

KENT STATE FIVE YEARS LATER

By Benson A. Wolman

In the 1930s Martin Scheuer fled Nazi Germany and eventually came to the United States. On May 4, 1970, he and his wife, Sarah, celebrated their 25th wedding anniversary. A card from their daughter Sandra, a student at Kent State University, was in the day's mail.

Shortly after noon, at the campus some forty miles away, Sandy talked with a boy whom she had been tutoring at the Speech and Hearing Clinic. A diligent honor student, she began crossing the campus on the way to her next class, passing about a football field away from a detachment of Ohio National Guardsmen called to the campus by then and once-again Governor James A. Rhodes.

The day before, Rhodes, appearing on the campus, had charged at a press conference that campus unrest was the product of bands of radicals roaming the state. "We are going to eradicate the problem, we are not going to treat the symptoms," he said. The troublemakers "are worse than the Brown Shirts, the Communist element, nightriders and vigilantes. They are the worst type of people we harbor in America."

On May 4, mindful of their state commander-in-chief's admonition, troops at Kent State dispersed a peaceful gathering called to protest Nixon's "incursion" in Cambodia. Suddenly, at 12:24 PM, a group of guardsmen mounted a hill, turned, and 29 of them fired nearly 60 rounds into the students—dissenters, onlookers, and passersby. A steel-jacketed bullet—the kind being used in Vietnam—crashed through the neck and jaw of Sandy Scheuer. She and three other students—Jeffrey Miller, Allison Krause, and William Schroeder—died that day, and nine were maimed or injured.

Earlier that day, in our office in Columbus, we had been dealing with the myriad of problems surrounding the statewide campus unrest of that violent spring—there were more troops deployed on Ohio's many campuses that year than were called-out in all other states of the nation combined. The first reports that came in over the radio said that two guardsmen had been killed. Later that day Guard headquarters issued a correction and a "cover" story: four students had been killed when troops returned sniper fire.

Our own observers and the press knew differently, and that evening we wired the Justice Department that "eyewitness accounts discredit the so-called sniper theory," the actions of the guardsmen were "reckless, wanton, and unwarranted," and an immediate federal investigation was necessary.

[Eventually, the Scranton Commission laid responsibility on political misleadership and military misconduct, even John Mitchell conceded that the Guard's response was "unjustified, unwarranted, and inexcusable," and a belatedly-convened federal grand jury (after the exodus of Mitchell and Kleindienst) indicted eight guardsmen. Cases against them were dismissed when a federal judge held that the government had failed to prove that the guardsmen had specifically intended to deprive the victims of their rights. The judge did note, however, that "the use of force against unarmed demonstrators... is and was deplorable" and that a different result might be obtained in civil suits.]

Within hours of the killings, the Kent Chapter of the ACLU began organizing two-person teams to tape-record and take written statements from witnesses, and the next day the ACLU national office and the Ohio affiliate issued a joint public offer to represent the families of those who were killed. A few days later Martin and Sarah Scheuer authorized the Union to represent them in what we knew would be a long quest for justice at Kent.

[The state had its own version of justice: a special grand jury was convened under the control of the Rhodes-appointed attorney general; the grand jurors—all town, no gown—indicted two dozen students and a faculty member and issued a report (later expunged by order of a

federal court) blaming the deaths on student excesses and the permissiveness of university officials; all charges arising out of the events of May 4, 1970, were later dismissed.]

The ACLU Kent Project was established to engage in a broad-based litigative attempt to redress the tragedy and to remedy some of the underlying and related problems in the community. Relying primarily upon the resources of the ACLU Foundation and co-ordinated by Ohio State University law professor Michael Geltner, the Kent project, like the Mayday redress project, has been one of the most effective systematic litigative efforts in ACLU history:

- The ACLU won a major class-action suit to vindicate the rights of 8,500 students whose dormitory rooms were searched without warrants ten days after the killings while the university was shut down. The litigation, filed in the name of student body president (now First Lt.) Craig Morgan, resulted in a federal court holding that the search was unconstitutional and violated the civil rights of the students. Seized items were ordered returned. (*Morgan v. Hayth*).

