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Letter from Peter Davies in reply, NYTimes 30 Aug 71, filed Nix Ad.

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Justice at Kent State?

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Attorney General Mitchell has decided against any Federal prosecution of individual National Guardsmen in connection with the Kent State killings, though he shares the belief of the President's Commission on Campus Unrest that the Guard's resort to gun fire was "unnecessary, unwarranted and inexcusable." Mr. Mitchell is probably right in contending that the chances of providing personal guilt against any guardsman are virtually nil.

But the Attorney General's statement, while virtually closing the case against the guardsmen, leaves other aspects of the tragedy in unsatisfactory suspension. For instance, a Federal judge has allowed the indictments of 24 students and one faculty member to stand, even though the indictments are based on a county grand jury report which the judge ruled illegal. Surely, a conspiracy on the part of the students to threaten the lives of the guardsmen—already discounted by a number of reports including one prepared by the Federal Bureau of Investigation—would be at least as difficult to prove in court as a similar plot on the part of the soldiers. To continue the case against them would turn justice upside down. Mr. Mitchell might have served the cause of fair-minded leniency by recommending that the case against the student be dropped as well.

Separate damage suits by parents of some of the dead students and others who were wounded are still pending. These need not necessarily be affected by the Government's decision not to press the investigation of individual guardsmen. Indeed, a public service could be rendered by a judicial finding that the National Guard command, backed by the State government, violated sound policy and specific Federal guidelines when it allowed its men to enter the square with live ammunition in its rifles. Months after the killings a high ranking Ohio Guard officer boasted that "our policies haven't changed" in this matter.

Past victims cannot be brought back to life; but future tragedies can be avoided if such dangerous tactics are not left unchallenged. That is the issue still to be faced before the Kent State case can be considered closed.