

Inquest Judge Insists Kennedy Appear as a Witness

By JOHN H. FENTON

Special to The New York Times

EDGARTOWN, Mass., Aug. 27—Judge James A. Boyle of the Edgartown District Court said today that if Senator Edward M. Kennedy did not appear voluntarily as a witness next week in an inquest in the death of a Washington secretary he would be subpoenaed.

The judge was assured by Robert G. Clarke Jr., one of four lawyers representing the Senator, that Mr. Kennedy would be present "at any time you designate."

However, Edward B. Hanify, a long-time legal adviser to the Kennedy family, later said. "If the proceedings are not conducted according to constitutional dictates, I will make no guarantees."

He did not elaborate.

Not a Trial, Judge Says

The thrust of nearly two hours of presentation by the lawyers was that the inquest was an "accusatory" proceeding and should be conducted according to the rules governing a criminal trial, with all of the rights of due process of law.

Judge Boyle, who acknowledged he had never presided over an inquest before, replied "this is not a trial, there is no defendant and no person has been accused of a crime."

He said that his view of the law was that it gave the presiding judge powers he had in no other court. He said that he would proceed according to his best judgment to arrive at the truth.

He also said that there had been only two inquests in the last 38 years in Edgartown.

The Judge agreed to another procedural hearing tomorrow on whether he would accept a motion and requests for rulings presented by the lawyers.

The motion involves Mr. Kennedy's rights as a possible witness. The rulings involve proposed sets of rules of procedure.

Judge Boyle said that he could find no precedent in Massachusetts law for conducting an inquest under the rules of trials. But he invited the lawyers to bring in any citations they found.

Lawyers Asked Hearing

Today's hearing in the pre-Civil War courthouse of Dukes County was scheduled by Judge Boyle in response to letters from four groups of lawyers concerning procedures for the official inquest on Sept. 3.

The inquest was scheduled at the request of District Attorney Edmund Dinis of the Southeastern District of Massachusetts, which includes Cape Cod and outlying islands.

It concerns the death of May Jo Kopechne, 28 years old, who drowned when a car driven by Senator Kennedy left a narrow bridge on nearby Chappaquiddick Island on the night of July 18 and dropped into a salt-water pond.

The accident went unreported for about nine hours. A week later, Mr. Kennedy, appearing on nationwide television, said that his delay in reporting to the police was indefensible. He told of diving repeatedly in an effort to reach Miss Kopechne in the car.

In addition to the inquest, Mr. Dinis has been seeking authority from Pennsylvania to have

Miss Kopechne's body exhumed for an autopsy. She is buried in Larksville, Pa.

Mr. Dinis has said that he is not satisfied with the finding of Dr. Donald R. Mills, assistant medical examiner, that Miss Kopechne died of drowning.

Today's session was attended by about 100 persons, including reporters and summer visitors and islanders in casual summer clothing.

Judge Boyle appeared in his black judicial robes, with a red bow tie protruding above them.

Mr. Dinis and an assistant, Armand Fernandes, were at a table in front of the bench. Behind them in a line that spread beyond two other tables was a string of other lawyers.

In addition to Mr. Hanify and Mr. Clarke, himself a former district court judge, Mr. Kennedy is also represented by Robert G. Clarke 3d, and Richard J. McCarran.

Paul J. Redmond and Daniel J. Daley Sr. represented five girls and three men who were present at a cookout on Chappaquiddick Island the night of July 18.

The girls were Nancy Lyons and her sister, Maryellen, Esther Newberg, Rosemary

Keogh and Susan Tannebaum. The men were John B. Crimmins, a long-time aide of the Kennedy family, and Charles Tretter and Raymond LaRosa, sailing companions of the Senator's.

Joseph P. Donahue, brother of Richard Donahue, a former aide of President Kennedy's, represented Paul F. Markham, a former United States Attorney for Massachusetts, and Joseph F. Gargan, a Kennedy family cousin.

Two Legal Observers

Mr. Markham and Mr. Gargan, both lawyers, joined Mr. Kennedy after the accident. They had also been at the party.

The other lawyers appeared as observers. They were James L. Lawrence Keiney, representing Dr. Mills, and Rich H. Worth, representing the Kopechne family.

At the outset of the proceedings, Mr. Dinis withdrew a request to consider a postponement of the inquest.

Mr. Clarke, Mr. Donahue and Mr. Redmond argued at some length on what rules should apply at the inquest. They called for regular trial procedures.

Those three, with Mr. Hanify, also asserted that it was essential to the constitutional right of the witnesses for the lawyers to be able to advise their clients about the rules.

They asked for permission to examine and cross-examine witnesses, to seek rulings on the "relevancy, competency and materiality" of evidence, to present evidence and to compel the attendance of witnesses.

The Clarkes, father and son, offered a memorandum of law based on a recent ruling of the Supreme Court in a case involving labor relations in Louisiana.

The memorandum contended that on the basis of the case cited, due process of law required that witnesses and other interested persons whose conduct was under investigation be afforded the right to counsel, the right to cross-examine and the right to present witnesses.

The Clarkes insisted that the inquest was an "accusatory" procedure. But Judge Boyle replied "this is not a trial, there is no defendant and no person has been accused of a crime."

The judge said that he would take such procedures as would enable him to submit a written report as to the time, place and cause of death.