

THE KENT STATE INCIDENT: A SCENARIO FOR LIABILITY

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**WORKSHOP: PREVENTING TORT LIABILITY AND LOSSES-
IDENTIFYING THE ORIGINS OF TORT/ACCIDENT
LIABILITY AND DEFINING APPROACHES THAT LIMIT
PERSONAL INJURY CLAIMS FOR CIVIL DAMAGES**

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I. The Kent State Incident Revisited

It took only sixty-one shots fired from War II-vintage rifles (Campus Unrest, 1970, p. 233) in thirteen seconds to transform a beautiful campus with rolling hills and black squirrels into an infamous incident in the history of higher education in general, and Kent State University in particular. Was the rally at noon on May 4th illegal? Were the demonstrators aware of the curfew and prohibition of public gatherings in effect on May 4th? Who was in control of the University during the disruption which began with the burning of the ROTC building on Saturday, May 1st? Did the demonstrators threatening behavior justify the use of deadly force by the Ohio National Guard? Can similar incidents on college campuses be prevented?

II. Student Unrest on the College Campus

Student protest and peaceful demonstrations were not new to Kent State University prior to the weekend of May 4th, 1970. During the previous year, there were many rallies, marches, and demonstrations; from a handful of students proclaiming their opposition to “capitalism in the university,” to thousands marching for peace.

Student protest demonstrations often involve vague and ill-defined goals, roles and social-control mechanisms. People come together in a haphazard fashion and their reason for attending may vary widely; some are there to support the cause, others to heckle the supporters, and still others just to see what is happening or to pass time until dinner. (Popenoe, 1997, pp. 403-408) Most protests are entirely peaceful and orderly manifestations of dissent, such as holding meetings, picketing, vigils, demonstrations, and marches—all of which are protected by the First Amendment. (Campus unrest, 1970, p. x.) The Kent State University campus, its student body and nonstudents involved in the disruptive behavior prior to and during the May 4th incident exemplified this protest perspective. Each of the many rallies and demonstrations which occurred during the previous year had the potential



for evolving into a major student disruption. Each included students and non-students. Each had the potential ingredients of a riot.

Peaceful demonstrations have the potential of escalating into a disturbance and taking on many of the characteristics of a riot—a violent public demonstration often characterized by a lack of goals or direction. The underlying grievances may be heightened by formally organized groups that advocate an aggressive response to the situation, creating an awareness of violence as a possible outlet, perhaps even a solution. In nearly all riots there is a precipitating event that arouses the emotion of the group, leading it to retaliate aggressively against a person or property. The precipitating event may be meaningful, symbolizing an underlying conflict; or it, and the victim at hand, may be simply the focus of displaced emotion and blame. (Popenoe, 1997, p. 409)

The mode of communication in a riotous situation is *rumor*, an untrue or unverified report that is informally communicated from person to person. No riots ever occur without rumors to incite, accompany and intensify the violence. (Allport and Postman, 1947, p. 19) The entire weekend of May 2-4, 1970 was replete with miscommunication and false communication. The lack of a communication process with appropriate communication equipment may have been the primary factor contributing to the confusion of communicating with those participating in the disturbance; with university officials who were assigned to be among the demonstrators; between university administrator; and between university administrators and the various external agencies (Ohio National Guard, Ohio State Patrol, Kent City Police, Portage County Sheriff's Personnel, and Kent State University Police). The disorganization and inability to communicate between and amongst the various individuals involved in managing the university during the incident, was compounded by the void of training of university personnel to deal with riotous conditions on a university campus.

III. A View From Inside of the Riot

As a college recruiter with Goodyear Aerospace (Akron, Ohio), I had visited many campuses and observed first-hand student unrest and demonstrations during the previous three years. In my naivete, I believed there was a need for individuals who had outgoing personalities and a passion for working with the youthful exuberance of college students and



the ability to deal with student dissent and disruptions which were common at that time. Thus, in February of 1969, I enrolled in a graduate program at Kent State University, and by June of that year was appointed Assistant Director of the Office of Student Conduct Programs. This position was responsible for assisting with the administration of a university-wide discipline program, training and coordinating thirty-one student judicial boards, one university judicial board and one appeals board, and training the residence hall staff that supervised 8,500 resident students on a campus of 22,000. In addition to performing other student affairs administrative duties, this position was responsible for *monitoring crowds*.

“Monitoring of crowds” was defined as being present for any type of gathering that occurred on the campus and reporting potential problems to the Vice President for Student Affairs, Office of Student Conduct, and/or University Police. Specific instructions included to observe what was occurring; not to become involved in any type of confrontation; and to be aware of behavior that might result in the disruption of the operation of the university, destruction of property or injury to human beings; and finally, to run to a pay phone and report it. As a novice in student affairs, I had no experience or training in crowd control, student disturbances, or civil disobedience. Equally important, I had yet to take a single course in student affairs administration and was not given any type of orientation in the student protest movement.

During the academic year 1969-70, there were numerous marches, rallies and demonstrations, none of which engendered a feeling of fear or intimidation. While there were frequent looks of “what’s he doing here in his jacket and tie,” there was never a personal confrontation or any form of verbal harassment.

A variety of student activities were planned in the Student Union and residence halls for the weekend of May 4th. Information on planned activities was distributed throughout the campus. (Matson and Frisina, Students Information Sheet, 5/2/70) which advised students of the curfew on campus and in the city of Kent, and stated: “The Court has issued an injunction to all persons, student and non-students, on the main campus of Kent State University which in effect will make it a *Contempt of Court to participate in destructive activity on the main campus.*” That information sheet listed the following activities:



1. Band in Union – 7:00 to 12:00 Midnight
2. Two bands and food in Tri-Towers – 7:00 to 12:00 Midnight
3. SAB Flick in Bowman Hall, Lecture B
“The Devil at 4 O’clock” – 6:00 – 9:00 PM
4. Film Festival in the University Auditorium
5. Band and recreational activities in Eastway Hall – 8:00 PM
6. Folk Music, Beal Hall lounge – 8:00 PM
7. Dennis Lang, Piano, School of Music, M&S Recital Hall – 8:30 PM

The information sheet delineated the curfew restrictions and noted that peaceful assembly on the campus was permitted.

