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Ted Challenges Law In Fight Over Inquest

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BOSTON — Gov. William Bradford, elected governor of the "Plimouth Plantation" in 1621, served at the same time as the first Massachusetts chief justice.

This marriage of the judicial and executive branches has proved durable in the Bay State.

Indeed, in the clerk's office of the Massachusetts Supreme Court where Sen. Edward Kennedy is suing a district judge for more rights at an inquest, there is a symbol of such liaison.

On one wall, an oil portrait of President John Kennedy looks out on plaintiff and defendant alike. On another, a sketch of the late President and his dead brother, Sen. Robert Kennedy, is displayed.

A eulogy, mounted on a plaque, to President Kennedy made by a former state legislator, now the clerk of court, adorns another section of the wall.

Prominent Demo

And the Attorney General of Massachusetts is a prominent Democratic politician with a staff of patronage beneficiaries, some nevertheless talented.

But talented or not, it is a courageous political appointee that bends and shakes the mightiest man in his party, as Edward Kennedy is in Massachusetts.

In sum, about the only thing that Edward Kennedy has going against him in the Massachusetts court system is the law, and even there his lawyers have found some precedents for his unique request.

Of the four Supreme Court decisions brought into the case so far during Kennedy's bid for the right to cross-

examine witnesses and other safeguards, three go against the senator's position.

Teamster Victory

Kennedy, ironically, finds himself using a victory by a Teamsters member as his mainstay while his brother Robert was anathema to the Teamsters.

The case before the seven Massachusetts Supreme Court judges is simply stated:

Kennedy wants all the

protections of a criminal trial, contending that the Mary Jo Kopechne inquest is an "accusatory" proceeding. The attorney general's office, representing District Judge James Boyle, says an inquest is not accusatory.

In the last 38 years there have been only two inquests in Duke's County, where Miss Kopechne died. They are exceedingly rare

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preme Court said the marshal was right in refusing them counsel at that state.

Justice Stanley Reed, writing the majority opinion, said even though the business owners' testimony might prove a basis for criminal charges, they still had to go through with the hearing.

If they got to a self-incriminating point, he suggested, they should invoke the Fifth Amendment. This is a course which some lawyers have said Kennedy should be following. But it is one that would hurt him politically.

Private Eyes

The second Supreme Court decision cited by the attorney general against Kennedy's position dealt with some suspected ambulance-chasing private eyes who beat the bushes for business for their lawyer-clients.

A special New York, one-judge investigation was ordered. Some private detectives refused to testify unless their lawyers were in the room with them, even though the judge said proceedings could be suspended while the investigators went outside to consult. Decided in 1959, the decision was 5-4 in favor of the investigating body.

The next case, also against the Kennedy position, was decided in 1960 and concerned Louisiana, voting registrars suspected of refus-

ing to register Negroes. The Civil Rights Commission went to Shreveport and called on the registrars to testify.

They would not unless given the right to cross-examine witnesses. Saying the proceedings would hold them up to public scorn, might cost them their jobs and could get them into criminal charges. A position somewhat similar to the one taken by Kennedy's lawyers.

Once again, the court upheld the investigating body, this time by a 7-2 vote.

Labor Crime

Finally, last June came the case of Roderick Jenkins, a Teamsters Union member who went into court against the Louisiana Labor-Management Commission. The commission was set up specifically to investigate crime in the labor field and to make recommendations for possible criminal proceedings.

The commission rules allowed witnesses' lawyers to submit written questions for other witnesses and had limited other safeguards, but fell below those accorded criminal suspects in a regular court.

The court went 5-3 against the commission saying its procedures did not meet "the minimal requirements of due process" under the 14th

throughout Massachusetts and there is next to no law on them within the state.

High Court

So both Kennedy and the attorney general have turned to the U.S. Supreme Court. There they find a muddle in which three consecutive cases, none directly on inquests, seem to fly in the face of Kennedy's demands. But the most recent one clearly favors him.

The first of the four cases, decided in 1957, involved Dresden, Ohio, businessmen suspected by the fire marshal of burning down their own establishment.

The marshal summoned them before an "arson bureau." They refused to be sworn without lawyers present.

By a 5-4 decision, the Su-

amendment, particularly cross-examination.

Kennedy's lawyers point to similarities between the commission and the Edgartown inquest. The commission was set up to investigate crimes. And the 1877 statute, as amended, which ends the old coroners' inquests and sets up the medical examiner system providing for magistrate's inquests says:

"The magistrate (Judge Boyle in this case) shall report . . . the name, if known, of any persons whose unlawful act" or "negligence" might have caused death of the subject of the inquest.

The very next paragraph orders the arrest of any person "charged by the (magistrate's) report with the commission of a crime."

Citing this statute, the Kennedy attorneys insist that the senator should have all the protections of a criminal trial.

The Massachusetts Supreme Court decision, if appealed to the U.S. Supreme Court, could clarify all the status of all inquests. Most states, Massachusetts among them, bypass inquests and go directly to grand juries if the case has criminal possibilities.

That, according to some reports, is what District Attorney Edmund Dinis — who triggered the Kopechne in-

quest in the first place — is considering if legal arguments on the inquest go on beyond the October session of the Massachusetts Supreme Court.

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