- After the state grand jury issued its subsequently-expunged report at a press conference called by the attorney general two county judges issued orders which said that the subjects (students and university officials) could not publicly criticize it. ACLU attorneys brought suit and obtained an injunction and declaratory judgment that the gag rule was unconstitutional and unenforceable. (*King v. Jones*).

- In the aftermath of the killings, the ACLU succeeded in extending the right to vote to all residents of the university community. A federal suit at Kent was finally dropped when state officials

acquiesced and eliminated an unconstitutional ban on student voting in academic communities. (*Fridrich v. Brown*).

- After continuing harassment of students, the ACLU successfully invoked administrative remedies through the Department of Agriculture when vindictive local officials arbitrarily denied food stamps to needy students.

- After a protracted legal battle, ACLU attorneys succeeded in quashing state riot charges against Craig Morgan who was indicted by the state grand jury merely because he was present on May 4 and was the president of the student body. (*State v. Morgan*). [A number of others indicted with Morgan were represented by the Kent Legal Defense Fund, Inc.] In a campaign of local harassment Morgan was rearrested in May, 1971 when he was a peace marshal at a commemorative demonstration; charges were eventually dismissed (*City of Kent v. Morgan*), and he and two others recovered \$5,000 in a malicious prosecution suit brought in federal court by the ACLU against campus and city police officials (*Morgan v. Fyke*).

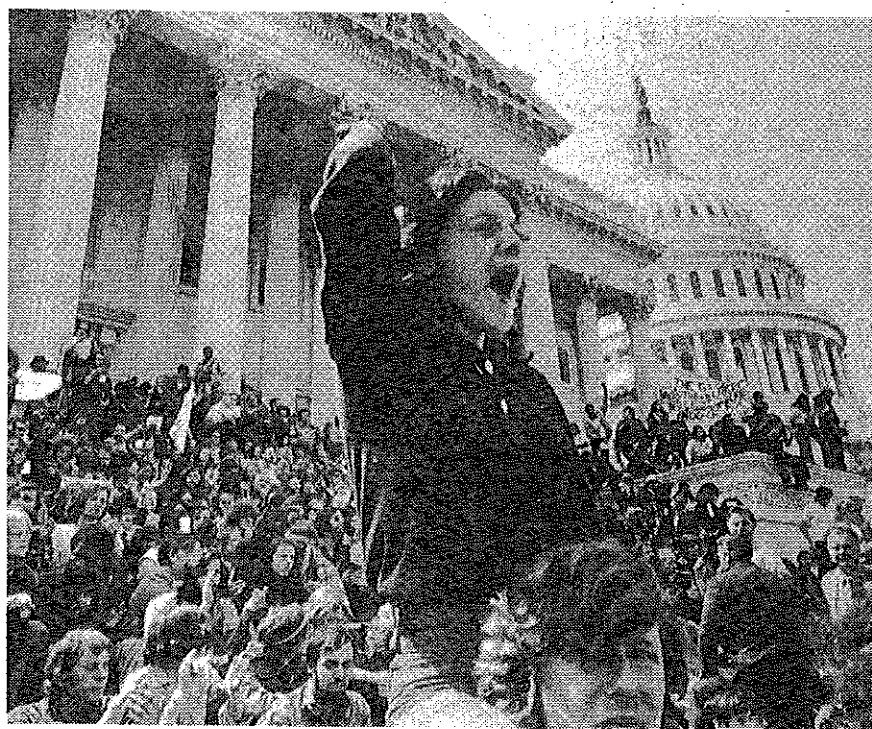
- In the course of investigation of police activities at Kent, Union attorneys uncovered a pattern of harassment and surveillance of peace groups. In one case, several members of the Kent Chapter of the Vietnam Veterans Against the War were offered a Chinese Communist AK-47 submachine gun and a rocket-propelled grenade launcher by another member of the group. ACLU counsel advised them that such weapons were illegal and the offer should be reported to local police. Kent city police arrested Reinhold Mohr as he emerged from his house with the weapons; they later released Mohr when it was revealed that he was a university

undercover agent planted in the VVAW to spy upon its members. The university suspended Mohr but he was reinstated by the state civil service agency after the campus police chief testified that Mohr was only following orders. An injunction and damage suit—charging university officials with attempted entrapment, unlawful surveillance, and invasion of privacy—has survived defense motions to dismiss and is scheduled for trial in federal court later this year. (*VVAW v. Fyke*).

