

1974
OCT 30 1974

KENT CASE LACKS BALLISTICS DATA

Prosecutor Reports Bullets
Were Not Recovered
NYTimes

Special to The New York Times

CLEVELAND, Oct. 29.—

Government lawyers conceded today in their opening statement in the Kent State trial that they had no ballistic evidence to connect any single Ohio National Guard weapon with the killing and wounding of students on the Kent State University campus on May 4, 1970.

The statement came after Robert Murphy, a Government prosecutor, told the jury of eight men and four women not to expect the Government's case to be loaded with surprises.

During the initial investigation of the 1970 shootings agents of the Federal Bureau of Investigation confiscated the weapons of 28 guardsmen who acknowledged firing them and conducted extensive ballistics tests.

Mr. Murphy explained in his statement that many of the bullets that killed four students and wounded nine passed right through them and were "never recovered."

Mr. Murphy added that eight former guardsmen, on trial on charges of violating the civil rights of those killed and wounded, were the only ones who fired in the direction of or at human beings.

'No Massive Rush'

The eight defendants, he said, accounted for one-third of the 60 shots fired in 13 seconds that day. The Government said the evidence would show that the guardsmen were not surrounded at the time of the shooting and that their path of retreat was clear.

"The evidence will show there was no massive rush of students toward the guard and no assault on the guard position when the shooting broke out," Mr. Murphy said.

"There were only 15 students who were within 50 yards and moving toward the guard. The firings were indiscriminate and unjustified, and at the conclusion of this case the Government will ask to convict each and every defendant of the crimes charged."

In contrast, defense lawyers painted a picture of guardsmen in retreat under a hail of rocks and obscenities when the shootings broke out.

Frenzy Described

C. D. Lambros, attorney for four of the defendants, told the jury:

"The evidence will show that these violent terms that were used showed the state of mind of the demonstrators, particularly when, as they charged the National Guard on top of the hill using the words 'kill, kill, kill.'

"The evidence will show that they were words of hostility, frenzy and hysteria; and that they were words of persons bent in mind to destruction and injury of National Guardsmen."

Mr. Lambros said that the defense would prove that none of the guardsmen fired their weapons with a specific intent to violate anyone's civil rights.

"The evidence will show they were trying to protect the civil rights of all persons there," he said.

Mr. Lambros added the defense would prove that none of the defendants fired the first shots; that they fired to protect their lives and that they believed an order to fire had been given.

Bernard Stuplinski, who represents three of the men charged, said the evidence would establish beyond doubt that the "responsibility for this tragedy should be placed not on these eight men, but on the officials of Kent State University, the then Governor of the State of Ohio (James A. Rhodes), and the high command of the National Guard."

"There was no leadership, no direction, no instruction, and these men were in a state of confusion," he said.

50 Witnesses Planned

The trial of the eight guardsmen is expected to take six to eight weeks. During that time, the Government said, it will call 50 witnesses and present 90 photographs to prove its case.

The Government has the burden of proof to establish that the guardsmen wilfully and wantonly aided and abetted each other when they fired into the crowd of demonstrators who were protesting former President Richard M. Nixon's announcement on April 30, 1970, of the invasion of Cambodia.

The defendants are Lawrence A. Shafer, 29 years old, of Ravenna, Ralph W. Zoller, 27, of Mantua, James D. McGee, 27, of Ravenna, James E. Pierce, 29, of Amelia Island, Fla., and William E. Perkins, 28, of Canton, all of whom face a felony charge of wilfully assaulting and intimidating the students, and Barry W. Morris, 29, of Kent, Mathew J. McManus, 28, of West Salem, and Leon H. Smith, 27 of Beach City, who face a misdemeanor charge of assault and intimidation not resulting in death.