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# Judge Acquits Guardsmen In Slayings at Kent State

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CLEVELAND, Nov. 8—The chief judge of the Federal District Court here acquitted eight former Ohio National Guardsmen today in the 1970 Kent State shootings. In a

sudden and dramatic end to the trial that began Oct. 29, Judge Frank J. Battisti held that the Government prosecutors had not proved "beyond a reasonable doubt" that the guardsmen willfully intended to deprive the students of their civil rights.

The guardsmen were accused of violating the rights of students at a demonstration in which four of them were killed and nine were wounded.

The judge said in his opinion: "It is vital that state and National Guard officials not regard this decision as authorizing or approving the use of force against demonstrators, whatever the occasion of the issue involved. Such use of force is, and was, deplorable."

The decision left the guardsmen and their supporters happy, while some of the parents of the slain students felt they had been stifled again in their quest for justice.

Arthur Krause, the father of Allison Krause, who was killed when a guardsman fired into a group of demonstrators, said: "I still want the truth out, and it didn't come out here."

The eight guardsmen sat silently with serious expressions in the ornate courtroom of the

Continued on Page 26, Column 1

Continued From Page 1, Col. 6

Judge Battisti read his decision this morning.

Later, the guardsmen expressed relief and delight in interviews with newsmen, and in conversations with their lawyers and with some of the 12 jurors, most of whom said they would have voted for acquittal.

"I'm on Cloud 9," said Lawrence Shafer, 28 years old, one of the guardsmen as he stood relaxing with a cigarette in the suite of his attorney.

Paul Mack, one of the jurors, vigorously shook the hand of James McGee, one of the guardsmen on trial and said: "I'm so glad that it turned out this way for you. Now you can go back to a normal life."

And Mrs. Evelyn Smith, the wife of Leon H. Smith, one of the guardsmen, asked her husband to call both their parents. "I can't do it," she said. "I'll just cry."

Mr. Smith said that when he heard the judge's decision, "I felt that I could finally let a smile come to my face."

Judge Battisti's written opinion was given in granting a defense motion for a dismissal on the basis of insufficient evidence.

The defense motion was presented this morning after the prosecution completed its case. Judge Battisti, anticipating the motion, had prepared a written ruling, which he read after discussion of the motion. He then dismissed the jury.

In his opinion the judge held out the possibility that state officials may "wish to pursue criminal prosecutions against various persons responsible for the events at Kent State." Such a course was considered highly unlikely, however.

During the trial the prosecution, headed by Robert Murphy of the Justice Department, presented 33 witnesses and 130 exhibits, mostly photographs of the May 4, 1970, confrontation on the state university campus. The jury of 12 also visited the campus and listened to a simulation of the shots.

The intention of the prosecution, summed up by Mr. Murphy, was to show that the Guardsmen were not surrounded at the time of the shooting, that no student was within 60 feet of the guard, that only about 15 students, who were about 50 yards from the guard, were moving toward the guard, and that the Guard was in the best and safest position on high ground.

Judge Battisti, in a 15-minute discussion with Mr. Murphy, asked: "What specifically have you proven?"

Mr. Murphy answered: "We have shown that the shootings were unjustified; that there was no danger posed to the guardsmen's lives."

Judge Battisti, both in his

opinion and his discussion in court, said that the Government had presented much evidence that showed that the guardsmen may have used excessive force.

"At best," he read from his opinion, "the evidence presented by the Government would support a finding that the amount of force used by the defendants was excessive and unjustified; that they intended to harm or frighten at least some of the demonstrators; and that they fired without being ordered to do so."

But the judge brought out that the indictments of the guardsmen were based on Section 8 and 242 of Title 18 of the United States Code, under which the prosecution must prove that the defendants were motivated by a specific intent to deprive the students of constitutional rights.

The judge said in his opinion: "There is no evidence from which the jury could conclude beyond a reasonable doubt that the defendants acted with premeditation, prior consultation with each other, or any actively formulated intention to punish or otherwise deprive any students of their constitutional rights."

Five of the eight guardsmen faced felony charges. They were Lawrence Shafer, 28 years old; and James McGee, 28, both of Ravenna, Ohio; James Pierce, 30, of Amelia Island, Fla.; William Perkins, 38 of Canton, Ohio; and Ralph Zoller, 27, of Mantua, Ohio.

The three others, indicted on misdemeanor charges, were Barry Morris, 30, of Kent, Ohio; Leon H. Smith, 27, of Beach City, Ohio, and Matthew J. McManus, 28, of West Salem, Ohio.

The legal proceedings for the guardsmen are not over. There is still a civil suit brought by parents of the injured and killed students of \$20-million filed against the National Guard and former high-ranking state offi-

cial including James A. Rhodes, who was Governor when the demonstration took place and who was re-elected this week after a term out of office.

Depositions in the civil suit are being taken now and it is expected to go to trial next spring.

#### Comments From Officials

CLEVELAND, Nov. 9 (AP)—Ohio Attorney General William J. Brown refused to speculate on the possibility of the state undertaking any criminal prosecution.

"I don't know what he's talking about," Mr. Brown said in commenting on Judge Battisti's opinion. "I'd have to read the statement in its totality. After all, we've just defended them."

In Washington, J. Stanley Pottinger, Assistant Attorney General of the Justice Department's civil rights division, said in a statement:

"We felt that the case should have been decided by the jury instead of the judge. With that ruling we are disappointed. But we are not disappointed with our efforts to see that justice was done. The decision to reopen the case was right. The grand jury's decision to indict was honest. The trial of the case was thorough. The department has done everything in its power to air the cause of this tragedy and to enforce the law."

"The court's ruling today ends the Federal Government's prosecution in the Kent State case. This is subject only to the remote possibility of an appeal which, in any event, appears to be precluded as a matter of law."

Mr. Rhodes, the re-elected Governor, said today that "justice has prevailed" with the judgment of acquittal.

The eight defendants were members of guard units ordered to the Kent State campus Mr. Rhodes, as Governor, after demonstrators had burned the Army Reserve Officers Training Corps building.