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Senator Kennedy: The Court and the Press

By JAMES RESTON

The Kennedy story goes on from one tragic chapter to another. At first, so prominent was the Senator's family, fame and political future that there was almost no time or pity for the girl. In the competitive struggle of the news, Edward Kennedy's political career became more important than Mary Jo Kopechne's life.

Then the common sense and common conscience of the American people rejected the Senator's explanation of the events leading up to Miss Kopechne's death, and the press began to ask the unanswered questions, and to instigate its own investigations, and to publish its own and everybody else's speculations, and this has produced a new situation.

Trial by Headline?

Now there is no pity for the Senator. The press insisted on proper legal procedure and won. The Senator has agreed to cooperate with the legal inquiry in Edgartown on Sept. 3, but meanwhile he is the object of the wildest rumors, reports, and speculation in the press, and each of them is a drop of

poison against his defense.

This, of course, is typical of the Kennedys. Always, they have been all the way up or all the way down, adored or hated, praised beyond human achievement or villified beyond human wickedness.

The Two Bostonians

That other Bostonian, Ralph Waldo Emerson, would have been intrigued by the Kennedy triumphs and the Kennedy tragedies. In his essay on the duality of life, he argued that every human excess causes a defect, and every defect an excess; every good an evil; for everything you have missed, a gain, and everything you have gained, a loss.

It is a very old theme. Emerson's law of "compensation" reaches from the Bible to the prize-ring; the meek shall inherit the earth, and the bigger they are the harder they fall. "Nature hates monopolies and exceptions," Emerson said. "There is always some levelling circumstances that puts down the overbearing, the strong, the rich, the fortunate. . . . The farmer imagines power and place are fine things, but

the President has paid dearly for his White House; it has commonly cost him all his peace. . . ."

The Kennedys surely illustrate his point. They have been strong, rich, fortunate, and even overbearing, but they have been put down by tragedy almost beyond description. Why then, once the legal inquiry has been set, this pre-trial inquisition?

The newspapers argued, quite rightly, that not only Kennedy was on trial but the legal system was on trial in the state of Massachusetts, and they prevailed. They forced a legal inquiry, but are now in danger of trying the Senator in the headlines and being unfair to him in the name of "justice."

Lawyers and Journalists

The press and the courts are now engaged in defining their responsibilities in case of this kind. Serious lawyers, judges and journalists have been struggling with the ambiguities of this problem ever since the murder of President Kennedy in Dallas, where the press not only covered the news but made the news.

Accordingly, lawyers and

journalists have recently been trying to draw up "fair trial principles and guidelines" in the State of New York, and they seem to be in general agreement that editors, in the exercise of news judgments, should remember as they put it, that:

1. An accused person is presumed innocent until proven guilty.

2. Accused persons and civil litigants are entitled to be judged in an atmosphere free from passion, prejudice and sensationalism.

3. Readers, listeners and viewers are potential jurors.

4. No one's reputation should be injured needlessly.

Even those of us who were not satisfied with Senator Kennedy's explanation of the tragedy at Chappaquiddick and who insisted on a legal inquiry into the facts would have to wonder whether the press has remembered these principles since the inquiry was arranged.

He is being tried in the press before he gets to the court, and this is making the legal process unnecessarily difficult.