“Between the hours of 11:00 PM and 3:00 AM last night, there were disturbances on Water Street and Main Street with the trouble starting around J.B.’s and ending at the arch on campus at Lincoln and Main. Due to property damage and personal injuries, the Mayor of Kent has placed a curfew on the City of Kent.

Curfew is hereby defined as a prohibition against any person or persons walking, running, loitering, standing or motoring upon any alley, street, highway, public property or vacant premises within the corporate limits of the City of Kent, excepting persons officially designated to duty with reference to said civil emergency.

Any person violating the provisions of this ordinance or executive order issued there to shall be guilty of an offense against the City of Kent, and shall be punished by a fine not exceeding \$100 and or imprisonment in the City jail not exceeding three months.

1. The injunction does not prevent peaceful assembly-demonstrations, dissent or movement about the campus.
2. It applies to any person who comes on campus, whether they are student or non-student.”

My instructions at that time were to monitor gatherings or to “monitor crowds.” Following strategy meetings on Saturday, May 2nd, that involved University officials, University Police, and other individuals, I was assigned to monitor two rallies: Black United Students (BUS), rumored to be scheduled for the front campus, and an unidentified rally rumored to be scheduled to occur on the Commons after 7:00 PM.

I arrived in the vicinity of the ROTC building at approximately 7:00 PM where about forty individuals were gathered at the southeast end of the Commons—a large grassy area located between the ROTC building and Taylor Hall. A group of six individuals were sharing a bottle of what appeared to be an alcoholic beverage, given the secretive manner in which they were passing around the bottle camouflaged in a brown bag.



At 7:30 PM, two individuals with cameras arrived. One went to the top of the outdoor stairs of a barrack-type wooden building, across the street from the ROTC building and took several pictures. Immediately, three individuals from the larger group approached the individual and said, "if you take any more pictures, you'll be taking your life into your hands and we'll take care of your camera! We're not going back to jail because of a few pictures." The two individuals with cameras complied.

At that time, the established protocol for communicating information about gatherings—"while monitoring crowds"—was to go to the nearest pay phone and call the Communication Center which was located in the Administration Building. At 8:00 PM, I walked to the Student Union, a short distance from the Commons, to report the size of the crowd (about 35-40) and the incident where the two photographers were threatened. Upon returning to the Commons, the crowd had increased to approximately 500 and were now located at the site of the Victory Bell. This bell was traditionally used for announcing athletic victories, but had become a rallying call for any type of student gathering or demonstration. An individual from within the crowd yelled, "we don't have enough people, let's go to Tri-Towers and get more."

It was common practice to begin a rally or demonstration with a small number of participants and then march to the location of several residence halls (Eastway Center, Twin Towers, and Tri-Towers). The chanting for more people to join the march generally recruited individuals as the group returned to the Commons for speeches and/or the presentation of demands. There was, however, a noticeably different attitude with this march. Along the marching route, fireworks were set off, many participants carried baseball-size rocks, clubs, and bottles. On more than one occasion, individuals approached me abruptly and face-to-face shouted, "we don't want your fucking war!" The lack of fear that I had experienced throughout the previous academic year in "monitoring crowds" now changed to a concern for my personal safety. As I quickly removed my tie and turned up the collar on my raincoat, I became more sensitive as to who was near me and what was happening. I had no form of visible identification that would identify me as a University official. I was scared and alone.



As the crowd moved from the Eastway Complex, it now numbered 900-1000 and proceeded toward the Commons. The crowd moved in a westward direction and rocks were thrown at a construction site trailer breaking most of its windows. Nearing a cyclone fence, a yell was heard, "let's get the fence" and they attempted to knock it down. The attempt was unsuccessful because of its sturdiness, however, many climbed over it while others walked to an open gate nearby.

As the mob neared Taylor Hall, at the East end of the Commons, they began chanting, "burn ROTC," "smash ROTC," "Burn the ROTC Building," "kill the pigs," and "we don't want your fucking war." At the Student Activities Office, near Taylor Hall, I advised the Student Affairs Staff that many demonstrators were carrying, rocks, bottles, and clubs. That information was then relayed to the Communication Center.

The mob, now running and becoming increasingly more boisterous, went directly to the ROTC Building and like an offensive combat wave hit the building with rocks, bottles, and anything they could throw. Many windows were broken immediately. Words of encouragement came from the crowd. There were no identifiable leaders, nor was there an apparent group plan. Individuals appeared to act spontaneously at the outset of the attack on the building.

As the crowd of 2500-3000 mingled around the North side of the ROTC Building, a railroad-type flare was ignited and thrown onto the roof, but rolled safely to the ground.

A U.S. Flag was set on fire and when a photographer took a picture, the crowd attacked him and beat him to the ground. Professor Glen Frank (Faculty Marshall), in a very courageous move, with a black Kent State student rescued the individual. I can still hear Glen's words, "let's cool it."

An individual hoisted a large block of wood onto his shoulder and charged the building, attempting to throw it through a window. His aim was off and when the log struck the building he abruptly fell backwards to the ground.

Two individuals lifted a large metal garbage barrel onto their shoulders and attempted to dump its contents into a window. In their haste, their aim was off and when it struck the bottom of a windowsill, they were both knocked to the ground spilling its contents on the ground instead of inside the ROTC Building. There were no University Police in sight.



An individual with another flare ran to the building and dropped it through a broken window. A loud cheer arose! I ran toward the K.S.U. Police Department which was nearby and advised a K.S.U. Detective and other staff that they had better call the fire department because of the efforts to ignite the ROTC Building.

