

Kent State Jury Reaches No Verdict on the First Day of

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CLEVELAND, Aug. 22—A Federal jury of six men and six women began deliberations today in the \$46-million civil damage suit that grew out of the Kent State University campus shootings that killed four students and wounded nine others five years ago. The jurors returned to their hotel after failing to reach a verdict after five hours and were to resume deliberations tomorrow.

They got the case after a two-hour reading by Judge Don J. Young in United States District Court of an 80-page charge.

His instructions outlined the constitutional issues and the statutes affecting the case and presented the jury with more than 500 variations of findings.

The 29 defendants include 27 Ohio National Guardsmen, Gov. James A. Rhodes and Robert I. White, former president of Kent State.

The plaintiffs include the parents of the dead students and the nine students wounded by National Guard gunfire on May 4, 1970, during an antiwar demonstration that followed three nights of violence and vandalism. Protests had been set off by President Nixon's disclosure of the United States invasion of Cambodia.

The Jury's Task

The jurors assumed the task of deciding if the defendants could be held personally and financially liable for the \$46-million in damages asked by the plaintiffs.

A finding of liability against one or all of the defendants would mean that a second trial would be held to assign the amount of damages.

Judge Young told the jurors the plaintiffs had to prove in the 95-day trial that a preponderance of the evidence established that the injuries and deaths came as a result of a

deprivation, under color of state law, of a right and privilege secured to each plaintiff by both the United States Constitution and Congress.

The judge told the jurors that under the provision of the First, Eighth and 14th Amendments, the plaintiffs had to prove that the defendants had violated rights including the right to assemble peacefully; the right not to be deprived of life and liberty without due process of law; the right not to suffer cruel and unusual punishment and the right to protection against excessive government force.

"The plaintiffs allege they were deprived of these rights when there was an attempt to disperse a rally on the campus," the judge told the jurors.

In addition jurors were told to determine if the guardsmen and Mr. Rhodes were protected under the state's doctrine of sovereign immunity.

Qualified Immunity

Judge Young told the jurors that sovereign immunity was "not absolute," but "qualified" and that they must decide if Mr. Rhodes and Guard leaders had acted within the scope of the authority of their offices.

In addition the jurors were instructed to consider the plaintiffs' contention that state laws on assault and battery and negligence had been violated by the shootings and woundings.

Judge Young also told the jury to consider the defendants' contentions that the shootings had constituted self-defense on the part of the defendants and that the plaintiffs were guilty of contributory negligence.

Few revelations sprang from the 14-week-old trial that brought testimony from more than 100 witnesses and produced a transcript of more than 1,500 pages.

The testimony regarded as most damaging to the Guard came from a former captain, J. Ronald Snyder, who testified in the seventh week that he had lied about finding a gun on the body of one of the dead students in order to support the Guard's contention that the troops had fired in self-defense.

Startling Testimony

Startling testimony also came in the 13th week of the trial when a former student testified that she had seen a civilian fire moments before the Guard troops fired their 13-second volley.

Joy Bishop testified that she had been standing on a dormitory roof with two other students when she saw a man

come around a corner at ground level, fire one shot from a pistol and flee.

The defense used Mrs. Bishop to support its contention that the troops had been fired upon and had responded to what they believed to be a sniper.

The incident produced dramatic testimony in the closing days of the trial when lawyers for the victims brought in Mrs. Bishop's two companions at the time of the shootings. Both disputed her testimony.

Denied Firing Gun

The two former students said that they had been standing with Mrs. Bishop and had not seen the man she had described. The defense also tried to show that an undercover campus police photographer might have been responsible for touching off the shooting incident.

Terry Norman, the photographer, was apprehended after



United Press International

Dean Kahler, wounded in the Kent State shooting in 1970, waiting outside Federal Court in Cleveland yesterday as jury deliberated in civil trial.

Deliberations in \$46-Million Suit

the incident with a .38-caliber revolver that was turned over to the authorities. He testified in the case, through a sworn statement, that he had not fired the weapon.

Mr. Kelner accused the defense of using the incidents to distract the jury from the main thrust of the case, whether or not the shootings had been justified. He said the defense was bankrupt because it could not prove any justification for the shooting.

"This is not a criminal case," he told the jury. "No one is going to jail. All we want is responsibility fixed. Thirteen innocent kids—my kids and I love them—didn't deserve what happened to them."

Testimony in the rest of the case centered on the disputed issues of whether guardsmen had feared for their lives and whether there had been a rush

of rock-throwing, screaming students just before the Guard wheeled and fired into the crowd.

The plaintiffs have had a long struggle in reaching the point where a jury will finally decide if the National Guard can be held responsible for the deaths and injuries.

Case 5 Years Old

They began their civil case five years ago on two levels, trying to sue the State of Ohio and its officers and, on another front, suing the officials as individuals.

It was their attempt to sue the officials as individuals that brought them the most success. Starting on the lowest state court levels the plaintiffs were repeatedly rebuffed because the courts, including the State Supreme Court, consistently ruled that the Guard and the Governor were protected by the

medieval doctrine of sovereign immunity.

It was not until April, 1974, when Chief Justice Warren F. Burger ruled for the plaintiffs that the doctrine of sovereign immunity is not absolute, but qualified, that the hope of getting the case to a jury was finally realized.

Justice Burger told the plaintiffs in his ruling, however, that "the issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support their claims.

"Indeed it may appear on the face of the pleadings as if a recovery is very remote and unlikely, but that is not the test."

Arthur Krause, whose daughter was one of the four killed, summed up the plaintiffs' desires when he said, "That is all we ever asked, to get it to jury and let them decide."