

Legal Rights in Inquest

A Denial of Criminal-Trial Procedures Led to Suspension of Kennedy Hearing

By **SIDNEY E. ZION**
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EDGARTOWN, Mass., Sept. 3—For all their apparent complexity, there now appears to be an almost preordained simplicity to the legal events that culminated yesterday in a court order temporarily halting the inquest here into the death of Mary Jo Kopechne. In the wake of that injunction, one ruling has emerged as the critical factor that

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made possible, if not inevitable, the suspension of the inquest, with which all the principals said they wanted to proceed. This was the decision Aug. 27 by Judge James A. Boyle of the Edgartown District Court denying the request of Senator Edward M. Kennedy's lawyers to conduct the inquest according to the due process standards that prevail in criminal trials.

From the moment Judge Boyle refused to permit Mr. Kennedy's attorneys to cross-examine witnesses, introduce evidence, raise objections or remain in court throughout the proceedings, virtually all lawyers recognized that the Senator could halt the inquest if he wanted to.

It is a well-ingrained principle that restraining orders are granted whenever there are serious legal questions concerning a proceeding that may irreparably damage a person.

While Judge Boyle's ruling appeared to some to be a serious setback for the Senator, from the Kennedy viewpoint it had virtues easily recognizable to experienced lawyers. For it provided Mr. Kennedy with an eminently legitimate fall-back position in the event that he later wanted to put off the inquest.

That this fact was not lost on the Kennedy attorneys seemed apparent the other day when a source close to the Senator smiled knowingly at the suggestion of a lawyer-friend that Judge Boyle had "played right into your hands."

A few knowledgeable lawyers wondered aloud yesterday what might have happened had Judge Boyle granted a full-scale, due process inquest.

"If the judge granted the request for cross-examination and the like," one said, "I don't see how Kennedy could have moved to enjoin the inquest. The only grounds left to him would have been the publicity

angle, but I believe it would have been politically impossible for him to have demanded a secret hearing if he got everything else he asked for.

"It's also very questionable whether he'd be on firm legal grounds, since he'd be receiving a virtual trial, complete with constitutional protections, and trials are always public."

It is entirely possible, of course, that Mr. Kennedy would have been satisfied with a public inquest if he had been provided with constitutional guarantees, and, indeed, his lawyers did not ask Judge Boyle to close the hearing to the press.

But this fact was seen by some legal authorities as a two-edged sword. They suggested that political strategy might have dictated restraint in requesting a closed hearing until the motion for a due process inquest was lost.

In support of this theory, they pointed out that Mr. Kennedy asked for the first time yesterday that the Supreme Judicial Court in Boston quash Judge Boyle's order permitting the press into the inquest.

Senator's Requests

In any event, the public impact of the Senator's request for a closed hearing appeared to have been significantly blunted by the strategy of coupling it with a demand for due process.

Thus, some people here directed their criticism at what they considered Mr. Kennedy's "taking advantage" of "legal technicalities," such as the right of cross-examination. On the other hand, lawyers were beginning yesterday to question Judge Boyle's ruling rather than Senator Kennedy's objections.

For example, it seemed to some legal experts that Judge Boyle could have granted the request for a due process inquest.

They said the United States Supreme Court in June had held that cross-examination and full assistance of counsel were required in hearings held by a Louisiana labor investigating unit under circumstances rather analogous to an inquest.

Moreover, on a more pragmatic basis, the lawyers noted that a judge was always safe in granting more rights than might be required. The said that Judge Boyle's court was far from overcrowded and that

it could operate if the inquest took a few extra days because of a grant of procedural rights to the Senator and other witnesses.

But, of course, Judge Boyle said no, and if this gave Senator Kennedy the occasion to move for a temporary injunction, it did not altogether decide the issue for him.

By most accounts, the Senator was undecided until the last minute whether to try to stop the inquest, apparently because he was concerned with what people might say.

Why then did he move for

the injunction? And why does he now want the inquest to be a secret proceeding?

Nobody involved is answering that question, though most informed observers believed that the decision was made on the advice of Mr. Kennedy's astute lawyers.

And while no one can be sure, not a few sophisticated legal authorities have suggested that the usual reason for advising a client to avoid a public hearing is that the lawyer does not feel the client will acquit himself well on the witness stand.