

More Questions Than Answers in Report on Inquest

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Judge James A. Boyle's inquest report on the death of Mary Jo Kopechne has raised more questions than it has settled, by implying that Senator Edward M. Kennedy probably committed a crime but not requiring that he be charged with a violation. Friends and supporters of Senator Kennedy are saying—with considerable bitterness—that Judge Boyle in effect made a charge that he failed to stand behind. But because of the extraordinary features of the Massachusetts inquest law, the cloud left over Senator Kennedy may never be completely dispelled.

News Analysis

Under the inquest statute, which dates to 1877, the presiding judge seems to be required to issue a warrant for a person's arrest if the judge finds that the individual probably committed a crime.

Judge Boyle did not say in so many words that he considered Senator Kennedy culpable for an offense, but his conclusions about the Senator's probable conduct are almost a word-for-word recitation of a statute against "driving so as to endanger the lives and safety of the public."

Yet Judge Boyle did not order an arrest, which leaves the District Attorney, Edmund

Dinis, with the burden of proceeding against Senator Kennedy or of explaining why not and leaving Mr. Kennedy with a charge that has been expressed but not officially lodged.

The Massachusetts inquest law states that the judge shall hear the evidence and report "the name, if known, of any person whose unlawful act or negligence appears to have contributed" to the death. It continues that "if a person charged by the report with the commission of a crime is at large, the magistrate shall forthwith issue process for his arrest."

This seems to require the judge to issue an arrest warrant if he finds a violation. Judge Boyle quoted in his report a 1945 ruling by the Supreme Judicial Court of Massachusetts that used the word "may" rather than "shall" in referring to the issuance of the arrest warrant.

The 1945 decision was an antitrust case not involving an inquest, and the Supreme Court's use of the word "may" was made in passing.

In his findings Judge Boyle appeared to be accusing Senator Kennedy of a violation of section 23 (2) (a) of the Massachusetts Motor Vehicle Code, which makes it a misdemeanor for any person "upon any way or in any place to which the public has a right of access [to] operate a motor vehicle reck-

lessly, or operates such a vehicle negligently so that the lives or safety of the public might be endangered."

As his final conclusion, Judge Boyle stated, "There is probable cause to believe that Edward M. Kennedy operated his motor vehicle negligently in a way or in a place to which the public have a right of access and that such operation appears to have contributed to the death of Mary Jo Kopechne."

The statute carries a penalty of a fine of \$20 to \$200 and imprisonment of from two weeks to two years. Several days after the accident Senator Kennedy pleaded guilty to another clause of the same section, which makes it illegal to leave the scene of an accident. He was given a suspended sentence.

It is extremely rare for a law to give a judge leave to state, for official public distribution, that a person probably committed a crime, without initiating some legal proceeding that will ultimately result in the conviction or vindication of the person charged.

The Massachusetts inquest procedure permitted this because it is an archaic statute, created for a purpose quite different from the investigation of a death resulting from an automobile accident.

Inquests are descendants of coroners' inquests, an invention of medieval England as a way to preserve the facts of homi-

cides until the king's justices made their infrequent visits to conduct trials. The idea was revived in Massachusetts in the 19th century primarily as a means of aiding the heirs of persons who had been killed by railroad trains.

Plaintiffs in damage suits against the railroads had scant means of discovering the facts under the court procedures that existed then, and the inquest brought the state in on the side of the claimant against the railroad.

The Massachusetts law still requires a railroad, trolley line or motor-car-for-hire to pay the cost of the inquest if it is found responsible for a death.

In the Kennedy case, the result was disclosure of a grand jury-type inquiry—and it illustrates the reasons that grand jury transcripts are so closely guarded in secrecy.

The disclosures when the transcripts were made public earlier this week stand to harm Senator Kennedy far more politically and personally than legally.

The grand jury in Edgartown could reconsider its earlier decision not to press charges, but there are many reasons why it would not do so. One is that Judge Boyle relied upon what he called "inferences, known as presumption of facts" to conclude that Senator Kennedy's testimony was not credible in places and that it suggested criminal negligence.