Upon returning to the ROTC Building, individuals with rocks and clubs were actually hitting the building. Individuals would run from the mob, strike the building and quickly retreat to cover in the crowd.

A male individual walked up to the building and reached inside a broken window and attempted to start a fire by lighting the drapes with a cigarette lighter. He was also unsuccessful.

Two individuals ran to the building and dropped what appeared to be a molotov-cocktail-type device into the building. Immediately, there was a flash of fire and a rousing cheer rang out from the crowd. The ROTC Building was on fire!

I again hurried toward the K.S.U. Police Department and ran into Dr. David Ambler, Assistant Vice President for Student Affairs, and Dr. Gordon Bigelow, Dean of Student Activities. They were going in the direction of the ROTC Building with a portable bullhorn with the intent to read a "cease and desist order" to the crowd. When they observed the size and attitude of the mob, they concluded that it would be fruitless to attempt to disperse the crowd without substantial assistance from police or other staff. I walked back into the crowd of demonstrators.

A Kent City fire truck arrived at the opposite side (South-East) of the building from where the crowd had gathered. A single fireman hurried toward the rear of the building with a hose. He appeared to be adjusting the hose or water level and then moved toward the fire. Within seconds, a group of demonstrators from within the mob attacked him, beating him to the ground. They took the fire hose from him. Instantly the fire hose was cut! There were no other firemen in sight, and no police protection.

I ran to the West end of the building and noticed a Sheriff's patrol car with two officers sitting inside. I indicated that I was a member of the K.S.U. staff and that a fireman was getting "beat up" by the demonstrators, and asked if they could help. Receiving no positive response from either—actually no response at all—I asked if they were able to communicate with Dr. Matson (K.S.U. Vice President for Student Affairs) who was in the



Communication Center. Getting no response from either officer and now fearing for my safety, I left the scene of the disorder and retreated to the safety of the Communication Center. It was near 9:00 PM.

Official records indicate that when the mob was eventually disbursed with the use of tear gas, intramural sports sheds located around the commons for the storage of intramural athletic equipment and public garbage barrels were set on fire as the mob was forced to move away from the building.

Of special significance is the fact that the fire hose was cut by demonstrators, one who had a machete and others with knives and ice picks. Eventually, the protection of the firemen required assistance from the police and National Guard. However, the ROTC Building was a total loss that included ROTC records, Military Science materials, weapons and equipment. Originally classified as a peace rally, in particular to oppose the Vietnam War, it appeared that many individuals had obviously come to the rally with weapons and an intent other than peaceful dissent.

The placid rolling hills of the Kent State campus changed abruptly as the Ohio National Guard was stationed at strategic points throughout the campus. Armored tanks were located at all entrances to the university and armed guardsmen patrolled in jeeps and trucks. Other guardsmen were assigned specific guard posts. The campus appeared to be a military controlled institute of higher education. It was that!

I am convinced that had the Ohio National Guard not arrived on the campus, and had there been no eventual police protection for the firemen, the two ROTC buildings (army barrack-type), located across the street from the main ROTC Building, would have been set afire by the angry mob. The Ohio National Guard was a welcomed relief for the University. At that point, a troop of Boy Scouts or Girl Scouts would have been welcome.

I would later learn that my wife of less than two years was two blocks away at our home watching the flames of the burning ROTC Building, knowing that I was monitoring the demonstrators because of my official duties. She had no idea as to what was happening on the campus. She would experience the same fear at the time of the shooting by the guard on May 4th when she again had no information other than the rumor that a shooting had occurred. (Note: Alice Sivulich was the K.S.U. Director of Greek Affairs at this time.)



Sunday, May 3, 1970

At 2:00 PM, Governor Rhodes (Ohio) visited the Kent State Campus and declared a "state of emergency." The official declaration prohibited all rallies of any nature and imposed a 1:00 AM curfew for the campus. The terms of the Governor's proclamation and the presence of the Ohio National Guard troops removed the university personnel from effective control of the university.

K.S.U. President, Dr. Robert White, who had returned from his trip to Iowa issued the following statement:

KENT STATE UNIVERSITY
Office of the President

Sunday, May 3, 1970

"Kent State University President, Robert I. White, issued a four point statement outlining the University's position on the recent campus disruptions. President White said:

The University's position on several matters should be made clear.

First, Kent State University has been disastrously hurt. The hopes of all on campus have been placed in jeopardy and whether or not any part of the loss can be retrieved depends upon immediately responsible actions from all quarters of the university community. We must show to the nation that Kent State University has more to it than the ugliness it has seen in our midst.

Second, we can be grateful for the effort and response from so many members of the student and faculty leadership, as well as the various security operations. These efforts helped to temper the situation.

Third, by order of the Governor, the National Guard will remain in the Kent community and campus until its leadership decides their departure is safe. Events have taken these decisions out of University hands. Widespread damage and threats in the community have created an alarming situation.

Fourth, the University plans to maintain normal operations and classes will meet as scheduled."

A number of strategy meetings were held on the campus out of concern for rumored rallies. By 3:00 PM, Student Affairs staff and Residence Life personnel were preparing to serve meals in their respective halls to "keep the students inside."

At 3:15 PM, it was reported that a group of fifteen Black students were taunting University Police on the Commons. At 5:02 PM a "reliable student" reported that four students had indicated a desire to burn the other ROTC Buildings. By 5:32 PM, additional rumors included plans to burn down Bowman Hall, Kent City Post Office, Army Recruiting Center, and KSU Administration Building. At 6:45 PM, it was alleged that carloads of "outsiders" were coming to the campus for the Monday rally.



Shortly before 7:00 PM, Dr. Robert Matson, Vice President for Student Affairs, and Frank Frisina, President of the Student Body, prepared and had distributed 12,000 copies of a second information sheet throughout the University.

