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Kennedy and the Machinery of Justice

By JAMES RESTON

EDGARTOWN, Mass., Sept. 2 —The new Chief Justice of the United States, Warren C. Burger, told the lawyers of the United States the other day in Texas that the American people were "nearing the end of their patience with the American machinery of justice," and the Kennedy case here seems to illustrate his point.

First there was no autopsy to determine the cause of the death of Mary Jo Kopechne, who was in the car driven by Senator Edward Kennedy when it plunged off the Dike Bridge on Chappaquiddick Island. Then there was another legal wrangle over whether there should be an official inquiry into the case and whether the body of the dead girl should be exhumed. Finally, an inquiry was ordered without assurance of cross examination of the witnesses, and after an appeal, the inquiry was postponed.

The Courts and the People

No doubt this is all quite satisfactory and even proper in the eyes of lawyers and judges who run "the machinery of justice," but Senator Kennedy's problem as a politician is not primarily with the courts of Massachusetts but with the court of public opinion, and his

decision to seek another postponement is bound to be interpreted as another attempt to use the technicalities of the legal procedure to postpone if not to evade questioning.

This, at least, was the general reaction in Edgartown when the postponement was announced. It is a hard, and may even be an unfair reaction, for under the rules of the Edgartown court, Kennedy's lawyers felt that they would be denied the protection of cross-examining witnesses and thus might not be able to guarantee the Senator's constitutional rights.

What Kind of Justice?

Nevertheless, Chief Justice Burger is undoubtedly right in saying that there is impatience among the people with the present legal procedures, especially in the light of the Kennedy case and other recent spectacular cases.

Nearly ten years ago, Esther James received a default judgment against Congressman Adam Clayton Powell because he called her a "bag woman" on a TV program. He probably could have settled this by an apology and a small sum, but he chose to defy the law. As a result, he was held in contempt and the judgment jumped to

over \$165,000. Meanwhile, the time of over 75 judges was consumed in trying to answer the questions of law necessary to decide Powell's moves to exploit the technicalities of the judicial system, and the case is still in the courts.

Millions of Americans watched the murder of Lee Harvey Oswald after the assassination of President Kennedy. Jack Ruby was tried and found guilty of murder in the first degree. Then there were appeals, motions to move the trial from Dallas, sanity hearings and proceedings to disqualify the judge, and finally the conviction was set aside on the grounds that the judge should not have allowed a policeman's testimony that indicated Ruby had "premeditated" the murder.

These cases, of course, are all different but each in its own way—and many others like them in recent years—have all contributed to the public suspicion that the technicalities of the law are often used not to bring about justice but to evade it. And beyond this, to the widespread feeling that there is one law for the rich who have money, influence and clever lawyers, and another law for the poor who have neither money nor influence.

In fact, it was precisely this

feeling that Senator Kennedy was getting special treatment—that he was getting off without an autopsy of Mary Jo Kopechne, and without an official inquiry—that led to the public outcry in the press for court action. Even here in Massachusetts, where the Kennedys are popular, it was widely felt that not only the Senator but the legal system was on trial.

Did Kennedy Blunder?

Under these circumstances, when public opinion was already aroused against him, it is odd that a politician, who lives by the movements of public sentiment, should have chosen to ask for a postponement, for whatever the technicalities in the case—and some of them are undoubtedly significant—he is now in a more awkward position than he was before, if that is possible, and eventually he will probably have to appear here before Judge Boyle, who is not likely to be amused by Kennedy's challenge to his judgment.

Maybe Chief Justice Burger will eventually come up with some answers to the problem of public irritation with the "machinery of justice," but meanwhile he has identified the problem, which the Kennedy case is clearly making worse.