

Opinion in Chambers

KRAUSE ET AL. v. RHODES, GOVERNOR OF
OHIO, ET AL.

ON APPLICATION FOR INJUNCTION AND/OR STAY

No. A-260. Decided September 16, 1977

Application for an injunction and/or stay of Court of Appeals' mandate, pending the filing of a petition for certiorari, for the purpose of stopping the construction of a gymnasium at Kent State University, is denied, where similar applications are pending in the District Court and Court of Appeals, both of which are in a position far superior to that of an individual Justice fairly to assess the merits of applicants' position.

See: 570 F. 2d 563.

MR. JUSTICE STEWART, Circuit Justice.

This is an application for an injunction and/or a stay of mandate of the United States Court of Appeals for the Sixth Circuit, pending the filing of a petition for certiorari in this Court. Its purpose is to secure from me, as Sixth Circuit Justice, an order stopping for the time being the construction of a gymnasium on a site at Kent State University in Ohio. The claim is that only such an order will prevent the obliteration of evidence necessary to a fair retrial of a lawsuit in which the applicants are plaintiffs.

Similar applications are now pending in the United States District Court for the Northern District of Ohio and in the United States Court of Appeals for the Sixth Circuit. Because of the intimate familiarity with the factual environment of this litigation acquired by those courts during the original trial and appeal, they are both now in a position far superior to that of an individual Justice of this Court fairly to assess the merits of the applicants' position.

Accordingly, the application is hereby denied, without

prejudice to the right of the applicants to continue to pursue similar relief in the District Court and/or the Court of Appeals, or to petition this Court for certiorari.

It is so ordered.