KENT STATE UNIVERSITY

May 3, 1970

"A special message to the university community:

During the last two days, the disruptive and destructive activities of a dissident group comprising students and nonstudents and numbering 500 to 600, escalated from a peaceful rally through illegal threat to life plus property damage leading eventually to the Governor's imposition of a state of emergency encompassing both the city of Kent and the University.

The Governor, through the National Guard, has assumed legal control of the campus and the city of Kent. As currently defined the State of Emergency has established the following:

1. Prohibited all forms of outdoor demonstrations and rallies—peaceful or otherwise;
2. Empowered the National Guard to make arrests;
3. A curfew is in effect for the city from 8 PM to 6 AM and an on-campus curfew of 1:00 Am has been ordered by the National Guard.

The above will remain in effect until altered or removed by order of the Governor."

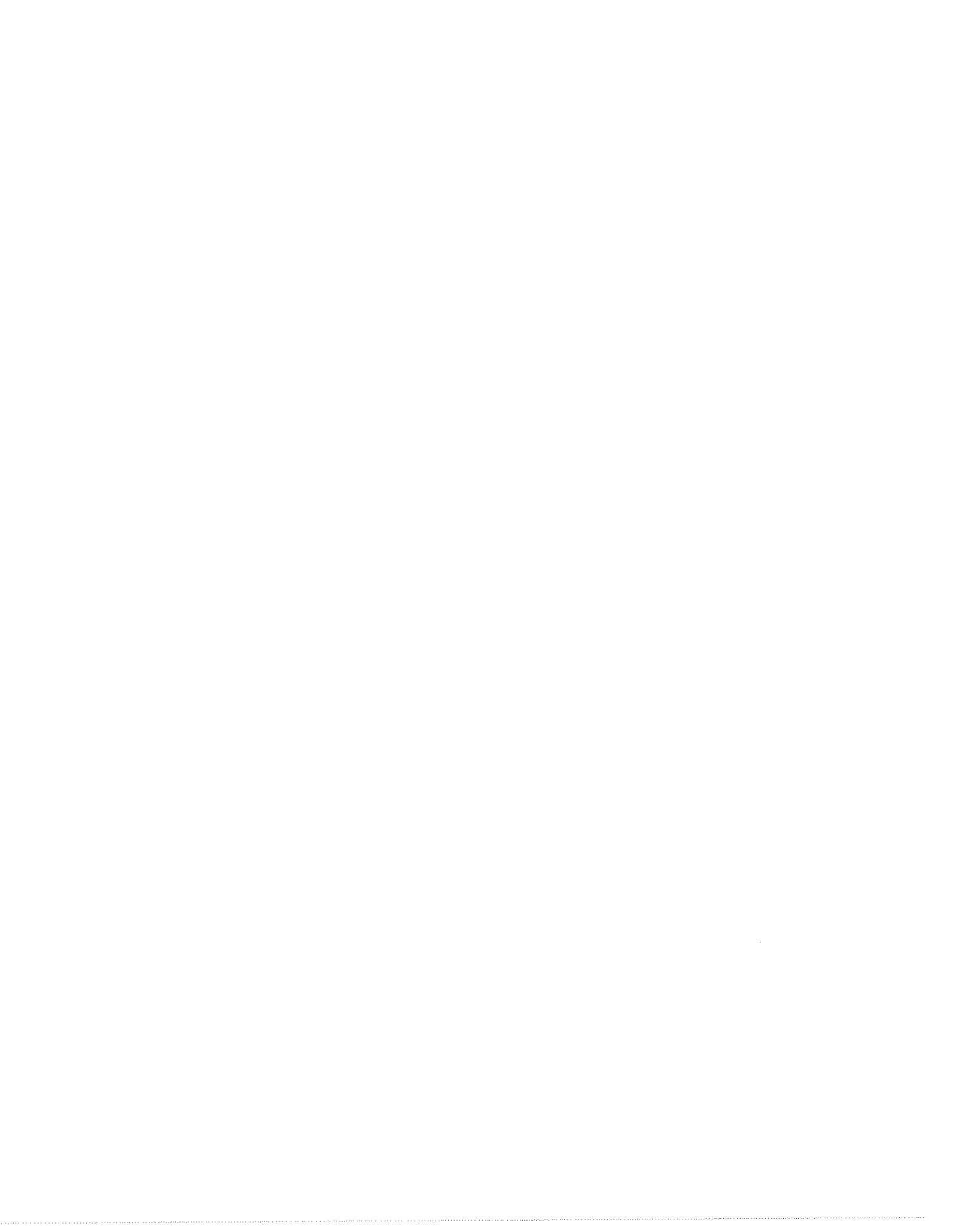
ROBERT MATSON
Vice President for Student Affairs

FRANK FRISINA
President of the Student Body

Assigned to monitor all gatherings on the campus, I arrived at the Student Union at 7:00 PM where individuals had gathered. There was a steady stream of people arriving. The crowd of 200 moved to the Commons near the Victory Bell.

At 8:30 PM, there was a repeat of previous marches as the group moved across campus toward the residence halls to attract more participants. I remained at the Student Activities Center to monitor the increasing size of the crowd. By 8:28 PM, the group numbered nearly 1000. The National Guard requested that the Riot Act be read to those present on the Commons. At 8:36 PM, a rumor circulated that individuals in the crowd had weapons.

The Riot Act was read, declaring that it was an unlawful/illegal gathering and that all participants were directed to leave the area and go to their places of employment or residences. That was but the first of many times the Riot Act was read during the next three



hours. Tear gas was fired toward the demonstrators and the crowd disbursed toward mid-campus. A pattern of painful play ensued late into the evening. This meant that the Guard fired tear gas, the crowd moved away, the Guard advanced with bayoneted rifles, and the crowd moved again. Students and nonstudents ran, stopped, attempted to wipe the pain from their eyes, laughed, and then appeared to await the next advance of the Guard before moving or disbursing. It was not uncommon for a demonstrator to retrieve a tear gas canister and throw it back at the advancing Guard. There was a lack of seriousness about the role of the Guard, the prohibition of all forms of demonstrations and rallies, the arrest power of the Ohio National Guard, or the fact that the Guard was advancing with fixed bayonets on loaded rifles and are dressed in full riot gear. This was a game. Nothing was taken seriously. Military helicopters hovered above with brilliant flood lights and appeared to have little effect on the demonstrators as they played in the game of the riot act—firing of tear gas, advancing of the Guard, and awaiting the next move.

