Gilligan has directed the state attorney general to provide defense attorneys for the eight former guardsmen who were indicted last month.

The lawsuits claimed that Rhodes, who was then governor of Ohio, permitted the guardsmen to carry loaded guns and to shoot at persons

without justification. Similar allegations were made against del Corso and other guard officials. Kent State President Robert White was charged with reckless failure to act.

Other defendants are Robert Canterbury, del Corso's chief assistant; Harry Jones, a major in the guard and John Martin and Raymond Spr, guard captains.

The suits charge the defendants acted "intentionally, recklessly, willfully and wantonly," from the governor on down, and that they intended to violate the constitutional rights of the students. Rhodes, for instance, was charged with having ultimate responsibility for the fact that the guardsmen had ammunition in their weapons.

Chief Justice Burger also ruled that the "executive immunity" claimed by the officials in acting on the part of the state of Ohio is not absolute. The Sixth Circuit based its decision upholding the District Court in part on the "absolute 'executive immunity' of the state officials."

"Public officials, whether governors, mayors or police, legislators or judges who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices," Burger wrote.

Looking at the statute involved—the 1871 Civil Rights Act—Burger said "government officials, as a class, could not be totally exempt, by virtue of some absolute immunity, from liability under its terms."

He concluded that "a qualified immunity is available to officers of the executive branch of government . . . It is the existence of reasonable grounds for the belief . . . in light of all the circumstances . . . that affords (the) basis for qualified immunity of executive officers or acts performed in the course of official conduct."