Kent State Victims' Parents Plead Cause at High Court

By John P. MacKenzie
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The Supreme Court was told yesterday that civil suits against national guardsmen and Ohio officials are the last hope for parents of four students who were slain on the campus of Kent State University in May, 1970.

"We have no place to go," said Steven A. Sindell of Cleveland, counsel for the parents of two of the students, Allison Krause and Jeffrey Miller. "This is it. This is our last opportunity to have redress."

Sindell and Michael E. Geltner, counsel for the parents of Sandra Scheuer, called on the court to reinstate damage suits brought under the 1871 civil rights act but dismissed in lower courts.

Lawyers for the guardsmen and former Gov. James Rhodes said such suits could flood the courts and make officials fearful of carrying out their duties in a crisis. They said the electoral process was available to cure grievances.

Attending the two-hour hearing were present and former Kent State students, including 23-year-old Dean Kahler who is confined to a wheelchair by a rifle shot that wounded his spine, as well as parents and friends of the students and three lawyers from the Justice Department's civil rights division.

Assistant Attorney General J. Stanley Pottinger is expected soon to press for a grand jury inquiry into the shootings. That represents a turnabout from the decision of former Attorney General John N. Mitchell to drop the case.

ARTHUR KRAUSE
. . . father of slain student

In addition to the Justice Department's initial rebuff, the parents have sued in state courts only to be defeated on grounds of sovereign immunity.

Turning to the federal courts, the plaintiffs charged Rhodes and other officials with personal acts in violation of the students' civil rights, including the dispatch of untrained guardsmen to the troubled campus with loaded weapons and authority to fire into a crowd to disperse it.

Those suits, said the officials' attorney, Charles E. Brown of Columbus, were properly thrown out because they were "essentially suits against the state" rather than individuals. He said that brought them under the sovereign immunity doctrine and the 11th Amendment's ban on suing states.

Geltner said the immunity concept was "novel" as applied to civil rights suits for damages and should be repudiated.

As for the argument that such suits would be "troublesome," Geltner said Congress in the post-Civil War period specifically intended that officials would be troubled—and deterred—by the threat of lawsuits for violent interference with civil rights.

R. Brooke Alloway, attorney for Rhodes, argued that the suits were replete with "irresponsible use of inflammatory language," but he was challenged by Justice Potter Stewart.

"They were not emotionally charged allegations. They were serious allegations," said Stewart. He said courts ordinarily must accept the charges as true when they dismiss a suit.

During most of the argument, Brown and Alloway were repeatedly pressed by apparently skeptical questions from several justices, including three—Harry A. Blackmun, Bryon R. White and Stewart—who might cast the crucial votes.