At one point during the “cat and mouse game,” I inquired of the Communication Center as to why no arrests were being made given that the Riot Act was designed to warn the demonstrators that those who failed to heed the warning would be summarily arrested. Many students had asked me why arrests weren’t being made. Following my conversation with Dr. Matson in the Communication Center, I personally asked a representative of the National Guard, Ohio Patrol, and Portage County Police about “who had arrest power,” and no one admitted or accepted the responsibility for making arrests and enforcing the Governor’s declaration of a state of emergency. There was major confusion as to what agency was going to enforce the Riot Act. As a result, the demonstrators did not take anything seriously. The Riot Act, without arrests, and tear gas without follow-up action, reinforced the game-playing that had been established early in the evening. Unknowingly, this scenario set the scene for more catastrophic difficulties that would be experienced the next day.

By 9:09 PM the mob moved back to the Commons where the Ohio Patrol used tear gas to disburse the illegal assembly. At 9:23 PM the crowd moved again to the front campus. I saw tear gas being fired and I erred in my prediction of the direction of the wind. The wind moved more of the gas toward the Guard, where I was situated, than the moving crowd. With tearing eyes and a burning face I attempted to monitor the crowd, unaware that



the Guard could have fired their weapons and I was between the advancing guard and the demonstrators. Naivete prevailed as I had no form of identification and could have readily been perceived to be one of the demonstrators.

At 9:30 PM, 300 demonstrators sat down in the street intersection of Lincoln and Main , while another group moved back toward the campus. At 9:47 PM, the mob remained sitting in the street. A demonstrator told a Police Sergeant that they will move off of the street and onto the campus in exchange for the appearance of Mayor Satrum (Kent City) to address them. They also requested that KSU President, Dr. Robert White, address them and consider six demands:

1. Abolition of ROTC.
2. Removal of the Guard from campus by Monday night.
3. Lifting of the curfew.
4. Full amnesty of all persons arrested Saturday night.
5. Lower tuition.
6. Granting of any demand made by the Black United Students (BUS).

John Huffman, KSU Dean for Judicial Counsel, advised the crowd that the Mayor and University President would NOT appear. Immediately, a member of the crowd grabbed the bullhorn and said that the Mayor and University President would in fact be there. The Police Sergeant made no effort to clarify this miscommunication.

I returned to the Communication Center to assist with logging-in phone calls and inquiries about incidents being reported to the Center. At 11:05 PM, it was reported that TV-3 in Cleveland had announced that there were guns in the KSU Library. At 11:12 PM an Ohio State Trooper suffered a leg injury when hit by a wrench wielded by a demonstrator.

It is reported that a student had suffered a bayonet injury to his buttocks. In speaking with the attending physician at the University Health Center to learn how it had occurred, I was told that the student said rather humorously, "I guess I just got to close to the bayonet." That was part of the painful play that was occurring between the Guard and demonstrators—students and nonstudent alike. Neither armed National Guardsmen nor university proclamations stipulating curfews or outlawing gatherings were taken seriously. It was a game.



May 4th

Early Monday morning, May 4, 1970, numerous calls were received in the University Communication Center about a "12:00 noon rally." A call for a noon rally to take place on the Commons was disseminated throughout the campus by word of mouth and announcements on classroom chalkboards. The precise purpose was not made clear, but most students assumed it was to protest the presence of the National Guard. (Special Grand Jury Report)

At 11:26 AM, information was received about a female who had been treated at Robinson Memorial Hospital (Ravenna, Ohio) with a bayonet wound. A briefing of University staff stipulated that evening classes would be canceled. It was also emphasized that the prohibition of ALL mass gatherings and rallies would remain in effect for the campus and would be enforced by the Ohio National Guard. The curfew for the campus would be the same as for the City of Kent, 1:00 AM.

Individuals manning the phones in the Communication Center were instructed to emphasize to all callers that ONLY KENT STATE UNIVERSITY STUDENTS AND UNIVERSITY EMPLOYEES WOULD BE PERMITTED TO BE ON THE CAMPUS, and that non-students would not be permitted to be present.

Word was received that the "Guard said it was up to the University to snuff the rally" scheduled for 12:00 noon on the Commons. This was yet another example of questionable communication or a lack of definitive operational structure for the entire University.

I had asked my wife to purchase a watch for me because mine had broken and it was important for me to be aware of the time sequence of events. She reluctantly left me in the company of Student Government President, Frank Frisina. He and I observed the activities occurring on the Commons from a location in the tennis courts directly North of the Commons.

At 11:47 AM, a crowd began to form in front of the Student Union which was located a short distance from the Victory Bell and the Commons. At 11:50 AM, it was reported that fifteen (15) "long hairs" and other students were ringing the Victory Bell. By 11:59 AM, 500 individuals were gathered in the vicinity of the Bell. A K.S.U. Police Sergeant, Harold Rice, driven in a National Guard jeep, attempted to disburse the crowd by reading the proclamation

that prohibited all gatherings on the campus. Although the police officer was wearing a riot gear face protector, the barrage of rocks that were thrown at him made his effort useless and potentially dangerous. He was driven back to the location of the Guard, at the site of the burned ROTC Building. More than 2000 individuals were gathered at the bell, and more than 3000 were bystanders—"observing" from a location to the South of the Commons on the hill near the Student Activities Office.