- Even in the one Kent case which the ACLU lost (5 to 4)—seeking judicial limitation and administration of the Guard's use of deadly force, premature use of troops, and nonarrest detentions—the Supreme Court, in limiting the extent of judicial intervention in executive matters, noted that during the litigation the state had "voluntarily" changed its practices to conform to the relief sought by the ACLU. (*Morgan v. Rhodes*, sub nom. *Gilligan v. Morgan*).

- The greatest Kent victory thus far has been in the first round of the damage suit brought on behalf of the Scheuers against Governor Rhodes, his commanders, and the guardsmen who fired into the crowd. The defendants claimed that, as public officials, they were personally immune from federal civil rights statutes and could not be held to account in civil suits charging that they willfully and wantonly gave orders which increased the risk of violence, carried and utilized loaded guns when their use was unjustified, and, acting in the name of the state, unconstitutionally deprived students of life and limb. The suit was originally dismissed—on grounds that the Eleventh Amendment made state officials immune—but was reinstated last year in a unanimous decision of the Supreme Court (*Scheuer v. Rhodes*).

Mayday: A \$12 Million Victory



In January the ACLU of the National Capital Area won a \$12 million damage suit against the District of Columbia for falsely arresting and otherwise violating the rights of 1,200 antiwar demonstrators on the steps of the Capitol on May 5, 1971.

The award is one of the largest ever in a civil liberties suit. The money would be divided among the demonstrators, each receiving from \$8,050 to over \$10,000 depending on length of time in custody. The case, however, will not be over until the Union has defeated the government's planned appeals.

If you were arrested May 5 on the Capitol steps, you should write the ACLU of the National Capital Area with the following information: your name, address you gave at time of arrest, your address now, whether you posted bond and how much, whether you got a refund on your bond, and how many hours you were in custody.

The ACLU-NCA also continues to implement its victory of last September, when the court ordered all Mayday arrest records destroyed and collateral refunded (see the November *Civil Liberties*). If you were arrested May 3, 4, or 5, you should write, giving the day of arrest, where, whether you paid collateral, and whether you got a refund.

The address for Mayday letters is: ACLU of the National Capital Area, 3000 Connecticut Ave. N.W., Washington, D.C. 20008.

Now, five years after the tragedy, the Scheuer case and the cases of all of those killed or wounded (they were separately represented by private counsel in the lower federal courts and in the Supreme Court) have been consolidated for the trial that is scheduled to begin next month. The chief trial counsel for all of the plaintiffs will be Ramsey Clark.

In all of these suits, a team of attorneys—in addition to Geltner and Clark—have devoted thousands of hours to the Kent Litigation. Among the ACLU cooperating and staff attorneys are: Nelson Karl and Niki Schwartz (both of Cleveland); Clyde Ellis, Leonard Schwartz, and Stanley K. Laughlin, Jr. (all of Columbus); Mel Wulf, John Shattuck, and, until his death, Marvin Karparkin (all of New York); and Sanford Rosen (of San Francisco).

The Krause, Miller, and Schroeder families and those who were wounded have been privately represented by Steven Sindell and Fred Mandel (both of Cleveland), Joseph Kellner (of New York) and Prof. David Engdahl, who relocated from Boulder, Colorado, to Cleveland to work on the case through the cooperation of the United Methodist Church, the National Council of Churches, and other groups.

By the time the Kent cases are completed, the ACLU and its foundation will have expended well over \$100,000 in the quest to hold public officials accountable for their acts. Whenever someone asks why we are devoting so much time and effort and so many resources toward accountability for events that happened so long ago, I tell them that just four months ago—a few days before he was again sworn into office after a mandatory four-year hiatus—Governor Rhodes was questioned under oath by ACLU attorneys. He was asked, whether, in retrospect, there was anything he would have done or would now do differently at Kent.

His reply: "None whatsoever... Nothing."

Benson Wolman is executive director of the ACLU of Ohio.