

AUTOPSY DENIED IN KOPECHNE CASE

Need Unproved, Judge Rules in Kennedy Accident

By DONALD JANSON
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WILKES-BARRE, Pa., Dec. 10 — Judge Bernard C. Brominski denied today a request by Massachusetts authorities for an autopsy on the body of Mary o Kopechne.

He said a two-day hearing in the Court of Common Pleas of Luzerne County seven weeks ago had produced no testimony sufficient to indicate that Miss Kopechne's death might have been caused by anything other than drowning.

The 28-year-old secretary, who once worked for the late Senator Robert F. Kennedy, died the night of July 18 when a car driven by Senator Edward M. Kennedy plunged off a bridge and into a tidal pond on Chappaquiddick Island, Mass.

Senator Kennedy reported the accident more than nine hours later, after it had been discovered. In an examination at the scene, Dr. Donald R. Mills, associate medical examiner for Dukes County, Mass., found that death was due to drowning. Three days later Miss Kopechne was buried in Larksville, a suburb of Wilkes-Barre near her home town of Plymouth, Pa.

Her parents, Mr. and Mrs.

Continued on Page 46, Column 1

Continued From Page 1, Col. 8

Joseph A. Kopechne, now of Berkeley Heights, N. J., today expressed satisfaction with Judge Brominski's ruling. They had fought the request for exhumation and an autopsy sought by Massachusetts authorities as part of an inquest into the accident.

"This means I will come here often to visit my daughter," Mrs. Kopechne said at a crowded news conference in the Luzerne County Courthouse. "I could never have gone to that cemetery if her grave had been disturbed."

Mr. Kopechne, an insurance salesman, said, "Now we are waiting patiently for the inquest."

It will be conducted before Judge James A. Boyle of the Dukes County District Court in Edgartown, Mass. Judge Boyle said on Nov. 6 that he would wait until Judge Brominski ruled on the autopsy request before setting a date for the inquest.

Attendance Denied

Joseph F. Flanagan, attorney for the Kopechnes, said at the news conference that Judge Boyle had denied a request that a representative of the parents be permitted to attend the inquest. The Supreme Judicial Court of Massachusetts granting a request by Senator Kennedy, has ordered that the inquest be closed to the press and public.

In a 14-page decision today Judge Brominski found that "from the testimony before this court every reasonable probability leads to a conclusion that supports the original finding of . . . death by drowning."

District Attorney Edmund S. Dinis of the Southern District of Massachusetts, said in seeking the autopsy that it was vital to a sound medical determination of the cause of death. He produced expert witnesses who concurred.

The Kopechnes, on the other hand, produced experts who said the time was past for an effective autopsy.

Blood on Blouse

Judge Brominski said the presence of blood on the back of the victim's blouse was explained logically by Dr. Werner Spitz, deputy chief medical examiner for the State of Maryland, as a "froth" from the nose—common in drownings—that could have run down Miss Kopechne's face to the back of the neck and shoulders.

The judge noted that Dr. Mills had found the death "an obvious case of drowning" from water in the chest, with "no evidence of foul play or any criminal conduct."

He added that Eugene Friehe, the mortician who prepared the body for burial, testified to finding no bruises or cuts except on a finger.

The judge said that even if an autopsy showed injuries, they could have been caused

in the accident and would not necessarily change the finding of death by drowning.

"To consider any other cause of death at this time would give loose rein to speculation unsupported by any medical facts of record," he wrote.

Phrase Explained

He said in an interview that his words "any other cause" alluded particularly to suggestions by Armand Fernandes Jr., assistant to Mr. Dinis, that Dr.

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Mills' external examination had not the possibility of "manual strangulation."

Mr. and Mrs. Kopechne repeated today that they were satisfied with Senator Kennedy's explanation that their daughter's death following a party was accidental.

The Massachusetts Democrat pleaded guilty to leaving the scene of an accident, was given a suspended two-month jail term and lost his driver's license for a year.

Judge Brominski noted that the hearing brought out minor discrepancies between the report of the accident Senator Kennedy gave the police and the Senator's televised speech about the accident six days later. But the judge said, "These discrepancies do not alter the determination of the cause of death."

Nor, he said, did testimony by Deputy Sheriff Christopher Look Jr. of Dukes County that the accident may have occurred an hour and a half later than the Senator reported.

The Burden of Proof

The judge said the Massachusetts authorities had voluntarily passed up their right to perform an autopsy before burial.

After interment, he said, "the law will not reach into the

grave in search of the facts except in the rarest of cases, and not even then unless it is clearly necessary and there is reasonable probability that such a violation of the sepulcher will establish that which is sought."

"The petitioners," he concluded, "have failed to meet their burden of proof . . . that there is a reasonable probability that that which is sought warrants a violation of the sepulcher."

He said it was incumbent upon the court to consider the wishes of the parents. Mr. Kopechne testified at the hearing that they were "unalterably opposed" to exhumation and autopsy.

"In view of the facts presented to this court," Judge Brominski said, "their objections are well-taken."

Prosecutor Not Reached

SPECIAL TO THE NEW YORK TIMES
BOSTON, Dec. 10 — Neither Judge Boyle nor Mr. Dinis could be reached for comment on the decision by Judge Brominski.

An aide who asked not to be identified said that Mr. Dinis would not appeal the decision.

Judge Rejects Prosecutor's Request



Judge Bernard C. Brominski releasing his decision in the Kopechne case yesterday.



District Attorney Edmund S. Dinis in New Bedford, Mass., after hearing of decision.

Kopechne Autopsy Plea Denied; Judge Rules Need Is Unproved