Shortly after the inability to read the proclamation, the Guard was ordered to fire tear gas to disburse the crowd located in the vicinity of the Bell. The crowd moved in two directions; one group moved around Taylor Hall to the South, and the other moved to the North of Taylor Hall. Much of the large crowd of bystanders remained in their spectator location. The Guard appeared to concentrate its movement to the South of Taylor Hall.

According to my instructions to "monitor crowds," I would have normally followed the crowd moving in the direction to the North of Taylor Hall. However, the Student Government President said he thought it would be a good idea to go inside because of the escalating hostility of the crowd and the ineffectiveness of the University Police and the National Guard to enforce the "no rally" order.

In what appeared to be a very short period of time after the crowd moved from the Bell, we heard a sound that I described as "it must have been an air volley." The Student Government President and I believed that the Guard must have fired into the air to disburse the demonstrators. Even I, who had been between the Guard and the demonstrators on numerous occasions on Saturday and Sunday, did not perceive that the Guard would fire their weapons at the demonstrators. There had been no discussion about the use of deadly force in any briefing. I had been given no instructions about the possibility of the Guard firing. There was no mention of the fact that I had no University identification that would distinguish me from the demonstrators and that any action directed at the demonstrators could have been directed at me. I was unaware that a guardsman had the option to fire if he feels his life is in danger. If I had followed the crowd as I had done throughout the weekend, I would have been in the direct line fire of the National Guard! My unconscious need to remain with the Student Government President may have saved me from serious injury or even death.

I walked to an administration building with him and contacted my wife to get my watch so I could track the time of occurrences. She expressed grave concern about my safety and whether or not I should return to the Commons. At that time there were increasing rumors about students having been killed. I assured her that they were only rumors, although rumors were rampant about students being shot, a sniper having fired at the guard, and that ambulances were on their way to the campus.

It was documented that sixty-one shots were fired in a period of thirteen seconds. By 12:56 PM, Robinson Memorial Hospital had confirmed that three students had died and thirteen were injured from gunshot wounds. Later, it would be verified that four Kent State University students had been killed and nine others injured by rifle fire from the Ohio National Guard. The Special Grand Jury Report documented that a total of fifty-eight (58) Guardsmen were injured by rocks and other objects thrown at them on May 4th.

After returning to the Commons, I spoke with two cafeteria workers who were standing outside of Johnson Hall. They claimed that they had heard a shot fired from the top of Taylor Hall immediately prior to the firing by the Guard. To my knowledge, that has never been substantiated by any investigation.

At approximately 1:20 PM, Professor Glen Frank, Professor Myron Lunine, Graduate Assistant Steve Sharoff (a Faculty Marshall) were pleading with General Robert H. Canterbury on how to proceed with the hundreds of students who had gathered on the commons. General Canterbury is alleged to have responded, "They're going to have to find out what law and order is all about." (Michner, 1971) Steve Sharoff was pleading with the General to "bring some soup and sandwiches to the Commons and permit the students to dialogue about what had just happened." The calmness of Glenn Frank prevailed as he was able to convince the students to leave the area in a peaceful manner. While I stood behind those in the discussion, I encouraged that everyone be instructed to go to their dorms immediately. I feared that any type of disobedience on the part of the students might elicit a repeat response from the Guard. Eventually the Commons was cleared of all demonstrators and spectators.

At 1:22 PM, President Robert White ordered that the University be closed for the remainder of the week and that all students be sent home. Students were advised, through the Residence Life staff, to take personal belongings for at least three days and leave the campus



immediately. Long lines of students carrying make-shift overnight bags were seen leaving the campus. It resembled refugees hurrying from a war-torn country. The University's fleet of busses were dispatched to the various airports, bus stations, and train stations.

By 8:09, PM, 95% of the 8,500 resident students were evacuated. At 9:10 PM, the campus was 99% evacuated. The Communication Center ceased operation at 12:47 AM. Kent State University was closed.

The Day After

Ohio National Guard tanks remained stationed at strategic points on the campus. Guardsmen patrolled in jeeps and a variety of trucks. The Ohio Highway Patrol and F.B.I. agents had a noticeable presence throughout the campus. A group of twenty-two (22) University administrators were permitted on campus to aid with the investigation, maintain some semblance of administrative operation, and plan for the return of the students. The resident students were eventually permitted to return to the campus, under a structured schedule, to retrieve all of their personal belongings. The University, however, would remain closed until the Fall quarter 1970. Students were permitted to complete their courses for the Spring quarter by (1) accepting the grade which they had earned at the time of the closing, (2) completing the work through a correspondence plan arranged with their instructors, or (3) attending classes conducted at the instructor's homes or other off-campus sites.

Conclusions: Could It Have Been Prevented?

The epilogue of the Kent State Incident remains unwritten because of the conflicting interpretations of what constitutes conditions that merit calling the National Guard and other external agencies to a university campus, but more importantly, whether there was justification for using deadly force. The U.S. Supreme Court said, "Declaration of emergency was entitled to great weight, but was not conclusive on whether mob rule existed at state university and whether governor acted in good faith in dispatching national guard." (Schuerer v. Rhodes, 1974) Likewise, the mother of Allison Krause, Mrs. Doris Krause, said, "They said a riot occurred here. The only riot was from the guards. . . The students posed no threat." ("Kent State memorial," Pittsburgh Post Gazette, 1999)

As an observer from within the mob of thousands of demonstrators, I can attest that riotous conditions and/or the potential for mob rule existed from Saturday evening until the firing by the Ohio National Guard on Monday, May 4, 1970. The burning of a university building, interfering with a fireman, assaulting a fireman and an individual attempting to take a picture of a burning U.S.A. flag, the defying of the Ohio State Riot Act, and violating the prohibition of gatherings surely fall within the definition of "riot." While the Supreme Court required more "conclusive evidence" to justify the Governor's dispatching of the guard to Kent State, the conditions on the campus compelled State and University officials to seek assistance from every available external agency in an effort to bring order to the University, and to prevent further destruction of property. The conditions which existed on Saturday evening prior to the burning of the ROTC Building existed on Monday and, therefore, University Officials had no other choice but to utilize the assistance from the guard, highway patrol and local police agencies. However, university officials must take heed of the message which the U.S. Supreme Court was offering, you can't use deadly force just because of student dissent and trample their First Amendment Rights.

