

WXPost AUG 28 1975

Kent Suit

Won by

Defense

No Liability For Governor, National Guard

From News Dispatches

CLEVELAND, Aug. 27 —

A federal jury refused today to hold Ohio Gov. James A. Rhodes and 28 other defendants personally and financially liable in the 1970 Kent State University shootings. The plaintiffs had sought \$46 million in damages.

The question before the jury was whether 29 current and former state officials and Ohio National Guardsmen were liable for the injuries and deaths at Kent State on May 4, 1970.

Four students were killed and nine were wounded when Guardsmen opened fire as they moved across the campus to disperse an antiwar rally. The civil suit was filed by the wounded students and by the parents of the dead.

Criminal charges against eight Guardsmen were dismissed last year.

[Violence on the Kent State campus grew out of President Nixon's May, 1970, decision to invade Cambodia. The shootings provoked some of the most heated debate of the Vietnam-war era.]

Attorneys for those who brought the suit told the jury the shooting was an unprovoked and unwarranted action that deprived the students of their lives and liberty.

The defendants argued that they were carrying out their lawful duties on the campus and fired to protect themselves from a mob. Defendants included Rhodes; former Adj. Gen. Sylvester Del Corso and Brig. Gen. Robert H. Canter-

bury, the Guard commander; former Kent State President Robert I. White, and 25 current and former Guardsmen.

The six men and six women of the jury were escorted individually from the courthouse to their homes by U.S. marshals after the verdict was delivered.

Judge Donald J. Young announced that two jurors dissented in the verdict. Since it was a civil case a unanimous verdict was not required.

The jury heard three months of testimony and deliberated for five days before returning its verdict.

The plaintiffs had asked for \$46 million from the defendants. The suit was a consolidation of a number of separate suits filed earlier by the plaintiffs.

Muffled sobs of the mothers of the slain and wounded were heard as the verdict was read, along with jeers from the young men who were wounded five years ago.

Defense attorneys listened to the verdict in silence, along with the only defendants present in court, Del Corso and then-Lt. Col. Charles Fasinger.

Joseph Kelner, lead attorney for the plaintiffs, said an appeal was certain. He urged Young to set aside the verdict, but the judge said he wanted the attorney to file his motion in writing before making a decision.

The shootings had been termed "unwarranted, unnecessary and inexcusable" by the President's Commission on Campus Unrest, which was established in August, 1970, to investigate.

A month later, a special state grand jury conducted a probe, exonerating the Guardsmen but indicting 25 students and faculty members.

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Most were charged with violation of state riot laws.

Two of those indicted were never arrested. Three were convicted, one was acquitted, and charges were dismissed against the rest.

A few months later, a federal judge ruled that the state grand jury had exceeded its authority, and its report was ordered destroyed.

On Aug. 13, 1971, then Attorney General John N. Mitchell said the Justice Department had completed an investigation of the shootings, and no further federal action was considered necessary.

Nearly two years later, on Aug. 3, 1973, then Attorney General Elliot L. Richardson ordered a new investigation. On Dec. 12, 1973, he announced that a grand jury had

been convened to conduct the new probe.

That panel indicted eight of the Guardsmen, charging them with violating the dead and wounded students' constitutional rights. Those criminal charges were later dismissed after Justice Department attorneys completed their court presentation and the trial judge ruled the government had failed to make its case.

Those eight Guardsmen were among the defendants in the civil suit.

Alan Canfora, of Barberton, Ohio, and Thomas Grace, of Syracuse, N.Y., who were wounded by National Guard gunfire, spoke out when findings against them were announced.

"He's still a murderer," said Grace, without indicating to whom he referred.

"This is an outrage," said Canfora. "There's no justice."

Canfora was shot through the wrist and Grace had part of one foot blown off by Guard bullets in the 1970 incident.

"These questions go the very depths of civil justice," the judge told the jury after the verdict was read. "You

have plumbed those depths. You have earned the gratitude of everyone in this courtroom, regardless of whether they benefited by your decision, and of everyone in this free land."

At that point, Grace said, "What freedom? Spare us; it's a sham in every way."

Chief plaintiffs' attorney Joseph Kelinder asked the judge to set aside the verdict and grant a new trial "without the expense of an appeal which there surely will be." Young said he would rule on that when the motion was submitted in writing and reviewed by both sides.

During the trial defendants produced witnesses who claimed to hear nonmilitary gunfire before the Guardsmen shot and one former student who said she saw a civilian fire a gun in the air shortly before the Guard shooting began.

Gen. Canterbury, however, admitted officials had been unable to substantiate sniper reports, and three other former students denied their fellow student's claim to have seen a civilian fire.