

Kent State: Justice?

To the Editor:

At first glance your Aug. 18 editorial "Justice at Kent State?" appears to offer a realistic response to Attorney General Mitchell's decision not to convene a grand jury. Upon reflection, however, I find it to be a disturbing capitulation to this Administration's desire to bury Kent State once and for all.

I devoted many months to the preparation of my report on the conduct of the Ohio National Guard during the hour preceding the shooting. At the time it was entered into the Congressional Record by Representative William S. Moorhead of Pennsylvania he said, "I believe that a prima facie case has been made that there was murder committed at Kent State."

This week the Akron Beacon Journal published a letter from a guardsmen in which he states: "As a guardsmen who was present at Kent State, I cannot wholly dismiss the possibilities of a deadly collusion. Just as I know many fellow guardsmen who were appalled by the murders, I know others who welcomed the deadly confrontation."

I can only express dismay at The Times for concluding Mr. Mitchell was "probably right" in his contention there is little hope of successful prosecution of individual guardsmen. How can Mr. Mitchell be right when his decision is based upon deplorably incomplete evidence?

The Justice Department possesses the instrument by which vital testimony can be elicited and that is the immunity statute which allows for the gathering of evidence without the threat of incrimination. This instrument, exercised through the Federal grand jury process, was swiftly used by the Attorney General in the de-

partment's investigations of the alleged Berrigan conspiracy and the Pentagon papers case.

It has been deliberately withheld in the killing of four unarmed citizens despite Mr. Mitchell's conclusion their deaths were "unnecessary, unwarranted and inexcusable."

Many of our younger generation must feel that The Times has opted for the easy way out by suggesting we look to the civil suits in Ohio to produce a judicial condemnation of the Guard's actions. I can only share in their disillusionment in a newspaper which took such a courageous stand on the people's right to know.

I believe my report touched the nerve-end of the truth about Kent State, and the Attorney General's opinion that I failed to present a "credible" case does not mean there was no concerted action on the part of several guardsmen. Only a Federal grand jury, with its power to grant immunity, could possibly determine whether or not there was a conspiracy to shoot at the students.

Why has Mr. Mitchell denied the immunity statute in this case while exercising it in others? That The Times should have ignored this aspect of the Justice Department's handling of the Kent State tragedy conveys the unhappy impression it condones the Administration's wish to sweep this case under the rug.

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New York, Aug. 20, 1971