The killings at Kent State University in May of 1970 should have never happened. Obviously, that is the general conclusion, except for the rare individual who claimed that "the students got what they deserved." Such a conclusion is not a condemnation of the National Guardsmen. Nor is it a condemnation of the decision to dispatch the Guard to the Kent State campus. Without the assistance of the Ohio National Guard and other external agencies, there would surely have been more damage and destruction of property and injury to persons. A "mob" and "riotous" conditions were present from Saturday through the Monday rally at the Bell. The damage and destruction would have continued if assistance was not given to the limited University Police force.

There was corporate responsibility on the part of the Guard, various external agencies, administrators, students, and non-students for the end results of the Kent State Incident. The catastrophic results were precipitated by the burning of the ROTC Building that necessitated the assistance of external agencies. If mass arrests had been made at the outset of the riotous conditions on Saturday and Sunday, there would not have been thousands of demonstrators defying "no rally/no gathering" orders in effect on Monday.

Likewise, an amount of the blame must be placed on the demonstrators who constantly taunted the Guard and the police, threw rocks, damaged property, and defied every order to disburse. If both students and non-students had taken seriously the restrictions on public gatherings on the campus, the situation would not have escalated into mass chaos and mob rule.

Perhaps the major problems that existed during the Kent State Incident involved operational disorganization and lack of effective communication during a crisis situation. Although the University had experienced student disobedience prior to the May 1970 incident, there did not appear to be an organized plan with which to deal with mass student disorder. While the University was in the capable hands of an Executive Vice President and several Vice Presidents, once the National Guard was stationed on the campus, there was serious confusion as to "who was running the University?" This was compounded by the inability to communicate what was occurring at the site of the disruption; whether it was prior to and during the burning of the ROTC Building, trashing Intramural Sports storage cabinets, breaking windows, or defying orders which prohibited gatherings on the campus. Instant communication was impossible because there were no walkie talkies, cell phones, camcorders, or other communication equipment. Observing an incident, running to a pay phone and reporting it to the Communication Center was surely a significant part of the communication problem.

Even with the diligent efforts of the University administration to communicate through mass distribution of flyers to the 8,500 resident students about the presence and authority of the National Guard and other external agencies, there remained confusion as to "who was in charge." University officials should have retained major control of the operation of the institution while working closely with the external agencies. A cadre of University officials, with appropriate identification (ID tags or arm bands), should have been on the scene to work in tandem with the Guard and other supporting agencies.

For example, I believe that University officials should have been on the scene when the ROTC Building was being attacked, and during the mass demonstrations to determine FIRST HAND the purpose of the demonstrations and their expectations of the University. This would have been more effective than having an Assistant Director of the Office of Student Conduct Programs at the scene with instructions "to monitor crowds," not to become



involved, and run to a pay phone to report “what was happening.” Although it has been concluded that the nature of the crowd would have rendered ineffective the reading of the Riot Act or a disbursement order, the presence of University officials in and of itself would have caused many of the bystanders, those who were not truly committed to a cause, to leave the scene.

During the Fall of 1970, when the ROTC Program was relocated to the Old Library, a mass gathering of students attempted to “close down ROTC” by blocking the entrance. On the second day of the disturbance, mass arrests were made. On the third day, additional arrests were made. On the fourth day, the demonstrators and bystanders were gone and the ROTC Program continued to function at that location. By this time, pagers and walkie talkies were commonplace among many University officials.

In the final analysis, an organizational plan for coping with campus crises, supported by appropriate ongoing training of University officials in general and Student Affairs personnel in particular, would surely aid in addressing student grievances and preventing future Kent State Incidents.

Liability Issues and Staff Training

It is almost impossible to work for any period of time in Student Affairs without facing a campus crisis. (Duncan, 1993, p. 340) A daily crisis might involve a student attempting suicide or being rushed to the emergency room for alcohol poisoning, a student sitting on a sixth floor window sill, or a fire in a student’s room. It could include date rape or the death of a student on a field trip or off-campus social activity. It could also include a natural disaster (heavy snowstorm, flood or hurricane), or a Columbine High School-type incident. How would most student affairs administrators respond to a disgruntled student rushing into the student union and firing an automatic rifle indiscriminately, or 500 individuals threatening to trash a university building? Is it possible to provide adequate training for a crisis on campus? Given the nature of the college campus and student attitudes, what training is necessary to prepare staff to cope with the day-to-day liability issues at a college or university?

Crises are an inescapable reality that must be factored into a student affairs professional’s planning and decision making. While there is not a singular, fail-safe solution

for all crises, good people tend to act quickly but without any thought of the consequences of their actions. Crisis management is not a tactical skill but rather a strategic process for assessing crisis prevention, response and resolution. Ultimately, most people are not as prepared to handle a crisis as they think they are or should be. In that light, too much effort is expended preparing intensely detailed crisis management documents that sit on shelves gathering dust, and far too little time is spent doing crisis-management training. (Abent, 1999, pp. 1-2) The numerous student riots during 1998 and 1999 as a result of colleges and universities attempting to address binge drinking and enforce alcohol policies, exemplify the potential for crisis situations on any campus.

There is ongoing controversy about the effectiveness of graduate programs in higher education and student affairs administration in preparing individuals to assume administrative roles at colleges and universities. First, there is an argument about where the emphasis should be placed in graduate programs; on the theoretical or on the practical. Second, there is a concern about the number of full-time instructors in these graduate programs. Finally, there is a concern about graduate students being exposed to the practical aspect of administration versus receiving a strong emphasis on the ability to do empirical studies and write publishable papers. These questions are exacerbated by the fact that many graduate programs have only one or less full-time instructors. Likewise, it is not uncommon for the instructor to have little or NO practical experience in higher education administration, thus, the teaching is from a text with little ability to relate text material to real-life campus situations, at any time.

Studies of program quality have generally asked professors of higher education to rank programs or have looked at such objective measures as faculty publications; few studies have analyzed student-related outcome measures like the career paths of graduates, persistence in the field, satisfaction, or graduate's subsequent publications and research productivity. (Komives, 1993, pp. 394-395) Komives continues by challenging the make-up of graduate programs; "Although 75 percent of all higher education programs claim a student affairs specialization (forty-seven programs), *The Directory of Graduate Preparation Programs* lists only twenty-two doctoral programs in higher education with a student affairs specialization, and not all of those meet the minimal ACPA Commission XII criteria of at least one (1) full-time faculty member." It is not uncommon for a student affairs program to

be coordinated by an administrator who is a full-time administrator and functions only part-time in his/her academic role. It is also not uncommon to have instructors who have lengthy publishing records and little to no practical experience in student affairs administration.

Beatty and Stamatakos (1990) find agreement among student affairs practitioners and preparation faculty on the competencies needed for effective practice; the exception is that the faculty rank research and evaluation competencies as number one, whereas that skill was ranked ninth for Student Affairs administrators. (Komives, 1993, p. 396)

Although faculty and many programs emphasize research and writing for publications, the need to develop higher education administrators who can adequately deal with crisis management and student-related incidents that attach serious liability to the institution, has become painfully evident. In addition to requiring graduate students to acquire basic competencies in administration, counseling and communication skills, much more attention must be placed on a practical component that includes legal issues. At a minimum, graduate students should be required to complete two or three internships in various student affairs departments. Likewise, every higher education administration and student affairs program should require three to six hours of higher education law. This is to make future administrators aware of the potential for liability as a result of their inappropriate action or inaction.

Providing a review during graduate programs and requiring annual professional development and inservice training that includes the following topics would enlighten staff, in particular student affairs directors and residence life staff, about the potential for legal repercussions and the benefit of having an awareness of liability risks: (1) discipline and due process (*Dixon v. Alabama*); (2) confidentiality of student records (*Family Education Rights and Privacy Act/The Buckley Amendment*); (3) faculty advisor role and off-campus activities (*Mintz v. State of N.Y.*); (4) fraternity hazing and institutional liability (*Furek v. the University of Delaware*); (5) counselor responsibility to alert potential victims of possible harm (*Tarasoff v. Board of Regents of the University of California*); (6) alcohol and student activities (*Bradshaw and Rawlings*); (7) facilities and slip and fall accidents (*Bloom v. Seton Hall University*); (8) fraternity houses and university control (*University of Denver v. Whitlock*); and (9) student disobedience and the use of deadly force infringing on First Amendment Rights (*Scheuer v. Rhodes et.al*).



The above topics and cases involve persistent and increasingly troubling issues for college administrators. They are currently the most common potential liability issues in higher education. The proposed educational requirements and ongoing professional development are not intended to develop legal experts of the student affairs generalist. These areas of concern are selected for the purpose of making the student affairs administrator and residence life staff aware of their responsibilities in functioning as a “reasonable and prudent individual,” and in “knowing or should have known” the legal ramifications of failing to perform or poor performance in serving students. The major theme is for the protection of the student, institution and oneself.

A Crisis Management Model

While there is no panacea for preventing a campus crisis, a university can be well served by establishing a comprehensive plan to deal with crises and requiring ongoing training of staff in crisis management protocol.

- A. **DESIGN AND IMPLEMENT A CRISIS MANAGEMENT PROTOCOL.**
Prepare a written document, which defines the various crises which may require the implementation of crisis management and specify the requirements for ongoing training and awareness of the plan.

Include a comprehensive treatment of “crisis management” in a University Crisis Management Handbook.
- B. **ESTABLISH AN ADMINISTRATIVE CHAIN OF COMMAND.**
Prepare a Crisis Management Chain of Command and describe in detail the specific crisis roles each administrator will fulfill. Review each role on an annual basis during inservice sessions or specified crisis management training updates.

Utilize a simulation of a crisis for crisis management training.
- C. **DEFINE WHAT CONSTITUTES THE NEED TO REQUEST EXTERNAL ASSISTANCE.**
Establish specific guidelines and criteria for requesting the support of external agencies (military, local and state police, etc.) and ensure that legal counsel is involved in the planning and decisions.



- Stipulate which administrator has the authority and under what circumstances external assistance will be requested.
- Establish under what circumstances and who has ultimate authority for the administration of the University during a crisis situation, especially when external agencies are functioning on the campus.

D. ESTABLISH COMMUNICATION CHANNELS

Prepare detailed instructions on the various forms of communication that will be necessary during a crisis situation for:

- Communication between University officers who are responsible for the administration of the University.
- Communication between University officials, students, and staff. Special emphasis should be placed on communication with Residence Life and Student Activities staffs.
- Communication between University officials and external agencies.
- Communication between the University and the media.

E. INCORPORATE COMMUNICATION EQUIPMENT.

Have in place the necessary and appropriate communication equipment for instant transmission of information between all constituencies functioning on the campus, e.g., walkie talkies, cell phones, pagers, camcorders, and other equipment.

F. ESTABLISH A MEDIA COMMUNICATION PROTOCOL.

Design a detailed protocol for the Public Relations Office in processing information to the media and ensure appropriate training of all University personnel in this protocol.

G. ESTABLISH A RUMOR CONTROL CENTER.

Establish a location, with appropriate staffing, to (1) receive and dispel rumors, (2) maintain detailed logs of all information received, and (3) disseminate accurate, factual, and timely information about the operation of the University and the crisis situation.

- The Rumor Control Center and the Public Relations staff must be in constant contact with each other.

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